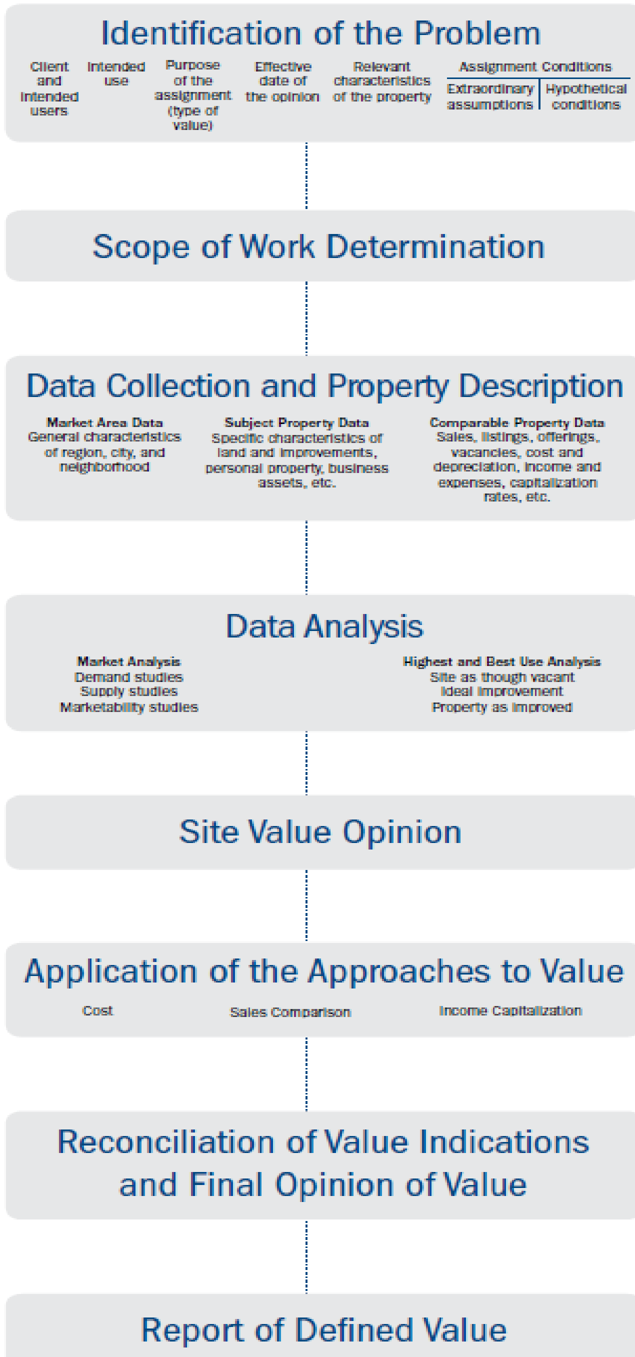
APPENDICES

THE COMPONENTS OF A USPAP-COMPLIANT APPRAISAL



Uniform Residential Appraisal Report

File #

The purpose of this summary appraisal report is to provide the lender/client with an accurate, and adequately supported, opinion of the market value of the subject property.

SUBJECT

Property Address | City | State | Zip Code

Borrower | Owner of Public Record | County

Legal Description

Assessor's Parcel # | Tax Year | R.E. Taxes $

Neighborhood Name | Map Reference | Census Tract

1 Occupant ☐ Owner ☐ Tenant ☐ Vacant | Special Assessments $ | ☐ PUD | HOA $ | ☐ per year ☐ per month

2 Property Rights Appraised ☐ Fee Simple ☐ Leasehold ☐ Other (describe)

3 Assignment Type ☐ Purchase Transaction ☐ Refinance Transaction ☐ Other (describe)

4 Lender/Client | Address

Is the subject property currently offered for sale or has it been offered for sale in the twelve months prior to the effective date of this appraisal? ☐ Yes ☐ No

Report data source(s) used, offering price(s), and date(s).

CONTRACT

I ☐ did ☐ did not analyze the contract for sale for the subject purchase transaction. Explain the results of the analysis of the contract for sale or why the analysis was not performed.

Contract Price $ | Date of Contract | Is the property seller the owner of public record? ☐ Yes ☐ No | Data Source(s)

Is there any financial assistance (loan charges, sale concessions, gift or downpayment assistance, etc.) to be paid by any party on behalf of the borrower? ☐ Yes ☐ No

If Yes, report the total dollar amount and describe the items to be paid.

NEIGHBORHOOD

Note: Race and the racial composition of the neighborhood are not appraisal factors.

Neighborhood Characteristics	One-Unit Housing Trends	One-Unit Housing	Present Land Use %
Location ☐ Urban ☐ Suburban ☐ Rural	Property Values ☐ Increasing ☐ Stable ☐ Declining	PRICE AGE	One-Unit %
Built-Up ☐ Over 75% ☐ 25–75% ☐ Under 25%	Demand/Supply ☐ Shortage ☐ In Balance ☐ Over Supply	$ (000) (yrs)	2-4 Unit %
Growth ☐ Rapid ☐ Stable ☐ Slow	Marketing Time ☐ Under 3 mths ☐ 3–6 mths ☐ Over 6 mths	Low	Multi-Family %
Neighborhood Boundaries		High	Commercial %
		Pred.	Other %

Neighborhood Description

Market Conditions (including support for the above conclusions)

SITE

Dimensions | Area | Shape | View

Specific Zoning Classification | Zoning Description

Zoning Compliance ☐ Legal ☐ Legal Nonconforming (Grandfathered Use) ☐ No Zoning ☐ Illegal (describe)

Is the highest and best use of the subject property as improved (or as proposed per plans and specifications) the present use? ☐ Yes ☐ No If No, describe

Utilities	Public	Other (describe)		Public	Other (describe)	Off-site Improvements—Type	Public	Private
Electricity	☐	☐	Water	☐	☐	Street	☐	☐
Gas	☐	☐	Sanitary Sewer	☐	☐	Alley	☐	☐

FEMA Special Flood Hazard Area ☐ Yes ☐ No | FEMA Flood Zone | FEMA Map # | FEMA Map Date

Are the utilities and off-site improvements typical for the market area? ☐ Yes ☐ No If No, describe

Are there any adverse site conditions or external factors (easements, encroachments, environmental conditions, land uses, etc.)? ☐ Yes ☐ No If Yes, describe

IMPROVEMENTS

General Description	Foundation	Exterior Description materials/condition	Interior materials/condition
Units ☐ One ☐ One with Accessory Unit	☐ Concrete Slab ☐ Crawl Space	Foundation Walls	Floors
# of Stories	☐ Full Basement ☐ Partial Basement	Exterior Walls	Walls
Type ☐ Det. ☐ Att. ☐ S-Det./End Unit	Basement Area sq. ft.	Roof Surface	Trim/Finish
☐ Existing ☐ Proposed ☐ Under Const.	Basement Finish %	Gutters & Downspouts	Bath Floor
Design (Style)	☐ Outside Entry/Exit ☐ Sump Pump	Window Type	Bath Wainscot
Year Built	Evidence of ☐ Infestation	Storm Sash/Insulated	Car Storage ☐ None
Effective Age (Yrs)	☐ Dampness ☐ Settlement	Screens	☐ Driveway # of Cars
Attic ☐ None	Heating ☐ FWA ☐ HWBB ☐ Radiant	Amenities ☐ Woodstove(s) #	Driveway Surface
☐ Drop Stair ☐ Stairs	☐ Other Fuel	☐ Fireplace(s) # ☐ Fence	☐ Garage # of Cars
☐ Floor ☐ Scuttle	Cooling ☐ Central Air Conditioning	☐ Patio/Deck ☐ Porch	☐ Carport # of Cars
☐ Finished ☐ Heated	☐ Individual ☐ Other	☐ Pool ☐ Other	☐ Att. ☐ Det. ☐ Built-in

Appliances ☐ Refrigerator ☐ Range/Oven ☐ Dishwasher ☐ Disposal ☐ Microwave ☐ Washer/Dryer ☐ Other (describe)

Finished area above grade contains: | Rooms | Bedrooms | Bath(s) | Square Feet of Gross Living Area Above Grade

Additional features (special energy efficient items, etc.)

Describe the condition of the property (including needed repairs, deterioration, renovations, remodeling, etc.).

Are there any physical deficiencies or adverse conditions that affect the livability, soundness, or structural integrity of the property? ☐ Yes ☐ No If Yes, describe

Does the property generally conform to the neighborhood (functional utility, style, condition, use, construction, etc.)? ☐ Yes ☐ No If No, describe

Uniform Residential Appraisal Report

File #

5 There are ____ comparable properties currently offered for sale in the subject neighborhood ranging in price from $ ____ to $ ____

6 There are ____ comparable sales in the subject neighborhood within the past twelve months ranging in sale price from $ ____ to $ ____

SALES COMPARISON APPROACH

FEATURE	SUBJECT		COMPARABLE SALE # 1		COMPARABLE SALE # 2		COMPARABLE SALE # 3	
Address								
Proximity to Subject								
Sale Price	$			$		$		$
Sale Price/Gross Liv. Area	$ sq. ft.		$ sq. ft.		$ sq. ft.		$ sq. ft.	
Data Source(s)								
Verification Source(s)								
VALUE ADJUSTMENTS	DESCRIPTION		DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment	DESCRIPTION	+(-) $ Adjustment
Sale or Financing Concessions								
Date of Sale/Time								
Location								
Leasehold/Fee Simple								
Site								
View								
Design (Style)								
Quality of Construction								
Actual Age								
Condition								
Above Grade Room Count	Total | Bdrms. | Baths		Total | Bdrms. | Baths		Total | Bdrms. | Baths		Total | Bdrms. | Baths	
Gross Living Area	sq. ft.		sq. ft.		sq. ft.		sq. ft.	
Basement & Finished Rooms Below Grade								
Functional Utility								
Heating/Cooling								
Energy Efficient Items								
Garage/Carport								
Porch/Patio/Deck								
7 Net Adjustment (Total)			☐ + ☐ -	$	☐ + ☐ -	$	☐ + ☐ -	$
8 Adjusted Sale Price of Comparables			Net Adj. % Gross Adj. %	$	Net Adj. % Gross Adj. %	$	Net Adj. % Gross Adj. %	$

I ☐ did ☐ did not research the sale or transfer history of the subject property and comparable sales. If not, explain

My research ☐ did ☐ did not reveal any prior sales or transfers of the subject property for the three years prior to the effective date of this appraisal.

Data source(s)

My research ☐ did ☐ did not reveal any prior sales or transfers of the comparable sales for the year prior to the date of sale of the comparable sale.

Data source(s)

Report the results of the research and analysis of the prior sale or transfer history of the subject property and comparable sales (report additional prior sales on page 3).

ITEM	SUBJECT	COMPARABLE SALE # 1	COMPARABLE SALE # 2	COMPARABLE SALE # 3
Date of Prior Sale/Transfer				
Price of Prior Sale/Transfer				
Data Source(s)				
Effective Date of Data Source(s)				

Analysis of prior sale or transfer history of the subject property and comparable sales

Summary of Sales Comparison Approach

9 Indicated Value by Sales Comparison Approach $

RECONCILIATION

10 Indicated Value by: Sales Comparison Approach $ ____ Cost Approach (if developed) $ ____ Income Approach (if developed) $

This appraisal is made ☐ "as is", ☐ subject to completion per plans and specifications on the basis of a hypothetical condition that the improvements have been completed, ☐ subject to the following repairs or alterations on the basis of a hypothetical condition that the repairs or alterations have been completed, or ☐ subject to the following required inspection based on the extraordinary assumption that the condition or deficiency does not require alteration or repair:

11 **Based on a complete visual inspection of the interior and exterior areas of the subject property, defined scope of work, statement of assumptions and limiting conditions, and appraiser's certification, my (our) opinion of the market value, as defined, of the real property that is the subject of this report is $ ____ , as of ____ , which is the date of inspection and the effective date of this appraisal.**

Freddie Mac Form 70 March 2005 Page 2 of 6 Fannie Mae Form 1004 March 2005

RESIDENTIAL APPRAISAL SAMPLE QUESTIONS

Introductory Note

The list of questions below is a compilation, for convenience in one location, of those listed in the foregoing chapter. But they are offered with a caution. Like the common formatting of an appraisal report, the questions asked of the appraisers who prepare those reports often cover common ground from one BOR hearing to the next. But the truth-finding process at the BOR is disserved if those points of commonality lull a questioner into thinking that the examination of an appraiser at the BOR should be conducted in a rote or formulaic manner. Each appraisal is unique. There is no formula for questioning an appraiser. There are no mandated questions. There is no one, singular way to conduct the witness examination of an appraiser. Each inquiry, each series of questions to the appraiser, is (or should be) designed to address the unique circumstances and issues raised by the appraisal under review. When it comes to questioning an appraiser, one size does not fit all. These questions should not be mechanically employed. Would-be, or inexperienced questioners, should keep that in mind as they review the list below.

Finally, it is important to note that these questions are ***starting points only and are not applicable to every case***. The questioner at the BOR will need to structure her inquiry and craft questions, including appropriate follow-up questions, to suit the circumstances of the appraisal and the appraiser's verbal responses under oath.

The following, then, either suggest areas of questioning or pose questions that sometimes arise in questioning an appraiser.

Background/Preliminary Information About the Appraisal

1. The identity of the client
2. Who is paying the appraiser for her work
3. The appraiser's scope of work
4. The purpose for which the appraisal was undertaken
5. When was the assignment given
6. The effective date of the appraisal
1. The person (if a company gave the assignment) who discussed the assignment with the appraiser

The Subject's Neighborhood

2. What criteria did you use to determine the subject property's "neighborhood"?
3. What are the geographic boundaries of that neighborhood?
4. What factors did you use in concluding that the neighborhood's buildings were "related"?
5. What data sources did you utilize in determining the number and price range of the pool of comparable sales?
6. Were all of the comparable sales located in the subject's neighborhood? If not, why not?

Criteria Used to Select Comps

7. What characteristics did this comparable have in common with the subject?
8. How many other sales, of the entire pool of comparables, had those or similar characteristics in common with the subject?
9. Given that potential number, why did you select this particular comparable?

10. In your search for appropriate comparables, were there any characteristics of those potential comparables that carried more weight with you than others?
11. When was this comparable last sold in an arm's length sale?
12. Did you verify the facts of that sale?

<u>Age of Subject and Comps</u>

13. Would you agree that the average condition of an older home is generally different than the average condition of a newer home?
14. In this case, the subject is 41 years old, Comp 1 is 29 years old, Comp 2 is 54 years old, and Comp 3 is 10 years old, correct?
15. Given that the average condition of a home may vary with its age, can you explain why you made no adjustments to these comps to account for the age differences between each of them and the subject.

<u>Meaning of "Average" Condition</u>

16. You describe all of these residences as being in "average" condition, correct?
17. You are required to perform your appraisals in accordance with USPAP, correct?
18. Did you utilize a definition of the word "average" when determining that these properties were all "average"?
19. Is there a definition within USPAP as to the meaning of the word "average"?
20. Is there any kind of mathematical or scientific calculation that you use in determining whether a property's condition is "average"?
21. Are there certain features or physical characteristics of a home that must exist in order for you to characterize it as "average"?
22. Would it be correct, then, to say that your determination that these homes were in "average" condition involves subjectivity on your part?

<u>Condition of Exterior</u>

23. You indicated that the exterior of the subject is "brick/vinyl" and that "brick/vinyl" is worth more in the marketplace than a vinyl-only exterior, correct?
24. What is your factual basis for that opinion?In making a determination that a vinyl/brick exterior is worth more than a vinyl-only exterior did you consult any books, treatises, or other resources?

<u>Amount of Adjustments</u>

25. In your appraisal you indicated that difference in value for a brick/vinyl exterior as opposed to an all vinyl exterior was $2,500, correct?
26. In coming up with that value did you consult Marshall & Swift or any other resources?
27. Where did that number ($2,500) come from?
28. Would you agree that the smaller the amount of the adjustment, the more similar it is to the subject?
29. And if the adjustments get too large, it may indicate that it is not a good comparable sale?

Number of Adjustments

30. In general, do you agree that it is better to have a smaller number of adjustments?
31. In general, do you tend to place greater reliance on a comp with fewer adjustments?

COMMERCIAL APPRAISAL SAMPLE QUESTIONS

Preliminary Matters

1. Who hired you to do the appraisal?
2. What was the scope of your assignment?
3. Was the appraisal prepared for tax valuation purposes?
4. What is the effective date of your opinion of value?
5. On what date/dates did you visit the site?
6. Did you view the interior of the property as well as the exterior?
7. On what date/dates did you write the report?
8. In viewing the interior of the subject, were you escorted by anyone at that location?
9. Was your access to the entire interior restricted or limited in any manner?
10. Did anyone assist you in gathering data for the appraisal?
11. Did anyone assist you in writing the appraisal?
12. Did anyone review the appraisal before you finalized it?
    a. If so, who?
    b. Did you make any edits or changes to either your opinion of value or any other portion of your appraisal based upon comments or concerns expressed to you by others?
        i. If so, what were those changes?

Highest and Best Use

Highest and Best Use – Questioning the Appraiser Regarding Whether the Subject is Legally Permissible and Physically Possible

Regarding Whether the Subject is Legally Permissible

13. In what jurisdiction is the subject located?
14. Does that jurisdiction have zoning laws?
15. What are the applicable zoning regulations regarding the subject?
16. Was it necessary to obtain a variance or conditional use authorization from any applicable government body before the subject could be constructed?
17. Are there any setback requirements or other restrictions on the area of the subject parcel on which a building can be constructed?
18. Is the subject required to comply with any building or other safety code requirements?
19. Is the subject under lease?
20. Are there any restrictions to certain uses under the deed that currently underlies the property?
21. Is the subject required to comply with any easements or restrictions other than utility easements?
22. Are there any other permits or certificates required from the applicable jurisdictions(s) before the subject may be legally occupied?

Regarding Whether the Subject is Physically Possible

Questions regarding whether the subject building is physically possible may include some or all of the following:

23. What is the soil type and can it support the structure?
24. What is the topography (flat, hilly, swampy, floodplain, etc.)?
25. What is the size/shape of the parcel and can it support the proposed use?
26. Where on the parcel is the building located?
27. Is there room for expansion?
28. Do any changes need to be made to the site/building to bring it to its highest and best use?

Regarding Whether the Subject is Financially Feasible

29. In determining if the subject is financially feasible, what uses did you look at?
30. Did you prepare any proforma net operating income statements for each of these uses?
31. Was the subject financially feasible in all of those uses?
32. In determining financial feasibility, what data did you review?
33. Did you do any calculations based on that data?
    a. Are those calculations in your appraisal?

34. In your analysis, did you prepare any written financial estimates?
35. In determining financial feasibility, would it be useful to know the price of surrounding lots or parcels?
    a. Did you do a review of the prices of the surrounding lots/parcels?

36. Were there any factors or facts that you explored in determining financial feasibility that are not discussed in your discussion of the three valuation approaches in your appraisal?

Regarding Whether the Subject is Maximally Productive

37. You indicated that the highest and best use for the subject is as a [SPECIFIED USE], correct?
38. And determining that that use is maximally productive is a critical component of your highest-and-best-use determination, correct?
39. Being maximally productive, in turn, produces the highest residual value of the land, correct?
40. Can you specify the data that you reviewed to make the determination that the [SPECIFIED USE] is the one that makes it maximally productive?
41. Can you explain your understanding of the term “highest residual value”?
42. Can you explain your methodology in determining that the use you selected produces the highest residual value?

43. According to *The ARE* the highest residual value must be "consistent with the market's acceptance of risk", correct?[1]
    a. How did you determine the market's acceptance of risk in this case?
    b. Did you rely on certain data or reference materials or was this just something based upon your experience?
    c. What were those data/materials and why did you select those as your reference resource?

44. According to *The ARE*, the highest residual value must be consistent with "the rate of return warranted by the market for that use",[2] correct?
45. For the use you selected, did you determine the rate of return warranted by the market?
    a. What was that rate of return?
    b. How did you determine that rate of return?

46. In making your determination of what use would prove maximally productive at the subject property, did you determine whether the subject undergo any rehabilitation, modernization, or other improvements?
    a. What were those changes?
    b. Were you able to determine how much those changes would cost?
        i. What was that amount?

47. In making your determination of what use would prove maximally productive at the subject property, did you determine that the subject should undergo any maintenance that had been deferred?
    a. What maintenance was that?
    b. Were you able to determine how much that deferred maintenance would cost?
        i. What was that amount?

[1] *The ARE*, 12th Edition at 314

[2] *The ARE*, 12th Edition at 314

Comparative Sales Approach

Research – Questions Regarding the Extent and Thoroughness of The Appraiser's Research Into Potential Comp Sales

48. How did you locate the sales comps?
49. Did they come from a database contained in your office?
50. How often is the database updated?
51. Is it updated by you or anyone else?
52. Other than the database, did you do any independent research to discover sales comps?
53. Have you used any of these sales comps in other appraisals?
54. Which ones?
55. How many times do you estimate you've used those particular sales comps?
56. Did you use any other sources in finding the comps?
57. Who wrote the appraisal?
58. Who reviewed it before it was finalized?
59. Did the attorney see it before it was finalized?
    a. Did the attorney provide you with written or oral comments ?
    b. After receiving those comments, did you make any changes to the draft of the appraisal?
    c. If changes made, did you keep a draft of the earlier appraisal?

Verification – Questions Regarding the Extent and Thoroughness of the Appraiser's Verification of Each Sales Comp Transaction

60. As to each comp sale:
    a. How did you verify the sale
    b. Did you review the records of the county auditor and recorder
    c. Did you speak with anyone directly involved in the sale to determine if it was an arm's length transaction
    d. Did you read the sales contract in each case?
    e. Did you check the courthouse records in each case?

61. As to market analysis information:
    a. Regarding your market analysis, where did you find your demographic data?
    b. Did you utilize any U.S. Census Data?
        i. Are you familiar with U.S. Census online tools known as Data Profiles?
        ii. Are you aware that the Census data profiles can get you information about demographics down to the census tract level?
        iii. Are you familiar with the fact that using census data you can compare the demographics of certain geographic areas to determine if they are compatible?
        iv. Are you aware that you can use census data to compare the household incomes of certain geographic areas?
        v. Any reason why you did not use census data directly?

Units of Comparison – Questions Regarding Whether Appropriate Units of Comparison Were Used Between the Subject and the Comps

NOTE: Frequently there is little to question here, as most appraisers will use price per square foot or some other generally acceptable measurement in coming to an appropriate conclusion of value

Adjustments to Comps

Differences Between Subject and Each Comp – Questions Regarding the Adjustments Made to Correct for These Differences

62. There is no rule in USPAP as to what constitutes a "comparable sale", correct?
63. The determination of what is a comp is a matter of your judgment, correct?
64. The adjustments that you make to the comps are largely subjective, correct?
65. Have you ever done an appraisal for the subject property before?
    a. When?
    b. What was valuation at that time?
    c. On any prior appraisal for this property or any earlier draft of the appraisal in the current case, did you reach a valuation that was in any manner different than the value conclusion that is in your final appraisal?

Questions Regarding Recency

66. When were each of the comps last sold?
67. For the time that elapsed from the sale to the effective date of the appraisal, did you make a determination as to whether market or economic conditions had changed in the market in which the comp is located?

Questions Regarding Restrictions on Use

68. Did you read the zoning ordinance applicable to both the comp and the subject?
    a. Any differences?
    b. If differences, how did you adjust for those differences?
69. Did you review the deed to determine is there were any use restrictions contained within the deeds for the subject and the comps?
70. Did you determine if there were any environmental issues with either the subject or the comps?

Questions Regarding Location[3]

71. Do you agree that for commercial properties location is a key determinant of value?
72. Would it be fair to say that for commercial properties, with all other things being equal, the property with the better vehicular visibility and access is worth more than the property with worse vehicular visibility and access?
73. Are there any differences in type of road or vehicle access between the subject and the comps?
74. In comparing the location of the comps to the subject did you attempt to obtain information regarding vehicle counts on the road leading to the subject?
75. In comparing the location of the comps to the subject did you have access to information regarding vehicle counts on the roads leading to the comps?
76. Can disparities in vehicle counts on roads giving access to a property effect the value of that property?
77. Did you make any adjustments between the subject and the comps for location?

Questions Regarding Financing

78. Did the appraiser investigate whether the buyer (current owner) got financing from the then-seller?
79. Did appraiser investigate whether the financing was more favorable than the market rate at the time?
80. Are there any differences between the financing terms for the subject and the financing terms for any of the subjects?
81. Describe the financing terms of the comps vs. those of the subject
82. In your opinion, did the financing terms of any of the comps effect their value?
    a. Explain

Questions Regarding the Interests Conveyed

83. What were the interests conveyed in each of the comps?
84. Were any of them encumbered by a lease?
85. Are there any differences between the interests conveyed in the comps and those of the subject?
    a. Explain

Questions Regarding Expenditures After Purchase

86. Did buyer (current owner) make any expenditures after purchase (deferred maintenance, demolition or removal of improvements, petition for zoning changes; costs to remediate environmental contamination
87. Did you determine if any expenditures were incurred by any of the comps, post-sale, for items like deferred maintenance, remediation of environmental issues, demolition or improvements?

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[3] According to *The ARE*, "Location considers time-distance relationships, or linkages, between a property or neighborhood and all possible origins and destinations of residents coming to or going from the property or neighborhood." See *The ARE*, 12th Edition at 46

Income Capitalization Approach

Net Operating Income

Net Operating Income: Questions for the Appraiser About How the Comps were Selected

88. What process did you use in selecting the comps?
89. Had you ever used any of these comps before?
90. Were these comps from files maintained in your office or from some other source?
91. In the preparation of this appraisal, did you personally visit and inspect both the interior and exterior of each of the comps?
    a. Which ones did you visit?

92. Have you ever done an appraisal for any of the comps that you used here?
    a. When was that appraisal done?
    b. Has it been updated since then?
    c. How many times have you used these comps in other appraisals?

93. [If some comps have more than one tenant] Did some of the comps have more than one tenant?
    a. Did those tenants pay different rent per square foot?

94. Explain the process of how you developed PGI for that property – what steps did you go through
95. Where did you get the rent rates for the comps?
96. Where did you get the expense amount for the comps?
    a. With whom did you speak to get this information?
    b. Did you verify any of the information yourself?

97. Explain the manner in which you forecast an increase or decrease in PGI for the twelve month period after the tax lien date
98. What materials did you rely upon in making that percentage increase/decrease determination?
99. How current is that information?
100. Did you study trends regarding increase/decrease of PGI
101. How far back?
102. Did you do a similar review for the comps

Net Operating Income: Questions for the Appraiser About Vacancy and Credit Loss (VCL)

103. In determining a market vacancy rate, what documents or information did you consult
104. [Regarding comps] How were those comps selected?
105. How far from subject?
106. Are there any dissimilarities between any of the comps and the subject?
107. Are they in similar market from subject?
    a. How was similarity of market determined?
    b. What information sources did you consult to determine similarity of market?

108. In determining a vacancy rate did you consult any sources other than comparable properties?

109. Are those resources specific to the geographic area where the subject is located
110. How current is the information in those resources?
111. In listing vacancy rates, do those resources distinguish between different types of commercial property
    a. In relying on those resources, did you limit your reliance to information that related only to the subject's type of building?
112. What was the single largest factor in determining the vacancy rat?
113. In determining collection loss, did you consult any sources other than the comparable properties? [**NOTE TO QUESTIONERS**: *The ARE* states that "An appraiser should survey the local market to support the vacancy estimate."][4]
114. In determining collection loss for the subject, did you compare the potential gross income with the amount actually collected?
    a. This would have given you an accurate percentage of collection loss for the subject, correct?[5]

<u>Net Operating Income: Questions for the Appraiser About Other Income</u>

115. Can you identify all of the sources of Other Income at the subject?
116. What records did you review in finding that Other Income?
117. How far back in time did you go to review the records for Other Income?
118. Were all sources of Other Income subject to a VCL reduction
    a. Which ones
    b. Explain why you did/did not reduce each source of income by VCL

119. Explain under what circumstances a source of Other Income would be subject to VCL reduction and under what circumstances it would not be subject to VCL reduction
120. In your analysis of Other Income, did you utilize any comps?
    a. Explain why/why not

121. At the subject, did you notice any increases or decrease of over 10% year over year
122. Can you identify the factors that would have an impact on the amount of Other Income?
123. You projected a ___% increase/decrease in Other Income
    a. Explain how you made that determination
    b. In making that determination, what resources did you consult?
    c. How current are those resources?

<u>Net Operating Income: Questions for the Appraiser About Operating Expenses</u>

124. Do you use a checklist or other writing to help you include all of the items that you feel should be included in operating expenses?
    a. If so, do you have that list with you?
    b. If not, can you tell us all of the items that you included in operating expenses

[4] *The ARE*, 12th Edition at 512.

[5] *The ARE*, 12th Edition at 512. ("Other methods of measuring vacancy and collection loss include comparing potential gross income at market rates against the subject property's actual collected income.")

125. You determined operating expenses for each of the expense comps, correct?
   a. What documents did you review to determine the expenses for each of the comps?
   b. What was the source of those documents or information?
   c. Had you used any of this information for any of the comps before?
   d. How current was the information on expenses from the comps?
126. Tell us the process that you used in selecting the expense comps
127. Did you find it necessary to make any adjustments to the expense comps?
   a. If so, please explain what adjustments and why they were made

Net Operating Income: Questions for the Appraiser About the Replacement Allowance

Questions that may be asked about the appraiser's determination of a replacement allowance could include the following:

128. From the tax lien date in question, what is the useful life of the building on the subject
   a. How did you determine that?
   b. What sources did you use?

129. Can you identify all of the components of the subject property that you took into consideration in developing your replacement allowance? [NOTE: If certain components that you might expect to be included in the replacement allowance were excluded, ask the appraiser to explain why.]

130. In reaching your replacement allowance figure, did you personally examine each of those components to determine how much useful life was left in each of them? [NOTE: If not, then have the appraiser explain how she determined the useful life of each component.]

131. Your replacement allowance is a figure that is projected into the future, correct?

132. Did you do the calculations for the replacement allowance or did someone else do them for you?

133. In reaching a replacement allowance did you consult with contractors in the subject's market area regarding replacement costs for those components?
   a. [NOTE: In *The Student Handbook to The Appraisal of Real Estate*, 13th Edition, at 311, it states "Reserves for replacement are commonly estimated by obtaining contractors' estimates for the work needed. Some appraisers divide the current cost of the item by the total economic life. Other appraisers adjust the cost to future amounts (usually higher) and then discount that amount back to current dollars using an appropriate discount rate...The future expenditure should be projected out only until the expense is incurred."]

134. In determining the replacement allowance, did you review the records of the subject regarding whether any of the components had previously been replaced?
   a. What records did you look at?

135. In determining the replacement allowance, did you review the records of any comparables regarding their maintenance history?
   a. Explain

136. In determining the replacement allowance, what source(s) did you use to determine how much it would cost to replace each of those components?

137. If you <u>overestimate</u> the amount of operating expenses – in other words, higher than they should be – that would <u>reduce</u> the NOI, correct?
   a. And if the NOI is reduced, then that would reduce the value of the subject property, correct?

In summary, then, the following steps should be taken in determining operating expenses:

- Research historical fixed and variable operating expenses for the subject

- Determine amount of annual replacement allowance (i.e. confer with contractors, etc.)
- Calculate the operating expenses by combining the determinations for fixed and variable expenses plus replacement allowance

- Increase or decrease the amount reached in Step 4, above, by the appropriate percentage (i.e. inflation) for the future period under consideration

<u>The Capitalization Rate</u>

<u>The Capitalization Rate</u>: <u>Questions for the Appraiser About the Determination of the Cap Rate</u>

Some questions that may be asked about the manner in which the appraiser determined the cap rate could include the following:

138. In your selection of cap rate comps, did you personally examine documents that showed the sale price, income, expenses, and financing terms for each of the comps
   a. If not, who did?
   b. If not, explain why you did not personally review
   c. In your selection of cap rate comps, did you undertake an examination of the market for sales at the time that each comp was sold?
   d. What resources did you consult in making that determination?
   e. How are you able to determine that the market conditions for each of the cap rate comps at the time they were sold is similar to that for the subject?

139. Explain basis on which comps were selected
   a. Comps should have the same overall level of risk or be adjusted to make them have the same overall level of risk as the subject;
      i. Risk is effected by creditworthiness of tenants, correct
      ii. Did Appraiser investigate the creditworthiness of the tenant of the subject property; what are the credit ratings of the tenant at the comps and the tenant at the subject

140. [If the subject has one or more tenants] In making your selection of cap rate comps, did you determine whether the creditworthiness of the tenants at each cap rate comp was similar to the creditworthiness of the tenants at the subject
   a. What sources did you consult
   b. Do you have that information in your workfile

c. Can you give us an example of how you went through that process and determined whether a cap rate comp was similar to the subject

141. Explain the process through which you determined that the financing terms for each cap rate comp was similar to the financing terms of the subject

142. How did you verify the information for each of the cap rate comps?

Cost Approach

Possible Questions Regarding Selecting Reproduction or Replacement Cost

143. Is your cost approach opinion based on reproduction or replacement?
144. Explain your reasoning in selecting reproduction/replacement
145. In selecting reproduction/replacement did you do an analysis as to which of those would cost more/less
    a. If not, why not
    b. If so, which of those (reproduction/replacement) cost less
    c.

Possible Questions Regarding the Determination of Hard and Soft Costs

146. What items did you include in hard costs?
147. What items did you include in soft costs?
148. Do you use a checklist or other document to insure that you cover all hard and soft costs?
    a. Do you have that list with you?
    b. Is it in your work file?
    c. For this appraisal assignment did you add any items not contained on the list?
    d. For this appraisal assignment did you delete or remove any items that are contained on the list?

149. Did you do an item-by-item breakdown or listing of both the hard and soft costs?
150. Do you have training or a background in the construction industry?
151. Are you familiar with the costs of construction materials and labor?
    a. If not, what source or sources did you consult to obtain that information?
    b. Is the information that you obtained from that source localized to the neighborhood of the subject
    c. How recent is that cost information?

152. Do you have personal knowledge of how that information was gathered?
153. Do you have personal knowledge of how that information was verified?
154. Do you have personal knowledge of the sources that were utilized by that source to obtain that information?
155. Do you have knowledge about the competitive conditions between construction companies in the neighborhood of the subject?
    a. Where was that information obtained?
    b. Would you agree that the competitive conditions for construction work would have an impact on the cost of a building?

156. Do you know what the architectural fees were for the subject?
157. Do you know what the legal fees were for the subject?
158. Do you know the costs of the performance bond?
159. Do you know what the cost of financing is for the subject?

Possible Questions Regarding the Determination of Entrepreneurial Incentive

160. You determined that there would be an entrepreneurial incentive of X%
161. How did you determine that percentage?
    a. Did you consult outside sources in reaching that percentage?
    b. If so, are you personally familiar with how those sources gathered the information?
    c. If so, are you personally familiar with how those sources verified that information?
    d. Do you know if that source material was localized to the market area of the subject?
        i. Explain how you know
    e. Do you know how frequently that source material is updated?
    f. Do you know how recent the source material was that you relied upon?

162. In reaching your determination of entrepreneurial incentive, were you personally familiar with the competitive conditions for construction work in the subject's market area?
163. In reaching your determination of entrepreneurial incentive, were you personally familiar with the profit expectations of the local construction companies for work of this type?
164. In reaching your determination of entrepreneurial incentive, did you consult with any builders or construction companies in the subject's market area?
    a. List and identify
    b. Why did you select those builders over others?

165. Would you agree that the amount of expected profit is tied to the amount of risk involved in the project?
166. How would you characterize the level of risk for this subject property?
167. Did the level of risk involved in the subject property play a factor in your determining the percentage of entrepreneurial incentive?[6]
    a. If so, explain how you factored that in and what impact that had on your determination of the entrepreneurial incentive percentage

Possible Questions Regarding the Determination of Depreciation

168. Is the depreciation amount effected by the length of the "economic life"[7] of the subject?
169. Did you determine the "useful life"[8] of the subject?
    a. Explain
    b. How did you make that determination?

170. Describe the manner in which you determined depreciation
171. Do you agree that breaking down depreciation into physical deterioration, functional obsolescence, and external obsolescence is the most comprehensive and detailed way to measure depreciation?[9]

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[6] According to *The ARE*, "The range of profit will vary for different types of structures and with the nature or scale for a given project. For example, the entrepreneurial incentive for a proposed development may be higher where creative concepts, greater risk, or unique opportunities are found to have market acceptance. **Less risky, more standard competitive projects may merit a lower measure of profit.**" See *The ARE*, 12th Edition at 361

[7] *The ARE*, 12th Edition at 386 defines "economic life" as "The period over which improvements to real property contribute to property value; the term relates to the market extraction and age-life methods of estimating depreciation." "Useful life" is defined as "The period of time over which a structure may reasonably be expected to perform the function for which it was designed."

[8] *The ARE*, 12th Edition at 387 defines "Useful life" as "The period of time over which a structure may reasonably be expected to perform the function for which it was designed."

[9] *The ARE*, 12th Edition at 395 ("The breakdown method is the most comprehensive and detailed way to measure depreciation.")

172. Did you break down depreciation into physical and functional depreciation and external obsolescence?
   a. If so, describe your process in reaching that breakdown
   b. If not, why not?

173. In determining depreciation, did you consult any outside sources?
   a. What sources?
   b. Do you have personal knowledge of the manner in which those sources gathered or confirmed their data?

174. In reaching your valuation, did you determine the contributory value of site improvements
175. What were the site improvements that you reviewed?
   a. Were there any site improvements that you did not include?
   b. Can you tell us the contributory value that you put on each of those site improvements?

176. Can you explain how you reached those particular values?
177. In reaching those values did you consult any outside sources?
   a. Identify those sources

178. Were those sources localized to the market area of the subject?
179. In reaching an opinion of the contributory value of the site improvements did you consult with any construction, landscape, gardening, or other companies or individuals
   a. Which ones?
   b. With whom did you speak?
   c. Discuss the nature of your conversations
   d. Did they give you values for certain site features?
   e. In reaching the contributory value for those site improvements did you simply add together the cost of construction and materials for those improvements?
      i. If so, is it correct that the value contributed by a site improvement to the overall value of the subject may be more or less than the dollars cost of that site improvement?
      ii. In other words, is it correct that improvements to a site do not necessarily add a dollar of value for a dollar of cost?

<u>Possible Questions Regarding the Determination of the Value of the Site</u>

180. In determining the value of the land itself you were required to find its highest and best use?
181. What is the highest and best use of the land?
182. And is that highest and best use as vacant land?[10]
183. Explain the process that you utilized to determine site value
   a. Did you use comps?
   b. What criteria did you use in selecting the comps?
   c. How many comps did you ultimately use?
   d. How many comps did you initially consider?
   e. Were all comps in the subject's market area?

[10] See *The Student Handbook to The Appraisal of Real Estate*, 13th Edition, at 249 ("Site value is always estimated as if the land were vacant and available to be put to its highest and best use.")

184. Did you make any adjustments to the comps?

a. Why make adjustments?
b. Degree of adjustment?
c. <u>Explain</u>

Reconciling the Different Approaches to Value

<u>Possible Questions Regarding the Determination of the Value of the Site</u>

185. In your reconciliation, which approach was given the greatest weight?

a. Explain why you gave it the greatest weight
b. [Where appraiser has an ultimate conclusion between the values reached in two or more approaches]
c. In reaching your value conclusion, did you ascribe certain percentage weights to the values you determined for those different approaches?
d. Your dollar value for the income approach was X; your dollar value for the sales comparison approach was Y; explain mathematically how you ultimately determined a dollar value different than X and Y?

SAMPLE TRANSCRIPTS OF COMMERCIAL APPRAISER TESTIMONY

The pages that follow contain several transcripts of appraiser testimony given at the Board of Tax Appeals. These transcripts are provided as examples of the manner in which commercial appraisers are questioned both on direct and cross-examination. These transcripts have been converted to word format and, in the electronic version of this document, can be searched using a word or phrase.

Contents of Sample Transcripts

TRANSCRIPT 1

The subject property discussed in this transcript is a retail center with several large retail units, a smaller strip of stores, and an outparcel.

BEFORE THE STATE OF OHIO BOARD OF TAX APPEALS

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Kettering City Schools :
Board of Education, :
:
Appellant, :
:
vs. : Case No. 2015-2394
:
Montgomery County Board of:
Revision, :
:
Appellee. :

\- - -

PROCEEDINGS

before Ms. Christine Mendoza, Hearing Examiner, at the State of Ohio Board of Tax Appeals, 30 East Broad Street, 24th Floor, Columbus, Ohio, on Monday, September 19, 2016, called at 9:08 a.m.

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ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724

\- - -

APPEARANCES:

Rich & Gillis Law Group
By Ms. Kimberly G. Allison
6400 Riverside Drive, Suite D
Dublin, Ohio 43017

On behalf of the Appellant.

Sleggs, Danzinger & Gill, LPA
By Mr. Todd W. Sleggs
820 West Superior Avenue, Seventh Floor
Cleveland, Ohio 44113

On behalf of the Appellee.

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INDEX

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EXHIBITS

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Monday Morning Session,
September 19, 2016

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THE ATTORNEY EXAMINER: This is a hearing before the Board of Tax Appeals, State of Ohio, relative to an appeal styled Kettering City Schools Board of Education, Appellants, versus the Montgomery County Board of Revision, et al., Appellees, having been assigned Board of Tax Appeals Case No. 2015-2394.

Through the appeal, the Appellant challenges the decision of the Montgomery County Board of Revision determining the value of the subject property Parcel No. N64-04327-0001, for tax year 2014.

This hearing is being convened in the offices of the Board of Tax Appeals on the 24th Floor, Rhodes State Office Tower, 30 East Broad Street, Columbus, Ohio, on September 19, 2016, at approximately 9:08 a.m. before Christine M. Mendoza, Attorney Examiner for the Board of Tax Appeals.

At this time will the Appellant's representative please enter her appearance by name, mailing address, and telephone number.

MS. ALLISON: Thank you. Kimberly

Page 5

Allison with Rich & Gillis Law Group, 6400 Riverside Drive, Suite D, Dublin, Ohio 43017, telephone (614) 228-5822, and we are here on behalf of the Kettering City School District.

THE ATTORNEY EXAMINER: Thank you.

At this time will the Appellee's property owner representative enter his appearance by name, mailing address, and telephone number.

MR. SLEGGS: Thank you. May it please the Board, my name is Todd Sleggs. I am here on behalf of Wilmington Center, Ltd., and our office address is 820 West Superior Avenue, Seventh Floor Cleveland, Ohio, 44113. And our telephone is (216) 771-8990.

THE ATTORNEY EXAMINER: Thank you.

Ms. Allison, as you represent the Appellant in this matter, would you like to begin with an opening statement?

MS. ALLISON: We'll wait, but we will request a briefing schedule at the conclusion.

THE ATTORNEY EXAMINER: Thank you. You may proceed.

MS. ALLISON: At this time I'd like to call Tom Sprout. Before he takes the stand, we would make a motion to separate the witnesses.

Page 6

MR. SLEGGS: I should note, while we are on subject, Fred Scalese, who testified at the Board of Revision, he's vice president of the company that owns Wilmington Center, Ltd., and he's going to come in at some point. I will designate him as the representative of the Wilmington Center, Ltd. so he can sit in the hearing.

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THOMAS D. SPROUT

being first duly sworn, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

By Ms. Allison:

Q. Good morning, Mr. Sprout.

A. Good morning.

Q. Can you please state your name for the record?

A. Thomas Sprout, I'm a commercial real estate appraiser.

Q. And were you engaged to prepare a appraisal report for the property we are discussing this morning on Wilmington Pike?

A. I was.

Q. And have your conclusions been summarized in what has been marked as Appellant's Exhibit A?

Page 7

A. Yes. The report is dated May 12, 2016, and that is such a document.

Q. Thank you. And are your qualifications set forth in this report?

A. They are. They are in the addendum section of the report.

MS. ALLISON: Can I ask counsel if he is willing to stipulate to the qualifications as set forth in the report?

MR. SLEGGS: I will.

MS. ALLISON: Thank you.

Q. (By Ms. Allison) Is your appraisal report or your testimony in any way contingent on the outcome of the case?

A. It is not.

Q. Having said that, would you please go ahead and walk us through your report?

A. Sure. I don't know what was testified to at the BOR. I will briefly talk about the description of the improvements and then spend most of my time on the evaluation section of the report.

We were asked to appraise the property known as the Wilmington Plaza Retail Center, located at 2724-2890 Wilmington Pike in the city of Kettering as of the tax lien date January 1, 2014.

Page 8

The subject property is a retail center that has basically three components to it. It has four large box retail units. It has a smaller strip, and then out front it is occupied by Skyline Chili, so we have three distinct rental components that will be analyzed here, the big boxes, the smaller strip retail, and then the outlot with the Skyline Chili.

I'm familiar with the neighborhood. There's a McDonald's basically located right across the street that I have also appraised for a BTA hearing. I think they are going on tomorrow. This Wilmington Pike has just gone through a major, I believe, street widening, and during that point in time, the McDonald's across the street basically razed its building and put up a new McDonald's building to fit the more upper generation property.

So the location is good. McDonald's would not have demoed its building and put a new building up if they didn't feel it was a good enough location for retail.

Photographs of the property are located on pages 2, 3, 4, 5, 6, and 7. It identifies the larger boxes to the rear of the property, and then the strip is in the middle, and the Skyline is along road frontage.

When I was out there, I believe there was a vacant larger box that was available for $3.25 a square foot and approximately 3,000 square feet in the retail strip that was available for $6 a square foot. I believe both on a triple-net basis.

We were out there May 11, 2016. We measured -- I measured the property and it was within about 200 square feet of what the rent roll was, so I just went ahead and utilized the property owner's rent roll just for consistency purposes. It wasn't a material impact on the property.

Wilmington Pike is a major arterial through the neighborhood. You can see that on page 13 with my map, as well as if you turn to page 15, there's a plat map of the property indicating its total square footage.

The property was built in 1967 and 1984. I've indicated three different buildings. Building 1 would be the larger retail, which totals 97,345 square feet. When I was out at the property it was occupied by Big Lots; a thrift store, I believe St. Francis was the name of it; and then a Designer Fashion Warehouse. The farthest to I believe it would be the south, I believe, was vacant. It was I believe formerly occupied by -- I'm not real

certain whether it was a church, or something along those lines.

Building 2 I've characterized as a Skyline Chili, which is approximately 2,800 square feet; and then the third was a 17,900 square foot building that was partitioned into smaller storefronts. Several of the occupants I believe have been there for quite some time.

Based on my discussions with management, the roof on the 17,900 square foot retail building was original, which I think was 1984, and then the roof on the larger building was sealed sometime in 2011, based on my discussions with management. The parking lot was in okay physical condition.

So now that we've talked about the condition of the building, I'll get into the valuation portions of the property. On pages 19 and 20 I did a two-mile vacancy survey of the property for the retail utilizing the CoStar Survey. As of the tax lien date, which was 1/1/14, vacancy was approximately 10 percent, as of the tax lien date. I added an additional 2 percent for credit loss in determining my overall vacancy and credit loss rate that I would be utilizing for the statewide profit/loss statement or 12 percent overall. That is

supported there on page 20. That's about 3.9 million square foot of space was surveyed.

Highest and best use analysis, as vacant, in my opinion, would be held for future development. As improved, the improvements still contribute above the value of the site, in my opinion.

Two approaches of value were utilized, the sales and income approaches to value. The sales approach was only completed in this appraisal just as a guide to give an indication that is supportive to the income approach.

This is an income-producing property. An investor would purchase this property based on its income stream; therefore, the sales approach was given very little weight in my overall conclusion of value. I relied upon the income approach.

I won't spend much time on the sales approach, but I did provide six sales. Sale 1 was in Twinsburg, Ohio, $63 a foot. That's superior to the subject. Sale No. 2 was Morse Plaza here in Columbus. Had a former Gold Circle, then became Kohl's, and then now I think the Franklin County Board of Elections is in there. That also included a Kroger's property, which they will be vacating within the next couple years to move across the street to a

new building. This was known when the property was purchased.

It sold for $32 a foot. This was built in 1967 and 1992 so it's a similar-type property having different types of users. As you can see, to the far left there's an outlot there with a building on it. So that was a very good sale here at $32 a foot.

Sale No. 3 is in Canton, Ohio, sold for $53 a foot. This is far superior to the subject.

Sale No. 4 is actually in Harrison Township on Needmore Road in the greater Dayton market area. This property sold for $20 a foot. I was unable to verify any of this information with the buyer or seller of the property.

Sale No. 5, Washington Township in Montgomery County, this is down near the Centerville area. That property was 93 percent leased. It sold for $22.42 per square foot. Once again, I was unable to verify any of the information from this center with the buyer or the seller, but I believe there was some motivation to sell this property. That's why it sold for so low.

Sale No. 6 is located in Miamisburg, which is also in the Dayton market area. This property sold for $29.71 per square foot. It was 88 percent leased. It sold at a reported 10 percent capitalization rate. This property was built in 1959.

We did speak to the listing broker on this, so here's a property that's a similar age to the property, similar size. It was 88 percent leased and sold at a 10 percent cap rate, so it just kind of zeroes us in on what this property is worth.

I concluded to a value for the subject at the absolute low end of the range between 20 and 21 a foot, indicating a range between $2,350,000 and $2,475,000.

So now we get to the income approach to value. This is where the weight of the value of the conclusion is involved. On page 32 I've included rent rolls for the subject property that was provided to me. Skyline, from 2014 to 2015, their rent significantly decreased from $36 a square foot to $19.63 per square foot as of 1/1 -- I believe between 1/1/14 and 1/1/15.

So since that was a renegotiated lease at $19.63, that's a perfect example of what market rent would be in this case. Once again, we get into that leased fee/fee simple discussion. This is a

leased-fee interest here but at market, so it's akin to fee simple. So that provides the best evidence for that property as to what its rent is.

I have additional rent support for this property, but I concluded the $19.63 for the Skyline portion of the profit and loss statement that we'll talk about here in a second.

The second set, which would be the third building, would be the inline retail space. If you look at the rent roll as of 1/1/14, you have an Advance America, which is a lender of a higher interest rate, would be the best way of putting it. Their rent -- as of 1/1/15, their rent was $12 a foot triple net.

Dayton Embroidery & Darts, they've been there for a reasonable period of time. Their rent was $4.50 a square foot. There's a bar that was out there. Their rent was $8.22 per square foot, and then three others range between $2 and $8 per square foot. I concluded to a rent for the inline space of $6 a foot, which is basically kind of in the middle of what the other inline space was.

And then, finally, we're talking about the Big Lots store, the thrift store, and the Designer Warehouse space. The Big Lots and the

thrift store was between a buck ninety and $3.04. The offer was $3.25 per square foot. I concluded to a rent of $2 per square foot on a triple-net basis for the inline space.

My rent comps are on pages 33, 34, and 35. I won't go into those specifically on a line-to-line basis. It just supports my overall indication of rent.

So if you look on page 36, my market rent of $2 per square foot for the Big Lots, the thrift store, and the Designer Warehouse space, as well as the vacant space -- Designer Warehouse, I believe, came in subsequent to 1/1/15. I don't have -- I was not provided really any additional information on that. I'm trying to think. I don't think I was.

I concluded to a rent for all that space of $2 a square foot. I concluded the inline space at $6, and then the Skyline space at $19.63 on a triple-net basis.

I was provided historical financial data, which is also on page 36, between 2011 and 2014. It appears that from 2012 to 2013 the property lost tenants and was in a vacancy situation. I'm guessing some of that would have to do with the road construction that was going on out front.

But you can see the revenue from '11 and '12 is consistent with my net effective gross income on a stabilized basis as of the tax lien date at 484,544. So '11 and '12 this property was stabilized, and you can see the effective gross income is consistent with my numbers.

If you look at the net operating income for '11 and '12, 256 and 295 thousand dollars, that's above where I am at 243,000. I have also included reserves for replacement at about 25 cents a foot for $30,000. So that would make up the difference between my NOI in '11 and '12.

'13 and '14 the property had a higher vacancy than what the market was indicating, so that's why the NOI is lower for those two years.

So based on the information that I have I've pretty much tailored my expenses based on historical numbers and further supported by market indications from other properties.

So I took that $243,438, and I determined what an appropriate capitalization rate would be for this. Since I'm at the lower end of the range for my market rents in the market, for not only the big-box space but also the inline space, as well as the outlot space, I concluded to a capitalization rate that would be right around the middle to upper end of the range that would be consistent with a property of this age at 10 percent.

Capitalization rate is all about risk. If I indicated a higher rent for this property, then my cap rate would be higher because there would be higher risk at that point, but since I concluded to rents at the lower end of the range, the lower to middle of the range, I felt that a 10 percent capitalization rate was consistent with the sales that I have provided on page 38, as well as at the upper end of the range of national indicators, which would be the PricewaterhouseCoopers, as well as page 39, the Realty Rates Investor Survey.

There's nothing better than local sales, and what I mean by local sales would be the sales within, in this case, the state of Ohio. I conclude to a rate of 10 percent. Providing that capitalization rate to the net operating income indicated a value of $2,435,000.

Page 40, I've done an adder methodology where I've added back the existing taxes to the net operating income and then adjust my capitalization rate for the effective tax rate for District N64. That provided a capitalization rate of 13.44 percent.

Applying that to net operating income of 327,726 indicated a value of $2,440,000.

In conclusion, as I indicated before, the income approach is given all the weight here. The sales approach is just a secondary indication. It's an income-producing asset, so, therefore, as of the tax lien date January 1, 2014, my value conclusion was $2,440,000.

Q. Mr. Sprout, I think you just stated the vacancy for subject property was higher for '13 and '14. Did you take that into consideration in determining your overall vacancy for the subject property?

A. No. It appeared the property lost tenants so it was in the process of having to retenant the property. That's an ongoing -- that happens within retail centers, so when we're dealing with that for ad valorem tax purposes, we're valuing the property as stabilized at market rent, market vacancy, and what we determine as the market capitalization rate.

So in this case it's clear in '11 and '12 that the property had been stabilized based on the information that I have in my profit/loss statement, which is consistent with those two years.

Q. Thank you. And then when you determined your market vacancy, I think you relied primarily upon CoStar?

A. I did.

Q. Okay. What type of properties would be included in the CoStar Survey?

A. Well, in this particular case the CoStar would be all retail properties, retail/commercial. There would be no office, no industrial, no multifamily. This is specific to retail and commercial properties.

Q. So in your opinion would it ever be appropriate to limit your determination of market vacancy by looking solely at older shopping centers in Dayton?

A. No, not in my opinion. I think every market has its own segment. We're in the Kettering market. I don't think it would be fair to figure out what vacancy would be in Kettering versus, say, in north Dayton or if you go down to the southeast to the Dayton Mall area, which is Centerville. I think this is its own unique market, and I think when you're talking about retail areas, I think it's important that you segment it out.

Columbus, just to give you an example, I

wouldn't use Easton to figure out what the market vacancy would be in the Dublin market. It's its own market area.

MS. ALLISON: That's all I have.

THE ATTORNEY EXAMINER: Mr. Sleggs, do you have any cross-examination?

MR. SLEGGS: Yes. Thank you.

- - -

CROSS-EXAMINATION

By Mr. Sleggs:

Q. I'm going to start out with a really easy question. Who is Teddy Sprout?

A. That's my son.

Q. Is it? Okay. Then congratulations. I find this is a business that the next generation seems to come in, so I hadn't seen that name before so I thought I'd ask. I didn't know if you had a nickname I didn't know about.

A. No. Thanks for the softball. I appreciate that.

Q. So I just want to -- I'm looking on page No. 1, the photograph on the top, and Wilmington Pike is the street that's on the extreme left-hand side of the page?

A. Yes, that's correct.

Q. Okay. I just want the Board to understand. So Skyline Chili is the outlot in the front?
A. Correct.
Q. Is it the one on the north side?
A. Yes. It's the top corner.
Q. Okay. The top outlot, and then there's another outlot that isn't part of the property?
A. That is not part of the property.
Q. That's on the corner of Jaybee Court?
A. Yes.
Q. Then the 17,900 square foot small box, I think you called it, that is right behind the Skyline Chili?
A. That would be the strip retail, correct.
Q. Okay. Then we go to the back, and that big black box is the four-partition storeroom, the big-box space?
A. Correct.
Q. Okay. I just wanted to confirm that.
And, let's see, the CoStar report for the subject property that's in the addendum, was that printed out around the time you did this report?
A. Yes.
Q. It doesn't have a date on it. I just

wanted --
A. No. That's correct. This would have been printed off at the time of.
Q. Around the time, okay. Let's see, now, in terms of the CoStar data -- I know Ms. Allison asked you some questions on that. I just have a couple more questions.
A. Sure.
Q. So this is all the retail within a two-mile radius of the subject property?
A. That is correct.
Q. Okay. And it would include all different ages of properties?
A. Yes.
Q. And it would include all types of retail? Let me just give you an example. So it would include like a CVS store?
A. Yes.
Q. It would include like an Arby's fast-food restaurant?
A. Yes.
Q. It would include like multi-tenant strip shopping centers like the subject property?
A. Yes.
Q. Okay. Any type of retail --

A. Any type of retail.
Q. -- is going to get captured in there?
A. Yes.
Q. Okay. And it's not -- so I guess my point is so it's not just strip shopping centers. It's the whole universe of retail.
A. Correct.
Q. Okay. And then in terms of credit loss, you used a 2 percent credit loss factor. Is there any market data in the report for that particular portion of the calculation?
A. No.
Q. Okay. And you used for the inline space or the small-box space $6 a square foot in your income approach?
A. Yes.
Q. And is that also the asking rent for the space?
A. Yes. I believe so.
Q. Okay. Let's see, then the $2 a square foot for the larger retail or the big-box space, that's what they're asking for that as well?
A. No. I believe it's three and a quarter.
Q. Three and a quarter?
A. Yes.

Q. Is that off of CoStar?
A. I believe it was, yeah.
Q. I see that, okay. Now I'm onto page 37. You talk about common area maintenance charges and property repairs and that sort of thing, and you primarily relied on the actual income and expenses in your projection of expenses for the subject property?
A. Yeah. I had four years' worth of expenses, and I felt that that's the most appropriate.
Q. Okay. And there isn't -- just so I'm not misreading the report, I don't think you have any expense comparables in the report. I didn't see any.
A. I do not. It was just based on -- which is typical of retail because most of the rents are triple net in nature, so usually the biggest expenses a lot of times are taxes. In this case that's just part of it since it's an older center.
Q. Okay. I know you on page 38 talk about the PwC Real Estate Survey, and you have that in the addendum of the report. And I'm looking at it in the addendum. It's a national strip shopping center market study?
A. Yes.
Q. So that would include not just Ohio but

it would be the whole country?
A. Yes.
Q. Okay. And I think you testified that local sales, in your opinion, would encompass the state of Ohio?
A. Yes.
Q. Okay. I am assuming you gave that, the national data from PricewaterhouseCoopers less weight?
A. Yes.
Q. Okay. I know you gave the market -- the sales comparison approach very little weight, but I just want to ask a couple of questions, just for the record. The first sale in Twinsburg, Ohio, that would be northeast Ohio?
A. Correct.
Q. Summit County, okay. Then I think you already testified that sale No. 2 was in the Columbus market?
A. Yes.
Q. Under verification you have the Haines Report. What is the Haines Report?
A. The Haines Report is a local company that provides comp information for Franklin County. A lot of times it has more detail in it than CoStar. It

also -- it supplements CoStar.
Q. Who publishes that?
A. A lady by the name of Kim Wentzel. Jackie Haines was doing this for a long time. She succumbed to cancer about -- gosh, it's been about ten years now.
Q. In that particular case you didn't speak to either the buyer or seller in verifying that sale?
A. No. It's interesting, I had an e-mail out to the gentleman that was involved. He said he would get back to me, but he hasn't yet, that's why that information is here.
Q. Okay. And, let's see, Sale No. 3, that's Stark County. That, again, would be northeast Ohio?
A. Correct.
Q. And, let's see, Sale Nos. 4 and 5, I think you mentioned that you weren't able to verify those. But those are in Montgomery County?
A. They are.
Q. Let's see, then if we go to the page 29 in your report, you did qualitative adjustments on page 29?
A. Yes.
Q. So this isn't -- it's not we adjusted this one up 5 percent and this one down 3 percent,

that type of thing?
A. No. I went into a rating system, what I felt was better versus the subject property center.
Q. Okay. I want to speak just specifically to Twinsburg -- Sales 1, 2, and 3, which are Twinsburg, Columbus, and Canton. I mean, those are different parts of the state, would you agree with that, than Dayton?
A. Yes.
Q. They may have different demographics than the Kettering market?
A. Sure.
MR. SLEGGS: Okay. I may be getting too old to do this, but I'm done.
THE ATTORNEY EXAMINER: Do you have any redirect?
MS. ALLISON: No, thank you.
THE ATTORNEY EXAMINER: Thank you very much for your testimony, Mr. Sprout.
THE WITNESS: Thank you.
(Recess taken.)
THE ATTORNEY EXAMINER: We will go back on the record, please.
Mr. Sleggs, I believe Ms. Allison concluded her case in chief.

At this time do you want to move your appraisal into evidence?
MS. ALLISON: Yes, please.
THE ATTORNEY EXAMINER: Do you have any objection?
MR. SLEGGS: No, I don't.
THE ATTORNEY EXAMINER: We will move Exhibit A into the record.
(EXHIBIT ADMITTED INTO EVIDENCE.)
THE ATTORNEY EXAMINER: Mr. Sleggs.
MR. SLEGGS: At this time I'd like to call Mr. Ken Wilson to the stand.
- - -
KENNETH E. WILSON
being first duly sworn, as prescribed by law, was examined and testified as follows:
DIRECT EXAMINATION
By Mr. Sleggs:
Q. Mr. Wilson, could you state your full name for the record?
A. My name is Kenneth E. Wilson.
Q. And your appraisal qualifications appear in the addendum to the report on pages 96 through 99.
MR. SLEGGS: And rather than have you testify to your appraisal qualifications I would just

request a stipulation from Ms. Allison on behalf of the Board of Education as to your qualifications as they appear in the appraisal.

MS. ALLISON: I will stipulate.

MR. SLEGGS: Thank you.

Q. (By Mr. Sleggs) Mr. Wilson, there's been some testimony already in the case about the property, and there's also descriptive information in the transcript on appeal that was filed by the Board of Revision with the Board of Tax Appeals. But you have some photographs that begin on page 21 in the report. Could you briefly touch on the photographs and what your inspection of the property revealed?

A. On page 22 of the report is a front view and a rear view of the Skyline Chili fast-food restaurant. As I recall, this structure was built in 2004 and the lease was a 2,800 square feet of leasable area. It was subject to an existing lease. This property is a little unique in that it had three separate buildings. It had the Skyline Chili building. It had a smaller retail building, and at the far rear of the property it had a large box retail building.

Q. You actually have an aerial photograph from the auditor's website on page 20 that shows the

layout of the property?

A. Yes, sir.

Q. Just so the Board is aware, this is Skyline Chili?

A. Yes.

Q. And then this is the smaller inline retail space?

A. Yes, sir.

Q. And then this is the big-box portion of the property?

A. Yes, sir.

Q. And then this is Wilmington Pike along here?

A. Yes.

Q. And that is kind of a main thoroughfare?

A. Yes, it is.

Q. And I know there was some testimony at the Board of Revision about the visibility of the small inline and big box being blocked by the outlots. Did you find that at the property?

A. Yes. Both the two outlots -- there's the Skyline Chili is an outlot that's on the subject property, and adjacent to it was an outsale of a Sonic restaurant, and then there's a central drive entrance. But when you're standing basically at the

front of the property, you cannot see the stores towards the rear.

Q. Okay. You have some additional photographs of the other buildings of the property. Is there anything that you would like to point out to the Board that is shown in those photographs?

A. Well, on pages 23 and 24 is the smaller building with the inline stores, so you can see it is a fairly typical strip retail store building. It is of concrete block so there's nothing unusual about that.

The larger building at the rear has these four large box spaces. It's an older building. It was built in 1967. It's a brick on concrete block construction, which is a little unusual. We don't do that today. The Big Lots store had a full loading dock section with overhead doors, and other than that, it's fairly typical for large big box retail stores.

Q. You have a description of the Kettering area that as on pages 18 or 19. Is there anything specific that you would highlight for the Board in terms of where the subject property is located?

A. Kettering is considered one of the most desirable suburbs in the Dayton area, next to Oakland

and Centerville, but it's older and it's basically landlocked. The school district is considered one of the better ones by reputation.

This particular area of Kettering, however, was an older area. It was annexed in from the township many years ago, and it was originally known as Beavertown, as it was bisected by the Little Beaver Creek. The elementary school is still called Beavertown, which is next door to the subject property.

This area is a little older. It has more modest-priced residential neighborhoods around it. The same thing with the apartment projects, they're older with lower- to moderate-priced rents.

The immediate location, however, was upgraded when they widened Wilmington Pike, which was about eight years ago, maybe, and so some newer development took place about that time with the McDonald's restaurant and a Frisch's restaurant.

Unfortunately, the existing retail declined, and there's a China Buffet next door and a beer drive-through that's empty. The cinema or theater that was there is now converted to a church, so it's kind of got mixed dynamics going on with some new retail but with some older stuff, and so it's very secondary, at least in terms of the Kettering/Dayton market, but it is still quite stable.

Q. Okay. You've got some descriptive information with respect to the three buildings that appear on pages 29 and 30 in your appraisal. Is there anything specific with respect to the building improvements that the Board should be aware of in connection with your appraisal?

A. As I indicated, the Skyline Chili is a newer building. It was built in 2004. Actually, it had been a former fast-food restaurant that was razed and redeveloped.

The strip building is about 18,000 square feet, and it has relatively small stores in it. It's fairly typical of most inline retail store buildings.

The big building in the back is about 97,000 square feet. It has four tenants. As of the date of value, however, only two were occupied, Big Lots and the St. Francis store. I think later in 2015 the adjacent store to St. Francis was leased to, like, a discount dress type store.

The end unit was known as The Attic, which was a nightclub. This does not have any typical retail storefront or entry doors. The inside

is painted black. It's got two long bars. It has two large old restrooms. It's got a tile floor that has been torn up. I mean, it is pretty rough inside. It is going to take quite a bit of money to fix that store to lease to the marketplace, and the City of Kettering doesn't have any desire to have that released to a nightclub.

I talked with Mr. Scalese, and he indicated he's had some interest for some like flea-market type of use for that space, and the City of Kettering has also denied that use for him, so it's still sitting vacant. So that's an older building, and it's had a lot of vacancy history in the past.

Q. And that is the section of the building farthest away from even the side street there?

A. Yes, sir.

Q. So it's really in the back corner of the shopping center. I guess, again, going to page 20, it would be this section of the building?

A. Yes.

Q. Okay. You discussed highest and best use on pages 32 and 33. What were your findings and conclusions with respect to highest and best use?

A. Well, the highest and best use as vacant,

this is a ten-acre site. It is narrow and deep. It is zoned business in Kettering. As I indicated just a little bit ago, Wilmington Pike is a major road through the neighborhood, four lanes now with a center turn lane. It has some new development with the McDonald's and the Frisch's restaurant. But as I indicated, it had old retail which is secondary so it is a hit-and-miss type of location.

The adjacent property is some apartments to the rear, the secondary retail. Then on the other side of it is the Beavertown Elementary School, so it is not what one would call a real prime commercial location.

But based upon the development along Wilmington Pike, if this site were vacant, it probably, because of its size and configuration, would be a mixed-use project if it was developed, retail, apartments, much like we see here in Columbus.

The highest and best use as improved, even though this isn't an ideal retail property, would still be as improved. We wouldn't raze the improvements at this time in that we have some reasonable occupancy in the smaller stores; some substantial vacancy, however, as of tax date in the

bigger stores.

Q. Your income approach is the first approach to value that you process in your appraisal, and it begins at page 23. Could you explain to the Board how you went about valuing the property under the income approach to value?

A. As I indicated, this property has three different components. It has the Skyline Chili, which is a fast-food restaurant. It has the 18,000 square foot building, which is the small inline stores. Then there's the big box building at the far rear of the site, so to estimate the market rent we looked at each component.

In this particular case, the Skyline Chili was on a renegotiated lease, a relatively new lease, at about $20 per square foot. In our office files, the fast-food restaurants we have rents that range from as low as $12 a square foot to over $30. High end is, obviously, for new building or for first-class locations. The lower range is for older buildings or secondary locations. It's subject to somewhat of a secondary location, so $20 a square foot, in my opinion, was market rent, so I used that to estimate market rent.

The inline stores had actual rents that

ranged from as low as $2 a square foot to $12 per square foot. The most recent ones were in $2 to $6 per square foot range. This property was listed with Tracey Herron of Equity, Inc. Realty, and I discussed the rents with her regarding the vacant spaces, and she indicated they were asking $6 per square foot as of the date of value, but that was a starting place, she said. She anticipated the actual rents could be something lower than that.

She also provided a listing of other properties that they have listed for rent and/or manage in their company, and typical rents for small stores like this in the Dayton market was in the $5 to $8 per square foot range.

Based upon the actual rents and taking into consideration her information, I estimated the market rent at $5.50 per square foot for the small stores.

The larger building, as I indicated, had only two stores occupied as of the tax lien date, and they were the Big Lots stores, which was rented for $3.04 per square foot and the St. Francis Thrift Store at $1.90 per square foot. During this assignment I talked to the owner, Mr. Fred Scalese. He said that he had been asking $4 per square foot

for the other two storerooms that were vacant, but he was pretty sure he would have to adjust that or negotiate it down.

In 2015 he leased 20,400 square feet for $2.25 per square foot. He indicated to me this was on a short-term basis, and he wasn't really sure this tenant would stay for the full term of the lease.

But during our market research, and again, discussing the market rents with Tracey Herron of Equity, Inc., she indicated that many other shopping centers like this had larger stores that typically ranged in the 3 to 4 dollar per square foot range for this type of property. So my estimate of market rent for the large store space was $3.50 per square foot based upon this information.

So on page 35 the total potential gross income at 100 percent occupancy at the market rents I just discussed would be $493,421. These were rents that are quoted on a net basis, wherein the tenant would pay additional costs commonly known as the common area maintenance charge.

Mr. Scalese indicated that he was quoting at the time $1.54 per square foot for common area maintenance, So I just rounded that to $1.50 cents per square foot for the whole property for $176,767.

I should note that not all of the stores in the center pay a common area maintenance charge, so this was at market rate, not the actual income that they would receive.

Adding the common area maintenance to the market rent estimate, the total potential gross income before vacancies and credit loss was $670,188. From the total potential gross income, I deducted an allowance for vacancy and credit loss. The subject has had a history of high vacancy over most of its live.

The vacancy as of January 1, 2014, was 42 percent. They were able to rent a storeroom and the inline stores during 2015, so the vacancy declined to 37 percent, and by the end of 2015, where they had leased the one large big-box store, the vacancy declined to 22 percent.

I discussed this also with Tracey Herron, who was trying to lease this space. She said it's been very, very difficult to find tenants, especially for these stores you can't see from the street.

And so during our research I found other shopping centers in the Dayton market of similar age that also had fairly high vacancies. The Washington Park Plaza in Centerville had a 25 to 30 percent

vacancy. The Northtown Center up on the north side of Dayton had a 20 percent vacancy. The Fairborn Plaza in Fairborn had a 22 percent vacancy, which was increasing, and the Imperial Square Shopping Center in West Carrollton was over 40 percent vacant. It became clearer that the older shopping centers had higher vacancy than the newer shopping centers.

So taking into consideration the subject's history, taking into consideration that it had a declining vacancy after the tax lien date, I stabilized the vacancy and credit loss at 30 percent or $201,056.

Q. The sales that you looked at or the properties that you looked at that are discussed on the bottom of page 35, those are sales that you either used in your sales comparison approach or for market expense information later on in the report?

A. Or found during our research, yes.

Q. All right.

MR. SLEGGS: Fred Scalese just walked into the room. As I mentioned before we went on the record, Mr. Scalese is vice president with Carnegie Companies, which is the parent of Wilmington Center, Ltd., and I designated him as the representative of the Appellee in the case, and we are working through

Mr. Wilson's appraisal. We are on page 26.

Q. (By Mr. Sleggs) So after you made your projection of vacancy and credit loss under the income approach, what was the next step?

A. From the effective gross income of $469,132, I deducted the fixed and operating expenses for the property. For this report I used the actual real estate taxes for 2014, which will be adjusted later as a part of the tax adder process, so that's an actual number.

The other expenses I have budgeted based upon market. This is based primarily upon filed data that I have. The property insurance was stabilized at 15 cents per square foot or $17,700. The management fee was estimated at 5 percent of effective gross income. I've estimated leasing fees on an average basis of $3,000 per year. Utilities were estimated based, in part, upon the subject's history at $15,000 per year. Grounds maintenance, which include blacktop repair, site lighting, landscaping, was budgeted at 30 cents per square foot for 35,400. General building maintenance and repair was budgeted at 75 cents per square foot or 88,400.

Again, these are averages in that in some years the maintenance expenses may be very high, like

in one year to replace the roof at $200,000, and some years would be a little lower. So for the purpose of stabilizing expenses, these are considered averages.

Miscellaneous expenses might include legal services, accounting services, provisional fees. That was estimated at 1.5 percent of effective gross income, and the final category was reserve for replacements. This might be parking lot cover. In this case it might be the replacement of the storefront over the nightclub that doesn't have a typical storefront. So I budgeted the replacement for reserves at 25 cents per square foot or $29,500 per year.

The total stabilized expenses were $305,199. This was approximately $2.59 per square foot of building area. I have listed four properties taken from our files. The market expenses --

Q. That's on page 37?

A. On page 37. These expenses were from my file data because I either appraised the property or I had direct information from the owner, and the market expenses for older properties, larger in size like this, range from a low of $2.42 per square foot to a high of $2.68 per square foot. So I felt my stabilized expenses at $2.59 per square foot was

within the market range and were reasonable.

Q. And you have -- the calculations you've been testifying to, they're summarized on page 38?

A. Yes.

Q. Once you determined expenses, and this begins on page 37, you talk about determining a capitalization rate for the property under the income approach. How did you go about determining your capitalization rate?

A. On page 39 is a listing of the market capitalization rates that I considered. The first one was the Miamisburg Plaza in Miamisburg, Ohio, which is a suburb of Dayton. This was a sale in 2009 at a 10 percent cap rate. The Washington Park Plaza was in Centerville, Ohio, a suburb of Dayton. It sold December 2013 with a 12.28 percent cap rate. The Dayton Towne Plaza sold in 2011. This was an unusual sale in that the realtor's cap rate was 15.42 percent. The information through CoStar, however, indicated an 11.4 percent cap rate.

From my file the Great Western Shopping Center here in Columbus sold in 2013 with an 11.3 percent cap rate. The Raintree Center on the northeast side of Columbus sold in 2015 at a 10.4 percent cap rate. A small center that was owned

by the same owner as the Raintree sold in 2013 at a 10 percent cap rate.

The Shops at Town & Country on the east side of the Columbus sold in 2011 at an 11.29 percent cap rate, and the Home Center Shopping Center in Centerville on State Route 725 sold in 2015 at an 11 percent cap rate.

Q. Is Centerville a suburb of Dayton?

A. Yes, one of the nicer suburbs of Dayton.

So these capitalization rates bracket the tax lien date, which was January 1, 2014, and based upon this data I concluded to an 11 percent capitalization rate for the subject property.

Q. Now, you mentioned that you used the adder method on the bottom of page 38, and I show an adjustment where you added back real estate taxes to your net income projection.

A. Yes, sir.

Q. And once you made that adjustment then, what did you have to do to your capitalization rate in order to arrive at your conclusion under the income approach?

A. To account for the impact of real estate taxes, the market overall rate of 11 percent is adjusted by effective tax rate. The effective tax

rate is the actual taxes divided by the auditor's market value.
In this case it was 3.44 percent, so the adjusted overall rate is 14.44 percent divided into the adjusted net income of $249,632 for an adjusted value -- or estimated value by the income approach of $1,729,000, rounded.
Q. The next section of your report contains some of the information you have already made reference to, but just very briefly, beginning on page 40, is this a summary of the income and expense history for the property?
A. Yes, sir, for 2012, 2013, and 2014.
Q. Okay. And then I believe that the next document is from the transcript on appeal. There is a rent roll for the property as of January 1, 2015.
A. Yes, sir, on page 41 is the rent roll.
Q. And then you've got additional income and expense history on pages 42 and 43.
A. That's correct.
Q. Let's go to your sales comparison approach that begins on page 44. How did you go about valuing the property under the sales comparison approach?
A. Well, the sales comparison approach is a

method of value whereby we research the value for sales of shopping centers that might be similar and comparable to the subject. Our research criteria were for sales that might be in the Dayton market, Montgomery County. Our research was also for sales that might be similar in terms of age, similar in terms of style, maybe having the larger big-box-type storerooms and similar in terms of occupancy, since the subject had suffered occupancy for a number of years. Those were our research criteria.
There's two different methods of analyzing comparable sales known as the quantitative method and the qualitative method. The quantitative method applies very specific adjustments to each element of comparison there. This is a real good appraisal tool, and there's a lot of good data where you isolate the adjustment factors.
The qualitative method analyzes the sales in terms of their positive and negative features of the subject compared to the comparable sales. With this type of data, which is somewhat erratic, I believe that the qualitative method was the better analysis tool in this particular assignment.
Q. You have four sales that are summarized on page 45, but if we go to the pages that follow,

46, 47, and 48, you have more detailed information on each of the sales. How did you go about using that data to value the subject property under the sales comparison approach?
A. Well, on page 45 is a chart of the four comparable sales that were considered. It indicates the name of the shopping center and location, the sale date, the sale price, the sale price per square foot, and some brief comments regarding each of the sales.
With properties of this type, the standard unit of comparison is the sale price per square foot of building area, and this would be -- in this case we used the gross leasable area for the subject property as this was the most consistent.
On pages 50 through 60 are the location map and the detailed data sheets for each of these comparable sales. These comparable sales were all found in the Dayton area and were verified with a party that had knowledge of the transaction.
Q. And the map op page 50 shows the location of each of the sales, vis-a-vis the subject property?
A. That's correct.
Q. And they are all either in Montgomery County or in Greene County, which I think would be

the Fairborn location, which is next door to Montgomery County?
A. That's correct. Fairborn is considered to be a suburb, just like Westerville would be here. It's about the same distance from town.
Q. So based upon that data, how did you go about valuing the subject property under the sales comparison approach?
A. Well, Sale No. 1 is Northtown Shopping Center. This is found on North Main Street in Dayton. This is an older residential area of Dayton, but Main Street is the major north-south street in that neighborhood. The surrounding neighborhood is similar in terms of price range as the subject neighborhood, so my opinion is it was comparable to the subject. It sold in January 2012 for $17.56 per square foot. This is a strip shopping center of 106,730 square feet. It was built in 1949, but essentially renovated in 2010. The property had 80 percent occupancy at the time of the sale and was felt to be in average to good condition.
So overall I felt the sale was superior to the subject in terms of being a smaller sized shopping center and also in superior condition and superior occupancy, so it would require a net

downward adjustment.

Sale No. 2 sold in September of 2013 for $11.95 per square foot. This is the Fairborn Plaza Shopping Center in Fairborn, Ohio. Fairborn is about eight to ten miles northeast of downtown Dayton. It's right along Wright-Patterson Air Force Base, and it's part of the greater Dayton market area.

This sale happens to be in the older part of Fairborn, close to the city hall complex. The surrounding residential neighborhoods are older and moderate priced, much like the subject, so in this respect it's similar to the subject in location and requiring no adjustment.

This shopping center is a community shopping center of 100,452 square feet built in 1958 and was in average condition at the time it sold. It was approximately 78 percent occupied at the time of sale, but they had some tenants indicating they weren't going to renew their lease so it might have a declining occupancy. This property subsequently resold in 2016 at $100,000 less than the purchaser paid for it. This was about an 8 percent discount.

This is the lowest sale of the sample, and it was purchased, according to the buyer, based

primarily upon a price per square foot. It wasn't based upon an income analysis, and he was hopeful that he would turn it around, and he did do some things to turn it around, but clearly it was economically in worse shape than the subject, in my opinion, so it would require an upward adjustment.

Sale No. 3 sold in October of 2014 for $15.84 per square foot. This is known as the Imperial Square Shopping Center. This is found in West Carrollton. The location is actually across the street from Miamisburg, so it's a West Carrollton, Miamisburg location, about a mile west of the Southwest Dayton Regional Mall.

This is an unusual location in that the shopping center faces onto Watertower Lane, but backs up to State Route 725 and has a full intersection with South Alex Bell Road. It's only about a half a mile from the interchange of Interstate 75 and State Route 25. In many respects this is a very good general area, but the specific location not facing out onto a major street was apparently difficult because they had a higher-than-normal vacancy factor in the shopping center.

This is a small strip shopping center of 63,729 square feet built in 1976 or 1977. It was in

average condition at the time of the sale. Because it's a smaller shopping center and a little bit newer than the subject, an upper adjustment would be considered for that. The owner indicated that the property had substantial vacancies, but he said it was offset to some degree because there were two land leases on the property, one under the Long John Silver's and the other one on the PNC Bank. There was a secondary outlot that could be leased but hadn't been over all these years, but it was a positive feature, according to the buyer.

So considering all of these items, a net downward adjustment is indicated, merely for size and age because the land leases tend to offset the higher vacancy factors in this shopping center.

Sale No. 4 sold in February 2011 for $20.64 per square foot. This is known as the Dayton Towne Plaza. This is located on Needmore Road, which is on the far northeast side of Dayton. It's about a half a mile west of the Needmore Road/I-75 interchange, but it is close to North Dixie Drive on the north side of Dayton. Dixie Drive was the old Route 25 that ran all the way from Cincinnati to Toledo at one time, so this was one of the older kind of commercial areas, so in that respect I think it is

somewhat similar to the subject requiring no location adjustment.

This is a four-tenant commercial property of 89,157 square feet built in 1963 and was in average condition at the time of sale. This is a smaller shopping center compared to the subject, so an adjustment downward would be necessary.

The sale property was 100 percent occupied at the time of sale. This was based upon renegotiating the leases. But the seller of the property was Hotel Liquidators. They also indicated they have a stay on the property but the buyer, who was an out-of-state buyer, required they guarantee the rent for three years to make this sale work.

So considering the fact that this has an occupancy at 100 percent and also a guaranteed rent, a downward adjustment for the sale was necessary.

So considering the four sales, they range from $11.95 to $20.64 on an unadjusted basis, three of the sales required net downward adjustments, and the lowest sale, in my opinion, required a net upward adjustment for economic conditions, so I estimated the subject's value based on this data in the mid range at $15 per square foot times 117,865 square feet for $1,768,000.

Q. You've already touched on this, but in addition to the discussion of the adjustments, you have photographs of each of the sale comparables that appear beginning on pages 52 and going through and including page 60?

A. Yes, sir.

Q. Okay. Once you completed both of those approaches to value, you have a section on page 61, which is your final reconciliation of value. How did you go about weighting the two approaches and arriving at your final conclusion of value for the property?

A. Well, there's three approaches to value, and the cost approach hasn't been processed due to the age of this property and the degree of depreciation. That would be relative to cost new.

The income approach is a good appraisal tool for income-producing properties, and in this assignment I have used market grant. I have used market vacancy. I have used market expenses and a market capitalization rate. I've used the income approach to reflect the impact of real estate taxes by a tax adder. In this respect the income approach is a good appraisal tool.

The sales comparison approach considered

four sales. These sales were analyzed for their positive and negative features, and they formed a relatively close range of value.

I selected a value within the range, which did not give weight to any one particular set, as none were considered that comparable in that respect, and so the sales comparison approach provides close support to the income approach.

With this type of property, we had two properties that were basically purchased on the basis of a sale price per square foot. We had two properties that were purchased in part on net capitalization rate, and so equal weight then, in my opinion, would be accorded to the market approach and the income approach to value.

I selected a value conclusion within the range of $1,729,000 to $1,768,000 at $1,750,000 as of January 1, 2014.

MR. SLEGGS: Thank you. I would note for the record that I couldn't find the addenda section of Mr. Wilson's report on the BTA website, but the court reporter does a full copy, and the addenda just contains the zoning code, property record card, the deed, and a building sketch.

Q. (By Mr. Sleggs) Let me ask a final

question. Mr. Wilson, based upon your report and your testimony, what is your opinion as to the fair market value of the real estate as of January 1, 2014?

A. $1,750,000.

MR. SLEGGS: All right. Thank you.

THE ATTORNEY EXAMINER: Do you have any cross-examination?

MS. ALLISON: I do. Thank you.

\- - -

CROSS-EXAMINATION

By Ms. Allison:

Q. Mr. Wilson, let's start on page 34, please, of your income approach. I don't see any rent comps in your report. Did you determine the rent primarily upon the actuals and the asking rent on the subject property?

A. Yes and no.

Q. Okay.

A. The first one is yes. That's the most obvious place to start, is the actual rents that are being achieved at the subject property. That's usually the best evidence. I did discuss the market rents with Tracey Herron, who is the listing realtor for this property. They also have many other

shopping centers listed throughout the Dayton market.

I also had information from the comparable sales, so to estimate market rent outside of the actual rents, then that's the data that I utilized.

Q. And none of those -- there's not a list of rent comps?

A. No.

Q. Okay. Thank you. Let's turn to your vacancy. So you relied primarily upon four older shopping centers in the Dayton area to determine your market vacancies; is that correct?

A. I started with the history of the subject property. That was some of the best evidence because it was substantially vacant as of date of the value, and then the owner was able to get some more tenants for the next year or two. That was the place to start. I interviewed the realtor that had the property listed, and she also discussed the issue of vacancy and was unable to lease the properties towards the rear of the site. And then I also considered these other properties that sold or were available for sale in the subject market area and their vacancy.

Q. Aren't you tasked with evaluating the

property as stabilized?
A. I did. Market rent was at 100 percent occupancy, yes, ma'am.
Q. Okay. So you did not look at CoStar or Colliers or any of the other surveys?
A. They're just averages. They're just very general. They include new buildings and old buildings and single-tenant buildings and --
Q. How many square feet would you say you considered in making your vacancy determination, roughly?
A. 500,000, 600,000 square feet.
Q. Thank you. And then in determining your expenses, some of these, I'm just curious, your market rents are at triple net, correct?
A. Yes, ma'am.
Q. Things like units that you've included, that would just be for the vacant space?
A. No. What I did in this case, I estimated the markets rate at 100 percent occupancy. I projected a common maintenance area charge at 100 percent occupancy and then the vacancy and credit loss adjustment was off the total at 100 percent occupancy, so there wasn't any -- so when projecting the actual expenses, then I didn't have to deal with

how much was -- which tenant was actually paying common area maintenance or which ones weren't or how much was vacant and that type of thing.
Q. Under a triple net lease, though, isn't the tenant typically responsible for utilities? I'm curious how you came up with your utility amount.
A. Oh, the utility amount?
Q. Right.
A. I think that was from the actuals.
Q. And in triple net, typically, right, the tenant pays?
A. Or through a common area maintenance charge.
Q. Got you.
A. But in common area maintenance charge, then you would have to take away as an operating expense.
Q. Got you. And then you stated they were based on averages, I believe, when you looked at your market expense data. Averages of which year, do you remember?
A. If you look at the subject's history, it goes up and down. That's pretty common with retail property. The same thing with the file data that I have for the other shopping centers. So when I said

average, it's kind of stabilizing. It's like stabilizing income. You stabilize the expenses in the same fashion.
Q. Okay. And then in determining your cap rate, I see you did use CoStar.
A. I only referenced it once.
Q. Okay. And you looked primarily again at older shopping centers in the Dayton area, correct? Well, no, just older shopping centers?
A. Yes.
Q. Okay. Did you also look at any of the national surveys or the band-of-investment method or any other method in determining your cap rate?
A. No.
Q. No?
A. The interesting thing about those other methods is you have to have a market capitalization rate to even process a band of investments, so it's a wash.
Q. Okay. In determining your market cap rate, the sales that you have on page 39, particularly No. 3, you say that the -- it was listed at 15.42 for the seller pro forma or 11.4 to CoStar. Which number did you use?
A. Put both in, but I didn't put weight on

either one of them.
Q. Okay.
A. My point was -- and that was the problem with this market, is that some of these older shopping centers had some very high capitalization rates, and that's kind of what took it out of the standard CoStar averages and that type of thing because they focus on all types of properties, not just these similar to the subject.
Q. Just a few more questions on your sales comparison approach, please.
A. Sure.
Q. Again, I think you stated you limited your search for comps to older facilities that had vacancy issues like the subject.
A. Yes.
Q. Okay. And you did not make a market adjustment to the sales that occurred in '11 and '12?
A. No.
Q. So in your opinion the market didn't change from 1/1/11 to 1/1/14?
A. No.
Q. Why did you not use the sale of the Washington Park Plaza Center? You referenced it earlier in your vacancy, but then you didn't use it

as a comparable sale.
A. I don't want to explain this. In verifying the sale, I verified the sale with the appraiser that appraised the property, and it had some unusual financial circumstances.
It had two junior department stores that were part of that shopping center that were vacant. Then it had some other stores that they were able to get above market rents, probably by doing tenant improvements and things. So the arithmetic was apparently complicated, and that's why I didn't use it or give any weight to it because I didn't know how to address some information that I had that was confidential.
A. Okay.
Q. Do any of your sales comps have smaller restaurants, like the Skyline Chili?
A. No.
MR. SLEGGS: I believe that's all I have. Thank you.
THE ATTORNEY EXAMINER: Do you have redirect for your witness?
MR. SLEGGS: Just one question.
- - -
REDIRECT EXAMINATION

By Mr. Sleggs:
Q. Mr. Wilson, Ms. Allison asked you about utility expenses under the income approach and, like the subject property, has a parking lot, and I'm assuming the parking lot is illuminated at night. Would that electrical charge, that utility charge, would be something that would be passed through to the tenants in the common area maintenance charge?
A. Usually.
MR. SLEGGS: That's all I have.
THE ATTORNEY EXAMINER: Anything further?
MS. ALLISON: No.
THE ATTORNEY EXAMINER: Thank you for your testimony today.
MR. SLEGGS: I'd like to call Mr. Scalese. May I have three minutes to talk to him?
THE ATTORNEY EXAMINER: Certainly.
(Recess taken.)
THE ATTORNEY EXAMINER: Back on the record.
- - -
FRED SCALESE
being first duly sworn, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION
By Mr. Sleggs:
Q. Mr. Scalese, could you state your full name for the record?
A. Fred Scalese, vice president, Carnegie Company.
Q. And the property that we're dealing with is owned by -- owned in the name of Wilmington Center, Ltd. What is the Carnegie Company's relationship to Wilmington Center, Ltd.?
A. It's the parent entity of the limited liability company that owned Wilmington Plaza.
Q. Okay. You testified at the Board of Revision in this case?
A. I did.
Q. Okay. And I just want to ask you some very specific questions about the property. And the first thing I want to ask you about is the property was acquired by Carnegie Company back in 1997, and how long have you been associated with this particular asset?
A. All 19 years.
Q. Okay. And what has the vacancy of the property been over the years that you've owned it? I know that fluctuated. Has it always been at or above

a certain amount over the years that you've owned it?
A. Since 1997, and I'll start there because unfortunately that's -- I'll try and keep it brief, but that's where we'll have to start. When we acquired this center, there were the credit tenant signatures on the back of the leases.
There was Heilig-Meyers Furniture, which was a 250-plus store national chain. CVS had a master lease on part of the building and then subleased it to St. Francis Thrift, so we had CVS credit at that time. We had Big Lots on a ten-year lease doing 3-1/2 million in sales. That was the back building. We also had a nightclub on the backside called the Colosseum that had been there prior to our ownership and was performing.
Q. And that's the big building?
A. Yes, that's the big building in the back.
Q. So it was a country mile from the road?
A. Yes, that's the big back building. Right after we bought it the Colosseum filed bankruptcy, closed their doors. That was 20,225 square feet.
Since that time I have evicted every single tenant that has gone through that space for nonpayment of rent. That's the Attic, actually prior to the Attic there was a surplus warehouse, then the

Attic, which was just evicted relatively recently, a few years ago. It is still vacant.

Q. We had some testimony earlier today; that is, the portion that's in the very back corner from the property.

A. That's correct.

Q. So it's the farthest store from any of the roads that abut the center?

A. Yes, that's correct. It's also the one referenced in the appraisal that had no storefront, essentially, and it's just two man-doors you walk in. It isn't really a retail store.

Q. So let's talk about the little building now. At the time you bought it, it was fully occupied, 100 percent occupied. A national -- I forget which one, if it was Schwebel's or Hostess. It might have been Hostess. But on the end cap there it had an eye doctor in 2,500 square foot. It had a dry cleaners. It was well occupied, 15, 16 bucks triple net.

That's what we bought in 1997. It has not been that since then. Shortly after we bought it, the dry cleaner went out and filed bankruptcy. When the lease came due for the thrift shop, they went out. That's another 3,000 feet. There was a

dance studio in there. They went out, and really since then, since everything I've just described to you, the property has never recovered.

And Big Lots has now gone from 3-1/2 million to 2.3 million annual sales. Your only anchor, national-credit-type anchor left, on a year-to-year lease, doing a million two less than when we bought it.

Q. That's Big Lots?

A. That's Big Lots. You know, they're in the market. They're shopping. Everybody knows they're shopping for a new spot. It's just a matter of when they find it.

Q. Okay. And what has the vacancy -- so when these tenants started leaving, and we get into the period after the leases have turned and you had tenants leave the property, what's the vacancy been since the tenants that were in place when you bought the property have left?

A. For the most part, one of those big boxes in the back is always empty, so that's 20 to 23 thousand, depending which box is empty at that moment. And usually at least 3,000 is empty in the B-space buildings, so 23 to 25 thousand is consistently vacant there.

Q. Okay. There's been some testimony in the case that in 2014 and 2015 the vacancy was running between 42 and 37 percent. Is there a reason why the vacancy was so high during those years?

A. Well, Wilmington Pike, as you probably all know, was widened and that killed us. I mean, we virtually had a very limited ingress/egress into the center at the light. Turning either right or left, it was rough for the tenants during that time.

Q. There has also been some testimony in this case about the visibility of the property from the road impacting the tenants. Has that been your experience in terms of tenants at the property or attempting to attract tenants to the property?

A. Sure. Without -- the anchors are what drive a center like this, especially one as far from the road that it is, especially for the B-space tenants. This is all about cotenancy. Again, without the national cotenancy, you can't improve the B-space tenants, which is why we have four dollar, three dollar, some even gross leases in the B spaces and why you can only get 2, 2.25 on the back building today in those spaces.

Q. When you say B space, is that the smaller retail that I think has been described as 17,900

square feet?

A. It is. And it sits perpendicular to the street with zero visibility to the road. Essentially Skyline sits in front of them.

Q. In addition to Skyline, there was another outlot?

A. The Sonic out parcel, yes.

Q. Okay. And then you talked about evicting tenants. When you evict a tenant, have you historically had troubles? Did you have to sue them for back rent, that type of thing?

A. Correct. And there's not much left there. That's a cold trail.

MR. SLEGGS: Okay. All right. That's all I have. Thank you.

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CROSS-EXAMINATION

By Ms. Allison:

Q. Mr. Scalese, as Mr. Sleggs indicated, we heard some testimony regarding vacancy problems in '13 and '14. Do you know what the vacancy was prior to that, maybe in 1/1/12-ish?

A. At least one of those big boxes was empty.

Q. Okay.

A. Without looking at a rent roll, I wouldn't be able to tell you off the top of my head.
Q. Okay. Do you know what the vacancy is right now?
A. The same 20,000 plus is vacant and 3,000 B space is vacant, so 24,000 probably.
Q. So that percent? Does that work out to 30 --
A. It's 24,000 over 117.
Q. That's fair enough. I'll figure it out later. Thank you.
A. A lot. So much so that we can't put debt on it.
MS. ALLISON: That's all I have. Thank you.
THE ATTORNEY EXAMINER: Do you have anything for this witness?
MR. SLEGGS: No, I don't. Thank you.
THE ATTORNEY EXAMINER: Thank you very much for testifying.
THE WITNESS: Thank you. I appreciate it.
MR. SLEGGS: Thank you for your time.
THE ATTORNEY EXAMINER: At this time would you like to move Appellee's Exhibit 1 in the

record.
MR. SLEGGS: Yes.
THE ATTORNEY EXAMINER: Any objection?
MS. ALLISON: No.
THE ATTORNEY EXAMINER: I move Appellee's Exhibit 1 into the record.
We have Appellant's Exhibit 1, which is the appraisal report of Mr. Sprout, and we have Appellee's Exhibit 1, which is an appraisal report by Mr. Wilson's report.
(EXHIBIT ADMITTED INTO EVIDENCE.)
THE ATTORNEY EXAMINER: I believe that Ms. Allison said she would prefer to have briefs as opposed to closing arguments.
MS. ALLISON: I would.
MR. SLEGGS: That's fine. I can do that.
THE ATTORNEY EXAMINER: Would three weeks -- October 10 is a holiday, so the 11th. Would that be long enough, do you think?
MR. SLEGGS: That's fine.
MS. ALLISON: Okay.
THE ATTORNEY EXAMINER: So initial briefs will be due on October 11, a Tuesday, because of the holiday, and any replies would be due one week thereafter on October 18.

MS. ALLISON: Thank you.
MR. SLEGGS: Okay.
THE ATTORNEY EXAMINER: Thank you very much.
There being nothing further, the hearing is concluded. Thank you.
MR. SLEGGS: Thank you.
(The hearing adjourned at 10:59 a.m.)
- - -

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, September 19, 2016, and carefully compared with my original stenographic notes.

____
Rosemary Foster Anderson,
Professional Reporter and Notary
Public in and for the State of
Ohio.

My commission expires April 5, 2019.
(rfa-81972)
- - -

TRANSCRIPT 2

The subject property discussed in this transcript contains two parcels covering 12.4 acres and is improved with a 96,000 square foot industrial office, a residential duplex, and a metal pole barn.

BEFORE THE BOARD OF TAX APPEALS
STATE OF OHIO
- - -

Huber Heights City Schools :
Board of Education, :
Appellant, :
:
vs. : Case Nos. 2015-2359
: 2015-2360
Montgomery County Board of :
Revision, et al., :
:
Appellees. :

- - -
PROCEEDINGS
before Temeka M. Higgins, Hearing Examiner, at the Board of Tax Appeals, Rhodes State Office Tower, 30 East Broad Street, Room B, Columbus, Ohio, called at 9:00 a.m. on Tuesday, September 13th, 2016.

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724
- - -

APPEARANCES:
Kim Allison, Esq.
Rich & Gillis Law Group
6400 Riverside Drive, Suite D
Dublin, Ohio 43017

On behalf of the Appellant

Stephen E. Klein, Esq.
240 James Bohanan Drive
Vandalia, Ohio 45377

On behalf of the Appellee Property Owner.
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INDEX
- - -

Monday Morning Session,
September 13th, 2016.
- - -

(EXHIBIT MARKED FOR IDENTIFICATION.)

HEARING EXAMINER: This is a hearing before the Board of Tax Appeals, State of Ohio, relative to an appeal styled Huber Heights City Schools Board of Education, Appellant, versus the Montgomery County Board of Revision, et al., Appellees, having been assigned Board of Tax Appeals Case Nos. 2015-2359 and 2015-2360.

This hearing is being convened in the offices of the Board of Tax Appeals before Attorney-Examiner Temeka M. Higgins, at approximately 9:13 a.m. on September 13th, 2016.

Would the Appellant's representative please enter her appearance by name, mailing address, and telephone number?

MS. ALLISON: Kim Allison with Rich & Gillis Law Group, 6400 Riverside Drive, Suite D, Dublin, Ohio 43017, telephone (614) 228-5822, and we are here this morning on behalf of the Huber Heights City School District.

HEARING EXAMINER: Thank you very much, Ms. Allison. And will the property owner's counsel

please enter his appearance by name, mailing address, and telephone number?
MR. KLEIN: Would you say that again, please? My hearing is a little bit not so good.
HEARING EXAMINER: Well, I'll try to be mindful today. Would you mind stating your appearance by name, mailing address, and telephone number?
MR. KLEIN: Stephen E. Klein, mailing address, 240 James Bohanan Drive, Vandalia, Ohio 45377, phone number (937) 339-3939.
HEARING EXAMINER: Thank you very much, Mr. Klein.
Ms. Allison, would you like to make a brief opening?
MS. ALLISON: We will waive opening, but we will request a briefing schedule at the end of the hearing.
HEARING EXAMINER: Thank you very much.
Mr. Klein, would you like to make a brief opening statement?
MR. KLEIN: Yes. According to the Columbus City Schools District Board of Education versus Franklin County Board of Revision, 90 Ohio State 3d 564, to prevail on appeal before this Board

the Appellant must present competent and probative evidence supporting the value that the Appellant asserts.
We don't believe there's going to be any competent, probative evidence supporting the value which -- whatever value the Appellant asserts at this hearing.
HEARING EXAMINER: Thank you very much, Mr. Klein. Ms. Allison, you indicated that you had a request --
MS. ALLISON: We would move to separate the witnesses before we call Mr. Sprout.
HEARING EXAMINER: Mr. Harris. Mr. Harris, would you mind stepping out until it's your turn to testify, please?
MR. HARRIS: Okay.
HEARING EXAMINER: Thank you.
MS. ALLISON: And at this time we would call Mr. Tom Sprout.
HEARING EXAMINER: Do you swear or affirm that the testimony you're about to provide to the Board today is the truth, and nothing but the truth?
MR. SPROUT: I do.
HEARING EXAMINER: Thank you very much.

And I'll just ask that during your testimony, if you'd try to speak up a little bit, Mr. Klein had indicated that maybe he had a little bit of difficulty hearing.
MR. SPROUT: No problem.
MR. KLEIN: What is his name, your Honor?
HEARING EXAMINER: His name is Tom Sprout. I was just asking him to speak up a little bit just to make sure you can hear, okay?
MR. KLEIN: I lost my hearing honorably in the military, so I do apologize for the inconvenience.
HEARING EXAMINER: It's not an inconvenience, I just want to make sure you're able to get all the information. So if we drop down a little too low, just let us know and I'm sure we'll bring it back up.
MR. KLEIN: It's mostly slowing the speech, your Honor.
- - -
Thomas Sprout, MAI,
being first duly sworn, as prescribed by law, was examined and testified as follows:
DIRECT EXAMINATION

By Ms. Allison:
Q. Mr. Sprout, will you please state your name for the record?
A. My name is Thomas D. Sprout, and I'm a commercial real estate appraiser.
Q. And were you engaged by the Board of Education to review an appraisal report that was submitted on behalf of the property owner for the subject property?
A. I was.
Q. Okay. And do you have a copy of that report before you?
A. I do. If the report that I have in front of me is dated September 25th, 2015, then I'm looking at the report that's in question.
Q. Okay. Before I go through Mr. Sprout's qualifications, you've testified many times as an expert before this Board, correct?
A. I have.
MS. ALLISON: Can I ask counsel if you would be willing to stipulate to his qualifications, or would you prefer I go through them?
MR. KLEIN: I'll be interrogating him on that matter.
By Ms. Allison:

Q. Well, briefly, why don't you go through your credentials for us, Mr. Sprout?
A. Well, I am a certified public accountant, and I have been since 1991. I'm a member of the Appraisal Institute. I received that designation, I believe, either in 2005 or 2007.
I'm a general certified real estate appraiser by the State of Ohio as of 2001. I've been a commercial real estate appraiser since 1995.
I have been involved in real estate since I started with the Big 8 firm Touche, Ross, in 1987. I'm happy to go through my work experience prior to leading up to my commercial real estate appraiser experience, which began in 1995. That will be up to the Magistrate.
HEARING EXAMINER: All right. Mr. Klein?
VOIR DIRE
By MR. KLEIN:
Q. Mr. Sprout, what percentage of your work is done on behalf of Board of Educations?
A. You mean my overall workload? I would say it's probably about 15 or 20 percent.
Q. For Board of Educations?
A. Yes, sir.

Q. And how about the rest?
A. The rest would be right-of-way work for the Ohio Department of Transportation. It would also be mortgage work for a various number of banks. I do both real estate appraisal, as well as doing review work for several smaller banks throughout the State of Ohio and Pennsylvania.
I also do work for private clients when it comes to valuing partnership interests, also for various other valuation purposes. So my work for -- I also do work for property owners at Board of Tax Appeals, as well as Board of Revisions.
Q. What percentage of your work is on behalf of property owners?
A. Now we're drilling down to my book of business. From a standpoint that would be for tax appeal, that would be 20 to 25 percent. And then my -- as far as for property owners would probably be somewhere around 10 to 15 percent of my overall book of business of tax work.
Q. How often do you appraise properties in the Montgomery County area?
A. Actually over the past couple years I've been doing more and more work in Montgomery County. I would say from an overall standpoint, from a value

standpoint, I would say probably 10 or 15 percent as well.
Q. Ten or 15 percent of your annual workload is performed in Montgomery County?
A. I would say that would be a fair assumption over the past year or two without looking at my overall billings.
MR. KLEIN: Nothing further, your Honor. We'll stipulate.
HEARING EXAMINER: Thank you.
MS. ALLISON: Thank you.
- - -
DIRECT EXAMINATION (Continued)
By Ms. Allison:
Q. So, Mr. Sprout, you indicated you were engaged to review the appraisal performed by Mr. Harris for tax year 2014, correct?
A. That's correct.
Q. If you could just kind of walk us through some of your conclusions, maybe starting with the zoning of the property.
A. How about if I just start from my notes to the finish?
Q. That's fine.
A. We were -- I was asked to review the

appraisal, and during the review process as an appraiser, I am to determine USPAP compliance. USPAP is united standards that we have -- the uniform standards that we have to abide by as real estate appraisers.
In this particular case the real estate that was being -- that was appraised here by Mr. Harris -- and through my review process, I'll start with kind of the global thing.
From what I understand from this building, it was a -- it's an industrial building that is in the process of trying to be leased.
The only approach that was utilized in the report was the sales comparison approach. If the property is in the process of being leased, an income approach would be very relevant in valuing this type of property.
For ad valorem tax purposes it is our task as an appraiser to value the property using market rents, market vacancy, and what we would determine -- be determined as a market cap rate for this property.
All of that information is available in the market. I ran a vacancy search on what this property -- or within three miles of the subject

property. Market vacancy was approximately 10 percent as of the tax lien date.

The property is currently listed for lease at a rate of $2.25 on a triple net basis. There would be adequate information to provide what operating expenses would be, what reserves would be.

So all of the market information was available to determine a net operating income and a value based on the income approach to value.

The reasoning in the report talks about the property was vacant. Well, just because a property is vacant doesn't mean you can't do an income approach.

And for ad valorem tax purposes we need to determine what the market rent is and what market vacancy would be for that in determining what this property would be worth, utilizing that approach to value.

So that, in my opinion, is a major flaw in this report; not having an income approach for a property that is attempting to be leased up.

Other things of concern that I saw in the report was the exposure period and the marketing time. Marketing time and exposure period -- exposure period is going back in time how long we believe a

property would have to be listed in order to achieve the value within a report.

Mr. Harris, in his report, indicated an exposure time of five to seven years. A typical exposure time would be within a one-year period, maybe 18 months.

Something that would be longer than 18 months would be a very specialized type of property where there would be a limited amount of buyers in the market.

An example that would be -- and this would just be a -- let's say a 30-acre site that has a $10 million home on it in Ohio. There's not going to be a big buyer pool for that type of thing, so it's going to take a little bit longer to sell that property at whatever is perceived is market value.

From what I read within this appraisal, there isn't necessarily a special type of use within this property. It's an industrial property. So that leads me to be concerned of if you've got a five or seven-year exposure period, I would think your value would probably be a little bit higher because you're waiting for this specific price.

There's no mention as to what the general condition of the roof is in this report.

This is an older industrial property. And what I mean older, over 20 years of age.

The cost of the roof and the condition of the roof is a very important factor because that is a major expenditure that could be coming this property's way. Roof costs could be anywhere between 4, 5, to $10 a foot based on the roof area.

That would have a major impact on the potential value for the property. Without having that information in the report is another flaw in determining its potential value.

So those are some indications within the report as to, you know, what is really going on, what's the overall condition of this property.

And then the final thing in my opinion -- we get into the sales approach. The sales that were utilized for this property -- and I'm turning to the grid on Pages 54 and 55 in the report.

The wall height for this property is only 14 feet. So it's a distinct -- you know, because of its age, being built in 1956, I understand that we're going to have a lower ceiling height with this property.

The sales that were utilized in this, five of the six sales all had wall heights that were

anywhere between 20 to 30 feet in clearance.

The adjustment that was made for each one of those was between 20 and 30 percent downward. If you're going to have an adjustment that's that significantly high, when you're comparing sales, my first question is, are these sales truly comparable to the subject property.

The overall total adjustments that were made on four of the six sales range anywhere between 25 and 53 percent.

Once again, are these sales truly comparable to the subject property? Now, I didn't appraise this property, I'm just acting as a reviewer. This is something that I would -- that I do for several of my banking clients that I have that aren't large enough to necessarily have an appraisal review situation.

So my concern would be are these sales really comparable to the subject property. So those are the flags that I see within this report. Those are the questions that I would ask the appraiser, if I was able to ask questions of the appraiser, as to why these comparables were utilized, why weren't other comparables utilized within this report when you have this significantly high of adjustments in

your grids.
So in summarizing -- and the last thing is once we got to the indicated value of the subject, the appraiser just said well, I'm going to take the average of the six sales, and here is what it's worth. An average is not an analysis.
Whenever you're determining averages, you need to have a larger sample size in order to -- the larger the sample size, the more credible the results are.
And when you only have six in a sample size, and then you're taking the average of that, that doesn't lead to a high confidence level.
So the overall analysis, there was no discussion as to well, this sale was better than this sale, as far as what is better than the other.
And in the adjustment grid, adjustments were made, but there was no discussion as to why those adjustments were made, he just said my opinion, 20 percent is what this would be deducted for, or 30 percent was what was deducted for.
So that also just saying here is what the average is leads to a credibility issue within the report.
So if you turn to Page 57, the statement

there as to the reason why the income approach was not utilized, it indicates the income approach was not completed as the building was 70 percent vacant.
Well, for ad valorem tax purposes, that is not an adequate reason why you don't do it, especially when adequate data was available to perform a value conclusion utilizing the income approach to support whatever approaches are within the analysis.
Q. Just as a followup to your last statement. Would that be particularly true in cases -- we have heard testimony before the Board of Revision that the subject property was not listed for lease as of the tax lien date.
Would that be relevant in making your last statement even more true?
A. Well, we would have to determine what the status of the property was as of the tax lien date.
Q. Right.
A. There's no information in this report that talks about that other than it was 30 percent occupied based on that statement.
Q. Owner occupied?
A. And to me, if it was 30 percent occupied

as of that date, the other 70 percent, well, are they going to lease that or, you know, which leads me to believe if this was a hundred percent occupied by an owner user, okay, I guess I could see why an income approach might not be utilized if there was strong reasons as to why.
But if there's vacancy in this property, what is the reasoning why they are not going to lease this property. Which leads to the next question, there should have been an income approach performed in this report to make it a credible document.
Q. And just two more follow-up areas. There are how many structures on the property?
A. I believe there's a primary building and then there's a one-story double house and a metal pole barn.
Q. So in your professional opinion, in performing an income approach, including the lease income from the house would have been relevant as well, correct?
A. Oh, absolutely.
Q. And then one more question. The sales comps that were used, one was from 2011 and two were from 2012. Should market adjustments have been made to those, in your opinion?

A. Yes. Market adjustments should have -- the economy has strengthened. There should have been a mention as to what that would be.
Now, even if it's a one or two percent adjustment upward, that would be appropriate. And along that same line of questioning, if you turn -- if you look at Sale No. 4, Sale No. 4 had a date of sale of August of 2011.
In the comments, which is on Page 49, there's an indication that says this property also transferred October of 2014 for $3,175,000, which is nearly twice the amount of its original purchase.
Now, it indicates that this may not be arm's length. Well, if you're going to use a sale, you need to find out why you didn't -- why didn't you use the sale that's even closer to the tax lien date.
It would be odd for a sale to be nearly twice the amount of the previous sale, and not be arm's length, because that's going to increase taxes and some other things.
There should have been more investigation done, or the sale should not have even been used, in my opinion.
MS. ALLISON: Thank you. That's all I have of Mr. Sprout.

HEARING EXAMINER: Okay. Thank you. Mr. Klein.

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CROSS-EXAMINATION

By Mr. Klein:

Q. Mr. Sprout, was the Board of Revision wrong in accepting this report as credible?

A. I can't make that decision. I'm just a reviewer in this case, so I can't determine whether they were right or wrong.

Q. In your opinion?

A. In my opinion? If I was on this Board as a real estate appraiser, I would not have accepted this report based on the information I have available.

I would have asked several questions as to why an income approach was not utilized in this report. In my opinion that would be the primary indication of value, because in -- this appears to be now transitioning into an income producing asset.

Q. Did you read the transcript of the Board of Revision hearing?

A. I did not.

Q. So you don't know what questions were asked?

A. That is correct.

Q. It's possible that someone with your expertise was on the Board and asked every question that you would have asked of the appraiser?

A. Sure, it's possible.

Q. Have you ever been to the building?

A. No, I have not.

Q. Have you inspected it at all?

A. No.

Q. Are you aware of the attempt made to lease the property?

A. I am not.

Q. Do you have an opinion as to the fair market value of this building?

A. I do not.

MR. KLEIN: Nothing further.

HEARING EXAMINER: Okay. Any redirect?

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REDIRECT EXAMINATION

By Ms. Allison:

Q. Mr. Sprout, are you required to inspect a property prior to performing a review of an appraisal?

A. No, when I do a review appraisal it's a desk appraisal and I'm looking for compliance with

USPAP. I'm also looking for credibility based on the information that's in the appraisal.

There should be sufficient information other than a restricted use report, which in this case would not be appropriate. There should be a sufficient provision in the report to support the opinions of value.

In my opinion, this document does not support the opinions of value that is in this report.

MS. ALLISON: That's all. Thank you.

HEARING EXAMINER: Thank you, Mr. Sprout.

(Witness excused.)

HEARING EXAMINER: Mr. Klein?

MR. KLEIN: My turn?

HEARING EXAMINER: Yes, your turn.

MR. KLEIN: Your Honor, I'd like to dismiss this appeal. There hasn't been any probative evidence of any different valuation.

I don't believe that the Appellant has presented sustainable argument based upon Supreme Court decisions that I cited in my opening argument.

MS. ALLISON: If I may respond. Subsequent to that case the court decided the Sears case wherein they specifically stated that the Board

of Education could meet their burden of proof by establishing through expert testimony that the evidence relied upon by the Board of Revision was not competent and probative. We have done exactly that in this case. Thank you.

HEARING EXAMINER: All right. I'm going to overrule your objection, and you can start your case in chief. I should say, deny your motion.

(Pause.)

HEARING EXAMINER: Mr. Harris, before we begin, would you mind raising your right hand so I can swear you in?

Do you swear or affirm that the testimony you're about to provide to the Board today is the truth, and nothing but the truth?

MR. HARRIS: Yes, I do.

HEARING EXAMINER: Well, thank you very much. And before we proceed, Mr. Klein, since we have the BOR hearing in the record, you don't have to do a wholesale rendition on the BOR hearing, but of course, if there's something you want to bring to the Board's attention or something you want to expand on, you can do so.

MR. KLEIN: Thank you, your Honor.

- - -

Robert A. Harris
being first duly sworn, as prescribed by law, was examined and testified as follows:

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DIRECT EXAMINATION

By Mr. Klein:

Q. Bob, you want to state your name and your business address?

A. Yes. It's Robert A. Harris, I'm at 1250 West Dorothy Lane, Suite 307, Kettering, Ohio 45409.

Q. What's your professional field?

A. I am a real estate appraiser.

Q. How long have you been in that field?

A. Forty-five years.

Q. Can you briefly describe the last 45 years, professionally?

A. Where do you want me to start?

Q. Forty-five years ago.

A. I just have been involved in a variety of commercial and residential appraisals for the last 45 years.

Q. What are your certifications?

A. I am a certified appraiser. I'm not -- I've taken all the classes for the MAI designation, I just never wrote the report. But I've been in school

numerous times over the years taking all kinds of professional appraisal classes.

Q. And how long have you -- rephrase that. Have you conducted classes in this field?

A. I've never taught any appraisal classes.

Q. Have you done work for various governmental agencies?

A. Yes, I have. I probably have done appraisals for at least 30 to 40 different banking entities over the years.

Q. State of Ohio?

A. I've never done anything with the -- for the State of Ohio.

Q. Okay. Approximately how many appraisals do you perform on an annual basis?

A. Generally around 150 to 200, myself. And then I have two other associates that do the residential and multi-family type of appraisals. But myself, personally, I probably average about 100 to 150 appraisals during a year's time.

Q. Commercial?

A. Primarily commercial and industrial.

Q. And of the 100 to 150, approximately how many are located in the Montgomery County area?

A. I would say probably 20 percent in

Montgomery County, and then, you know, contiguous counties as well.

Q. You have seen the building?

A. Yes, I have.

Q. Inspected it?

A. I did.

Q. And did you talk with one of the shareholders of the property owner, Globe Products?

A. I have, yes.

Q. Scott Kroencke?

A. Yes, that was my main contact.

Q. Are you aware of what the -- whether the property is currently listed for sale?

A. I am aware that -- I think it's Cushman & Wakefield has had the property listed for sale for five to six different years.

Q. Do you know what the current listing price is?

A. I believe the current listing price is $750,000.

Q. And how does that compare with your opinion of value?

A. Well, my opinion of value was around 940,000, so it would be several hundred thousand dollars less than my appraisal.

Q. And what is the date of your valuation, effective date?

A. I think the effective date was January 1st, 2014.

Q. '14 or '15?

A. I think it was -- I think it was -- maybe it was '15.

Q. You were present and testified at the Board of Revision hearing?

A. Yes, I did.

Q. All right. Has the condition of the property changed significantly since the date of the valuation?

A. I just had a -- just had a conference call with Scott Kroencke and he said that --

MS. ALLISON: Objection. Hearsay.

HEARING EXAMINER: Any response, Mr. Klein?

By Mr. Klein:

Q. What information did you receive concerning the property?

A. The only change I was aware of was that Mr. Kroencke had leased 13,000 square feet that was done after my report was made.

Q. You still stand by your opinion of value that was given to the Board of Revision hearing?

A. I do.

MR. KLEIN: I have nothing further, your Honor.

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CROSS-EXAMINATION

By Ms. Allison:

Q. Mr. Harris, what percentage of the appraisals that you perform are for ad valorem tax purposes?

A. I would think maybe ten percent.

Q. Okay. And what percentage of those are performed for property owners?

A. Generally most of them.

Q. And a lot of this is already in the record so I don't want to be repetitive, but what was your ultimate conclusion for not utilizing an income approach in this case?

A. Well, the building was like 80 percent vacant, and I just saw no need in going through trying to forecast the proper amount of rent and coming up with a proper amount of capitalization rate, and then trying to forecast.

When a building is 80 percent vacant, it's most difficult, there's a lot of -- there's a

lot of forecasting that has to be done, and the forecasting would be only as good as my opinion of what the actual rent should have been.

MS. ALLISON: Okay. That's all I have. Thank you.

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EXAMINATION

By the Hearing Examiner:

Q. And before I turn it back over for redirect -- and this may very well be in the record, and I apologize if I'm asking you to repeat information that you've already given.

On sale Comp 4 you noted that there was a recent sale in October 2014, and could you explain why you didn't use that sale as opposed to the sale in August of 2011 for sale Comp 4?

A. Because it was a newer sale.

Q. Okay. But it was closer to the tax lien date.

A. I'm sorry, I guess I've misunderstood.

Q. Okay. I apologize. I just had my one cup of coffee, so I apologize if I'm not speaking clearly.

A. Okay.

Q. So sale Comp 4, I'm on that page. So --

A. When was that sale?

Q. Okay. So you used an August -- excuse me, August 2011 sale -- maybe I need to get to your adjustment grid. Maybe that will give me the information that I need that I can give to you.

A. It was Comp 4, Comp Sale 4, and what was the address?

Q. I believe -- let me go back. I apologize that I keep jumping around. I believe 885 Center Drive in Vandalia. It was an August 2011 sale for $1.65 million.

A. Okay.

Q. And then --

A. It was on Central Drive, right?

Q. Center Drive.

A. Center Drive. Okay. Thank you.

Q. And then there was an October 2014 sale for $3,175,000. So my question is, why did you use the 2011 sale and not the 2014 sale?

A. I'm not -- I can't -- I can't explain that.

Q. Okay. Well, your note says it may not be arm's length, so could you expand on that just a little bit for me, please?

A. Well, I must have gotten some

information from either the buyer or the seller that maybe there was -- it wasn't totally arm's length, maybe that's the reason I didn't use it.

Going back -- going back for a year or two on these various appraisals, I can get confused and I can overlook.

Q. Okay. Thank you for answering my question and having patience with me. Thank you.

HEARING EXAMINER: All right. Mr. Klein, I'll turn it back over to you.

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REDIRECT EXAMINATION

By Mr. Klein:

Q. Bob, the high vacancy rate, were you able to determine what the reason was, why tenants wouldn't want to rent?

A. Yeah, it's primarily because most of the building has a 12 foot wall height, and that seems to be the major problem that people have.

Most of the sales that I used had a much higher wall height than 12 feet. But there is only one area of that building that has a 16 -- a 16-foot ceiling height, and that seems to be the major difference.

It seems to be -- it seems to be the

reason that it's taken such a long period of time to consummate a sale, because the ceiling height is only 12 feet.
MR. KLEIN: Nothing further. Your Honor.
HEARING EXAMINER: Okay.
MS. ALLISON: May I ask one follow-up just based on that question?
HEARING EXAMINER: Just one follow-up question.
- - -
RECROSS-EXAMINATION
By Ms. Allison:
Q. Mr. Harris, you testified at the Board of Revision that the property wasn't listed for lease as of the tax lien date. Is that your recollection?
A. No, really I don't. But the property has been listed for lease now and again, so it could have been a period of time when it was not advertised for lease.
MS. ALLISON: Thank you. That's all.
HEARING EXAMINER: Well, thank you very much, Mr. Harris. You can step down.
(Witness excused.)
HEARING EXAMINER: Mr. Klein, we marked

as Appellee's Exhibit 1 a --
THE WITNESS: You want me to leave?
HEARING EXAMINER: You're more than free to have a seat in the back. Just don't hassle anybody, okay?
THE WITNESS: I'll try not.
HEARING EXAMINER: Okay. It looks like it's a Cushman & Wakefield offering of the subject property. Would you like to expand on it a little bit?
MR. KLEIN: I was going to have my --
MS. ALLISON: We object to the calling of this witness. He wasn't identified as a witness. He wasn't present at the BOR hearing, so we have a 5715.19(G) objection, and an objection to improper disclosure.
Quite honestly, if this witness is allowed to testify -- and we came and prepared our case based upon a rebuttal of the appraisal evidence.
If he's allowed to submit new evidence now, I would request a bifurcation so we can rebut that new evidence as well.
HEARING EXAMINER: Okay. Mr. Klein, do you have a response?
MR. KLEIN: Your Honor, inadvertently we

did submit a witness list and it was Mr. Harris. Mr. Kroencke is the minor shareholder for the property owner. He's simply going to give oral testimony.
MS. ALLISON: We still have a 5715.19(G) objection as well.
HEARING EXAMINER: Well, let's take a ten-minute break while I ruminate over this. Let's go off the record.
(Recess taken.)
HEARING EXAMINER: We can go back on the record. Prior to going off the record the Board of Education raised a 5715.19(G) objection as well as a disclosure objection, alleging that Mr. Kroencke --
MR. KROENCKE: Close enough. I do a lot of that.
HEARING EXAMINER: Thank you. Thank you for correcting me. His testimony had not been previously provided or disclosed according to the Board's rules.
And, Ms. Allison, you raised the issue of bifurcating today's hearing.
MS. ALLISON: As well as the ability to produce additional evidence in rebuttal.
HEARING EXAMINER: Okay. So I am going

to grant your request. Mr. Kroencke, his direct examination will be performed today, and when we go off the record, when we're done today, I'll allow the parties to either, while they are here, come up with an agreeable date within three weeks where we'll come back for cross-examination, or if the parties need to go back and check their schedule, that's completely fine, but I need a date within a --
MS. ALLISON: My only problem is depending on what Mr. Kroencke says, I may be putting the cart before the horse, but we may wish to engage Mr. Sprout to perform a full report. So maybe a month, I think, would be plenty of time.
HEARING EXAMINER: Why don't we --
MS. ALLISON: Cross that bridge when we get to it.
HEARING EXAMINER: Let's go off the record just to allow Mr. Klein to discuss.
(Discussion off the record.)
HEARING EXAMINER: We're on the record. Mr. Klein.
MR. KLEIN: Your Honor, we will not be calling any more witnesses.
HEARING EXAMINER: All right. Well, Mr. Kroencke, I got your name right, and they decided

not to grace me with your testimony. But I completely understand.

So I believe we left off with the Appellee Property Owner Exhibit 1, and this is the current Cushman & Wakefield advertisement for the subject property?

MR. KLEIN: Yes, as verified by Mr. Harris.

HEARING EXAMINER: All right. And Ms. Allison had indicated she would like a briefing schedule. And normally we waive closing argument for a briefing schedule; however, in this one instance I will allow a brief closing by the parties, after I ask Ms. Allison, do you have an objection to Appellee's Exhibit 1?

MS. ALLISON: We would just note that I'm not sure proper authentication or foundation was laid for it. And Mr. Harris did testify that the list price was 750,000, but as to the actual listing, I'm not sure it's been properly authenticated.

HEARING EXAMINER: I will overrule your objection and the Board will accord this document its due weight, if any. So, Ms. Allison, if you --

(EXHIBITS ADMITTED INTO EVIDENCE.)

MS. ALLISON: We'll waive.

HEARING EXAMINER: Mr. Klein, do you have a brief closing?

MR. KLEIN: Not if Ms. Allison doesn't.

HEARING EXAMINER: Okay. Well the briefing schedule will be as follows: Simultaneous, both parties filing their briefs on or about the same time. The initial brief is due on or before October 13th, and all reply briefs are due on or before October 27th.

MS. ALLISON: Thank you.

MR. KLEIN: Did you say 13th?

HEARING EXAMINER: 13th and the 27th. And unless the parties have anything further, this concludes the hearing.

(Thereupon, the hearing was concluded at 10:06 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, September 13th, 2016, and carefully compared with my original stenographic notes.

____

Valerie J. Grubaugh,
Registered Merit Reporter
and Notary Public in and
for the State of Ohio.

My commission expires August 11, 2021

TRANSCRIPT 3

The subject property discussed in this transcript is a McDonald’s restaurant.

BEFORE THE STATE OF OHIO BOARD OF TAX APPEALS

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Kettering City Schools :
Board of Education, :
:
Appellant, :
:
vs. : Case No. 2015-2328
: Case No. 2015-2331
Montgomery County Board :
of Revision, et al., :
:
Appellees. :

- - -

PROCEEDINGS

before Temeka M. Higgins, Attorney Examiner, at the State of Ohio Board of Tax Appeals, 30 East Broad Street, 24th Floor, Hearing Room B, Columbus, Ohio, called at 9:38 a.m. on Thursday, October 6, 2016.

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ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
FAX - (614) 224-5724

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APPEARANCES:

Rich & Gillis Law Group, LLC
By Karol C. Fox, Esq.
6400 Riverside Drive, Suite D
Dublin, Ohio 43017

On behalf of the Appellant.

Bluestone Law Group, LLC
By Charles L. Bluestone, Esq.
141 East Town Street, Suite 100
Columbus, Ohio 43215-5142

On behalf of the Appellees/property owners.

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INDEX

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Thursday Morning Session,
October 6, 2016.

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ATTORNEY EXAMINER HIGGINS: This is a hearing before the Board of Tax Appeals, State of Ohio, relative to an appeal styled Kettering City Schools Board of Education, Appellant, versus the Montgomery County Board of Revision, et al., Appellees, having been assigned Board of Tax Appeals Case Nos. 2015-2328 and 2015-2331.

This hearing is being convened in the office of the Board of Tax Appeals before Attorney Examiner Temeka M. Higgins at approximately 9:38 a.m. on October 6th, 2016.

Would the Appellant's representative please enter her appearance by name, mailing address, and telephone number.

MS. FOX: Yes. Thank you. My name is Karol Fox. I'm with Rich & Gillis Law Group. Our address is 6400 Riverside Drive, Suite D, Dublin, Ohio 43017. Our phone number is area code 614, 228-5822, and I am here today on behalf of the Kettering City Schools Board of Education.

ATTORNEY EXAMINER HIGGINS: Thank you very much, Miss Fox.

Page 5

And would the property owner's counsel please enter his appearance by name, mailing address, and telephone number.

MR. BLUESTONE: Good morning, Miss Higgins. May it please the Board, my name is Charles Bluestone, with the law firm of Bluestone Law Group, LLC. Our firm's address is 141 East Town Street, Columbus, Ohio 43215. Our firm's telephone number is area code 614, 220-5900. I have the privilege today of representing McDonald's USA, LLC, which is the property owner of the subject property.

ATTORNEY EXAMINER HIGGINS: Thank you very much, Mr. Bluestone.

Before we get started I just wanted to make the record clear that although the Board of Education is the Appellant in these matters, we're going to do the hearing a little bit out of order because Mr. Weis, Steve Weis, he's appraiser for the property owner, previously provided testimony before the Board of Revision and such testimony is not in the record, so because the BOR failed to satisfy its statutory duty to provide us a full and complete record of the proceedings below, we are providing the property owners in these matters an opportunity to supplement the record with the missing testimony; so

Page 6

Mr. Bluestone will put Mr. Weis on first. He'll be under direct examination and cross-examination, and then the Board of Education will bring their witness, Mr. Thomas Sprout, on.

Everyone is okay with that; right?

MS. FOX: Yes.

MR. BLUESTONE: Yes.

ATTORNEY EXAMINER HIGGINS: Good, because Mr. Weis is already on the witness stand. I'll just go ahead and swear Mr. Weis in. Thank you.

(Mr. Weis was sworn.)

ATTORNEY EXAMINER HIGGINS: All right. Mr. Bluestone, before you get started on direct, did you have a brief opening?

MR. BLUESTONE: I do. I want to thank the Board and you in particular, Miss Higgins, for allowing us to supplement the statutory transcript to include Mr. Weis' testimony today. It's unfortunate that the Montgomery County Board of Revision has repeatedly failed to include the full statutory transcript when it sends these cases up to this Board, and I just want to note for the record that yesterday Mr. Weis and I were before the Montgomery County Board on other cases, on actually 2015 cases, and we specifically brought the issue up to the

Page 7

Board, and I will, as I said off the record, send a letter to Mr. Keith, who is the county appraiser, noting what's happened in the four or five cases this year and explain to him that it creates great difficulty and causes much time and money to be spent unnecessarily and ask him to please encourage his staff to provide a full transcript when they send the records up.

In terms of this case, this case involves a McDonald's restaurant which is situated at 1872 East Stroop, and that's S-t-r-o-o-p, Road in the City of Kettering, Montgomery County, Ohio. The McDonald's restaurant physically is a melange of an old-styled mansard roof McDonald's coupled with some newer stone elements. The restaurant sits on a parcel, as you'll hear from Mr. Weis' testimony, that contains approximately 1.163 acres. The size of the restaurant is approximately 4,686 square feet, and it was constructed in 2006.

For tax year 2014 the Montgomery County auditor initially placed a valuation on this property of $1,082,720. We believe that that valuation is vastly overstated. We had Mr. Weis inspect and appraise the subject property. He concluded in his report, which is part of the statutory record, at a

Page 8

value of $760,000 as of the January 1st, 2014, tax lien date. The Montgomery County Board of Revision issued a decision dated November 17th, 2015, in which it concluded to a slightly higher value, $764,040. There's no explanation why they chose a slightly higher value. I listened to the tape, and I don't recall the panel members explaining why there was a differential between Mr. Weis' report valuation and -- and their final number.

We believe that after this Board hears Mr. Weis' testimony this morning and notwithstanding what I anticipate to be Mr. Sprout's testimony following, that you will agree with us that the correct valuation of the subject property as of the tax lien date in question should be set at $760,000, and we ask that the Board find that the property to be that value and ask also that our complaint against valuation be deemed amended, which is the same thing that I requested before the Montgomery County Board of Revision at the hearing below.

ATTORNEY EXAMINER HIGGINS: All right. Well, thank you very much, Mr. Bluestone.

Miss Fox, do you have a brief opening?

MS. FOX: We do. As indicated by Mr. Bluestone, we will be presenting the appraisal testimony and report of Mr. Thomas Sprout, and he will explain to this Board that his opinion of value as of the tax lien date is $2 million. The Board of Revision did not have the benefit of having Mr. Sprout's report or testimony because Mr. Sprout had not had an opportunity to appraise the property prior to the Board of Revision hearing; so it is our position that the most reliable and best evidence of value of the subject property will be Mr. Sprout's appraisal report which will value the property at $2 million, and we will not make any more arguments with regard to the property today because we will be requesting an opportunity to file further arguments through brief. Thank you.

ATTORNEY EXAMINER HIGGINS: Thank you very much, Miss Fox.

Mr. Bluestone, would you like to proceed with your examination of Mr. Weis?

MR. BLUESTONE: Sure. And may I ask my colleague if we could have a stipulation as to Mr. Weis' qualifications as set forth in the report?

MS. FOX: Yes, you may.

MR. BLUESTONE: Thank you.

And, Miss Higgins, Mr. Weis has been recognized by this Board as an expert witness. I ask

that he be recognized as an expert witness in this case.

ATTORNEY EXAMINER HIGGINS: All right. Thank you.

MR. BLUESTONE: Thank you very much.

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STEPHEN J. WEIS, MBA, MAI,

being first duly sworn, as prescribed by law, was examined and testified as follows in Case No. 2015-2328:

DIRECT EXAMINATION

BY MR. BLUESTONE:

Q. Mr. Weis, there came a time when you were requested by my firm to inspect the subject property; correct?

A. Yes.

Q. And you did so on September 8th, 2015?

A. Yes.

Q. Okay. And did you then subsequently appraise the property and then memorialize your investigation and analysis in the appraisal report that's been provided to the Board of Revision below and a copy given to the School Board's counsel?

A. Yes.

Q. Has your firm been paid or will it be

paid a fee in connection with the services that you provided to McDonald's USA, LLC?

A. Yes.

Q. Is that fee in any way contingent upon your arriving at a predetermined valuation of the subject property or the ultimate outcome of this case?

A. No.

Q. And are -- other than perhaps owning some common stock in McDonald's Corporation or McDonald's USA, LLC, do you have any other significant business connections to that -- those companies?

A. No.

Q. Can I ask you please to describe the subject's improvements, the property within which -- on which they're located, the neighborhood within which they're situated, and then walk us through the appraisal analysis that you utilized and which led you to arrive at the final value conclusion of $760,000.

A. Sure. I appraised this property, tax appeal valuation date of January 1st, 2014. It is a freestanding restaurant building occupied by McDonald's. It's on 1.163 acres. It's 4,686 square

feet, and it was constructed in 2006. The property is an outlot to a Meijer's grocery store. It is adjacent to a Wendy's, and there are a couple of other restaurants and retail properties on outlots outside of the Meijer's parking lot.

Q. Including one outlot on which there's a Burger King restaurant nearby?

A. Yeah. The Burger King restaurant nearby is not necessarily an outlot, but you can see the Meijer's from -- from that location.

Q. Thank you.

A. We went out to the market to determine the value of the property. Part of that determination was to determine the market level of vacancy, capitalization rates, rental rates, sales. We went through a significant analysis, determined where we were in the market value cycle, determined the prospects of the property moving forward. With that, we conducted some analysis and found that the market was basically a pretty strong market. There wasn't a lot of vacancy in the area, probably in the range of 5 to 15 percent vacant, and we will conclude a vacancy rate for the subject property within that range.

The information that was in the public

Page 13

records was deemed appropriate and relatively accurate, and that's what we have as a starting standpoint from our inspection. We compared it to what was in the public records and found it to be pretty well accurate, and so we used that for the valuation of the property.
If you turn to the page -- in my report on Page 22 and 23, we detail the various components of the property in grid form. We show the sketch from public records, and on Page 24 and 25 we have photographs of the subject property so you can see the look, the condition of the property, overall appearance.
Q. Is the subject property what I'm going to call a special purpose or special design building?
A. No, it's not. It's basically a rectangle, freestanding retail building. It has some elements of -- obviously for a restaurant and had some elements of the design, appearance, decoration, trade dress for McDonald's --
Q. Can you give --
A. -- but you can remove those certain items and basically the property comes back as a regular, typical use, retail building, freestanding building.

Page 14

Q. Could you kind of give the Board a couple of quick examples of what a special design, special-purpose building is?
A. A power plant, churches, schools, amphitheaters, stadiums. These are more special use. There's not a lot of sales of those, and they're designed for a specific use and can't be really used for another alternative use without significant renovation.
Q. And if a building were a special design, special-purpose building, what would be, in your opinion, the appropriate way of valuing that property?
A. The cost approach would be the most appropriate way to value a property like that.
Q. And it would not be possible to use, for example, the sales comparison approach because --
MS. FOX: Objection. Leading.
MR. BLUESTONE: I'll withdraw the question.
Q. Would it be possible to use the sales comparison approach?
A. It would be possible but highly unlikely to use.
Q. Why?

Page 15

A. There wouldn't be enough sales of comparable properties, and because the -- each of those uses are, you know, very independent of each other, they may not be located in very close proximity. You're talking maybe a shopping mall. You've got them all across the country, other shopping mall sales, or stadiums, if they were to sell, and that's not going to give a very good indication because those locations would have different economic uses for those properties after -- for sale, and basically it's recognized by the Appraisal Institute as the best method to -- would be the cost approach for properties such as those.
Q. Thank you.
A. Speaking of the cost approach, we did not employ the cost approach here in this case, as this is a typical freestanding retail restaurant building. It also had -- was about nine or ten years old as of the effective date of value. The estimation of physical depreciation would have to be taken into account. The estimation of functional obsolescence would have to be taken into account, any superadequacies in the building, and economic obsolescence would also have be taken into account, and typically properties that are built like this and

Page 16

designed for an individual user would have those elements in there that would have to be accounted for, and the resulting value from the cost approach wouldn't produce a more credible result than the sales and income capitalization approaches, so we valued it using the sales comparison approach and the income capitalization approach.
With that, we did the highest and best use analysis, and highest and best use for the property would be continuing to use the property as a -- as a restaurant, a freestanding restaurant building, so we valued it as such.
The sales comparison approach is on Page 28. We have a map showing the location of our comparable properties in relation to the subject property. We have two sales that are extremely close to the subject property, Sales 4 and 6. You can see that there are -- either on Woodman Drive or on Wilmington, right in the neighborhood, and then we have two others that are just a little bit further away, Sales 1 and 5, and they are on West Dorothy Lane in Kettering. So those four sales are in very close proximity to the subject property and are deemed to be appropriate sales to use, that people would use as comparables when deciding a value to buy

Page 17

this property or rent this property.
With that, on Page 29 and 30 we have the details of each of our sales transactions in the report showing all the specifics of the property such as the size, age built, the construction type, the number of acres it's on, and some other relative factors.
Sale No. 1 is a former Applebee's at 1450 West Dorothy Lane in Kettering. This is a 5,033 square foot building. It was constructed in 2002, so it's only slightly older than the subject property. It's in a neighborhood. It's on 1.3 acres, and it sold in April 2014 for $139.80 a square foot.
Sale No. 2 is an Arby's restaurant on Brandt Pike in Huber Heights. This is a 3,120 square foot restaurant building, built in 1988, was sold in March 2013 for $150.64 a square foot.
Sale No. 3 is a former KFC property and A&W Root Beer combination store. It's on Old Troy Pike, just off the highway of I-70 in Huber Heights. It's 3,080 square feet. It was constructed in 2002. It's on 1.23 acres, and it sold in July of 2014 for $181.82 a square foot.
Sale No. 4 is a Subway on Woodman Drive. It was 1,815 square feet. It was built in 1972, but

Page 18

it was renovated in the 2000s to make it into a Subway with a drive-through, so it was updated in 2000 specifically for the Subway. It was a leased fee transaction. It sold in February 2015 for $250,000, for $137.74 a square foot.
No. 5 is a Longhorn Steakhouse on West Dorothy Lane. It's 5,496 square feet. It was built in 2003. It's on 1.58 acres, and it sold in November 2013 as a leased fee transaction for $185.86 a square foot.
No. 6 is a former Burger King on Wilmington Pike. We mentioned this earlier. This property is right around the corner from the subject property. It is basically within visual sight of the Meijer's grocery store that the subject property is an outlot. It has the same market draw as the subject property. It is a competitor or was a competitor of McDonald's, a Burger King. It's 3,976 square feet. It was constructed in 2000. This property was marketed for sale for quite some time as a functioning restaurant. No other buyers came to the market and were willing to purchase the property for use as a restaurant, and it sold for $67.28 a square foot, and the plans are to demolish the building that was built in 2000 and put a Tire

Page 19

Discounter store there.
Q. What's significant about the fact that a building that was constructed as a fast-food restaurant in 2000, that by April of 2015, 15 years later, is now slated for demolition?
A. It shows the economic life of the properties, the restaurant properties, in this particular case about a 15-year economic life and no more economic life, and so when you were -- if you were doing a cost approach, you would look at how old the property is.
In this particular case it's a 2006 property, 2014 valuation date, so that's an -- eight years old as of the effective date of value, which is about 50 percent, between the 15-year economic life of the building in the neighborhood, which we'd estimate on a cost approach basis physical depreciation or economic depreciation of that building about 50 percent; so that would have to be taken into consideration, and that's the major impact of that.
Our comparable sales, we made adjustments for them on Page 31 of the report.
Q. Can I ask you, if I may, to explain to the panel what the difference is between a leased fee

Page 20

sale and a fee simple sale, and if you are going to consider a leased fee sale, what type of adjustments have to be made and how they differ based upon your market research?
A. The leased fee sale and fee simple sale, when you have a leased fee sale, when you are buying the real estate, you're buying the land, you're buying the building, and you're buying basically a bond payment from the tenant. Many sales that are in the market are credit tenants on long-term leases, so when you have a credit tenant on a long-term lease, you're getting that bond payment or the value of getting a stream of income from that tenant for a long period of time. You're also getting a -- somewhat of a guarantee that there's going to be no vacancy for a long period of time; so you're getting all that value over and above just the value of the real estate.
If you were to use leased fee sales, you would need to consider adjustments for the creditworthiness of the tenant and the length of the lease, consider any above-market rental rate that is locked into the lease of the payment or below-market rental rate that is locked into the contract of the lease. You need to make consideration for those

Page 21

items and make adjustments. You can make the adjustments by using match pair analysis of properties that were sold in fee simple and that had sold in leased fee in short periods after that with no material change to the real estate; so you can make those adjustments.

We have made analysis in the past of properties leased fee, fee simple, and we can quantify adjustments in the range of 20 percent to 75, 80 percent for leased fee investment grade transactions, and so at the higher end would be to a credit tenant on a long-term lease. The lower end would be a less credit tenant on a shorter term lease, so those would be the factors that would be in consideration to make adjustments to move a leased fee to a fee simple.

There are instances where leased fee and fee simple are equivalent or very close to being the same overall value. In those particular cases you have somebody who didn't have a major creditworthiness and maybe a shorter term lease and the lease would be at a market rental rate. At that particular point those two values would be very similar.

Q. And can I ask you, as we talk -- since

Page 22

we're talking about leases, based upon your research, when a new fast-food restaurant is constructed and then leased to a national or regional fast-food restaurant, have you done any analysis of what's included as part of that lease? In other words -- let me clarify my question.

A. Sure.

Q. There's a rental rate to be paid under those leases. What does the rental rate include?

A. It could include a variety of different things, and that's something that's -- a lot of times it's difficult to discern and you have to do some digging and investigation to find out what it includes, but --

Q. Do you actually have to see the lease?

A. A lot of times, yes, you have to see the lease or you have to talk to somebody who maybe you can ask the questions and they'll give you the candid responses to what's in the lease and how it was determined.

A lot of times what we see are build-to-suit projects where a developer is going to build a property for a tenant. The tenant has specific requirements or needs that they want done. A lot of times it's a turnkey operation where the

Page 23

developer will put in all the trade dress, all the real estate, do all the, you know, regular construction work and put in FF&E, and so they have, you know, furniture or fixtures, equipment, kitchen equipment all lumped into it, and the tenant basically uses it as a financing vehicle to finance the entire operation, start of the operation, and they put it into an annual payment, which gives the developer a required return on their construction and their costs they put into the property. It's not necessarily a market rental rate, but you divide it by the square footage of the subject property, you come up with a rental rate, and it may include items such that are not real estate. So a lot of due diligence needs to be put into carving that portion of the overall annual payment into what is real estate and what is not real estate.

Q. Thank you.

A. The adjustments on Page 31, we had a couple leased fee sales, three leased fee sales, and we made adjustments to Sale 1 based on what I just talked about before, about creditworthiness of the tenant, length of the lease, above market or below market, rental rates. We felt that Sale No. 5 warranted a 15 percent downward adjustment. The two

Page 24

other sales that had a leased fee were more equivalent to a fee simple, and no downward adjustments or upward adjustments were required for those leased fee transfers.

The property sold between 2013 and 2015. We did make some market conditions for these properties that sold in 2015, which were over a year after the effective date of value, and the market conditions were improving; therefore, a downward two percent -- two and a half percent adjustments were made to Sale 4 and No. 6. The other properties sold within a year of the effective date of value, and we deemed those markets similar or similar enough that they -- an adjustment could not be discerned as to up or down a small amount; so we made no adjustments there.

Location adjustments, submarket were considered. One of the properties was in an inferior submarket, and we made an upward adjustment of five percent there. Access and exposure, this is basically in relation to roads, population, interchanges to the highway so that you can draw from a larger base, customers, and three of the properties were in superior -- had superior access/exposure qualities and downward adjustments were made. One was inferior, and an upward adjustment was made.

Physical adjustments were made of comparable properties, age, condition, and quality. The age, condition, and quality adjustment is based on the age of the property at the time it sold, the condition of the property at the time it sold, and the quality of the materials used in the construction of the building, how well it's been maintained. We made upward adjustments on all of the comparable properties, and the subject property was in better condition or age than all of our comparables, so upward adjustments were made.

Building layout was considered. They're all functional building layouts. No adjustments were needed. Other physical adjustments as to land-to-building ratio or parking ratios were considered. We felt everything was similar enough that no adjustment was required. Economic functionality, sometimes you make an adjustment there if they can derive better rents for a particular reason that's not associated with something else we've adjusted for. No adjustments were needed or made there. Size adjustment, smaller properties tend to sell for a higher price per square foot. Larger properties tend to sell for a lower price per square

foot to accommodate the size of the building. Therefore, appropriate adjustments were made up and down, basically downward adjustments as they were smaller properties and they tend to sell for a higher price per square foot; so we made adjustments downward.

After adjustments we had a real tight range with Sales 1 through 5. They ranged between $146 a square foot and $166 a square foot. We had the one outlier in that, in Sale No. 6, which is the -- the former Burger King which was constructed in 2000, which is right around the corner. That adjusted out to be $77.08 a square foot. Because we had good indication of value on five of our comparables within a very tight range, we had five of them that were -- excuse me, four of them that were $154 to $166 a square foot, and we reconciled to $160 a square foot, which is the upper end of our range and the upper end of the tight range we had on a couple of the comparables. We applied that to the 4,686 square feet of the subject property, and we came out to a value via the sales comparison approach at $750,000 on a rounded basis.

Photographs of our comparable properties are on Page 34, 35, and 36. You can see that these

are freestanding restaurant properties, and you can see that the type of construction materials and the sign they have.

We then turn our attention to the economic capitalization approach. The property is essentially owner occupied, and there is no contract rental rate on the property; therefore, we went and turned to the market to find an appropriate rental rate for the property if it was available for lease as of the effective date of value. On Page 38 we have nine rental rates that we went out to the market. Eight of these rental rates are restaurant properties, and one we classified as retail. However, that one that's retail was a former Wendy's, and that was vacated and then leased to a Clark's Pharmacy. So it really is a restaurant building, freestanding building.

The year built for each of the comparable rental rates is shown in our table. The amount of square footage is shown. The rental rate on a price per square foot triple net basis is also shown and the lease dates of the comparable rental rates. We then made our adjustments to these rental comparables to compare them to the subject property. We adjust for similar aspects of doing the sales

comparison approach. We did it for market conditions, similar method. Lease type, they're all triple net, so no adjustment is required. Location, access/exposure, age/condition/quality, other physical, and economic size, adjustments were made to these rental comparables to get a value indication of -- for the rental rate.

After the adjustments we had a pretty tight range of $11.24 a square foot to $16.43 a square foot. We had a couple of outliers in that, and the more concentrated rental rate would be in the area of $14 a square foot to $16 a square foot, and we reconciled to the upper end of that range at $15.50 a square foot on a triple net basis. Applying that rental rate to the subject's square footage, we get potential gross income, and also we have reimbursements to get more, additional income for the property, which is shown on Page 39. We talk about the market, the vacancy rate. Basically vacant between five and ten percent. The subject property is a hundred percent occupied. Therefore, we did a frictional vacancy rate of five percent for the subject property as what to be appropriate.

We then turn our attention to getting expenses from the market. You have secondary sources

Page 29

and primary sources. They derive expenses on a line-item-per-square-foot basis. We use all of that information to construct a stabilized operating statement. We used a market rental rate of $15.50 a square foot triple net. We used a market vacancy of five percent. We used market expenses to create a pro forma, which the expenses were -- part of the expenses were reimbursed, part were not, and it determines a net operating income. We capitalize that NOI later to be a tax additur, because we don't know what the real estate taxes are going to be moving forward, so we remove those as an expense, as reimbursement.

On Page 42 we have a number of properties that are similar to the subject property in terms of being freestanding restaurants or retail buildings, alternative investments that you could buy and what the capitalization rates were. They ranged from 7 1/2 percent to almost 13 percent, with an average of 8.97 percent. Capitalization rates are derived directly from the market.

On Page 43 and 44 we have secondary sources which give capitalization rates for retail properties, for restaurants of all types and for fast food. These particular survey results basically

Page 30

bracket our direct comparison method at a little bit wider range than we have because they're dealing with more properties. However, they corroborate the direct comparison approach as being within their range and being relevant, and we felt they were the most appropriate for the subject property. We felt the property was -- had less risks associated with it than the average of our direct comparison approach. Our direct comparison approach capitalization rate had an average capitalization rate of 8.97 percent, and we reconciled below that average at 8.25 percent to reflect the risks inherent with the subject property, it being less risky than the average direct comparison approach capitalization rate.

On Page 45 we did a pro forma again. It's the same pro forma we showed earlier in the report, but this time we removed real estate taxes as an expense and real estate taxes as a reimbursement. This changes the net operating income, and we need to account for that with an additur of the capitalization rate. The tax rate in the area is 3.44 percent at the effective date of value. The vacancy rate was five percent. The landlord was responsible for the real estate taxes only during times of vacancies. We multiplied the vacancy rate

Page 31

times the tax rate in the area of 3.44 percent to get an additur of .17 percent. We add that to the going in capitalization rate of 8.25 percent to come up with a fully loaded tax additur rate of 8.42 percent. We use that capitalization rate to capitalize the net operating income without real estate taxes and expense or reimbursement and without deducting replacement and reserves.

Capitalizing the resulting NOI gives us the value of $770,000 on a rounded basis. Our two approaches to value, the sales comparison approach at $750,000, the income capitalization approach at $770,000, and because there was a pretty tight range, we reconciled directly in the middle at $760,000 or about $162 a square foot.

Are there any other questions about the property or the report?

Q. Yes, I have a couple of questions. Mr. Weis, can I ask you what town you live in?

A. I live in Washington Township, which is the Centerville area of Dayton, Ohio.

Q. Is that in Montgomery County?

A. Yes, it is.

Q. And how long have you lived in Montgomery County?

Page 32

A. Over eight years now.

Q. And you were previously affiliated with Gem Real Estate Group?

A. Yes.

Q. Doing appraisal work?

A. Yes.

Q. And how many years have you been doing appraisal work of Montgomery County properties?

A. Since two thousand -- April of 2003, so 13 years.

Q. All right. And you and I this year alone were involved in approximately 40 fast-food restaurant tax appeal cases?

A. Yes.

Q. Okay. And in tax year 2014, you and I alone were involved with approximately 15 tax appeal cases involving McDonald's restaurants?

A. That's probably about right, yes.

Q. And you and I together have worked on tax appeal cases involving McDonald's restaurants for many years?

A. Correct.

Q. And so would it be fair to say that you and I together have worked on a number of McDonald's and other fast-food restaurant tax appeal cases now

Page 33

approaching a hundred restaurants in total?
A. Probably that's an accurate number.
Q. Okay. And do you feel that you have developed a strong expertise in valuing fast-food restaurants?
A. Yes.
Q. Thank you. And in your opinion, in valuing a fast-food restaurant such as the subject property, is it more important, A, to use restaurant/retail buildings in the vicinity of the subject property or, B, only fast-food restaurants which may be located far afield from the subject property?
A. A. Location is very important.
Q. Could you explain why?
A. Well, I think everyone kind of knows that in real estate location, location, location. The traffic patterns, the demographics, the household incomes are important in determining the location of a piece of retail property, and so from that standpoint, the most similar aspects you have in that the better off you are in terms of comparability.
If you find a property that is constructed almost identical to your subject property, and it's further away, that may also be a

Page 34

very good indication, but it would have to be very similar, almost identical to use something that's further away. There are many cases where appraisers get disciplined for not including a sale that is in very close proximity to the subject property because they feel it is most important to have location characteristics identified in sale comparables.
Q. And based upon your experience, if there was a person who was looking to buy a 4,600 square foot restaurant/retail building in the Kettering, Ohio vicinity, if they were trying to determine for themselves what the market value was of that property, would they be looking at properties in the vicinity of the Kettering market or would they be looking far afield?
A. In the Kettering market primarily is where they'd be looking.
Q. And I'd like to ask you to turn to the building sketch which appears on Page 23 of your report, and essentially what's presented there -- well, first of all, let me ask you, where did this building sketch come from?
A. This comes from the Montgomery County public records, the auditor's site.
Q. And when you did your personal

Page 35

inspection of the subject property, in your opinion, does the building sketch that appears on Page 23 appear to conform to the actual physical building?
A. Yes. I believe it's a fair representation of the property.
Q. And would it be fair to say that the subject property essentially is a rectangular box?
A. Yes.
Q. And based upon your experience, Mr. Weis, could the subject building be converted easily or relatively easily to other uses other than a restaurant?
A. Yes.
Q. And could you give us some examples of other uses which you believe that the subject property could be converted to?
A. There's a vast array of other properties you can convert it to. I've seen Wendy's converted into a Laundromat, another Wendy's converted into a dental office. I've seen other restaurants converted into multi-tenant retail properties. They can convert it into just a, you know, a typical office building, an insurance agency, any other retail aspect, you know, a single-tenant retail shop within the property.

Page 36

Q. Let me give you some examples, and let us know if you think the subject property could be converted to be used with these types of businesses. Insurance office.
A. Yes.
Q. Stock broker.
A. Sure.
Q. Law firm.
A. Yes.
Q. Drugstore.
A. Yes.
Q. Regular retail.
A. Yes.
Q. Small community type shop.
A. Yes.
Q. Dry cleaner.
A. Yes.
Q. A day care perhaps.
A. Yeah. The building could be converted for a day care. It probably wouldn't be -- this particular property wouldn't be just because of where it's located, but it could be.
Q. And with 4,600 square feet approximately of space, this -- the subject property could, in fact, be divided into two retail storefronts?

MS. FOX: Objection. Now we're leading, and we -- I think he's answered this question multiple times.

MR. BLUESTONE: I'll withdraw the question. Thank you.

Q. Are you aware of any physical nature of the subject property where it could not be converted to any of these alternative uses, provided that the zoning would allow it?

A. No. You'd have physical -- you could convert it. There was -- there's nothing inherent in this building which would preclude you from converting it.

Q. Okay. And this particular McDonald's restaurant, how do patrons access it?

A. There is a signalized interchange on Stroop just to the east of the property, which is an entrance road into the Meijer's shopping center. Then there is a -- I'll call it a loop road, an exterior loop road from the exterior of the Meijer's shopping center which basically is used to access the -- at least three or four of the properties that are outlots to the Meijer's from inside that loop road, so off the main road. That's where the access is.

Q. Okay. And there's one single access point?

A. Yes.

Q. And how would you compare the accessibility of the subject property to patrons to other fast-food restaurant properties that are more typical?

A. It's a -- the access is not directly off of the main road. There's going to be other properties, and I think in the next case we'll talk about, they'll have access directly from the main road. This property is -- the access is controlled via a signalized interchange, which helps, but the circuitousness of getting into the --

(Discussion off the record.)

A. Circuitousness -- I can't pronounce it -- circuity of -- basically going around and around and around to get into the property makes it a little bit more challenging. In fact, I recently had the experience of driving by this property. We were here a couple of weeks ago for some other cases, and I was heading back and looking to get something to eat quickly before going to my daughter's volleyball game, and I was in the left-hand lane to turn from Stroop into the property, and it was backed up. I

moved -- immediately moved over to the right and went across the street to a Subby's, and it was easier access to get in and out; so there are some difficulties there.

Q. I know we're going to talk about it in much detail in a few minutes, but you also appraised a McDonald's restaurant property that's located at 2901 Wilmington Pike in -- also Kettering, in Montgomery County?

A. Yes.

Q. And that restaurant is a little bit newer than the subject property?

A. Yes.

Q. And a little bit bigger than the subject property?

A. I think that's correct, yes.

Q. And can I ask you to turn to Page 15 in the report pertaining to the McDonald's restaurant located at 2901 Wilmington Pike. I just want to ask you one bit of information.

ATTORNEY EXAMINER HIGGINS: Could you clarify, are we still --

MR. BLUESTONE: We're still on the Stroop Road case, but I just want to ask one question about the other property.

BY MR. BLUESTONE:

Q. You were in contact with McDonald's representatives and asked them about the cost for constructing a newer and slightly larger McDonald's restaurant, the one that's located on Wilmington Pike. Can you tell the panel what those amounts were?

A. The cost to construct the building was $787,206.90.

Q. And you also got information regarding the cost to do --

MS. FOX: At this time I'm --

A. Yes -- sorry. I'll wait for you.

MS. FOX: I'm sorry, I --

BY MR. BLUESTONE:

Q. Well, while Miss Fox is thinking, you also got information regarding the cost to --

ATTORNEY EXAMINER HIGGINS: Just a second, because I'm not quite sure if she's objecting to something.

MS. FOX: Right. I guess I'm going to ask for some sort of foundation to be laid for this information, if that's possible, because at this point, you know, I am objecting based on hearsay, but I understand that sometimes in the appraisal process

Page 41

appraisers rely upon hearsay, so I guess I'd just like a little more information on how the information -- foundation for how he obtained this information. It also conflicts with testimony from the Board of Revision, so -- but we can get to that on cross.

ATTORNEY EXAMINER HIGGINS: Okay.

MR. BLUESTONE: I have no recollection of my asking any questions about cost at the Board of Revision hearing in this case, the Stroop Road case.

BY MR. BLUESTONE:

Q. So I'll ask you some foundation questions. Do you remember who you contacted at McDonald's?

A. Yes.

Q. Who was that?

A. Mary Dolby.

Q. And she is the manager of real estate development in the Ohio region for McDonald's?

MS. FOX: Can you just ask who she is rather than telling him, please?

Q. Who is she?

A. She's the McDonald's representative that I've dealt with in several cases, as you referenced that we've done a lot of properties like this, and

Page 42

she is the regional representative of McDonald's who has been made available to us to obtain information from regarding the properties.

Q. And she provided to -- you with information regarding the costs to construct the Wilmington Pike McDonald's restaurant and also to do the site improvements for that property?

A. Yes.

Q. Okay. So you've already testified that the cost to construct the building was $787,000 --

MS. FOX: And do we have anything in writing that shows this, what that cost includes, what the breakdown is? Do you have any of that with you?

THE WITNESS: I don't have any of that with me.

MS. FOX: Here's my concern --

THE WITNESS: That's actually --

MS. FOX: -- we had --

ATTORNEY EXAMINER HIGGINS: Wait, Mr. Weis.

THE WITNESS: Oh, I'm sorry.

MS. FOX: We had another case recently where we actually had somebody from McDonald's on the stand who talked about the cost, and it was a very

Page 43

different number than what's being presented here today, so, you know, I have concerns that if we wanted to get information in about the actual construction costs, why don't we have a representative from McDonald's here today to talk about that.

MR. BLUESTONE: The number that -- I think his name was Larry Graham, who was one of the construction managers from McDonald's, provided to the Board was a million dollars for the Triggs Road McDonald's building.

MS. FOX: Okay. And at the Board of Revision in the Wilmington property the testimony was it was $1,317,867, was the actual costs, so --

THE WITNESS: Yes.

ATTORNEY EXAMINER HIGGINS: Okay. So your objection is --

MS. FOX: My objection is hearsay.

ATTORNEY EXAMINER HIGGINS: I'm sorry. It looked like you were about to --

MS. FOX: Yes.

ATTORNEY EXAMINER HIGGINS: -- follow that up with something else. I apologize.

MR. BLUESTONE: Well, I don't believe --

MS. FOX: Well, and I guess, again,

Page 44

further, lack of foundation, because we don't have, again, any information with regard to what -- what is included here, who developed that, who provided that. I mean, we know the person, but where did she get that information, that type of thing.

MR. BLUESTONE: Can I -- may I? I think that Miss Fox inadvertently misstated the record. The total costs for the Wilmington Pike restaurant was a million three, but that included the land costs, and I believe that Mr. Weis does have some documents with him about the cost of construction of the McDonald's restaurants, and so based on those documents, I think he can -- he can continue with his testimony.

MS. FOX: And I don't think it includes the land costs. Again, now we're at a disadvantage because we don't have the actual record, which is why I am going to file a motion requesting the Board of Revision to supplement the transcript, because that didn't say it included the land costs -- anyway, but for whatever it's worth.

ATTORNEY EXAMINER HIGGINS: I am going to overrule your objection, and the Board will afford this portion of Mr. Weis' testimony as to weight, to the extent it does or does not conflict with other

Page 45

information contained in the record.
BY MR. BLUESTONE:
Q. So, Mr. Weis, can I ask you, could you tell the panel -- excuse me, can you tell the Board what information you have regarding the cost to construct the Wilmington Pike restaurant?
A. Yes, and I just want to back up and say I believe you asked me the cost to construct the building, and I gave you the answer to construct the building --
Q. Right.
A. -- not the total construction costs. The total construction costs for the Wilmington was approximately $1.3 million, and I have that contained on Page 15 of the Wilmington report. In terms of knowing what those costs are, on Page 15 of the report I detail what those costs are for site work and for the land values, et cetera, and then also, in the addenda of that report that's been submitted to the Board of Revision in Montgomery County, I'm sure it's here in the record for the next case we're in, in the addenda there is a McDonald's projected -- actual cost reports, and it has the construction costs of the building, and it shows that at $787,206.90, and it has a number of line items of

Page 46

expenses in terms of how they got to that number, and it shows the square footage of the building being a little other 5,200 square feet; so those are the costs, the direct costs for the building. And then the site work estimation was via conversation how much site work they put into it. I didn't have detailed documentation for that. And then the land value was, in that particular case, was estimated based on the assessed value of the land, because there wasn't a recent transfer of land and that property, I don't recall, so --
MS. FOX: I'm sorry, give me that page number where you had the total costs again.
THE WITNESS: In the addenda of the report --
MS. FOX: No. Before, the 1.3.
THE WITNESS: Oh. Page 15.
MS. FOX: Thank you.
THE WITNESS: It's in the property history section, and then in that section we talk about these are the total costs at 1.3, but then you'd also have obsolescence you need to apply, for physical and functional economic obsolescence, and in terms of what those building costs were, and that would be reduced, and then you add the land value to

Page 47

get to an indication of value in the $1,066,000 to $1,116,000 range from a cost standpoint on that point. And, you know, I guess what you would do in terms of relating that back to the subject property that we're here in the first case, here on Stroop, is you would divide the $1,100,000 value by the five thousand two hundred and -- 5,118 square feet or one thousand -- or 5,200 square feet approximately to get a cost per square foot on that, and that would be then somewhat relatable to the property on Stroop on a cost-per-square-foot basis.
BY MR. BLUESTONE:
Q. And so the cost per square foot of constructing the building and site improvements at Wilmington Pike came to $196 per square foot; right? I'm looking at Page 15 of your report.
A. Not exactly correct. The value after you deduct obsolescence I think is that number. One one divided by 52, that's at $211 a square foot.
MS. FOX: I'm sorry, I don't think I understood your answer. What's $211 a square foot?
THE WITNESS: On Page 15 of the Wilmington Pike report, once I added up all the costs of construction, deducted an obsolescence factor, added the land, I came up with a total value for that

Page 48

property, and that was about $211.53 a square foot for that on a cost basis. That -- that is for a new building. You'd have to depreciate it even more for an older building. It kind of sets the high watermark, I guess, is where you would talk about in terms of value. You'd have to also, you know, determine the difference in land value, location, make adjustments from that particular point.
BY MR. BLUESTONE:
Q. Okay. But my question actually was, if you took the costs to construct the building, 787,206.90, and added in the estimated site improvement costs of $220, you come to a total of $1,007,207. You divide that number by the square footage of the Wilmington Pike property, which was $5,118, and that comes to the $196.80 per square foot. The building --
A. Yes.
Q. Okay. And if you took that number, 196.80, and you multiplied it by the size of the building in this case, the Stroop Road building, which is 4,686 square feet, it comes to $922,190?
A. Approximately, yes.
Q. Okay. To build a bigger building, a slightly bigger building?

A. Well, that would be the same --

Q. I'm sorry. I apologize. I withdraw that question. I withdraw it. I'm sorry.

Based upon your experience, based upon your conversations with Mary Dolby from McDonald's Corporation and based upon your knowledge of Marshall & Swift Valuation Services, does that $922,000 seem to be a reasonable cost to construct a brand new McDonald's containing 4,686 square feet and the site improvements?

A. Yes.

Q. Okay. Thank you.

I have nothing further for Mr. Weis.

ATTORNEY EXAMINER HIGGINS: All right. Well, thank you, Mr. Bluestone.

We could break a little bit early. Miss Fox is just about to start her cross. Or we can still wait until our schedule of 11:15. Does anybody have any --

MS. FOX: Let's go ahead.

ATTORNEY EXAMINER HIGGINS: All right. Then go ahead, Miss Fox.

MS. FOX: Thank you.

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CROSS-EXAMINATION

BY MS. FOX:

Q. Mr. Weis, I'm going to kind of start with your most recent testimony and work our way back, if that's okay. There's been some discussion about the actual costs on the Wilmington Road property, and do you know whether or not those actual costs included any soft costs?

A. I don't recall. I think they did. They're listed in that -- let me see.

Q. I see architectural fees.

A. Yeah. It does include some.

Q. It would not include entrepreneurial profit, though?

A. No, it doesn't include any entrepreneurial profit. No, it does not.

Q. And that would be an appropriate thing to include if you were doing the cost approach, would it not?

A. Yes, you'd probably include some entrepreneurial profit. The amount of entrepreneurial profit would be more and it would be a significant number if it was to be built on spec, in terms of your ability, in the hopes to get a tenant. In terms of building it for a tenant,

specific for them, the entrepreneurial setup would be very minimal because they're going to take a -- maybe a developer fee or their costs, can be cost plus, whatever, as associated costs we have in here. So there was no risk or minimal risk in terms of building this property when you have someone like McDonald's who is paying the bills. You're not waiting for a tenant to then pay you for your risk of building it without a tenant, so the entrepreneurial setup would be minimal, but it would be included.

Q. Again, this is a little confusing because we are talking about two different properties, but right now focusing on the Stroop Road property, you mentioned that it's not -- it's not leased, it's not run by a franchisee; is that correct? It's operated by corporate? Or do you know?

A. I believe it's corporate. Yes, it's a corporate owned and operated store.

Q. Okay. All right. And there was quite a bit of discussion regarding alternative uses of the property. If I could ask you to open to Page 25 of your report for the Stroop Road property.

A. Okay.

Q. And if you could please read out loud

the last paragraph on that page which is under your "Highest and Best Use Analysis."

A. "The subject site improvements include concrete curbing, sidewalks, asphalt paved drives and parking, landscaping, drive-thru equipment and lighting. The vertical improvements are designed for restaurant use. These improvements add value to the land as if vacant. Since the improvements contribute value over/above the value of the land and an alternative use would not be cost effective as a conversion of the property would require substantial capital, the Highest and Best Use of the subject As It Existed, was as a Restaurant."

Q. Okay. Thank you. In looking at your income approach, I'd like to start with your rent comparables you have on Page 38. Of those nine properties that you have listed there, how many of those were being used by their first-generation user as of the tax lien date or the date of the lease information that you were relying upon?

A. Two, maybe three.

Q. Okay. And which two?

A. The two would be No. 8 --

Q. No. 8, the Arby's?

A. Arby's on National Road.

Q. Okay.
A. No. 6, the Pizza Hut on Harshman Road, and maybe is the Fricker's on Miller Lane.
Q. Okay. Maybe --
A. And I can't recall if that was their store or if they entered into it with another building afterwards. I can't recall.
Q. Okay. And that Fricker's building was built in, it looks like, 1997?
A. Yes.
Q. And both the Pizza Hut and the Arby's were built in 2000, if I'm reading that correctly? Is that correct?
A. I believe so, yes.
Q. Okay. And the Arby's lease date was January of 2010. Would you agree that that was an inferior economic period to January 1st, 2014?
A. Yes, I would.
Q. Okay. And with respect to the Fricker's, it appears -- again, I'm sorry, I'm trying to make sure I'm looking at the right line here -- that that was a lease date of January 2009?
A. Yes.
Q. Would you agree that that was also an inferior market?

A. Yes.
Q. Okay. And do any of -- never mind. I'm going to withdraw that. Were you not able to find any leases of other McDonald's, Wendy's, Steak 'n Shakes, those types of leases with similar national creditworthy, I guess, fast-food users?
A. Not specifically. The difficulty in obtaining those are that if you have a lease from a Steak 'n Shake that's newly constructed, as of the effective lien date, you know, right around January 2014, then you have the issue of it being a brand new building of the lease and then you'd have to make those adjustments. Also, you'd have to find out whether or not that is a turnkey lease rate, whether it includes personal property, et cetera. Then to get the lease rate that -- for a property that is already eight to ten years old, those lease rates are typically eight to ten years earlier than the effective date of value; so the comparability, it makes it very difficult to get any lease that's eight, ten years earlier for a new building and compare it to an older building as of the effective lien date. So those weren't found to be any more -- these were the best rental rates I could find to value the subject property.

Q. In your opinion, obviously.
A. Obviously.
Q. Okay. With respect to location, there was some discussion about location, and you mentioned, I think, when you were looking at location you mentioned traffic patterns and demographics. Was there something else that you consider when you're looking at location or were those just the two things?
A. Access/exposure --
Q. Okay.
A. -- you know, the demographics of -- the house -- the number of households, the -- the average household income. You look at demographics, the age and all those come into play. You're looking at, you know, access to major thoroughfares, whether it's, you know, linkages to interstates or to employment centers. These are aspects of location, which it's very difficult to ascertain a specific benefit or detraction of, A, this is a mile away from this office complex, which is why you want to use local rents and local sales, because they are generally in the proximity of these employment centers, the linkages. They are similar to the subject property. That's what makes it something that's more reliable.

Q. Isn't it possible that you could have a property location that might be further in distance but more similar with regard to demographics, traffic patterns, access and exposure? Because it is, in fact, more than just proximity when you're looking at location; correct?
A. Right. There could be. There's -- you know, obviously there's cases where you have a property and -- another property which you may try to say it's comparable, is maybe a half a mile away, but there's barriers to the market such as, you know, there's interstate running between them and you can't get to the other property, and so the property on the other side, even though it's very close, maybe the patronage of that other property, they may have much lower or much higher economic value; so it's not always just an as-the-crow-flies distance as being important.
Q. Okay.
A. There are other aspects that makes something that would be in a -- if you had -- from a demographics standpoint, if you have 10,000 households within a three-mile radius and they have an average income of $50,000 and then you have a comparable property that is in a location that has

approximately 10,000 households with approximately $50,000 of household income and the access and exposure is very similar in both, then, yeah, you can use those as comparables.

Q. Okay. Let's turn now to your cap rate information which is on Page 42 or your report.

A. Uh-huh.

Q. You list several buildings there, and if I did my count correctly, I see that -- it looks like one, two, three, four, five, six, seven, eight of those you have designated, under Property Type, as fast-food restaurant. Does that look accurate to you? Wait a minute. I think I missed one. Nine.

A. I see nine.

Q. Okay. Great. And for the sales that occurred in 2012 or 2013, did you make any adjustment or take into consideration again the fact that the market was superior in 2014 to those -- to those tax years when considering your cap rate?

A. You don't adjust cap rates, so, no, from that standpoint.

Q. I understand you don't make a specific adjustment --

A. Right.

Q. -- but did you take that into

consideration?

A. Yes, it is taken into consideration, and it is also taken into consideration in terms of developing the particular cap rate. For example, a property that's -- take the second one down. That's a Burger King, a fast-food restaurant. In June of 2013, which is six months prior to the effective date of value, it had a 10.04 percent cap rate. Now, that's the cap rate that is specific to that sale date and time, six months beforehand; however, the purchaser and the seller of that particular property is looking at a holding period that extends out beyond the effective date of value, so that cap rate is based on -- there are presumed changes in the market, whether the market is getting better or worse, they're going to pay a different cap rate, and it takes that into consideration. So these cap rates were determined by the market and the market participants with anticipation of what market conditions were going to be through a reasonable five- to ten-year period beyond buying that property.

Q. And were each of these fast-food restaurant sales occupied at the time of the sale or had they been vacated by the fast-food restaurant?

A. I believe they were still all occupied

and still paying rent.

Q. Okay. And did you look at, for purposes of determining cap rates that were appropriate, did you look at their location, traffic count, demographics, and compare those to the subject property or is that more analysis than you would typically do for a cap rate?

A. That's more analysis than -- than I typically would do just for a cap rate. What I try to do is incorporate that in terms of saying this is a similar property type, this is a similar size property, this is an alternative type use property, this is a property that is located in a location that is relatively similar, and because we have -- I don't know what your count here -- 35 cap rates, we don't do that specifically. I guess if I was to do a cap rate and show three to six cap rates, that would be more important to get down to making sure that they are actually comparable in that light.

We have properties that are going to be comparable in the sense that they're a fast-food restaurant but not necessarily comparable in terms of location. We're going to have ones that are comparable in terms of size but not necessarily comparable for being a fast-food restaurant or

whatnot. So, basically, in general, we looked at these and we get a range, because the market participants are looking at a range of returns on their investment as to what would be appropriate for them, and they adjust their purchase price or selling price based on their accepted rate of return. In this particular example we show that these properties -- the market, looking for a rate of return of similar type properties between 7 1/2 percent and 13 percent, for an average of 8.97 percent.

Q. And I know --

A. And I mentioned -- sorry. I mentioned in the -- in my testimony earlier that I felt that the -- overall, looking at these properties, the risk profile of these properties is slightly higher than that of the subject property. That's why I selected the lower cap rate --

Q. Okay.

A. -- and that's how I made the adjustment. I made it to the cap rate for the property, not necessarily for each individual.

Q. Okay. And I know we talked about this, I -- at one of the many Board of Revision hearings that we had together, there were sales of occupied

Page 61

and leased Wendy's stores in Montgomery County around this time period, but you did not use any of the -- either rental comps or sale comps, it appears, in your analysis, and could you -- can you speak as to why that is?
A. Because the sales I did use I felt were, in my opinion, were the most appropriate and -- indication of value for the subject property. The Wendy's that you're referring to, I have a vague recollection of the conversation we may have had previously on this, but, again, is it going to be a credit tenant, which an adjustment would need to be made for it being a credit tenant. The length of the lease would have to be analyzed and determined what adjustment would be appropriate, and the rental rate would have to be determined whether or not it was at market at the time it sold or if it was a contract rental rate that was above market that was entered into some years ago and whether or not that rental rate included, you know, turnkey operations of personal property as well; so with all the information that would be required to get those, those adjustments, would not necessarily be more credible than the way we approached this. We tried to give the most credible approach to value and using

Page 62

those and making adjustments which can be made. It gets extremely difficult, and the amount of information needed to make those adjustments accurately a lot of times is not available.
Q. Okay. Let's look at your market approach now, if we could, on Page 38 -- wait. I'm sorry. I moved on too soon. Going back to your income approach, the basis for your expense estimation, what was that? Was that primarily the actuals or market data?
A. Probably market data.
Q. Okay. And is that contained within your report, the data on which you relied?
A. On Page 40 of the report I have some secondary sources, and I quote generally expenses from primary sources in the $2 to $3 a square foot range.
Q. Okay. But we don't have any information about the specific --
A. Not in the report, no.
Q. -- other primary sources that you used? Okay.
A. Right. This is generally -- this is a, you know, a summary type report, and we don't include every piece of information that we look at. We kind

Page 63

of summarize what's going on in the market. In particular with, you know, the market expenses that you have, you're basing those items on market rent, but there's also triple net lease, so they're getting reimbursed back, and so the effect of whether or not you use $3 a square foot and it gets reimbursed or $2 a square foot and it gets reimbursed, the only difference would be that five-percent vacancy when it's not being reimbursed; so it's a very small indication of a change. So from that standpoint, it's not a meaningful market data point that needs to have a full-blown explanation in it, so we summarize it.
Q. Okay. Now moving back to the market approach on Page 38.
A. Okay. I have 38 being income.
Q. You're right. I'm sorry. We have already talked about this.
A. 28 through 31?
Q. Your market approach, you've already talked about Sale No. 6, which was an outlier as far as the value but also an unusual sale because it was purchased just for the land use; is that correct?
A. Yes.
Q. Okay. And with respect to that

Page 64

property, you mentioned that that building was built in 2000, but it was vacated -- do you know when it was vacated exactly?
A. I don't know exactly when it was vacated, no.
Q. Okay. But you mention that it was vacated and did sit empty and vacant for some time before it sold; is that --
A. Yes. There was a period of time that Burger King decided to vacate the property, which was -- at the time, I guess, when it sold, it was 15 years old, and my recollection was that Burger King was operating in that location, you know, probably a year, a year prior to the sale or at least they were in there a year prior to the sale. They -- they vacated, and it probably was vacant for less than a year.
Q. Okay. Sale No. 5 is a sit-down, full-service restaurant, being a Longhorn Steakhouse; is that correct?
A. It is.
Q. Okay. So it's not a fast-food restaurant with a drive-through; correct?
A. That would be correct, it does not have a drive-through.

Page 65

Q. And Sale No. 4 I think you mentioned was a former retail building that had been converted to a Subway; is that correct?
A. Yes. It was a former freestanding retail building that in 2000 -- early 2000s it was converted to -- lease for a Subway.
Q. Okay. And its original build date was 1972?
A. Yes.
Q. Quite a bit older than the subject property?
A. Yes.
Q. Okay. And Sale No. 3 was vacant at the time of the sale, had been a former Kentucky Fried Chicken/A&W --
A. Yes.
Q. -- fast-food restaurant?
Okay. And do you know how long that property was vacant before it sold?
A. I don't recall how long that was vacant. It didn't sit vacant for too long. This was a good located property. It was relatively new construction. I think that was 2002. Yes, constructed in 2002, so it was in good condition, and it was -- it was vacant for a while. I guess it

Page 66

really depends on how long it's going to sit on the market in terms of what they're asking for it. Properties can sit on the market -- I don't -- it didn't sit on the market too long, but if you're asking way too much money, it's going to sit, and then eventually, when it sells, you know, it's at a lower price. So if they were marketing it at a lower price, it would be on the market less, so -- sorry. Long way around that. I'm not sure how long it was on the market, but not very long.
Q. That's fine.
A. I apologize.
Q. That's all right.
A. I got sidetrack.
Q. Sale No. 2 is -- was the Arby's restaurant. Arby's still occupied that at the time of the sale; correct?
A. Yes.
Q. But that property was built 30 years prior to the subject property -- well, 28 years prior to the subject property; is that correct?
A. Sure, yes.
Q. 1988. Okay. And then Sale No. 1, I believe you indicated was also vacant, had been an Applebee's, also a full-service restaurant, but they

Page 67

left that property before they sold it?
A. Yeah. And that was -- recent vacated on that one. That was within months, a couple months. Maybe three or four months before it sold they vacated.
Q. Okay. Did the Applebee's relocate to a different location nearby or did they just decide that this wasn't a good location for them businesswise, do you know?
A. I don't know what their decision or motivation was on the move. I don't have knowledge of an Applebee's in that immediate location, so my guess is they didn't relocate to something immediately in the area.
Q. Okay.
A. But I'm not sure if it was -- why they didn't continue operation there.
Q. Okay. And for -- you mentioned that you only adjusted for one of your three leased fee sales and that you made a 15-percent adjustment for that sale, I believe. That was Sale 5?
A. I believe that's correct.
Q. Okay. And did you have an opportunity to review the actual lease that was in place for any of these properties that were leased fee sales? I

Page 68

know it's unusual for that to be provided, so --
A. Right, and I don't think I had -- I'm trying to think which ones were -- two, four, and five. Four, no; two, no; and five, I didn't have the lease, no.
Q. Okay. And with respect to the subject property, did you ever prepare a value estimate for just the land in your analysis when you were considering highest and best use or for any other reason? Did you do any sort of analysis of the land value?
A. I'm sure I did analysis of the land value and --
Q. Do you recall what your estimate was?
A. I don't. And I'm not sure how deep into the analysis I conducted it, but typically what I end up doing is if I think the land value is a significant portion, I might do it a little bit more in depth, but I would take the overall value that I had, divide it by the acreage, come up with a price per acre. In this particular case we're at $760,000 for a little over an acre, so we're at 600 and some thousand dollars an acre, and knowing the market the way I do, the land values are less than $600,000 an acre; so, therefore, it was obvious that a highest

and best use would be to continue to have the building -- the building contributed value over and above that price per acre.
Q. Okay.
A. There are relatively few areas in Montgomery County that -- retail locations that garner sale prices of $600,000 an acre and up, so --
Q. So would your analysis, your thought process have been you valued it as it was improved and then just looked at that value to determine whether or not the -- there would be any possibility that the land as vacant would be worth more; is that --
A. That would --
Q. Is that a fair summary?
A. Yeah, that would be a summary -- good summary of how I did it.
Q. All right. And then when you were talking about the value -- the cost value for the Wilmington Pike property, I just want to be clear, in your analysis, in your report for that one, you just utilized the existing land value that had been on the auditor's record? You added that exact value in rather than coming up with your own estimate of value?

A. Yes.
Q. Okay.
A. If I recall correctly on that, is I used what was on the auditor's site and I looked and felt that the price per acre was in the ballpark reasonable for it, so without doing a full appraisal of the land to add to it, I felt that that was a fair indication in that ballpark range, plus or minus.
Q. I think I'm just about done. If I could have just one minute, please.
For your sales that you used in your market approach, you mentioned that you adjusted -- you made a downward adjustment for sales that occurred in 2015, a superior market, but you didn't make any adjustment for sales that occurred in 2013, which would have been an inferior market. Why is that?
A. I thought I covered that. 2013, those sales were within a one-year period of the effective date of value, January 1st, 2014, so we felt that, yes, the market conditions were improving, but the sales in 2015 were past a year -- they were in the second year away from the effective date of value, and there was some more definitive information that it was a superior market, so we made downward

adjustments. Basically what ended up happening, in 2013, if we start making adjustments, start splitting hairs and say this particular property sold in April of 2013, this other one sold in October 2013, hey, you made an adjustment for this one and not for that one, why is that, type of stuff. Well, we basically rounded this thing off in terms of making our adjustment on a, you know, a year or more away from the effective date of value. We take into consideration the time these properties sell when we reconcile a value. If we had -- all properties, if they all sold in 2013 and we came up with an indication of value at X, without considering the time, we would probably do X plus a little bit more to -- on our reconciliation to adjust for that time. Because we had sales on both sides of the one-year anniversary of the effective date of value, we didn't necessarily need to make that adjustment.
Q. And the 15 percent that you adjusted Sale 5 for as leased fee, what was -- what was the basis for that?
A. I don't recall exactly what the overall basis was or specific basis, but I had the information regarding the lease rate and term and creditworthiness obviously of the tenant, and because

the -- the amount of time that you were going to be receiving rent from this credit tenant wasn't super long, only a 15-percent adjustment made and not a larger downward adjustment.
Q. Okay. Would you consider a McDonald's franchise to be a creditworthy tenant?
A. I do.
Q. Okay.
A. They have actually one of the highest credits in the market for restaurants, but we're not tasked with valuing the creditworthiness of McDonald's or for real estate taxes to tax them on their creditworthiness. We're tasked with -- tasked with determining the real estate value, and it has no bearing on whether the tenant is creditworthy or not. The real estate is worth what the real estate is worth.
Q. But if you're adjusting a comparable, either a sale or a lease, and if you're making an adjustment for that comp based on the creditworthiness of the tenants that can be attracted to that property, isn't the fact that the subject property can attract and be a viable location for McDonald's, which is one of the most creditworthy tenants out there, wouldn't that need to be taken

Page 73

into consideration when you're comparing the two?
A. Yeah. I mean, you take into consideration the location, what it's compatible for. This particular location is obviously compatible for McDonald's, they're operating in it, but right around the corner there is another national franchise restaurant that has a building that is -- it was built in 2000, a little bit older. It's not compatible for them. So, from that standpoint, you know, you say, oh, they're a credit tenant. Well, that means that Burger King should still be operating as a Burger King because they're a credit tenant. No. That market didn't work for them. This market maybe works for McDonald's to a better extent or McDonald's is a better operator, you know, than Burger King; so, therefore, they can stay in business. Just because they're both credit tenants, you can't sit there and say that, hey, they're -- they should stay in business.
Across the street there's a Subby's. Next-door there's a Wendy's. The Subby's is a much less credit tenant than the Burger King, the Wendy's, or McDonald's, and they're staying in business. How come Burger King -- Burger King can't stay -- they're a credit tenant. Because those things don't work

Page 74

based on the creditworthiness of -- now, has over history of time basically been an indication of success or credit, so they can make a success in those locations. Probably why McDonald's has a better credit rating, they can make a success in this location where Burger King can't; so, therefore, they don't have the losses that Burger King would have from not being able to operate in that same market. So over time creditworthiness comes into effect, but that doesn't have any affect on the value of the real estate at all.
Q. Okay. Thank you.
That's all I have on this property.
MR. BLUESTONE: May I ask a few questions? I think we'll keep on time.
ATTORNEY EXAMINER HIGGINS: Yes.
MR. BLUESTONE: Thank you.
- - -
REDIRECT EXAMINATION
BY MR. BLUESTONE:
Q. With respect to the Burger King property that you just discussed, that was available for purchase by any other national fast-food restaurant chain; correct?
A. Yes.

Page 75

Q. And none purchased it?
A. Correct.
Q. With respect to the questions that Miss Fox asked you about your adjustments for market conditions, and I'm looking at Page 31 of your report, she asked you specifically about adjustments for sales that took place in 2013. You mentioned April and October, but Sale 2 took place actually in March of '13 and Sale 5 took place in November of '13; correct?
A. Yes. I was just -- hypothetical, but yeah.
Q. Okay. And specifically, for example, with respect to Sale No. 5, that sale took place not more than two months before the tax lien date in question. Would it be able to -- or appropriate for you to make an adjustment for market conditions for an eight-week period?
A. I wouldn't have enough market information to be able to discern a specific adjustment. Overall trends are things that are continuing to improve, but does that mean a half-percent adjustment, a one-percent adjustment? We don't have that specific information.
Q. Okay. And can you explain to the Board

Page 76

why you made no adjustments to Sales 2 and 4 as to the fact that those were leased fee sales?
A. I felt that the term of the lease, the -- the rental rate wasn't significantly different than what you would see executed in the market. I felt those would be somewhat equivalent. To ferret out an adjustment there would be a long, drawn-out process for a very minuscule adjustment. Knowing that it's a leased fee is sufficient enough in this particular case to reconcile a number, and you would look at these leased fee, and if you knew that the rental rate was not significantly below market, than most likely the adjustments here, it would be superior, you adjustment them downward. So not to over-adjust downward and be overaggressive, I didn't adjust them at all.
Q. It was caution --
A. Yes.
Q. -- in other words, not to make the adjustment?
A. Right.
Q. Okay. And you acknowledged that you did not personally see the actual leases relating to a couple properties, 2, 4, and 5?
A. Correct.

Q. But in your testimony earlier this morning you said that to do the analysis you'd either have to see the lease or receive sufficient data from a competent source who has knowledge of the lease terms?
A. That's correct.
Q. Okay. And did you do that in regards to your analysis of Sale Comps 2, 4, and 5?
A. I believe so, and I believe that probably I didn't get as much information as I would like to get to be able to make, you know, further, you know, adjustments, and so, therefore, the adjustments weren't made, because I didn't have the lease and I didn't get a full summary of everything that was going on there. I got a sufficient amount of information to say yes, this is an arm's length sale, this is a market transaction, and this would be appropriate, and so that's the information I had and I adjusted based on the information I had.
Q. And, again, you were exercising caution by not making the adjustment?
A. Well, I had no basis to make any adjustment. I don't have that information, so -- and, you know, real estate is an imperfect market. You don't get all the information for every property

that you want; so, therefore, when you don't have the information, you don't have a basis for making an adjustment, you don't adjust it. That's just -- that's why you have a range of value. That's why not all of my sales comparison approaches all came in at $165 a square foot after adjustment. They had a range, and then within that range you select the most appropriate.
Q. Miss Fox asked you some questions regarding Sales Comp No. 2 which appears on Page 29 of your report. That's the Arby's restaurant on Brandt Pike, and she pointed out that that restaurant was constructed approximately 28 years prior to the construction date of the subject property. To your knowledge, does Arby's either periodically update restaurants or require franchisees to periodically update their restaurants?
A. Yes.
Q. And that's similar to what McDonald's requires of its franchisees and other national fast-food chains require of their franchisees?
A. Yeah. They all require you update it at some particular point.
Q. Okay. And you take those updates and the condition of the restaurant into consideration

when you make your adjustments in sales comps?
A. I do. In that particular case I made an upward adjustment of 15 percent to the age, condition, and quality for that particular property.
Q. I think there was a Subway restaurant that was built in 1972 but it was updated in the 2000s, and you took the renovated condition of the Subway restaurant into consideration when you did your -- your adjustments?
A. Yes. The condition of the property was when it sold, yes.
Q. With respect to Sales Comparable No. 6, the former Burger King restaurant on Wilmington Pike, that was a functional restaurant until just shortly before it sold?
A. Yes. They marketed it, trying to get another restaurant concept in that property.
Q. And another restaurant concept could have moved in and used the building as a restaurant?
A. It could have.
Q. But the market was such that the only buyer was one who wanted to tear down the restaurant and use it for -- use the land for an alternative use?
A. Yes. Well, they were the ones willing

to pay the most money, I guess, or it could have been some other restaurant user or I don't -- I don't have that information that they didn't want to pay what they were asking for it, so I don't know --
Q. So they were the highest bidder?
A. They were the highest bidder, yes.
Q. Thank you for pointing that out. Can I ask you -- Miss Fox asked you some questions about expense data, and you commented that the appraisal report that's been provided in this case is, in essence, a summary format appraisal report. Do you have expense data regarding comparable properties and also those market survey reports that you referenced in your file back at your office?
A. Yes.
Q. Miss Fox asked you about a scenario where national fast-food chains lease their buildings. To your knowledge, does McDonald's lease their buildings to anyone, anyone excluding franchisees?
A. I have no knowledge. I mean, I don't have -- there's no -- I didn't come across a McDonald's lease for any freestanding restaurants in the market. I am aware that McDonald's didn't lease the space to somebody else. A McDonald's operator

Page 81

leased the space from somebody else, and it was basically at Cleveland Clinic. There was space there at that location. I also believe that McDonald's in airports, they lease those spaces. There's those leases that are out there, but McDonald's, as an owner, doesn't lease out their property --
Q. That's what I'm asking.
A. -- to anybody but from McDonald's.
Q. That's what I'm asking. So I understand that there are structures like airports and hospitals, Wal-Mart stores, where the owner of those properties may lease some area of the greater building to McDonald's. My question was are you familiar, based on your experience working with me over the last eight years and doing tax appeal cases and the research that you've gone generally, where McDonald's actually leases one of its buildings to a third party?
A. No.
Q. I want to turn to the chart on Page 38 of your report where -- at the top where you look at comparable lease rates, and there were two leases, specifically No. 5, the Fricker's lease, and No. 8, the Arby's lease that Miss Fox asked you about, those leases having the initial term starting respectively

Page 82

in January of 2009 and January of 2010. Did you make adjustments for inferior market conditions with respect to those leases in particular?
A. Yes, I did.
Q. And are those adjustments and the fact that you made adjustments for market conditions reflected on the second table on Page 38?
A. Yes, they are.
Q. Okay. And she didn't ask you about it, but, in fact, isn't it correct that you also made adjustments for inferior market conditions with respect to the Subway lease, Lease Comp No. 4?
A. Yes.
Q. And that's reflected in your chart at the bottom of Page 38 as well?
A. Yes, it is.
Q. Miss Fox asked a couple of questions regarding first-generation users. Can you explain, in your opinion, what the significance is in valuing a property occupied by a first-generation user versus second-generation user?
A. It makes all the difference in the world in some cases and no difference at all in other cases. If you're valuing a property that's brand new and you have leases that are also brand new and the

Page 83

lease rate is at a market rate for just the real estate, very important. When you have an older property, you don't want to have a first-generation lease which is leased brand new because that rate may not be equivalent to what the market is right now.
Basically, in the appraisal of properties, we are looking at a hypothetical willing seller, a hypothetical willing buyer. So a property that is eight years old, which the property was on the effective date of value, you're looking at it and saying if McDonald's did the same thing Burger King did and left, what would they -- if they would be a willing seller at that particular point, what would they be willing to sell the property for, and if you could find a willing buyer, what would they be willing to buy the property for. At that particular point, the next purchaser is second generation. So that would be what you're looking at, the kind of the rents we have here, what would you rent the property for, what they would be, that would be kind of the second generation.
Now, the nomenclature of first generation, second generation, it seems fancy and everything. It could be a first generation -- a property could be in it for a year and they're first

Page 84

generation. They could be in the property 30 years and they're still first generation. That has no bearing -- that would be saying well, they're first generation, let's use all first generation rents for a property that's 30 years old. You're not going to do that.
The definition of generation is not defined in terms of a specific year. They're using it in terms of the fact that there's been one tenant, one operator been in that property for -- that's it, just one. That would be first generation. The second generation would be the second person in it. You could have a property that's five years old and it could be on its fifth generation. So generation doesn't, in itself, mean anything specifically. It's more along the lines of the age and condition of the property as to what they want for it.
Q. And the last history I wanted to ask you about, on Page 25, at the bottom, Miss Fox asked you to read the concluding paragraph on that page, and that included the words "conversion of the property would require substantial capital." In thinking back to my questioning about alternate uses that this property could be employed for, how do you reconcile your testimony with what's at the bottom of Page 25?

Page 85

A. Well, the rental rates and the sale comparisons that I used were for restaurants and wouldn't require substantial capital to convert it, and I valued it to its highest and best use, which was continue operation as a restaurant; so from the standpoint of -- well, let's say -- let's compare it to a dentist office, if we're going to convert it to a dentist office. Well, then I have to look at dentist office sales and say well, if they're selling for X amount of dollars per square foot, I would have to buy this property for X amount of dollars less those costs of renovation or alternate -- make it an alternative use, so that would be the price you'd pay with -- that price at that particular point would be less than what you could sell it for as a restaurant; so, therefore, the highest and best use as a restaurant, continue to use it as a restaurant, and that's the way we appraised it. Now, if we were appraising it, you know, as an alternative use, we'd have to take those items into consideration, and the value would be the cost -- the value that's included here is less the cost of substantial renovation, we'd have a lower value. If, for whatever reason, they said that this property couldn't be used as a restaurant anymore and had to be used as next highest

Page 86

and best use, and if, hypothetically, like I said, it's used as a medical office, what would you pay for it. Well, I'm not going to pay more for it than I could buy the dentist office across the street for. So if they leased it, plus the cost of renovation, plus the entrepreneurial incentive that you'd want to have to take that risk, so --

Q. And I asked you about a variety, a wide panoply of different types of uses, some of the -- that this property could be converted to. Some of those conversions costs would be less than to convert it to a medical office?

A. Yeah. I think the guise of those questions is whether it's special use or not special use, and that basically shows it's not a special use, but how do you value the property? You value it to the highest and best use, which is the way I've done it.

Q. Which is a restaurant?

A. Yes.

Q. Thank you.

I have nothing further.

ATTORNEY EXAMINER HIGGINS: Well, thank you very much, Mr. Weis.

MS. FOX: May I have two more recross

Page 87

questions?

ATTORNEY EXAMINER HIGGINS: It's 11:29.

MS. FOX: I know. I'm sorry.

ATTORNEY EXAMINER HIGGINS: You can get your two in really quickly.

MS. FOX: Okay.

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RECROSS-EXAMINATION

BY MS. FOX:

Q. There's been discussion about the information you had available to you with regard to the leased properties that you used in your market approach. Do you have either with you or in your report anywhere that shows us what the lease rates or the terms of the leases were for those?

A. I do not.

Q. Okay. Do you recall what those were? For Sale No. 5 that you did adjust, the Longhorn Steakhouse, do you recall what the actual rental rate was for that property?

A. I do not recall what the actual rental rate was for that property, but I wanted to back up. The Subway, I have the lease in as a lease comparable, so I have the -- that information is in the report. I said before I didn't have it. That's

Page 88

in the report. I want to make that clear.

Q. Okay. And how about the Arby's?

A. I don't recall what that is.

Q. All right. Then the discussion around whether McDonald's does or does not lease property, I think the question that was posed to you was to anyone other than a franchisee. In fact, in the Wilmington Pike property the property is actually titled in the name of George E. Ryne, who is not McDonald's; correct?

A. Right. I think Mr. Bluestone clarified that and asked if the McDonald's is owned of leased to somebody else.

Q. Right.

A. George Ryne, as a different owner, is leasing the ground to McDonald's.

Q. That's my question. McDonald's does sometimes act as a tenant in leasing properties from other owners; correct?

A. They do, and we discussed that a little bit and talked about the airports, hospitals, inside Wal-Mart, they're a tenant in there, and I see more in terms of when they are not the landowner, it's basically a ground rent and not a rent -- I haven't seen anywhere McDonald's leases the ground and building together as a package.

Q. Okay.

A. I have seen where they have ground rents and leases, yes.

Q. Okay. And for the Wilmington property, do you know what the terms of that ground lease are or how much the -- how much McDonald's or the franchisee pays to lease that ground?

A. No. I mention on Page 15 of my report I couldn't get them to disclose their -- the terms of their ground lease. I've asked McDonald's on numerous occasions for that information, and I can only recall on one occasion where I was able to get the information, but only half information if it's kept confidential, and this was not one of those cases where I got the information.

Q. All right. Thank you.

ATTORNEY EXAMINER HIGGINS: Thank you, Mr. Weis.

You want to take a 15-minute break? We're off the record.

(Recess taken.)

ATTORNEY EXAMINER HIGGINS: We're back on the record. Just before we went on the record we made sure our understanding was correct, that we are

now about to discuss the property that is the subject of 2015-2331, and because the property in 2331 is similar -- the appraisal reports, I'm sorry, are very similar, the parties agreed that Mr. Weis would talk more expansively on the previous property, and in this case, 2331, we would be focusing on the areas in which the appraisals are different. Correct?

MR. BLUESTONE: Yes.

ATTORNEY EXAMINER HIGGINS: Okay. All right. Thank you very much.

So, Mr. Bluestone, you indicated that you had a very brief opening as to the property that's the subject of 2015-2331, so go ahead.

MR. BLUESTONE: Correct. Thank you. May it please the Board, Charles Bluestone. I'm here representing the property owner, who is George E. Ryne, R-y-n-e. I also have the privilege of representing McDonald's Corporation, McDonald's USA, LLC, and McDonald's is the ground lessee of the subject property.

The county auditor originally assessed the subject property at $1,402,840 for tax year 2014. When we appeared below, before the Montgomery County Board of Revision, Mr. Weis had presented his appraisal report. He had concluded to a value of

$1,115,000. Again, as in the prior case, the Montgomery County Board of Revision adopted a slightly different value. I'm not sure why, but they concluded to $1,118,870. Unfortunately, Mr. Weis' direct testimony and the cross-examination and redirect that occurred below has been unavailable. We're going to recreate that testimony today. I asked below and I would ask this Board as well to allow us to amend the complaint against valuation, so that at the conclusion of these proceedings, this Board should adopt $1,115,000 as the property's market value as of January 1st, 2014.

I anticipate that the Board of Education will be calling Mr. Sprout to testify about what's been provided to me. I believe that after cross-examination and rebuttal testimony, this Court will find Mr. Sprout's report to be unpersuasive, not well-founded, and won't adopt it. Thank you.

ATTORNEY EXAMINER HIGGINS: Thank you, Mr. Bluestone.

Miss Fox, do you have a brief opening?

MS. FOX: Yes. As anticipated by Mr. Bluestone, the Board of Education will be presenting the expert testimony and report of appraiser Thomas Sprout. Mr. Sprout's value for this property, I

believe, is $2,055,000 as of January 1st, 2014, and that is the value that the Board of Education will be requesting this Board place on the property for that tax year. Again, Mr. Sprout's report was not done, completed, or available for the Board of Revision to consider in this hearing and will be presented for the first time for this Board today. Thank you.

ATTORNEY EXAMINER HIGGINS: Thank you, Miss Fox.

Mr. Bluestone.

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STEPHEN J. WEIS, MBA, MAI, being previously duly sworn, as prescribed by law, was examined and testified as follows in Case No. 2015-2331:

DIRECT EXAMINATION

BY MR. BLUESTONE:

Q. Mr. Weis, I just want to remind you that you're still under oath from the prior case. Can I ask you -- if I asked you the same preliminary questions about your relationship to the property owner, your fee, et cetera, will the answers be the same?

A. Yes.

Q. Thank you.

Page 93

And I believe, through the courtesy of Miss Fox, we'd like to put a stipulation on the record as to Mr. Weis' qualifications as set forth in the report.

MS. FOX: Yes, as we've already stipulated to, that's fine.

MR. BLUESTONE: Thank you. I'd ask again that he be recognized as an expert witness.

ATTORNEY EXAMINER HIGGINS: That's fine.

MR. BLUESTONE: Thank you.

BY MR. BLUESTONE:

Q. Mr. Weis, can you walk us through your report? Describe the improvements which are located at the subject property, which is 2901 Wilmington Pike in the City of Kettering, in Montgomery County, Ohio, the neighborhood within which they're located, and then -- I know that you utilized two or three traditional approaches to valuing the subject property and that you arrived at a final value conclusion of $1,115,000. Please explain to the Board that analysis and how you arrived at that final reconciled valuation.

A. Sure. What we're going to be talking about here is the differences between the previous property, previous case, and this one, and the reason

Page 94

why the appraisal report is so similar is because they are located very close to each other.

Basically, if you turn to Page 29 of the report, you'll see the map. You'll see that this property is in Kettering. The last property was in Kettering. The last property that we talked about was right there at that intersection where Sale No. 6 is indicated on the map on Page 29, and so basically this is just right up the street from the property, in the Kettering market; so, therefore, most everything is very similar. Vacancy rates, the market trends are all similar. The market sales are very similar in terms of what we have here. We have one different sale comparable and a couple different lease comparables, and we made changes to reflect the difference between this property and the other property as such. This property is larger, so a little bit larger site, and it is newer construction.

The property is 1.773 acres, 5,118 square feet. It was constructed in 2012. All the market information we said is similar, so we skip ahead to Page 15 where we start to get into some differences between this particular property and the other property. As we mentioned earlier today, this property here is on a ground lease, and the terms of

Page 95

that ground lease were not disclosed. It didn't impact the way we went about valuing the property because we're looking at a fee simple value anyway, and so the ground lease would have not impacted the value of a fee simple valuation; so we valued the ground as if vacant. In a cost approach you do it as if vacant and unencumbered. In this we just basically did the entire property as if available for lease or available for sale as of the effective lien date.

Also, on Page 15 of the report, under the property history, the second paragraph, we talk about in 2012 the subject property was constructed. We have the cost to construct the building at $787,000 and change. We had estimated cost to the site work at $220,000, for a total construction cost for the building at slightly over $1 million. The land was assessed at $310,000. We applied that number to the cost to get a total so-called cost of $1,317,000. I want to make it clear I'm not doing a cost approach here. We're required to analyze the history of the property and to reconcile it, whether it be higher or lower, whatever, basically tie it back to the value where it was contained within the report; so, therefore, I have to lay these details

Page 96

out and explain why I'm where I'm at versus what the history of the property indicates.

So we applied the ground value, an assessed value to it to come up with $1,317,000. We talk about the economic life of the property in terms of what depreciation would be. Also, there's economic obsolescence. There isn't a whole lot of new construction being done in the marketplace, there's no speculative development, and so, therefore, the -- once the building is constructed, there is obsolescence. Also, it was built with some superadequacies and functional obsolescence of the market, that we have to take it into account. So a 20 to 25 percent obsolescence factor for these items brings the value of the improvements down a little bit, with the value of the land, basically indicates a value that could be appropriate from this analysis or to tie it back to where I'm at. They're at $1,066,000 to $1,116,000, and my overall value is at $1,115,000; so I'm right at the upper end of the range of values when you consider how they did the cost and applying the appropriate amount of depreciation. So that's the difference there.

Obviously, this particular property is shown on Page 17 and 18, the aerial photographs and

Page 97

site map. It is directly located along Wilmington Pike. It has a point of ingress and egress on Wilmington Pike. It also has a point of egress and ingress on the adjoining side street at a signalized interchange, so a little different access and exposure to this property than the past property.

Q. A little better?

A. A little better, yes. Also, on Page 21 of the report, the public records show the building has 5,381 square feet. Our on site measurements and a survey provided by McDonald's indicate the building was approximately 5,118 square feet, so we valued it based on our measurements and the survey provided by the client at 5,118 square feet. The building sketch from the public records is on Page 23, which is larger than actually was built. On Page 24 we have the subject floor plan and the dimensions on there to indicate the proper size of the building.

Photographs are on Page 25 and 26. Highest and best use would still be to operate this as a freestanding restaurant building, as other costs would make it too expensive in the market for alternative uses besides a restaurant use, and we valued it as a restaurant.

The sales comparison approach, we went

Page 98

out to the market. We have six comparable sales. Five of them are the same comparable sales used in the last case. Sale No. 2 is the one that's different. We included Sale No. 2 in this particular report primarily because of the size of Sale No. 2 being 5,170 square feet and the subject being 5,118 square feet. The sizes are almost identical. Also, this was included because this property was constructed in 2004 and it's newer than when it was replaced, which was a 1988 constructed property, and it was a little over 3,000 square feet, so it related more in terms of the age and related better in terms of the size, is why it's included.

Q. Just so the record is clear, when you say the one that it replaced, you're referring to Sales Comp No. 2 in the report for the prior case?

A. Correct.

Q. I just wanted to make sure the record is clear.

A. Thank you. Yes. And I believe that was the Arby's property on Brandt Pike which it replaced.

Q. Right.

A. This property sold in 2013 for $920,000 or just under $178 a square foot. The other properties we talked about before. We made our

Page 99

adjustments for the properties. It's similar to what we did in the previous case. Sale No. 2 we made an adjustment for access and exposure being superior. Age, condition, and quality being inferior. It's a 2004 construction versus 2012, so an upward adjustment was made there. A size adjustment wasn't required because it's virtually identical. So basically after adjustments and discounting Sale No. 6 as my outlier, I had sales on an adjustment basis from about $174 a square foot to $223 a square foot, and I reconciled at the high end of that range, basically below Sale No. 5, which was my highest at 223 and above all of the other adjusted values in my sales comparison approach, and I reconciled at $215 a square foot. I applied the 5,118 square feet of the subject property and came out to a value on a rounded basis of $1,100,000.

Q. And $215 a square foot is higher than five of the adjusted sales price values shown on Page 32?

A. Yes.

Q. Thank you.

A. A photograph of Sale No. 2 is on Page 35. It's the bottom photograph. It's a Bob Evans Restaurant. All the other photographs are the same.

Page 100

The income capitalization approach, the property is -- the land and building is not leased. The land is on -- it's a ground lease, but the total package is not leased, so we don't have a market rent for the land and building as combined. Therefore, we went to the market and found comparable lease rates on Page 39. We list nine of them. As I mentioned, most of these are the same as before. No. 2 is different. We replaced the CJ Chan restaurant on Alex Bell with the former Lone Star property on Miller Lane. This property was constructed in 1995 at 5,580 square feet. It was much larger than the lease we replaced it with, and at $22 a square foot, it is much higher than the lease we replaced it with. This is actually a listing for that property at $22 in a square foot. In that particular listing the -- they were asking for it as a fully leased -- a fully furnished property --

Q. Fully equipped.

A. Fully equipped, furnished property. So they're basically -- took the property back. The previous tenant vacated and left their personal property there, and they were leasing it for this rate to include that information. What we talked about previously, some of these lease rates would

Page 101

include this information, and that's not real estate, so you'd have to make adjustments for that; so we took that into consideration.

No. 7, we replaced the Subway that we had in the -- excuse me. We replaced in the previous one an El Rancho Grande restaurant on Wilmington Pike with a Subway on Hoke Avenue in Montgomery County. It's a smaller property at $20 a square foot, newer property, 2005; so, therefore, we thought it was more appropriate, and I think those are the only two changes. Everything else was the same. So two properties that went in, they replaced a $13.25 a square foot lease with a $22 a square foot lease comp and replaced an $8 a square foot lease comp with a $20 a square foot lease comp.

We made our adjustments like we did in the last case for comparable leases, for market conditions, age, condition, quality, location, et cetera. After our adjustments we had an adjusted range between $16.50 a square foot and $21.40 a square foot. Threw out a couple of the outliers and had a tighter range in the $17 and $21 a square foot range, and we reconciled at $20 a square foot triple net based on the subject's location and its newness. This particular rent is close to $4 or $5 higher than

Page 102

in the previous case.

Q. And the rent that you used in this case is higher than seven out of the nine rent comps?

A. Yes.

Q. Thank you. And by the way, all of your comparable lease comps and your comparable sales, all of those were Montgomery County properties; correct?

A. Yes.

Q. Thank you.

A. The vacancy rate, five percent frictional vacancy rate, same as the last case. Market expenses, same drill for the way we derived in the last case. We developed a pro forma operating statements, which is on Page 42. In this pro forma we have real estate taxes as an expense and as reimbursement. The taxes were estimated based on the value conclusion in a sales comparison approach. We do this for an apples-to-apples comparison to other properties to make sure on a -- the expenses on a price per square foot are in line.

We'll capitalize the NOI after removing real estate taxes as an expense, as a reimbursement. Cap rates are on Page 43. Same information as shown -- as we did in the previous case. Also, on Page 44, 45 the capitalization rate from secondary

Page 103

sources are the same. We applied all that information on Page 46 to a tax additur stabilized operating statement, same pro forma we showed earlier in this report, but without real estate taxes as an expense, without real estate taxes as a reimbursement, and therefore, the NOI changes. We're going to capitalize that and account for that change in NOI due to removing real estate taxes by using a tax additur.

The tax rate in the area is 3.44 percent. The vacancy rate is applied at five percent. So the landlord is responsible for real estate taxes only at the time of vacancy, is about five percent, and so the additur is five percent times the 3.44 percent tax rate, to get a tax additur of .17 percent. We add that to the going in capitalization rate of eight percent for this property, which is lower than the capitalization rate we selected for the previous property, due to the newness of the property, and, therefore, we applied that capitalization rate, that additur to get a fully loaded tax additur capitalization rate of a 8.17 percent.

We applied that capitalization rate to the net operating income without real estate taxes as

Page 104

an expense or a reimbursement and without the deduction of replacement reserves, and, therefore, the value on the income capitalization approach was $1,120,000 on a rounded basis.

My two approaches to value, $1,100,000 sales comparison approach, and $1,120,000 for the income capitalization approach. We reconciled at $1,115,000, directly between the two approaches, and this is just under $218 a square foot, and I believe in the previous case, on an older property we were at 162 or $163 a square foot. So a newer property, more valuable on a price per square foot, that's the difference between those two there.

Q. And you personally inspected the subject property on September 3rd, 2015?

A. Yes.

Q. Thank you. Again, looking at the cost data that appears in the middle of Page 15 on your report, even taking into consideration the small entrepreneurial profit that might have been assessed and adding that to the construction costs, those numbers line up with your final value conclusion?

A. Yes.

Q. Thank you very much.

I have nothing further.

Page 105

ATTORNEY EXAMINER HIGGINS: Thank you, Mr. Bluestone.
Miss Fox.
MS. FOX: Thank you.
- - -
CROSS-EXAMINATION
BY MS. FOX:
Q. Those numbers on Page 15 that were referred to by Mr. Bluestone only line up with your valuation after you've taken a 20 to 25 percent obsolescence reduction to the improvements and the -- the site improvements, building and site improvements; correct?
A. That is correct.
Q. Okay. And you did not, in fact, do any sort of a land sale analysis to confirm that the auditor's value for this land was at market, did you?
A. I did not, no.
Q. Thank you.
A. I did have -- I do have knowledge of the market and values in the market, and it seemed to be within the market range.
Q. And how big is this site?
A. 1.7 acres, approximately.
Q. The Burger King that we've talked about

Page 106

that's located nearby, would that, in your opinion, be a similar site or does it have better or worse access, visibility, things like that?
A. It's on the same street, so it has basically the traffic patterns from that street of the north -- the south corridor through Kettering. I would say that it's probably a little bit inferior in terms of that site and the subject property site.
Q. Okay. And looking at the new sale that you added -- which was No. 2, the Bob Evans Restaurant; correct?
A. Yes.
Q. Okay. Similar question to what we discussed with regard to the other sales, did you have access to the actual lease for this property?
A. I did not.
Q. Okay. And do you recall what the lease term was or the lease rate was for this property?
A. I don't.
Q. Did you have that information or do you recall?
A. I don't recall if I had that information. I didn't make any adjustments for it being leased fee, which basically I talked about before if I don't have the information, I'm not going

Page 107

to make an adjustment, but I may have had the information and it turned out to be, you know, no adjustment needed. I don't recall at specifically.
Q. You don't recall. Okay. That's fine. And in looking at all of your adjustments on Page 32, because of the newness of this property, I assume, and its quality and condition, you had to take some pretty extensive -- or make some pretty extensive adjustments to all of your sales, did you not?
A. I did.
Q. Ranging from 20 to 35 percent for that?
A. Yes.
Q. Okay.
MR. BLUESTONE: Let me just point out, if I may, that with the -- I think you're referring to the adjustments at the bottom of the adjustment grid on Page 32, so it's not -- the adjustment is not just for newness, Karol, but for other factors as well.
MS. FOX: I was referring specifically to the age, condition, and quality adjustments, just to be clear in the record.
THE WITNESS: That's how I understood you with my answer.
MR. BLUESTONE: Thank you for clarifying

Page 108

it.
BY MS. FOX:
Q. All right. Then with respect to your leases, you mentioned that you had two that you replaced, and those were the Subway for $20 a square foot and the former Lone Star at $22 a square foot?
A. I believe that's correct, yes.
Q. Did I get that right? Okay.
A. Yeah, the Subway, which is No. 7, that was at $20, and the former Lone Star was at $22.
Q. As a listing. Okay.
A. Yes.
Q. All right. And do you know whether or not the Lone Star, in fact, leased? You may have followed up.
A. Shoot. No, I don't -- I don't know if it leased or not. When we did this at the Board of Revision, it had not leased at that particular point.
Q. All right. And for that particular property you do find it to be superior with respect to market conditions, which I assume is based on the time, as it being a listing at the time you did your report versus January 1st, 2014; is that correct?
A. In that particular case the market condition would also incorporate -- that's a lease to

be negotiated lower than what they're asking for, so, therefore, it was superior, downward adjustments.

Q. Would that also be taken into account under lease type?

A. The lease type was taken into account because it was including the personal property.

Q. Okay.

A. So it was a triple net lease of the real estate and the FF&E, equipment and personal property; so, therefore, it had to be adjusted downward to be superior, because you're getting more for that price.

Q. Okay. Then can you explain to me how this location or rather the location for the former Lone Star is superior to the subject property's location?

A. This location is on Miller Lane in Butler Township, north of the City of Dayton. It is the premier location on the north side of Dayton. They're along Miller Lane, which is basically the reason why it's so new and so premier is because I-75 relocated an exit on Little York Road to the Miller Lane interchange, so basically it became a brand new interchange on I-75. Within that new interchange there was a lot of commercial real estate activity and development. There's a Sam's Club there and some

other large draws, and the restaurant row, so to speak, right along I-75 has that great access and exposure along that -- with this new development in that area. That's why it's superior.

Q. Okay. And you would find it to be a superior location for not only that's it's a sit-down, full-serve restaurant type that Lone Star was but also for a fast-food restaurant?

A. Yes. It's basically -- from the standpoint of a fast-food restaurant and for a sit-down restaurant, it has interchange access, which is what you want when you travel along the highway to get off and get to this property quickly. There are a handful of sit-down restaurants at this location along Miller Lane and a handful of fast-food restaurants also there. Typically, we find that fast-food restaurants and sit-down restaurants co-locate with each other because they're drawn from the same demographic profile and linkages of interstate highways, same as each other, so --

Q. Okay. And although your rental rate conclusion for this property was quite a bit higher than for the last property, you chose to only replace two of your rent comparables, so the others were all quite a bit lower. Why did you just replace those

two? Were you not able to find others that you felt were a little more comparable?

A. There were not other rental rates in the local market that I could find that represented newer construction. The ones I had for the market -- I don't remember which report I did first, whether I did this one first and took these out and then put the other ones with the other ones, so -- just for clarification. So I may have removed these to the other property or maybe removed the other ones to the other property and added these, but basically because the property was new, I was looking for properties that were newer, were more indicative of the rents you would get from a newer property, and that's why those two were included. They're higher rents which I would expect to have for a newer property.

Q. Okay. Then my last question is one -- on Page 42, where you have your pro forma, you mentioned -- or I'm sorry. It appears that you've taken a deduction for tenant improvements and leasing, and I was wondering if you could tell me what you based that on.

A. I base that on market information from other properties. I basically -- it gets included in this because of convention for doing these

appraisals, and I do them also for bank financing, and bank financing likes to have a deduction; therefore, replacement allowance and tenant improvements in leasing, so they can calculate a debt service coverage ratio, but if you notice that in the analysis here what I do is I do not deduct them in my final NOI calculation, because my cap rates are developed without having tenant improvement and leasing commissions included as an expense, so what you see there vanishes later in terms of the analysis, in terms of what we're capitalizing, so it's -- for lack of a better term, it's a placeholder and then it's removed.

Q. Okay. So the difference being -- if I look on Page 42, I see it there.

A. And on Page 46 you'll see it there, but what you see is replacement reserve, it's the 2,888 number on Page 47, in the box on Page 47 -- are you there?

Q. I am.

A. The second line item there is replacement reserves, is 2,888, and if you go back to Page 46, the addition of the 2,120 for tenant improvement and leasing and replacement allowance of 768, when you add those together, you get the 2,888

which I'll deduct it back out.
Q. Well, now wait a minute. Now you lost me. Okay. So I'm looking at Page -- did you say 42 or am I on the wrong page?
A. 42 and 46 you'll see that the tenant improvement and replacement allowance are the exact same amounts.
Q. Well --
A. Well, actually they're different, aren't they?
Q. They're different. That's where I'm confused.
A. It -- it changes -- I apologize. It changes because it's based on the percentage of effective gross income. The two percent and the two percent are the same, but it changes when the real estate taxes are taken out, but like I said, that gets deducted later anyway. So it's not just put in, it's taken out. So I could put $10,000 in there, put it in, and take $10,000 out. It basically ends up being a zero number.
Q. Okay. So the 2,888 comes from Page 46? Those two figures --
A. Yes.
Q. -- add up to that?

A. Yes.
Q. Okay. And that you've added back in to the NOI without taxes?
A. Right.
Q. Okay. Thank you. I just wanted to make sure I understood what that was.
A. And if you look on Page 46, the last number on Page 46 in that pro forma is 91,303, and the cap -- number that was capitalized on Page 47 is 91,303.
Q. Okay. I think everything else we've covered with respect to the other property. I assume that all of the answers to the questions I asked you with regard to that report that had similarities to this one would be the same?
A. Yes.
Q. Okay. Then I think I'm done.
ATTORNEY EXAMINER HIGGINS: Okay. Thank you.
Any redirect?
MR. BLUESTONE: Yes. Thank you. I'm going to show this to Steve (indicating), and I'll explain it.
- - -

REDIRECT EXAMINATION
BY MR. BLUESTONE:
Q. I'd like to just ask you, if I may, Miss Fox asked about the relationship of the land value shown through Sales Comp No. 6, the former Burger King property, and asked you to compare it to the Montgomery County Auditor's value for the land and the subject property, and so I've done the calculations, and just tell me if I've done them correctly. The Burger King property sold for $267,500. It was 1.367 acres, and that gives you a value per acre I think of $195,683?
A. Yes.
Q. Okay. And the auditor's value for the land for the subject property is $310,660, is 1.773 acres in the subject property. When you do the math, you come to a value of $175,217 per acre?
A. Approximately, yes.
Q. Okay. And so on a per-acre basis, Burger King sold for $195,000 per acre. The subject property is valued by the auditor at $175,000 per acre. They're relatively close?
A. They are.
Q. Thank you.
And I'm going to give Miss Fox this for

her file, a copy of my calculations.
MS. FOX: It's okay. You can keep it. I appreciate it, though. Thank you.
MR. BLUESTONE: Sure.
Q. I do want to ask you one question. You were asked about Page 15, about your use of a 20 to 25 percent obsolescence factor. Can I ask you to explain that in just a little more detail in how you came up with those percentages?
A. The building as of the effective lien date was not brand new. It was a couple years old. So there's going to be physical depreciation right off the bat, so we need to account for that. We talked about the economic life of restaurants as being somewhere maybe between 10 and 30 years, depending on different circumstances. So a property that's two years old, may be 20 percent physically depreciated from the standpoint the economic life is -- that for a 10 year period, kind of similar to the Burger King that we talked about; so there's going to be some physical depreciation. There's also going to be obsolescence from the market in terms of building a brand new facility. You may not be able to get a rent to cover a proper return on the construction of a building, and it would include some

superadequacies that were built in for the McDonald's use.

Q. What are those?

A. Well, there's signage. There's trade dress. There's maybe some design issues they want to have, put in the kitchen. So some of those are there. They also use extensive tiling in their interiors, on walls and floors, and it creates value and is useful to McDonald's. The market doesn't generally pay the same dollar amount as the cost would be for those items.

Q. But another way of saying that -- you just said that McDonald's uses better quality materials in constructing its restaurant than --

MS. FOX: Objection. Leading.

MR. BLUESTONE: I'll withdraw the question.

Q. And let me ask you, does -- in your opinion, how does the quality of the finishes in the McDonald's restaurant compare to other restaurants?

A. Generally speaking, McDonald's does a very good job and uses high-quality materials. They also have physical obsolescence or superadequacies in terms of their costs because they put these on a rapid build schedule, and because they make a lot of

money with their sales, their business, the hamburgers and shakes and whatnot, they want to get up and operating as soon as possible, and to -- they had a McDonald's at this location, so they're losing revenue for every day that the property is down, so they pay a premium to have the costs of the restaurant in order to get it up and running sooner than a normal construction period; so taking into those -- account those, we basically -- a little bit here, a little bit here, a little bit here. We add it up and we're in -- somewhere in the neighborhood of 20 to 25 percent of total obsolescence. It was more along the lines of our familiarity with the process, our familiarity with the properties, to come up with an obsolescence factor and show that in the property history section how these costs would relate to our final value as we're supposed to do from a real estate standpoint. Similar to as if it was a property that was sold within that three-year period or so and we're at a different value, we like to discuss why the value is different than what it sold for. It may be market conditions. It may be the building was improved between the last time it sold and when we're appraising, so we reconcile those in our property history section.

Q. Thank you.

I have nothing further.

ATTORNEY EXAMINER HIGGINS: Thank you very much.

Thank you, Mr. Weis.

(Witness excused.)

ATTORNEY EXAMINER HIGGINS: Let's go off the record real quick.

(Discussion off the record.)

- - -

(Lunch recess taken.)

- - -

(EXHIBITS A & B MARKED FOR IDENTIFICATION.)

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ATTORNEY EXAMINER HIGGINS: Back on the record. So we've had our lunch, and just to clarify the record, previously we went through the direct and cross-examination for property owner's appraiser, Mr. Weis. We did the direct, cross-examination, redirect, and perhaps recross for two properties which are the subject of 2015-2328 and 2015-2331.

We are now going to have the examination of the BOE appraiser, Mr. Thomas Sprout, and he will first talk about the property on Stroop Road. We'll have direct and cross, any redirect and recross, and

then launch into the examination for Wilmington Pike.

MS. FOX: Great.

ATTORNEY EXAMINER HIGGINS: Once we're done with Mr. Sprout, there may be rebuttal of Mr. Weis. Okay. I just want to make the record clear.

All right. So, Mr. Sprout, you've already taken the stand. If you'd raise your right hand, I'd like to swear you in, please.

(Mr. Sprout was sworn.)

ATTORNEY EXAMINER HIGGINS: Thank you very much, Mr. Sprout. I know we had openings for these cases previously but, Miss Fox, did you have anything you wanted to add?

MS. FOX: Nothing additional, no.

ATTORNEY EXAMINER HIGGINS: All right. Mr. Bluestone, I'll --

MR. BLUESTONE: Nothing additional. Thank you.

ATTORNEY EXAMINER HIGGINS: All right. Miss Fox, go ahead.

MS. FOX: Thank you.

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THOMAS D. SPROUT, MAI, CPA,
being first duly sworn, as prescribed by law, was examined and testified as follows in Case No. 2015-2328:

DIRECT EXAMINATION

BY MS. FOX:

Q. Would you just please introduce yourself, stating your name, your business address, and your occupation.

A. My name is Thomas Sprout. I am a commercial real estate appraiser affiliated with Brian W. Barnes & Company with an address of 6860 Perimeter Drive, Suite B, as in boy, Dublin, Ohio 43016.

Q. Thank you. And, Mr. Sprout, you are a member of the Appraisal Institute?

A. I am.

Q. And are your qualifications as well as your educational background and experience set forth somewhere in your appraisal reports that we're going to be presenting today?

A. They are. They're located in the addendum section of the report.

MS. FOX: We would ask for a stipulation to Mr. Sprout's qualifications as set forth in his report.

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VOIR DIRE EXAMINATION

BY MR. BLUESTONE:

Q. Mr. Sprout, can I ask you, I'm just looking at the second page of your transmittal letter for the report, and you testified that you're affiliated with Brian W. Barnes & Company, Inc., but your signature is under Thomas D. Sprout CPA, Inc. Can you explain what the relationship is? Because it seems like your company is affiliated with Brian W. Barnes.

A. My company is affiliated with Brian W. Barnes. I am an employee of that company.

Q. Of Brian W. Barnes?

A. No. I am an employee of the Thomas D. Sprout CPA, Inc. company.

Q. So you're an employee -- are you the only owner of that corporation?

A. I am.

Q. And that corporation is affiliated with Brian W. Barnes & Company, Inc.?

A. It is not. I am not an employee of Brian W. Barnes & Company.

Q. I'm asking is your company --

A. No.

Q. It isn't? So can you just explain to me what the affiliation is? Because I'm confused.

A. I do appraisal work exclusively with -- for Brian W. Barnes & Company. I am not an employee of Mr. Barnes. That's why I always say I'm an affiliate or affiliated with Mr. Barnes.

Q. So you're a contractor, in essence?

A. A subcontractor, from an IRS standpoint, yes.

Q. Okay. And the subcontractor technically is Thomas D. Sprout CPA, Inc.?

A. That is correct.

Q. Okay. And is a CPA company authorized to prepare appraisal reports under Ohio law?

A. There's nothing -- well, you're a lawyer, but I can tell you from my standpoint, my services can be any kind from the standpoint -- it's just the name, so I am a consultant in real estate. I do tax returns. I give testimony for ad valorem tax purposes and such, a wide variety of services.

Q. Okay. I'm asking a technical question, which is under Ohio law, is a company that's a CPA company, is that company authorized to sign appraisal reports?

A. I'm not a CPA company. That's just in my title.

MR. BLUESTONE: Okay. I will stipulate to Mr. Sprout's qualifications with a caveat, I believe that there -- and I continue to believe that there is a disingenuous statement on Page 9 of the appraisal report, specifically that the -- at the bottom of the page, under Competency it says, "The appraiser(s)" -- the "s" in apostrophe -- in parentheses -- "have been actively involved in the appraisal of real estate in the Central Ohio area for over 30 years," et cetera.

As I noted in a prior case before you, Miss Higgins, that statement, if you give effect to the "s" in the parentheses, that statement is not true, was not true, and cannot be true for many, many years, because only Mr. Barnes has 30 years' experience as an appraiser. Mr. Sprout does not, and I think it's a misleading and disingenuous statement, so with that caveat, I will stipulate to his qualifications.

ATTORNEY EXAMINER HIGGINS: Okay. Well, just so the record is clear, this Board has recognized Mr. Sprout as an expert -- an expert qualified to render their property value. I don't

Page 125

see any reason that the Board should deviate from that, so the Board will recognize him as an expert.
So, Miss Fox.
MS. FOX: Thank you.
- - -
DIRECT EXAMINATION (Cont.)
BY MS. FOX:
Q. Now, Mr. Sprout, how long have you been a certified or licensed appraiser in the State of Ohio?
A. I've been a licensed appraiser since 2001. I started appraising real property in 1995.
Q. Okay.
A. Maybe '96.
Q. All right. And have you appraised -- in your estimation, as far as the type of property that we're talking about today, which is a fast-food restaurant, have you appraised very many of those types of properties?
A. I have. I've done them both for ad valorem tax purposes both for the school board and property owner as well as for mortgage purposes.
Q. Okay. So you've been before the Board of Revision on cases involving fast-food restaurants on behalf of both the Board of Education and the

Page 126

property owner?
A. Yes.
Q. And have you appraised these types of properties in -- throughout the state, primarily Franklin County? Have you -- where does your experience lie primarily?
A. I would say -- I would say probably north central Ohio and southwestern Ohio, is where I've -- and central Ohio, of course. So that would be my primary locales as far as appraising this type of a property.
Q. Okay. If I may approach, and can you -- what's been marked as Appellant's Exhibit A, can you please identify this for the record (indicating)?
A. Yes. This is an appraisal report of 1872 East Stroop Road in Kettering, which is a McDonald's restaurant, dated May 6th, 2016.
Q. And did you prepare that report?
A. I did.
Q. Did Mr. Barnes assist you or have any part in the preparation of this report? What was his involvement?
A. His involvement was quality control and just an advisory situation. The determination of value were mine and mine alone.

Page 127

Q. Okay. But he would have reviewed the report --
A. Yes, he would.
Q. -- before signing it?
A. Correct.
Q. Okay. And with respect to Appellant's Exhibit B, if you could identify that for the record.
A. That would be the appraisal of 2901 Wilmington Pike, which is also a McDonald's restaurant. That report is dated May 6th as well, and that would be an accurate, a true and accurate copy of the appraisal that I will be testifying to.
Q. Okay. So in front of you today you have identical copies of those reports?
A. Yes.
Q. Okay. With respect to either of these properties, was your fee in any way contingent upon your opinion of value?
A. It was not.
Q. Okay. And with respect to both of the properties, did you have an opportunity to view the interior and the exterior of the properties?
A. I did.
Q. Let's start with the Stroop Road property first, please.

Page 128

A. Okay.
Q. And would you please tell the Board what your opinion of value was for this property as of January 1st, 2014?
A. My opinion of value for the Stroop Road McDonald's was $2 million.
Q. Okay. And as we go through your report -- we've already talked about this property somewhat, as far as its location. If you wouldn't mind just giving a very brief explanation as to how you viewed the location of this property.
A. I viewed the location of this property as being very good. It's an outlot of a Meijer. It's at a corner signalized interchange of two primary arterials in the Kettering area. Traffic counts are approximately 30,000, which is a heavy volume of traffic, so I would consider it a very good location and a typical location for a national fast-food restaurant.
Q. Okay. And if you could -- this has been an issue in several of these cases, so I'm just going to go ahead and touch upon it.
A. Sure.
Q. Do you have a definition of special-purpose property in your report?

Page 129

A. I do.
Q. And could you direct us to the page on which that --
A. It's on Page 5, toward the bottom.
Q. Okay. And you set forth the definition. Where does that definition come from?
A. It comes from the Dictionary of Real Estate Appraisal, 5th Edition, Page 184.
Q. Okay. And you set forth that you believe the subject property fits into that definition; is that correct?
A. It does, based on the third characteristic there, which would be, "A unique physical design, special construction materials, or a layout that particularly adapts its utility to the use for which it was built." That would be the primary condition there.
Q. Okay. And even though you feel like this property falls under that definition, you didn't per se appraise it as a special-purpose property, did you?
A. No.
Q. Okay. And you didn't do a cost approach for this property?
A. I did not.

Page 130

Q. And what would be the reason for that?
A. The reason for that is there was adequate data in the marketplace. Fast-food restaurants are leased on a fairly regular basis. McDonald's typically does not lease their buildings. They ground lease or owner occupy, and there's enough sales activity as well, that those two would be the primary, but the income approach probably would have a little bit better data in determining a value for such a property.
Q. Okay. And the type of appraisal that you prepared for this property would be what?
A. An appraisal based on what the property was as of the date of appraisal 1/1/14. It was an operating national fast-food restaurant, which in this case was McDonald's.
Q. And this is not a leased fee appraisal; correct?
A. This is not a leased fee appraisal. It's a fee simple appraisal.
Q. And you've already mentioned that you utilized two approaches; is that correct?
A. That's correct, the sales and income approaches to value were utilized.
Q. Okay. Why don't you go ahead and begin

Page 131

with whichever one you have first in your report.
A. Okay. Just to kind of work my way up to that point, since I'm sure the site and everything was already discussed, the photographs that I have on Pages 1, 2, 3, and 4 adequately provide a description as to what this property is. It was built in 2006. It was a McDonald's previously to 2006. It was -- the McDonald's restaurant that was here prior to this one was built in 1979. So McDonald's made the determination that it was an economically viable site. They tore down their old building and they built a new building, which was built in 2006.
Q. So the building that was there in -- originally built in 1979 was how old when it was torn down?
A. Within about probably approximately 25 to 26 years of age.
Q. Okay. All right. Please proceed.
A. Which is fairly typical. I mean, fast-food restaurants, that's not an atypical situation, especially if it's determined that the site is economically viable. If it wasn't, they would have moved on and it would become not its highest and best use.
Q. Okay.

Page 132

A. So that being said, I viewed the property on April 26, 2016. I indicated that the property is located -- if you look on Page 10, it's located to the southwest corner of East Stroop and Wilmington Pike. It's a primary arterial in the area. It's signalized. The subject is at a signalized interchange. It's an outlot to a Meijer. The traffic count is 30,000. So all the factors that would come to play as far as a strong location is concerned apply here, especially for this type of use, a national fast-food restaurant.
Kettering for the most part is built out. It is a suburban type community in the Dayton area. I've done several appraisals over in the Kettering area, so I'm familiar with what Kettering is somewhat about. The zoning being in the business district would allow its use as well as a lot of other uses. It's surround by a Meijer, a Dunkin' Donut, a Wendy's, and strip retail, with a residential backdrop.
The square footage of the property at 4,686 square feet -- I did measure the property, and the auditor's square footage was reasonable based on my measurements. Within my highest and best use analysis on Page 16, I did a Vacancy Survey within a

Page 133

two-mile radius of the subject. Based on that survey I concluded to a vacancy factor of ten percent. That's based on all retail properties within the area, no discriminating it as to what type of retail properties. It was all retail properties in the market area. So a ten-percent vacancy factor was applied in my Stabilized Profit & Loss Statement.

Now, getting to my conclusions for the highest and best use, my most profitable use for this property would be for a national fast-food restaurant as improved. As vacant, it would be for a national single-tenant user. So that's the profile that this location and this site would fit, and that's how I appraised it, under that circumstance; so my comparable data will be reflective of the highest and best use for this property, which would be fast-food restaurants in my sales as well as rental properties that also would fit that property type.

So getting into the approaches to value, the sales and income approaches were utilized. I gave primary weight to my income approach. Rents are readily available for this type of property. So as I indicated previously, I have done fast-food restaurants at the point of construction for mortgage purposes as well as at the BOR for both the school

Page 134

board as well as for a property owner, and the property owner just happened to lease the property, and my discussions with that franchisee indicated that that's typically how these franchisees operate their restaurants. They have a rent level, and I asked them what they base their rent levels on, and they base their rent levels typically on the projected sales for that location, and they hit certain points. If they go over those certain points, then everybody shares in the success with additional rent paid to a percentage rent, but there is a base rent that's in place.

So the sales approach to value, I utilized sales except for one that I felt would meet the criteria of the highest and best use of the subject property. So starting with Sale No. 1, it's located in Montgomery County, the same county as the subject property. It's -- it was built in 1998. The subject was built in 2006. It sold for $436 a square foot. In my opinion, this property had mitigating adjustments for its smaller size, which also plays into the land ratio, and its inferior physical features; so this lease, in my opinion, would be inferior from a rent standpoint for what the subject could achieve, so it was adjusted for that as well.

Page 135

Sale No. 2 was a Chipotle restaurant located on Senate Drive. I felt this property was superior. It was built in 2011, and it's across the street from the Cincinnati outlet stores. I felt this was a better location, and this would be adjusted down for its location, which also would provide an adjustment down from the lease rate that was in place for this particular property. So that's the upper end of the range.

Sale No. 3, there's a misspelling here. "Inglewood" should be an "E," and I think there's several places where that should be an E-n-g-l-e wood, as opposed to an "I"; so that typo is consistent with the -- in the rent comp as well as my capitalization rate. Once again, we're talking about a -- the property was built in 2012. This particular lease rate was also superior, in my opinion, based on its cap rate and its income in place. Now, remember, keep in mind, the cap rates that are generated from these properties have no vacancy taken out and they also have no reserves taken out. If these properties had vacancy reflected in them and/or reserves reflected in them, the capitalization rates would be lower because you would have a lesser income stream versus the sale price. So that's Sale No. 3.

Page 136

Sale No. 4 is also a Chipotle restaurant that was built and then subsequently sold. Our office had appraised this property. I had all the costs down. I had the lease that was in place for this property, and so it allowed me to figure what the profit margin was made on this property based on its overall costs and what an entrepreneurial profit level was going to be based on the developer of this property in tune with the sale price and also determine what a market rent was based on the construction costs that went into this property. This particular property's lease rate is consistent with what the subject could achieve, in my opinion. It just so happens that its price point of $765 was based on the income with no vacancy, no reserves taken out of it; so those financial factors come into play when we're dealing with ad valorem tax purposes because we have to take out vacancy and -- market vacancy, and we also have to put reserves into the project as well; so from a sales standpoint, that provides the upper end of the range.

Sale No. 5 provides a sale of what the subject is not. This is a property located in central Ohio that has failed as two restaurants. The location is inferior, and this provides a value for something that the subject is not. This is -- would be considered a go-dark value, in my opinion, at $180 a foot; so that's your lower end of the range. I put this in the report because I wanted the reader to understand that this is what the property's value would be under a hypothetical condition as if it was vacant, and that's not the case here.

Sale No. 6 is an Arby's restaurant located in Springfield. This property sold for about $400 a foot. I have made adjustments to this sale for its inferior location as well as the lease rate that was in place for this particular property.

Finally, Sale No. 7 is a sale of a former restaurant that did not have a drive-through. Its location was superior, in my opinion, to the subject property's. It was in similar condition, having been built in 2005, and there was a conversion of this property from a single-tenant restaurant to a dual-tenanted property. Once again, I wanted to put this sale in place just to give an indication as to here is a property that was one thing and then it was converted to another use, and in this case because the location is so good at Hilliard-Rome Road they were able to re-tenant this property and get a lease rate of $33 for each side, on an average basis.

My overall conclusion of value from the sales approach based on everything that I discussed and based on adjustments that were made, my value conclusion was 425 to $450 or 1,990,000 to $2,110,000 by the sales approach.

Now, one other note, if you look at my map on Page 28, four of my seven sales are basically located within -- you could consider that Dayton-Cincinnati market area. The other three sales are in central, north central Ohio.

Q. Let me stop you right there while we're talking about location, if we could, Mr. Sprout. Are there items or things that come into being considered when you're looking at a comparable location other than just pure distance or "as the crow flies," which I think Mr. Weis so eloquently put it? Are there other things that you consider when you're looking at a comparable location?

A. We're looking at fly-by traffic. We're looking at demographics from the neighborhood. We're looking at similar uses in the market area. So the sales that I utilized that were outside of the Dayton-Cincinnati market area would be located and they all three are located in retail areas. So from the standpoint of similar use -- I mean, yes, it

would be great if we found properties within close proximity of the subject property. Obviously, that's what we always try to look for, but if what we see as far as data is concerned doesn't match its use, which I think is the most important factor here, we need to expand our market area to find those uses that are consistent with what the subject is, and in this case we're talking about a national fast-food restaurant, not a mom and pop in this case.

Q. So if a property is more comparable in the type of property that it is but maybe located further away in distance, you would use that property -- would you use that property, I should say?

A. Yes. I mean, if I felt like it was going to add to the value of the data that I have in place, absolutely.

Q. Okay. And when you're looking at -- you talked about demographics. Would things like access and visibility come into play as well?

A. Yes. I mean, those types of things do come into play. I mean, visibility, that kind of -- yes, and, you know, access -- access can vary from market to market. I mean, you can have access directly off a primary, you have to go through a

service road or through a shopping -- I mean, those are all market to market, so to speak.

Q. All right. I'm sorry I interrupted you. Please proceed.

A. So the income approach to value, in my opinion, provides the primary indication here. So looking at my comparables, we have a Chipotle restaurant in Englewood which is within the overall Dayton market area. That was executed in 2012, starting at $38 per foot. We have a property in Springfield, Leffers Lane, at $25 a foot. That's inferior, in my opinion.

Comparable No. 3, this is a Wendy's restaurant that was built in 1997. The lease was entered into here in 2006. Now, the interesting thing is even though the lease was entered into in 2006, capitalization rates for net leases in that time frame averaged approximately 7.65 percent per the net lease market, which is what this type of property is. As of the tax lien date, that cap rate was approximately 7.03 percent, a little bit lower, meaning that the market was a little bit better. The investors were willing to pay a little bit more for revenue in that -- in this -- in this condition, in this situation here. So even though this was entered

Page 141

into in 2006, I believe it's comparable from the standpoint of what the rent was as of 2014 at $36.60. This is just past -- well, it's about a half a mile south of the freeway, somewhere in that range, and it's within a residential neighborhood kind of similar to the subject. Huber Heights is also in the greater Dayton area, and it's about $36 a foot, so there is to be adjustment there for size as well as being older than the subject property, and I'm familiar with this just because I have an accounting client in Huber Heights and I happen to go by it once in a while.

Rent Comparable 4, $46 a foot. As we talked in the sales approach, this one was superior to the subject property. Its rent was superior, in my opinion.

We go to Rent Comparable No. 5, Possum Run Road in Mansfield or Washington Township. It's up on a hill, adjacent to -- or across the street from Wal-Mart, near the freeway interchange. This place was leasing at 41.75 at the point of commencement in 2013.

Rent Comparable 6 is a Steak 'n Shake that was built in 1999. That's located on the east side of Columbus. Its size was larger, and it was

Page 142

leasing for approximately $30 a foot. In my opinion, this provides a lower end of the range and would be adjusted for its inferior condition.

My Comparable 7 and 8 happen to be listings in the West Carrollton and Kettering area. The first one is an older Taco Bell from 1983 at $12.30 on a modified gross basis. As of -- in my opinion, this is far inferior to the subject property, and then we have a former Krispy Kreme Doughnuts that was built in 1999. The subject was built in 2006. This property was being offered for $25 a foot on a modified gross basis. Once again, I find this property to be inferior to the subject, subject property.

In conclusion, assuming that taxes are increased to my appraised value, the market rent of the subject property would be $38 a foot. This would also take into account that the subject property could support this level with the sales of approximately $2,740,000. That's at about a 6 1/2 percent rate of gross sales. Now, where did I get that number? That number comes from my discussions with franchisees of fast-food restaurants as to what's comfortable for them from a range of rent that they can support. The franchisee that I spoke to

Page 143

owns about five or six -- no. Actually, 14, sorry, 14 Wendy's, and indicated that some -- they range between 25 and 8 percent of gross sales as far as their breakpoint is concerned in their lease, where they would have to pay percentage rent; so there's a minimum rent that's in place that the landlord expects to receive at that point in time. So that's where I'm saying at 6 1/2 percent of gross sales, that this particular restaurant would need to do approximately $2,700,000 to support that rent.

So if we turn to Page 41, on the right column of the profit and loss statement you see the $38. You go down to potential gross rent and you see 76.09. That would be the equivalent full-service rate for the property. It's just a matter of what's allocated in base rent and in property taxes.

MR. BLUESTONE: Mr. Sprout, excuse me, can I ask you just to point me again where you're looking at?

THE WITNESS: Page 41, down at the Stabilized Profit & Loss Statement --

MR. BLUESTONE: Yes.

THE WITNESS: -- if you go to "Income" and then move down to Potential Gross Rent, you'll see 76.09, from 46.80.

Page 144

MR. BLUESTONE: I'm sorry. I see McDonald's.

THE WITNESS: Move down about four lines.

MR. BLUESTONE: Okay. I see it. And I'm sorry, I didn't hear the testimony because I was trying to find it. Can you just explain the significance of the 76.09?

THE WITNESS: The 76.09 is the equivalent of a full-service rate. The difference is in the amount of rent and the amount of taxes, and that affects the property's value, because if you have a higher base rent, you're going to have a higher property value, and vice versa.

So, also, if I were to do a vacancy-weighted tax additur on my right column, I'm going to get to the exact same number that my valuation conclusion is. I just don't do it that way because, based on my experience, taxes are part of the rent. Even though it's an expense and reimbursement, it's still part of the rent that the tenant is going to have to pay.

BY MS. FOX:

Q. So to follow up on that if I may, Mr. Sprout, could you give a little more explanation to if you had done a vacancy-weighted tax additur? I don't know if you've done the calculations or not, but -- and you don't have to do them necessarily. If you could just walk us through what that process would be.

A. Sure. No. I'm happy to. So if you've got your calculator out.

Q. We'll trust your calculator.

A. With a vacancy-weighted tax additur we're eliminating taxes from both sides, so effectively what we're doing is -- so I'm going to take the 356,570 and subtract out the taxes, which are $69,000 on that side. That gets me 287,570. Then I'm going to multiply that by 90 percent, because 10 percent is the vacancy factor, so that gets me an income of 258,813.

ATTORNEY EXAMINER HIGGINS: Just one second. Just to make sure I'm following along, now we're on the left side --

THE WITNESS: No. The right side.

ATTORNEY EXAMINER HIGGINS: Still on the right side. Okay.

THE WITNESS: The right side is what I determined is market rent.

ATTORNEY EXAMINER HIGGINS: Okay.

THE WITNESS: No problem.

ATTORNEY EXAMINER HIGGINS: I'm sorry. I thought I heard you say 560.

MS. FOX: 356,570.

THE WITNESS: 356,570.

ATTORNEY EXAMINER HIGGINS: "Potential Gross Income"?

THE WITNESS: Right. So I took 356,570, subtracted the taxes away from that, 69,000, and then I multiplied that by 90 percent, which is the occupancy number.

ATTORNEY EXAMINER HIGGINS: Okay.

THE WITNESS: Okay. So we should be at 258,813 right now.

ATTORNEY EXAMINER HIGGINS: Thank you.

THE WITNESS: Okay. Now, we're going to subtract our expenses, which we're effectively going to take the 179,674 and then add back 69,000, so -- let me say that little more clearer. Total expenses would be 179,674 minus 69,000. So that would be the total expenses without taxes. So my total expense number now changes to 110,674. So we subtract that from our adjusted net effective gross income to get a net operating income number of 148,139. Okay. So that's where we are right now. Now, we're going to

divide that by the adjusted cap rate, which is the vacancy-weighted cap rate.

BY MS. FOX:

Q. I'm sorry, what did you say that number was, 148 --

A. 148,139.

Q. Okay. Thank you.

A. So now the cap rate is going to change based on its effective rate. So if we turn to Page 45, after taking the 35 percent out, we're looking at a tax rate of 3.44 percent. So we're going to take .07 and add 10 percent of .0344, which should be -- we're adding .0034. So our adjusted cap rate is now .0734. We're going to divide that with the 148,139, and we get a value of $2,017,000. If you look on Page 44, you see 2,020,000 as far as a value indication. In the tax additur you see 2,000,000. The 2,017,000 all kind of ties in together.

As far as a capitalization rate is concerned, I've included seven sales on Page 43. They're all fast-food restaurants located in southwest and north central Ohio. Only one of them is in north central Ohio. All the other ones are in the Dayton-Cincinnati market area. Those capitalization rates range from 5.45 percent to 6.77

percent.

Now, keep in mind location is one of the things that comes into play when determining a capitalization rate. Other factors include the tenant, the lease term, those types of things, but the reason why I bring that up is the Miller Lane property in Dayton, which is the Skyline at 6.77 percent, that tenant only had five years remaining on their lease at the time of sale, so it didn't have a longer term period left, but the buyer felt the location was so good that if Skyline were to vacate, somebody else would come in and take their place for a similar type of rent; so you're looking at a 6.77 cap rate in this instance, which is a little higher than the others, but it's still within that 5 1/2 to 6 1/2 percent range.

Now, also keep in mind this is -- those cap rates are based on just the income stream, no vacancy, no reserves. If we took vacancy and reserves out, we would have lower capitalization rates on that chart. Because I didn't take McDonald's into consideration as being the tenant here, I'm just saying a national fast-food restaurant -- McDonald's is the gold standard from the standpoint of an investment company, for somebody

Page 149

that would want to buy a McDonald's from the standpoint of their ground lease, which is typically what they're buying, because McDonald's very rarely rents space on a standalone building, they're trading around five percent. My capitalization rate was seven percent. I'm above all the rent -- or the sale comps that I have here, which are all fast food, which all have the same highest and best use as the subject, and that's consistent with the average of the national publication by Pricewaterhouse. Their average is 7.03 percent, so I zeroed in on that average, which is above my sales, and I applied that to the net operating income on Pages 44 and then through the additur on 45, which indicated a value of $2 million.

In conclusion, the income approach was given primary weight. The sales approach further supports that. My value or my rents do not include furniture, fixtures, equipment or inventory. It's real estate only. So my overall value conclusion as of January 1st, 2014, for the McDonald's located at 1872 East Stroop Road, $2 million.

Q. Thank you.

That is all I have on direct. Thank you. For this property.

Page 150

ATTORNEY EXAMINER HIGGINS: All right. Mr. Bluestone.

MR. BLUESTONE: Thank you. We're going to do cross-examination on this report and then --

ATTORNEY EXAMINER HIGGINS: Back to direct on Wilmington Pike.

MR. BLUESTONE: Terrific.

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CROSS-EXAMINATION

BY MR. BLUESTONE:

Q. Mr. Sprout, I just want to make sure I understand the relationship between your company and yourself and Brian W. Barnes. I think we agreed that, in essence, you are a subcontractor of Mr. Barnes?

A. That's correct.

Q. Okay. Did Mr. Barnes receive a fee in connection with the preparation and/or review of the report?

A. I work on a split fee basis, which is typical of the market for appraisers.

Q. So the answer is yes, he received a fee?

A. Split fee, yes.

Q. Okay. And his role was limited to fact checking, I think you said?

Page 151

A. Quality control.

Q. Quality control?

A. Yeah. And like I said, there are some typos in there because I turned in these two reports with the two that I had appraised in West Carrollton all at the same time, so any typographical errors that Mr. Bluestone brought up in the previous testimony would probably be in these two reports as well.

Q. Okay. You're aware, I'm sure, that the property owner served discovery requests on the Board of Education?

A. Yes.

Q. Asking that the -- any appraiser hired by the Board of Education to appraise the subject property be identified, and the response essentially was we have not yet identified who the appraiser is, and that response was in, I think, February of two thousand and --

MS. FOX: At this point I'm going to object. I don't understand what our discovery has to do with Mr. Sprout's --

MR. BLUESTONE: Well --

MS. FOX: -- direct testimony.

MR. BLUESTONE: -- let me withdraw the question for the moment, and I'm going to get back to the issue.

Page 152

BY MR. BLUESTONE:

Q. When was Mr. Barnes --

ATTORNEY EXAMINER HIGGINS: Just a second. I have to admit I'm confused. Tell me what you're trying to get at.

MR. BLUESTONE: Well, I'd like to know -- I'm concerned about the quality of the report, and I believe that this report was rushed and prepared at the last second and is of poor quality; so I'd like to know when was Mr. Sprout or Mr. Barnes hired and how much time did they spend working on the report, and if they -- and the first that we ever heard of Mr. Sprout and Mr. Barnes' involvement with this case was in mid-May of 2016, when we asked that they be identified, that the appraisers be identified back in January of 2016; so I think the report was rushed, and that's the issue.

MS. FOX: Okay. If you want to in your brief argue that one report is better than the other -- I mean, this is ridiculous as far as the timing that has been spent on a report by an appraiser, are we really going to spend time on that today?

MR. BLUESTONE: It's probably two questions.
ATTORNEY EXAMINER HIGGINS: I'll allow you to ask.
MR. BLUESTONE: Thank you.
ATTORNEY EXAMINER HIGGINS: And then we will get into cross-examination of which -- on the substance, the topics that were brought up during direct.
BY MR. BLUESTONE:
Q. When was Mr. Barnes or yourself hired to appraise the property?
A. Well, I viewed the property on April 26th, so obviously we would have been hired probably prior to that, maybe a couple of weeks. I don't have my calendar book with me, but I can tell you that I was provided a name of a female that works in the real estate department for McDonald's, and I e-mailed her and she gave me the regional management in the Dayton market area, who I contacted and told him what I wanted to do, and he allowed me access to all four of the properties in West Carrollton and the Kettering area, and I did all four of those on the same day. So by the time I viewed the property on April 26th to the time that the report was written,

which would have been up until May the 6th, there was a -- that's probably about a week and a half period of time between viewing the property and actually writing the property -- writing the report.
Q. Okay. Mr. Sprout, the report states on Page 5 that it's "prepared for the sole and exclusive benefit of the client designated herein." Who is the "client"?
A. I think that speaks for itself on Page 5 above, where it says, "Client and Intended User."
Q. Okay. Then that paragraph goes on, please correct me if I read it incorrectly, it says, "It may not be used or relied upon by any other party. It is not anticipated that any other" party -- "person or party will rely upon this appraiser report." Do you have with you today any authorization from the Board of Education of the Kettering City School District authorizing you to present this report to the Board of Tax Appeals and authorizing the Board of Tax Appeals to rely upon this report?
MS. FOX: Objection. This is going to our work product.
MR. BLUESTONE: No. It goes to the statement in the report that it can only be relied

upon by the Board of Education, and, therefore, I'd like to know --
MS. FOX: And that's who we're here on behalf of, is the Board of Education.
MR. BLUESTONE: And it's going to be relied upon by the Board of Education. It doesn't say to be relied upon by taxing authorities.
ATTORNEY EXAMINER HIGGINS: Yes, it does. It says, "Intended User...State of Ohio Board of Tax Appeals," to the right. That is what it says; right?
THE WITNESS: Yeah, because you're not my client. You're the intended user of this report, is this -- is this Board.
MR. BLUESTONE: I -- I --
(Discussion off the record.)
ATTORNEY EXAMINER HIGGINS: Let's stop. If you have something specific that Mr. Sprout has said or done that you can present today that Mr. Sprout can specifically speak to, then you should get to that. Otherwise, we need to get into the substance of his appraisal report valuing this particular property.
BY MR. BLUESTONE:
Q. So let me get to the substance. My next

question is it says, lower down on Page 5, "A legal description is included in the addendum section of this report." Can you point to that for me, please?
A. Yes. The brief legal description that would be located on the very first page where you have the Auditor's Property Record Card, where it says, "Legal Description, 2 Kettering Mall Section 1." It's an abbreviated legal description.
Q. Okay. You don't have a metes and bounds legal description in the report; correct?
A. I do not.
Q. Okay. And on Page 5 there is a discussion of special-purpose properties, and in your testimony this afternoon you stated that this is not a special-purpose property. So can you please explain to me why even include this discussion of special-purpose properties in your report?
MS. FOX: First of all, I'm going to object because there's been a mischaracterization of Mr. Sprout's testimony. He did not say it was not a special use property. He said it fell within this definition, but he did not appraise it as a special use property per se.
BY MR. BLUESTONE:
Q. Is that correct, Mr. Sprout?

Page 157

A. Exactly.
Q. Okay. On Page 6, where you have "Auditor's Appraised Value," that actually isn't the auditor's appraised value; correct?
A. I believe if we look at the Property Record Card under valuation, I believe that's what the auditor had on when I printed these Property Record Cards out.
Q. Well, what's at the top of Page 6 is the Board of Revision's appraised value.
A. Well, if you would like to go to the Property Record Card that's located in the addendum section of my report, it's about seven pages back. There's a complete history of the value of the property. I believe Montgomery County changes their value as soon as their BOR ruling has been made. So as a real estate appraiser, that makes it -- I'm just going off the records that I can rely upon. So if there was a different number in place at that point in time, I didn't have access to it, based on the public record information that's here.
Q. Let me ask you to turn to Page 10, and you state that, "The boundaries of the neighborhood might best be described as I-675 to the east and south..." Is the southern portion of the boundary

Page 158

actually shown on this map?
A. It is not.
Q. Okay. And how about Patterson Road to the north?
A. That is not shown on the map either.
Q. Okay. And how about I-75 to the west?
A. That is correct, it is not shown on the map.
Q. Okay. So your neighborhood is actually far larger than what the map depicts, creating a false impression of what the neighborhood is.
A. Question?
Q. Am I correct?
A. No, you are not correct. I shrank the map in this case because I thought it would be important that the roadways and arterials that were within -- this is about a nine-mile radius when I did this. If you go out to about 15 or 20 miles --
Q. I'm sorry, the neighborhood is a nine-mile radius?
A. No. I'm saying that when I did this map, they have a little lever there -- I don't agree with them. It's just -- it's nine. It might be nine miles. I don't know, but I kept it at this point so that the reader could see all the streets that went

Page 159

approximate to where the subject property was, so --
Q. Okay. So you agree with me that the map that's on Page 10 does not accurately reflect what you consider to be the neighborhood? The neighborhood in your description is far larger?
A. Yes.
Q. Okay. And on Page 11 you talk about the most recent development in the area being a Target and Home Depot. When were those constructed?
A. Probably in -- I believe they were constructed in the mid to late 2000s.
Q. Before the recession, to the best of your knowledge, being early --
A. I don't know for sure.
Q. And how far away is this retail development? You described it as being near the Wilmington Pike/I-675 interchange. How far away is that from the subject property?
A. I believe it's several miles away, to the south. I had a tax client that was a manager of that -- no, not that one, but a different one in Beaver Creek.
Q. So there's no other similar type of major big-box stores going into the immediate vicinity of the subject property?

Page 160

A. I believe in my -- the very next paragraph indicates the neighborhood was built out, it was a built out status neighborhood, where there really wasn't much new development that was occurring.
Q. Okay. And you described the neighborhood as being "stable middle-aged residential community in the City of Kettering"; right?
A. Yes.
Q. And what's the projection for the number of homes within the three-mile radius of the subject property for 2015?
A. There's not going to be much growth based on the demographics of the neighborhood. As I previously discussed, it's a stable neighborhood that's built out.
Q. In fact, if I look at the addendum materials contained within your report, the projection for homes within the three-mile radius is actually going to go down.
A. It's --
Q. And isn't that consistent with what happened in the one-mile radius for 2010 and also 2015 projection?
MS. FOX: I'm sorry, what are you

Page 161

referring to?
THE WITNESS: He's referring to the Market Profile, which is the very first page in the demographics of the addendum.
Yes, there's a slight -- slight decrease in the number of households that are in that neighborhood --
Q. Okay.
A. -- which indicates its built-out status of the property.
Q. So isn't the neighborhood really in decline?
A. No. That's your opinion.
Q. You have a statement, a sentence or two later in that summary paragraph on Page 11, which says, "Existing commercial and multifamily properties will, in all probability, continue to turn over and experience continued upgrading to meet modern market standards." What do you base that on? What proof is there that multifamily properties or commercial properties are being upgraded in the neighborhood?
A. Well, I could speak to the McDonald's. They tore down a 1979 building to put up a 2006 building because the location was so good.
Q. But that occurred in 2006.

Page 162

A. Right.
Q. That's almost a decade before the tax lien date in question.
A. Well, let's see. I -- I appraised a Kroger property right down the street from there that was built in 1978. I did it for a Board of Revision hearing. Kroger decided that they wanted to stay in the property and reupped on a lease in a location that was surrounded by multifamily properties. That was done in 2013 or 2014, close to the tax lien date. They reupped for I believe about $6 a foot for a supermarket space. So Kroger decided to stay in this locale because they felt it was economic for them.
Driving around the neighborhood and understanding the properties have been well maintained. We're not talking about properties that have gone into disrepair. Kettering is a -- it's a solid, middle-class neighborhood where the pride of ownership is good.
Q. Okay. I'd ask you to turn to Page 12, and if you -- can you identify in the addendum where FEMA Map 3904C0259E is?
A. Yes. It's the page right before the demographic.
Q. Okay. And that's this document that I'm

Page 163

holding up, Mr. Sprout (indicating)?
A. Yes, sir.
Q. Okay. And the map number on that document, does it actually match the map number that you and quality control checker Barnes signed off on Page 12?
A. No. There's a slight discrepancy in the numbers. Instead of 113 it says 049, so --
Q. Okay. And then on Page 12, under Access, where it says there's a curb cut to the east, isn't that curb cut actually to the west of the subject?
A. Yes.
Q. Okay. Thank you. Mr. Weis testified this morning that McDonald's restaurants are typically built with superadequacies. Have you ever heard the term superadequacies or adequacies?
A. I have.
Q. Okay. And what does it mean to you?
A. That would mean that the improvements were built above what market would typically build. That would be -- so, for instance, you might have a warehouse that has a 60-foot high clearance. Well, the market might say well, that's too high, it's usually 32 to 34.

Page 164

Q. Or you might, for example, have a restaurant that's built over and above what the standards are of typical restaurants in the community?
A. Okay. Yeah, that's right.
Q. Okay. On Page 15, under Functional Obsolescence you -- your report states, "There is no functional obsolescence present as of the date of appraisal." Do you agree with Mr. Weis that the McDonald's restaurant or the subject of this afternoon's hearing contained superadequacies in terms of its construction?
A. No.
Q. Why not?
A. Because I don't think they're using any materials that would not be used in another national fast-food restaurant.
Q. Do you believe that McDonald's restaurants are built to a superior quality of construction --
A. No.
Q. -- as compared to -- as compared to a typical restaurant in the market?
A. No.
Q. You worked at a McDonald's restaurant at

one point in time?
A. I did.
Q. Okay. And where was that restaurant?
A. I worked at one at Northern Lights Shopping Center, which I think they're on their third McDonald's right now, building, and I also worked at one in Clintonville, where I met my wife.
Q. And while you were working at either of those McDonald's were the buildings undergoing any type of construction?
A. No.
Q. Are you familiar, Mr. Sprout, with the fact that McDonald's has its contractors build its restaurant on an expedited basis?
A. What do you mean by "expedited"?
Q. Well, they're charged with getting the restaurants up as quickly as possible, sometimes as little as three months.
A. I think that's true to a lot of national fast-food restaurants. Just based on the two most recent fast-food restaurants that I appraised, the one being a Chipotle and one being a Burger King, they were under the same gun, and Chipotle happened to be built by a similar construction company that builds McDonald's here in the central Ohio area.

Q. Okay. Would you agree with Mr. Weis that -- that McDonald's contractors are paid a premium for constructing a McDonald's restaurant on an expedited basis?
A. No. I disagree. I think they're paid -- sometimes they're paid less because they're specifically utilized to build that specific box, and they will move around to different locations. They know the cost of every single nail that goes into that thing.
Q. Is there in your report a diagram of the existing building on the McDonald's site?
A. Are you talking about a site plan? I've got a sketch.
Q. On 14. Looking at Page 14, which is a sketch, where did that sketch come from?
A. That came from the Montgomery County Auditor's Office.
Q. Okay. Would you agree with me that the building that's depicted on Page 14 is essentially a rectangle?
A. Yes.
Q. And can you explain to the Board why this building that's essentially a rectangle could not be adopted for other uses?

A. Well, it could be adopted for other uses at a cost, but that's a hypothetical. That's not what its use is right now.
Q. Would you agree with me that hypothetically the building could be adopted to a wide variety of other uses?
MS. FOX: Objection. It's asked and answered.
ATTORNEY EXAMINER HIGGINS: I'm going to sustain that. I do believe he did answer it.
MR. BLUESTONE: Okay. Thank you.
BY MR. BLUESTONE:
Q. I wanted to ask you about Page 16. You talk about your highest and best use analysis. You say under the paragraph that has the heading Physically Possible, "The property is serviced by all necessary utilities to accommodate development and abuts similar type uses"; right?
A. Yes.
Q. Okay. It physically abuts a retail center to the north, right, and a Meijer on the other side, I believe?
A. It's an outlot to the Meijer, which is typical in the market.
Q. What other similar type uses does the

McDonald's restaurant provide?
A. I think there's a Dunkin' Donuts and a Wendy's. I think I talked about that in my discussion. There's also --
Q. There's a Burger King very nearby or there was a Burger King nearby?
A. The Burger King was south of the property, and it was south of the Meijer, too. It was not -- you know, it was on the side of the Meijer. I know exactly where you're talking about.
Q. Terrific. And Mr. Weis testified that one could see the Meijer store from the Burger King property just as one could see the Meijer store from the subject property.
A. Well, I believe you could see the rear of the Meijer store from the Burger King property, not the front of it --
Q. Okay.
A. -- not the parking lot.
Q. You did not mention the Burger King property whatsoever in any of the analyses that you undertook in your report.
A. Correct.
Q. Why not?
A. Because it was a land sale. The point

Page 169

of purchase was not to utilize the existing building. The motivation of the buyer was to tear it down and put up, I believe, a tire store on the site, so their motivation wasn't to buy the existing building. Their motivation was to buy it for another national single-tenant user.

Q. Okay. And that Burger King facility, according to Mr. Weis, was constructed in 2000, and it was torn down by 2015.

A. Okay.

Q. Do you have any information to the contrary?

A. No, I don't. I didn't talk about it in my report because it was a land sale. It was improper to use something like that in a report when the existing use doesn't meet what the motivation was of the buyer.

Q. Mr. Weis testified that that property, the Burger King property, was marketed for use as a restaurant. Do you dispute that?

A. I can't dispute it because I don't know.

Q. Okay. Did you look at the listing for that property?

A. I did not.

Q. Okay. Do you have any information that

Page 170

would suggest that the Burger King property, the building, could not have been used for a restaurant by the next purchaser?

A. Well, obviously the market said no, because the -- the most -- the buyer that came into the market with the highest price bought it to tear the building down.

Q. Okay. But in terms of the structure itself, do you have any -- of the Burger King building, do you have any information that the building could not have been used as a restaurant?

A. No, I do not.

Q. And Miss Fox asked Mr. Weis this morning about sales of several Wendy's restaurants that occurred in Montgomery County. I don't recall seeing you utilize any sales of Wendy's properties in your report. Can you tell me if I missed them or why you didn't use the sales that Miss Fox asked about?

A. I didn't utilize -- I know what he's talking about. There was a bulk purchase of multiple Wendy's throughout the Midwest that I was aware of, and actually there's a rent comp in my report of one of those Wendy's that was purchased as part of that bulk purchase. Another one happened to be -- so from the standpoint of a bulk purchase, I didn't feel it

Page 171

was appropriate to utilize in my report.

Q. And so it was also appropriate for Mr. Weis not to utilize those sales in his report?

A. Agreed.

Q. Thank you. Can I ask you to turn, please, to the chart on Page 17 of your report?

A. Yes.

Q. First of all, there's no information here to indicate where this data comes from. Can you illuminate us, please?

A. Well, it's on the previous page. It talks about where the data came from, last paragraph.

Q. Okay. So that -- the data came from CoStar; correct? And on what date was this data created?

A. I ran the report on May 6, 2016, and as you can see by the information there, it provides a five-year window.

Q. Okay. There seems to be an anomaly in the data compared to your testimony. If I look at the vacancy rate, which is lines of a graph shown in the middle of the chart, it goes from a vacancy of 12-point something percent in 2011 and falls precipitously to maybe seven percent in 2015 and eight percent in 2014, but yet when you look at the

Page 172

triple net asking rent per square foot on the graph next to it, even though the vacancy is going down precipitously, so too are the rents. So my question to you is, how could this be a stable market if vacancy is dropping drastically and rents are dropping as well? In fact, in 2014-15, we're at the nadir of asking rents per square foot?

A. Once again, they're asking rents for the vacant space, so we're talking about all sorts of retail properties, and for the vacancy rate to continue to drop as well as the asking rates to continue to drop, and then you can see in 2015 they pick up once the vacancy starts to level off there at about seven percent; so, you know, you have a higher vacancy factor in this two-mile radius, and I accounted for that in my Stabilized Profit & Loss Statement with a ten-percent vacancy rate. I believe Mr. Weis utilized only five percent in his. So that's not atypical for me to see both lines going down, until we got to a situation where it seems to level off there at seven percent, and then the asking rates start to bounce back.

Q. And I don't remember, what was the asking -- the rent that you suggested would be appropriate for the subject property?

Page 173

A. $38.
Q. And on the graph that's shown on Page 17, Mr. Sprout, the asking rent per square foot doesn't even come close to $38 at any point in time.
A. No, because those are vacant properties. Those are all types of vacant properties. So if those properties are vacant, it's likely that they're second generation. The subject property is definitely not a second-generation property or McDonald's would have vacated.
Q. Okay. And would you agree with me that asking rent per square foot is probably higher than what the actual lease rate per square foot would be when a lease is signed?
A. Not necessarily.
Q. In most cases?
A. Not necessarily.
Q. Okay. And in -- just so I'm clear, looking at this chart that you obtained from CoStar, as of the beginning of 2014, what was the triple net asking rent per square foot?
A. The asking rent for vacant properties which were older than the subject property was $11.
Q. And that's the asking rate for vacant properties within a two-mile radius of the subject?

Page 174

A. Yes. And I will add that if the property was vacant, I would have appraised it as such.
Q. Okay. Is it possible that the subject property would be purchased by an owner occupant?
A. You mean as it is right now?
Q. Or McDonald's to leave and the property was available for purchase.
A. If McDonald's were to leave, then they would have determined that the market -- this site wasn't economically justifiable, so yes.
Q. So an investor who is looking for rental income isn't the only possible purchaser of the subject property?
A. No.
Q. And looking at your improved sales, what county is Improved Sale No. 2 located in Monroe, Ohio in?
A. Well, it's not Montgomery County. It's south of Montgomery County. I think it's one or two counties down.
Q. Okay. And Englewood, Ohio, Improved Sale No. 3?
A. I believe that's in Montgomery County.
Q. So of your seven sales comparables, two

Page 175

are in Montgomery County and five are not; correct?
A. Two are in Montgomery County and five are not, that is correct.
Q. And many of the sales comparables are new buildings that had attached to them recent long-term leases to national fast-food restaurant companies; correct?
A. Sale 1 only had about five years left on the term. The other -- two, three, four, six, and seven had longer term lease deals, which would be typical of the subject's type.
Q. Okay. And with respect to all of the national fast-food companies which purchased Sales 1 through 5, did you speak to the buyer in any of those instances to find out what the buyer's motivation was?
A. I spoke to either the seller or a broker that was involved in selling the transaction.
Q. Okay. Nobody that you spoke to on those sales could tell you what the -- from direct experience what the buyer's motivation was?
A. No.
Q. Okay. And with respect to -- would you agree with me that the buyer of the Chipotle restaurants was influenced by the creditworthiness of

Page 176

Chipotle and the success of Chipotle?
A. Well, you just asked me if I talked to any of the buyers, so I can't get into their minds, so I don't know the answer to that question.
Q. Okay. Would you agree that a buyer of a property which is subject to a lease or leased to a national fast-food restaurant would take into consideration the creditworthiness of the national fast-food restaurant?
A. One of the factors, yes.
Q. And would also take into consideration the strength of the sales at the restaurant?
A. Strength of its sales?
Q. Sales, gross revenues.
A. Possibly.
Q. Okay. So with respect to the sales, two, three, four, which were restaurants being operated as Chipotle restaurants, those all occurred in 2012 or 2014; correct?
A. Yes.
Q. And that was before Chipotle suffered a nationwide Listeria outbreak in its restaurants; correct?
A. I believe so.
Q. And would the buyer -- would a typical

buyer of a property that's subject to a ground lease take into consideration the Listeria -- let me ask the question a different way, so let me withdraw it, if I may.

Do you think that Sales 2, 3, and 4 would have achieved the same sales price had they occurred in 2015, after Chipotle had suffered its Listeria outbreak?

A. I don't know the answer to that. I can only tell that you that based on financial parameters, they would have sold at a lower capitalization rate.

Q. A lower capitalization rate?

A. Yes, because rates continue to drop as investors were looking -- were looking to purchase properties. There was more money available to them in the market, so continued -- capitalization rates continued to drop based on national averages.

Q. Okay. And so these investors, in your opinion, would be more heavily influenced by the national drop in capitalization rates than who the tenant is and fact that the tenant has been affected with a Listeria outbreak and its sales had dropped precipitously?

A. I didn't say that. I don't know -- I

said I don't know what they would consider. All I said was that based on financial parameters in the marketplace, capitalization rates dropped from '14 to '15 on average, based on average sales of global net leases, so I can't answer your question.

Q. Would you agree with me that these three properties became less attractive and less valuable because of the Listeria outbreak that afflicted Chipotle?

A. I told you I can't answer that question.

Q. Okay. I'm going to move on. Improved Sale No. 4, that's at an interstate location; correct?

A. Yes, it is.

Q. And how many of the other improved sales are at an interstate location?

A. You refer to an interstate location meaning easy on, easy off?

Q. Well, Sale No. 2, for example, is at the intersection of State Route 63 and I-75.

A. Yes.

Q. Okay. How many other of your improved sales are located at an interstate or an interchange location?

A. Sale -- so I'll just go in order. Sale

2 is. Sale 3 is. Sale 4 is. Sales 1, 6, and 7 are within a mile of the interchange.

Q. Okay. So on Sale 6, in the description where you originally wrote it's "located just north of the State Route 72/I-70 interchange," now you're changing that to be located within a mile?

A. Well, it is within a mile, isn't it?

Q. "Just north" suggests much closer to me.

A. Okay.

Q. And what about Improved Sale No. 7, where the description says that it's "located on the west side of Hilliard-Rome Road just north of I-70," do you want to change that description now, too?

A. Well, I didn't change --

MS. FOX: Objection.

A. -- the first one.

Q. Well, how far is it located from --

ATTORNEY EXAMINER HIGGINS: Wait. What was the basis of the objection?

MS. FOX: My basis for the objection was that he was misstating what Mr. Sprout had said, but Mr. Sprout responded in that way, also; so it's fine. We can go on.

ATTORNEY EXAMINER HIGGINS: Okay.

BY MR. BLUESTONE:

Q. So Improved Sale No. 4 -- Improved Sale No. 7, Mr. Sprout, how far north of I-70 is it?

A. Approximately a half a mile.

Q. And how far away is the subject property from the nearest major interchange?

A. I believe it's several miles to the north of the 675 interchange with Wilmington Pike, I believe.

Q. Okay. Let me turn to your rent comparables. Did you actually review the lease agreements themselves for Rent Comparables 1 through 8 or any of them?

A. You're talking about the actual executed lease document?

Q. Yes.

A. Is that what you're asking?

Q. Yes.

A. I looked at the lease document for Rent Comparable No. 5 because we appraised the property. I looked at extensive offering memorandums, as I indicate in my verification, for Rent Comparables 1, 2, 3, 4 -- I take that back. I did look at the lease on Rent Comparable 6, and 7 and 8 are offerings. So the lease offerings are extensive. They come from the brokers, because they're all from a national basis. These are all triple net leases, basically where expenses are paid by the tenant, so --

Q. Now, Mr. Sprout, in my 30 years as a real estate attorney I've looked at offering memorandums prepared by brokers such as Marcus & Millichap, CBRE, and other brokers, and while the offering memorandum may be extensive, the discussion of the actual lease terms is generally very succinct. Isn't that, in fact, the case with the offering memorandums that you looked at?

A. The offering memorandums that I looked at on the other four indicated rents on an annual basis, when the step-ups would occur, what options were available to the tenant, what expenses would be reflective of who pays what; so that's the general financial data of a lease. As far as all the other items, as far as if it goes dark or those types of items, no, those items were not, but from the standpoint of what the actual rent was, what the terms of that rent was, how long they were in place for and if there were any step-up or options, all that information which is at the crux of a lease, in my opinion, that I'm looking at as a real estate appraiser, I felt comfortable in utilizing that

information in my report.

Q. Okay. And three out of the four cases where you looked at offering memorandums, you only looked at the document itself, correct, in one situation, and that's in Rent Comp 1, 2, 3, and 4?

MS. FOX: I don't understand the question, so I'm --

Q. Okay. In Rent Comp No. 1, 2, 3, and 4, your verification was through the offering memorandum?

A. Correct.

Q. And then it says CoStar?

A. Yes.

Q. Did you -- were you able to view the entire offering memorandum?

A. Yes. I have it in my work file.

Q. And in only one situation did you actually call a broker to confirm information in the offering memorandum, and that's sale -- Rent Comp No. 2; correct?

A. No, that's not correct. I confirmed -- I confirmed Sale No. -- I confirmed the sale of 175 Senate Drive and I confirmed the sale of 9208 North Main Street, so that information would have been verified with whoever I talked to in the sales

approach.

Q. Did you ask any of the people that you talked to and verify with your rent comparables whether a portion of the rental rate being paid by the tenant included reimbursement for special-tenant improvements that were constructed by the landlord or for furniture, fixtures, and equipment that were provided by the landlord to the tenant?

A. I did some additional homework on that, concerning the FF&E. Typically FF&E is not included in the lease, and the reason for that is the tenant will purchase their furniture, fixtures, and equipment, and then they'll have the general contractor install those items within the building. The reason for that is because the tenant can take a large tax deduction based on that FF&E because the tax laws are such that allows that to happen, so that isn't -- an unusual situation is when the FF&E is built into the lease, very unusual situation, and when we get into a turnkey situation where they're just handing the keys over to a tenant, the tenant has purchased the FF&E themselves, the tables and chairs, the equipment and that sort of thing, and has the general contractor install them as part of the overall construction process; so it's not built into

the lease rate.

Q. Okay. Do you know if any of the rent comps were leased to the tenant in what I'm going to describe as a cold dark box? And do you know what that term means, Mr. Sprout?

A. I'm assuming you're referring to a vanilla box where they go in and -- they include the tenant improvements themselves.

Q. Right.

A. When you refer to tenant improvements, what are you -- when you say vanilla box, to me a vanilla box includes the floor. It includes the HVAC. It includes the drywall. It includes the glass. It includes the basic interior improvements. Your reference to a cold dark box, are you referring that there's no HVAC in it?

Q. Right, that it's just the shell.

A. No. That's atypical. The only time you see a situation like that is in a larger storeroom where -- where a -- not in this situation, but you see a larger storeroom where the developer still hasn't determined what tenants are going to go in line, so they leave it wide open so they can partition it based on what the tenant's needs are that they're looking to --

Page 185

Q. Okay. Are you familiar with the Dublin Green Shopping Center that's recently been constructed?
A. Dublin Green. You're going to have to tell me its location.
Q. Near Post Road.
A. Dublin Green, are you talking about where Dewey's Pizza is and Starbucks?
Q. Where the new Costco just opened up.
A. Oh, Dublin Green. I'm familiar with where the Costco is and I know that they're attempting to sell or lease outlots.
Q. And a client of mine just leased an outlot for use as a Tim Hortons store, and it was leased to them in a cold dark box scenario. Are you saying that that's not typical of the market?
A. From what I've seen. I mean, I'm just telling you from my -- my experience.
Q. Mr. Sprout, can I ask you --
A. No.
Q. If I was to look at -- before I get there, actually, in terms of your Sales Breakpoint Analysis which appears on Page 41 of your report, you testified that you consulted with one of your clients who owns, I think, 40 some odd --

Page 186

A. I said about 14 Wendy's.
Q. 14 Wendy's.
A. I believe it's 14.
Q. Thank you. Is there any other support for this type of analysis?
A. Actually, when I -- in property management, in discussions with property managers and when we're doing leases for restaurants, fast food and regular restaurants, in my review of multiple lease documents you see that sales breakpoint in a lot of those, so that's -- that's why when I requested sales information with McDonald's, and it wasn't forthcoming, I made the assumption that the sales must have been higher than what my indications were.
Q. And that's just an assumption? Theoretically, they could be less?
A. Well, you would have brought those to the table, I think, if they were.
Q. Well, no request was made of me for that information, Mr. Sprout.
A. Okay.
Q. Do you have any national publications that you relied on in coming up with this Sales Breakpoint Analysis?

Page 187

A. The Independent Council of Shopping Centers.
Q. And do you have that, the materials with you today?
A. I do not.
Q. If the sales were less than the amounts indicated on your chart, does that mean that the value of the property will go down?
A. That's just one piece of the puzzle, but that brings into play what are the sales at this specific location.
Q. Okay. So let me ask you this, our charge and the Board's charge is to determine the value of the subject property as of the January 1st tax lien date. Assume for the sake of this question that McDonald's is closed on New Year's Day and there are no sales. Does that mean that the value of the restaurant is zero?
A. These sales are based on annual sales, not one day.
Q. And if a restaurant chain were to be afflicted with a Listeria problem, such as Chipotle, and the sales plummet, does that mean that the value of the land and the building goes down as well?
A. No, because that would be a unique or

Page 188

unusual situation.
Q. Which sometimes happens?
A. Well, once again, we get back to the highest and best use analysis where the location would dictate a national single-tenant user.
Q. And what is it that generates these gross sales volumes that you've put in your chart?
A. The market.
Q. Well, how does the property owner -- what do they use to generate these gross sales volumes?
A. They use their historical numbers. They use their experiences. I'm sure that if we talked to McDonald's, they would probably tell you the exact same thing from a breakpoint standpoint. I can only speak from Wendy's standpoint as well as other leases that I have reviewed over the years, which have all been in that five to eight percent range.
Q. And the gross sales revenues are generated by the land and the building; correct?
A. Yes.
Q. And the equipment and the supplies and the inventory that are inside; correct?
A. We're not talking about a value in use, Counselor. We're talking about the real estate.

This is just one piece of the puzzle in determining rent.

Q. But I want to understand how does an owner generate, for example, $4,386,100 in revenues. It comes from a lot more than just the land and the building. It's the furniture, the fixtures, the equipment, the labor, the goods -- the goods that are provided to the customers, from the trademark, and from the goodwill of the business; correct?

A. All those are a part of it, but it still comes down to location, location, location as far as rental rates are concerned and how those sales are generated. Once again, it's part of the whole puzzle.

Q. Okay. But to understand your analysis don't you need to consider the cost of the -- of those items, the cost of advertising, the cost of building the trademark, the cost of equipment, the cost of labor, the cost of goods? Where is that shown in your analysis?

A. It's not.

Q. Okay. And your analysis assumes, does it not, that these purported gross sales would continue ad infinitum?

A. One more time.

Q. It assumes that the gross sales will be constant year after year after year.

A. Or if not -- yes, that is correct.

Q. Because -- and don't you recognize that food trends and companies come in and out of favor, and, therefore, the gross sales of a restaurant may significantly fluctuate from year to year?

A. And that's why it's a part of the puzzle, not the whole piece.

Q. Mr. Sprout, you and I have known each other many years, and, in fact, I have engaged you and Mr. Barnes to assist my clients in appraising different types of properties; correct?

A. On a couple of occasions, yes.

Q. I have no recollection of ever seeing a Sales Breakpoint Analysis in any of those reports, so I'm wondering why use it now?

A. I never appraised a restaurant for you.

Q. Why wouldn't you use a Sales Breakpoint Analysis in appraising a golf course, for example, like Dublin -- like Dublin -- the Golf Club of Dublin? Remember we rode around in a golf cart I think last year?

A. A sales analysis is done based on a multiplier basis. That's how the market looks at

those things, and on a capitalization rate basis, and that's a going concern that you're talking about. This isn't a going concern. A golf course is a going concern.

Q. I want to ask you, if I may, on Page 44 -- excuse me. I'm sorry. It's Page 43 in this report. What's the average rental for those restaurants?

A. Well, I don't -- are you talking -- each individual rent, I can -- I can calculate each individual rent for you on those based on the capitalization rates. A sample size of seven would not generate a credible average.

Q. Okay. Well, if I told you that the average rental of these seven restaurants was $85,000, does that sound approximately correct to you?

A. I'd have to do the calculation, but $85,000 -- and I believe all seven of those stores are significantly smaller than the subject property. So did you do it on a price per square foot -- price rent basis or did you just do a gross annual?

Q. I did the calculation -- I came up with an average rental of $85,000. Do you have a calculator in front of you?

A. So you did not do a rent-per-square-foot basis, is what you're telling me?

Q. No.

A. Okay. Well, then you -- then you're skewing the data.

Q. You have a calculator in front of you; correct?

A. I do.

Q. And if you look what I'm going to tell you is the average $85,000 annual rental for these stores and you -- let's say you used a seven cap. What valuation would that suggest?

A. That would suggest that we don't have all the data, because $85,000? So let's look at the average size of each one of these, which I believe is going to be somewhere around 2,500 square feet.

Q. Right, all the buildings are smaller.

A. Yes, all the buildings are smaller. Some are in better locations. Some are in worse locations or worse condition. I believe the average rental rate would be somewhere around $34 to $35 a foot.

Q. But you didn't answer my question. If the average rental here was 85,000 and you used, let's say, a seven cap, what value would that

Page 193

suggest?
A. Well, it would suggest no value. It would just be a straight calculation. The number would be 1,214,285.
Q. Thank you.
A. So there's -- there's no value there.
Q. In your report, looking at the rent comparables, how many of those do not have -- of the eight do not have drive-through lanes?
A. I believe all but Chipotles do not have drive-through lanes because that's their food concept. So that would be three of those.
Q. Okay. Steak 'n Shake?
A. Steak 'n Shake has a drive-through.
Q. And what about --
A. Krispy Kreme does, too.
Q. So three out of the eight don't have drive-throughs?
A. The Chipotle restaurants.
Q. Okay. And yet you used them in -- as part of your analysis even though they don't have a drive-through?
A. Yeah. I believe I talked about the fact that they are fast-food restaurants and because of their concept where they are -- basically you walk

Page 194

through the line in order to tell them what you want on your burrito or your bowl or whatever, that it's kind of an exception to the rule.
Q. Okay. And in looking at the improved sales, which of those don't have drive-throughs?
A. Two, three, four, and seven.
Q. Okay.
A. And I believe I discuss that on Page 29.
Q. Okay. And even though they don't have drive-throughs, you used them as part of your report?
A. Yes. And I would have adjusted them downward for an economic disadvantage.
Q. Okay. Earlier this morning Miss Fox criticized Mr. Weis for using a small number of restaurant properties in his reports that did not have drive-throughs, so was that criticism well-founded? You didn't use them.
MS. FOX: I'm going to object to the characterization of me criticizing Mr. Weis. I may have questioned Mr. Weis about his choices of his sales.
MR. BLUESTONE: I'll --
ATTORNEY EXAMINER HIGGINS: I agree. Please stick with the facts and circumstances --
MR. BLUESTONE: Thank you.

Page 195

ATTORNEY EXAMINER HIGGINS: -- relevant to the case and leave adjectives alone for now.
MR. BLUESTONE: I'll withdraw the question. Thank you, Miss Higgins.
BY MR. BLUESTONE:
Q. So it's not inappropriate in appraising the subject property to compare it to other restaurant properties that do not have a drive-through?
A. Mr. Weis did not utilize fast-food restaurants. His restaurant uses in his sales and his rent comps were sit-down restaurants. They weren't fast-food restaurants, and I've talked about Chipotles having a -- is a fast-food restaurant that has a specific floor plate for their building. Now, it doesn't have a drive-through, so that is a disadvantage. McDonald's and Wendy's and Burger King and all these national fast-food restaurants, over 50 percent of their sales come through drive-throughs, maybe even significantly more than that. That's why if you've noticed they've gone to the two drive-through concept to generate more traffic, and I can tell you when I was out at this property at 2:00 in the afternoon, a steady stream of cars in the middle of the day on an afternoon, steady stream of

Page 196

cars.
Q. And do you have any knowledge of what percentage of a fast-food restaurant's sales come from the drive-through?
A. I believe you indicated to me that they're well over 50 percent of their sales when you were questioning me in the last McDonald's that we had discussed, but I also know that based on the franchisees that I've talked to as well as franchisees that I still have stayed in touch with over the years that was a franchisee of McDonald's.
Q. And the subject property contains over 4,600 square feet of space; correct?
A. Yes.
Q. And if I told you that 70 percent of the typical McDonald's sales volume comes from the drive-through, would that refresh your memory of what I --
A. I wouldn't be surprised -- I wouldn't be surprised by that at all, no.
Q. And so if 70 percent of the sales are coming from a drive-through, isn't there functional obsolescence in the fact that the building is almost 4,700 square feet? Couldn't they actually utilize a much smaller building such as Chipotle?

A. No. They -- let me tell you something, these guys utilize every inch of their building. McDonald's is a gold standard for a reason. They're absolute geniuses in what they do. They utilize every square foot of that building. There's a reason why their floor plate is bigger, because they use -- they use space in there for all of their food that they have, which is breakfast and lunch. They use it for storage of buns, which they are continually rolling through. They use it for a break room for their employees. They use it for a cash office. They use it for restrooms. They also have a lobby area for their customers that are coming inside. So they utilize every inch of that building. That's why they developed their longer building. It works great for their drive-through and allows the drive-through traffic to stack easier than some of the shorter ones.

Q. And I just want to touch on one other topic. You said there was a prior McDonald's restaurant on this site and it was there from approximately 1979 to 2004, 2005?

A. Yes.

Q. Okay. And then it was tore down and a new restaurant was built in its place?

A. Yes.

Q. So that restaurant had an approximate useful life around 25 years?

A. Yeah. That's fair.

Q. And so when Mr. Weis states in his report that a useful life of a McDonald's fast-food restaurant building is somewhere between 20 to 25 years, that's a reasonable range?

MS. FOX: Objection. His report says 15 to something, maybe 15 to 30. He didn't say 20. So, again, you're misrepresenting the facts.

Q. If I -- if I were to ask you is 20 to 25 years a reasonable range of a useful life of a McDonald's fast-food building, would you agree?

A. Yes.

Q. Okay. You said many times that McDonald's is the gold standard of fast-food restaurants.

A. Uh-huh.

Q. And I want to thank you for that. I would agree. McDonald's is a mature fast-food restaurant chain?

A. As is many others.

Q. Okay. How about as compared to Chipotle? Isn't Chipotle actually growing much

faster nationally than McDonald's?

A. I can't answer that question. I can tell you that McDonald's used to own Chipotle.

Q. Correct, it did. But have you done any research on the number of Chipotle restaurants being built compared to McDonald's restaurants that are being built?

A. Well, McDonald's is -- has been in business a lot longer than Chipotle has.

Q. No. I'm talking the last -- let's say the last five years. Have you done any research -- let me ask you a question, in the last five years, do you know which chain has built more new restaurants, McDonald's or Chipotle?

A. Well, that's easy, because Chipotle has put more in because they're a newer company; so of course they're going to have more absorption because McDonald's already has all the restaurants and they are building some more, but they already have a larger market presence than Chipotle does.

Q. I would agree with that, but isn't it true that one of the reasons why all the Chipotle sales referenced in your report sold at such high values is because the investors were excited about the rapid growth of this new chain?

A. I can tell you that if McDonald's where coming up available for sale, their ground leases are selling for even a lower capitalization rate than what Chipotles are selling for.

MR. BLUESTONE: Miss Higgins, I don't have anything further. Thank you.

ATTORNEY EXAMINER HIGGINS: Thank you.

Any redirect?

MS. FOX: Yes. Thank you.

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REDIRECT EXAMINATION

BY MS. FOX:

Q. Mr. Sprout, I believe that you mentioned the absence of a drive-through would be a detriment as compared to the subject property; is that correct?

A. Yes.

Q. Okay. So if you were to adjust for that difference, would you be making an upward or a downward adjustment to, for example, the sale or a rental rate of a property without a drive-through?

A. Well, on Page 29 I address that, and it would be an upward adjustment because it's an economic disadvantage.

Q. Okay. And with respect to the fact that we've discussed a sit-down, full-service restaurant

versus Chipotle -- and just to be clear, you do not consider Chipotle to be a full-service restaurant, do you?
A. No.
Q. You consider them to be a fast-food restaurant?
A. Yes.
Q. Okay. And is their eat-in area or space similar to what you find in a Wendy's or a McDonald's or a Steak 'n Shake?
A. Yes. It would be an open eating area.
Q. And the customers have to serve themselves at the counter?
A. Yes.
Q. There are no waiters or waitresses?
A. Well, at Steak 'n Shake they have waiters and --
Q. No. I'm sorry. At Chipotle.
A. At Chipotle. That's -- yes, Chipotle, Wendy's, Taco Bell, yes, those are --
Q. All right.
A. Burger King.
Q. Okay. You were asked -- you were asked lots and lots of questions about your Sales Breakpoint Analysis, and I just want to be clear, is

this the primary analysis that you relied upon in your income approach?
A. As I indicated, it was one piece of the puzzle.
Q. And, in fact, when we're looking at the chart at the bottom of Page 41, which was your pro forma, is the sale -- are the gross sales included in that analysis down there at all?
A. No, they are not.
Q. Okay. So that analysis is based strictly upon a base flat market rental rate irrespective of sales?
A. The rental rate reflects what the real estate, that would be land and building, would generate.
Q. Okay. And you were asked many questions as well regarding the chart on Page 17 of your report, which I believe you indicated was a CoStar Vacancy Survey, and with respect to the information contained on that chart, to be clear, that included all currently vacant retail space within a two-mile radius; correct?
A. Yes.
Q. So that would include not only restaurants but stores. What other types of

properties would that include?
A. Inline retail space, big boxes. So like a big box could be a $2 or $3 a foot rent and have a huge amount of square footage, 100,000 feet. Most of the situation here would reflect second-generation space, where a tenant has moved out, so that's why those are typically always going to be lower within this chart.
Q. Okay.
I think that's all I have.
ATTORNEY EXAMINER HIGGINS: All right. Let's go off the record for a brief second.
(Discussion off the record.)
ATTORNEY EXAMINER HIGGINS: Let's go back on the record. Now that we've finished Mr. Sprout's examination on the property that is the subject of 2015-2328, we'll move on and discuss the property that is the subject of 2015-2331.
Miss Fox, I'll let you either do a brief opening or launch into your examination.
MS. FOX: I thought I would launch. I would like to launch, if that's all right.
ATTORNEY EXAMINER HIGGINS: I appreciate launching.
MS. FOX: Okay.

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THOMAS D. SPROUT, MAI, CPA,
being previously duly sworn, as prescribed by law, was examined and testified in Case 2015-2331 as follows:

DIRECT EXAMINATION
BY MS. FOX:
Q. Mr. Sprout, you have already identified for the record what's been marked as Appellant's Exhibit B, which is your appraisal report for the Wilmington Pike property; correct?
A. Yes, correct.
Q. All right. Could you please state for the record what your opinion of value was for this property as of January 1st, 2014?
A. $2,055,000.
Q. Okay. Now, we have gone into already a lot of detail through direct, cross, and recross and redirect about the -- all of the details contained within your first report, and a lot of those details are probably similar for this report; is that true?
A. Yes. There's a lot of similarities here, and I'll just touch on the differences.
Q. That would be fantastic. Thank you.
A. This property is located approximately

two miles north of the Stroop Road property. It is on a 1.7 acre site on Wilmington Pike more or less. It was built in 2012. It was -- I think they tore down the previous McDonald's and built a new one. Once again, we get into a situation where McDonald's felt it was a viable location, so they did that. This property exits out to a -- to a traffic light. So it does have a signalized intersection to get in and out of there. Wilmington Pike is a busy road. I appraised the center directly across the street from this property subsequent to writing this report. There is a Skyline Chili across the street, so that was built around -- I think built around 2004, 2003, so it's an older property. It doesn't have a signalized situation as the subject property does here in this case.

Once again, if you look at the aerial, fortunately Google had updated their aerial maps to show the new McDonald's on this location. Once again, you see the long, narrow building type which accommodates their drive-through traffic. As you can also see to the left there on Page 1 the significant amount of parking that this property has. It not only has access to the top there, where you can see where the traffic light is, it also has access -- it

really should be right turn in, right turn out, but I'm sure people make that left turn across those highway lines there, so -- so it does have two access points, but the signalized section is very important. I don't think this property's location is as good as the Stroop Road property. It's still a very good location. I just don't think it's as good, andwith it's slightly larger size there's some mitigating factors why my rental rate for this property, even though it's a newer building by six years, is slightly less than the Stroop Road property, so that being -- keeping that in mind, this site is about 40 percent larger, more or less, than the Stroop Road property, so that kind of comes into play as well. The larger site allows for more parking as well. So the floor plate and the interior of this building, I have the color pictures of the interior on Page 5. A lot of similarities to the Stroop Road property except this property also has a large outdoor eating area that you can see on Page 5, in the bottom corner.

Vacancy, I utilized 11-percent vacancy for this property, did a two-mile radius. You can see on Page 18 you have a similar type of vacancy rate, vacancy drop over the past five years. You can

also see the average asking rents, so we're going to have a similar type discussion from the Stroop Road as far as the asking rents are concerned.

The sales, I utilized all the same sales. The primary adjustments here, as you can see by the chart on Page 29, when we get into land ratio, all of the sales are smaller building plates, but if you look at the site size, the subject's site size is larger than the subject -- or, excuse me, larger than the sales by 20, 30, 50, 70 percent. Now, the land ratios might be a little skewed there just because the subject's size is so large, but it has a lot of parking, which is a big part of a restaurant use.

My conclusion in the sales approach was about I think $50 less on a square footage basis. That kind of comes into play based on this location isn't as good as the Stroop Road property, and it has a slightly larger floor plate than the Stroop Road property, I think was -- so it would be about 10, 15 percent larger. Some consideration was given -- that was built in 2012 versus 2006, but overall you get to the thing I keep talking about, location, location, location. And on Page 30, in the conclusion, I apologize, I obviously was using boilerplates here -- or the same floor print as far as my appraisal is

concerned. That should say $400 a square foot on Page 30 instead of $450 a square foot.

Q. I'm sorry, where are you looking at?

A. Page 30, Conclusion, in the narrative, the second to last sentence. So, obviously, you can see I did the Stroop Road report before I did this report.

Q. Okay. So the second line from the bottom, in the last paragraph should be 375 square feet and $400 square feet?

A. That's correct.

Q. Okay.

A. And that's what's indicated down below there.

Q. Okay.

A. I still haven't written the perfect appraisal yet with no typos. I'll keep working at it.

The rent comps would be the exact same. Once again, my conclusion of rent for this property was $35 versus $38 on the Stroop Road property. That goes to location. I can tell you that the Skyline Chili across the street renegotiate their lease in 2014 to approximately $20 per square foot. That's an older building and not in as good a location, and it

Page 209

has a smaller acreage site size, so that kind of ties into this property having a larger site, signalized interchange, newer building, at $35 a foot; so that kind of all ties together.

My cap rate for this thing, once again, same discussion. A seven cap rate is above all of my cap rates, but that's consistent with what the national average is and goes back to my highest and best use, which would be the same thing, a national, single-tenanted, freestanding user. So I think I hit all the high points.

Vacancy-weighted tax additur, we could go through the same process, we're going to get the same answer. Income approach is the primary indication of value. Sales approach is secondary. My conclusion of value for this property as of January 1st, 2014, is $2,055,000. And I'm sure that the School Board's counsel will hit me for something that I might not have picked up in my quick analysis of this property in comparison to the Stroop Road property. I'm done.

Q. Okay. I think we've covered everything. Did you get to see the interior of this -- obviously, because you have pictures, and you visited them all in the same day?

Page 210

A. That's right, the same conversation. Right, I think this -- was this one -- I can't remember the order. This might have been -- this was the second of the four, I believe.

Q. All right. Very well.

Nothing more from me at this point on direct.

ATTORNEY EXAMINER HIGGINS: All right. Well, thank you very much.

Mr. Bluestone.

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CROSS-EXAMINATION

BY MR. BLUESTONE:

Q. Mr. Stroop, if I was to ask you the same questions --

MS. FOX: Mr. Sprout.

MR. BLUESTONE: I apologize. Thank you.

MS. FOX: It's been a long day.

MR. BLUESTONE: I apologize.

BY MR. BLUESTONE:

Q. Mr. Sprout, if I was to ask you the same questions as I did in my cross-examination with regard to the Stroop Road report, would you give the same answers?

A. Yes. I think that's fair.

Page 211

Q. I want to ask you to turn to Page 40 in this report, and again, I just want to ask you about this question one more time, the average rents, if I've the calculations correctly, is around 85 or 86,000 a year. Looking at the nine -- I'm sorry, the eight -- the eight properties that you list at the top of Page 40, as I understand your report, you're suggesting that McDonald's can afford $100,000 more in terms of rent for this property?

A. Well, if you also look at the comps, you're talking about a floor plate that is larger than all eight of those as well, so it has more square footage to spread the rent over as well as the larger site size. So you can't look at it on an annual basis. You need to look at it on a rent-per-square-foot basis.

Q. And would you agree with me that a larger restaurant would typically rent for less on a per-square-foot basis than a smaller restaurant?

A. No.

Q. Why not?

A. Based on my experience, I've even seen smaller restaurants lease for less because they desire larger spaces, so it goes back to the floor plate that's built and the first generation of the

Page 212

space. So Wendy's has their floor plate. Chipotle has their floor plate. Burger King has their floor plate. Taco Bell has their floor plate. McDonald's has their floor plate. That goes to that special-use scenario as far as the layout of each different national user that's in place.

MR. BLUESTONE: I have nothing further of Mr. Sprout.

ATTORNEY EXAMINER HIGGINS: All right. Thank you.

Any redirect?

MS. FOX: Yes, just because I'm confused. Mr. Bluestone, you mentioned $85,000, but you said Page 40. Previously, when you were discussing that figure, you were talking about the Page 44 cap rate properties, I thought. Is that true or was I confused?

MR. BLUESTONE: I was talking --

THE WITNESS: The first one was Page 44 with the cap rate analysis.

MS. FOX: Okay. So is that -- because Page 40 is actually the rent comparables, I believe.

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REDIRECT EXAMINATION
BY MS. FOX:
Q. Is that correct, Mr. Sprout?
A. Yes. So I guess we just have to determine was Mr. Bluestone talking about the rent comparable averages or was he talking about cap rate?
MR. BLUESTONE: I was talking about the rent comparable averages, so in the first case if I was not clear.
THE WITNESS: You were talking about cap rate in the first case, so in the first case you really were talking about the rent comparables?
MR. BLUESTONE: Yes, exactly, and so if there's some confusion, I apologize.
MS. FOX: Okay.
MR. BLUESTONE: I meant --
THE WITNESS: You meant the rent comps for Stroop and for -- and my answer would be the same about the sample size, the average, you would have to talk about a rent-per-square-foot basis, not an annual rent basis.
MR. BLUESTONE: Okay. I have nothing further.
Thank you for the clarification, Mr. Sprout.

ATTORNEY EXAMINER HIGGINS: Any additional redirect?
MS. FOX: No.
ATTORNEY EXAMINER HIGGINS: Okay. Thank you.
(Witness excused.)
ATTORNEY EXAMINER HIGGINS: Let's go off the record for -- are we going to have a rebuttal?
MR. BLUESTONE: (Nods head.)
ATTORNEY EXAMINER HIGGINS: Let's go off record.
(Discussion off the record.)
ATTORNEY EXAMINER HIGGINS: We're back on the record, and, Mr. Bluestone, has recalled Mr. Weis for rebuttal testimony.
MR. BLUESTONE: Yes.
ATTORNEY EXAMINER HIGGINS: Okay. And Mr. Bluestone will ask his questions relevant to each property and make it clear, so I'll turn it over to you.
MR. BLUESTONE: Thank you very much, Hearing Officer Higgins.
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STEPHEN J. WEIS, MBA, MAI,
being previously duly sworn, as prescribed by law, was examined and testified further as follows:
DIRECT EXAMINATION
BY MR. BLUESTONE:
Q. Mr. Weis, I want to remind you that you're under oath from earlier today.
A. Yes.
Q. Focusing first on the property at 1872 East Stroop Road, I provided you with a copy of the appraisal report prepared by Brian W. Barnes and Thomas D. Sprout; correct?
A. Yes.
Q. And have you had a chance to look at it, look it over?
A. Yes.
Q. And you've given some thought to Mr. Sprout's valuation analysis?
A. Yes.
Q. Can I ask you to share your thoughts, please, with the Board?
A. Sure. I guess from inference and from previous cases we had, talking about special-use properties, where I believe this is not a special-use property and Mr. Sprout believes it's a special-use

property, I believe -- hopefully, I'm not putting words into his mouth -- but on Page 15 of his report, the summary says, you know, in general the property physically "can accommodate numerous commercial uses. In general, the building should continue to be a functional property for restaurant use so as long as it is...maintained."
So commercial users in restaurant uses, it doesn't say fast food, so basically you can -- what he's saying here is that it could be used for a variety of different uses that would be commercial and permitted under the zoning, which he talks about on the next page, Page 16.
On Page 16, in terms of financially feasible, financial feasibility analysis, he uses an overview of retail buildings within a two-mile radius to see if it's feasible, so there he's obviously considering this retail and not special use. He's going out to the market in general for retail for -- to make his application to highest and best use for the property, so it's not necessarily special use from that standpoint.
And I'm just kind of trying to go in order in terms of what I've got flagged he talked about, but on the next page, on Page 17 of his

report -- it looks like getting ahead of ourselves here a little bit, but he does have a survey of retail properties in the area, and the triple net rents in the area in the survey says the average triple net rent in the area within a two-mile radius of the subject property is $10.30 a square foot. He concludes later on in his report that this property is a rent of $38 a square foot triple net. That's almost 3.8 times higher than the average rent, is what he's concluded from in the market standpoint.

Q. And I asked Mr. Sprout about the fact that, on the chart on Page 17, the vacancy rate has fallen precipitously but the net -- triple net asking rent per square foot has also fallen, which seems to be odd to me. Can you perhaps explain what may be happening in the market?

A. Well, if you're asking less, more people they can afford less -- more for rent with the lower rent; therefore, they're occupying more buildings, therefore, the vacancy rate is going to drop. So if you were to market the property for $2 a square foot for -- it would be a hundred percent occupied, no vacancy. The higher rents, you have a much higher vacancy rate for the market. Also --

Q. Excuse me. I asked Mr. Sprout -- I

pointed out to Mr. Sprout that in some of the data in the addendum to the report the number of households within the two mile -- the one mile and I think three-mile radius was declining. Could that also be impacting the asking price for rents?

A. It could be.

Q. Thank you.

A. On Page 17 -- 19 of his report, in terms of the approaches to value that he uses, he, like me, did not use the cost approach, which is, you know, similar. He does talk about when you do a cost approach, you need to measure the physical depreciation, functional obsolescence, and the lack of desirability for any reason of the building, the economic obsolescence outside the property, and he goes on to say, "Considering properties similar to the subject are purchased based on their income potential, this approach to value is not pertinent," which basically is saying that it's not a special use because there are other properties with income potential similar to the property in the market that you'd rely upon.

The sales that he does use, the -- Miss Fox has hammered me on, asking me my sales in terms of whether they have drive-throughs or not, and 57

percent of his comps, four out of seven comps don't have drive-throughs. So to me it's not a big deal, and it's probably not a big deal to Mr. Sprout. We're not required to have drive-throughs. It's kind of a trade-off. If you have a drive-through, you're basically taking up parking spots. So sit-down restaurants, you're going to have more parking and not a drive-through lane, and vice versa; so there's some sort of offset there in terms of that. So using properties with or without drive-throughs, if they're restaurant properties, is probably going to be, you know, from a comparability standpoint pretty decent. Both of us have used properties with and without.

On Page 27, one of his comparable properties, and this kind of relates to, you know, alternative uses, this was a sit-down restaurant, Ruby Tuesday, that's converted to two retail tenants, so there's other uses for the property that can be converted. Obviously, economically they've done it and sold the property.

Q. Many of the improved sales are near highway interchanges.

A. I think we talked about this a little bit in my testimony earlier, about linkages, linkages to highways and employment centers and restaurants

that -- especially in the Miller Lane area I think we talked about specifically have access to the highways. They can draw from a much wider range of potential clients. They can get there in the same amount of time as to driving through the back roads or through city streets, so the population of who you draw from is much larger; therefore, it's much superior when you have interchange access and exposure.

The sales that he uses versus the sales that I used, they were, you know, in most part considerably further away than the local sales in my report, and it was, you know, a little bit pause for concern, not that you can't use them that's out there, but the adjustments are difficult to make and to be reliable on those differences. And I think the major impact or differences that I see in this -- this report that he uses, he concludes to his rental rate at $38 a square foot triple net for the subject property, and he corroborates that with -- well, the rental rates were from outside the market, obviously, but he corroborates that with an analysis of gross sales in the property, and he uses a 6 1/2 percent of gross sales as something that is reflective of being -- supporting that rental rate, and that basically will get you a $38 a square foot rental rate, and I guess the question is he also puts in his report that his value would change if he was provided with the sales in the -- in the store, so it could go up or down based on what his sales are, and real estate doesn't do that, based on sales.

He also has the -- all his rental comparables, they average about $86,000 in annual rent for the stores, and on Comparable 1, on Comparable 1 on his Page 31 of the report, it is a Chipotle on North Main Street, and he calls it "Inglewood." There is no Inglewood, Ohio. It's Englewood, with an "E," so I'm not sure if he understands the market if he doesn't know the name of the town it's in, but with that said, the rental rate that he has in there, the total rental rate of $85,125 a year triple net. In 2010, Chipotle's average store volume was $1.4 million. This equates to a percentage of gross sales on an average store, and you hope that they're building new stores that's more than average, but this 4.3 -- 4.73 percent of sales, much lower than the 6 1/2 percent of sales that he has for McDonald's. With that, the rent in this particular property has a total rent of $85,120. For Stroop Road, which we're talking about, the

amount of total net rentable -- rent, and he has it for $38 a square foot, is $178,000 -- $178,065. This is 209 percent more rent that he's charging to McDonald's because they can support it with their sales than the Chipotle would be on a comparable basis. Now, granted, the store is larger and you're going to have a larger rent, but the store is only 109 percent larger than the Chipotle, and he has a rent that's 209 percent higher. So if everything was apples to apples and no other adjustments were needed except for the size, you'd be 109 percent higher rent on the exact thing, so that's basically a 50-percent reduction in the amount of rent that he should be able to charge on a price-per-square-foot basis here.

MS. FOX: I need to stop because I'm not understanding what you're referencing when you say the $85,000.

THE WITNESS: Okay.

MS. FOX: Is that a number that's in Mr. Sprout's report?

THE WITNESS: It is a number that's calculated from Mr. Sprout's report.

MS. FOX: Can you --

THE WITNESS: You want me to go through the calculation?

MS. FOX: -- explain how you -- where you're getting that?

THE WITNESS: On Page 31, where he has comparable rent. It is the 9208 North Main Street in Englewood, Englewood, Ohio. It is a Chipotle restaurant, and the rental rate he has is at $38 per square foot. $38 times 2,240 square feet --

MS. FOX: Okay. So let me just stop you right there. What you're doing is you're comparing the total annual rate rather than breaking it down to a per-square-foot rate; is that correct?

THE WITNESS: That is correct.

MS. FOX: Okay. All right. Go ahead. You don't need to go through that. I was just trying to --

THE WITNESS: So the calculation is $85,000 a year.

MS. FOX: Right. But you're --

THE WITNESS: Chipotle --

MS. FOX: -- comparing apples to oranges.

THE WITNESS: No.

MS. FOX: All right.

THE WITNESS: We're comparing apples to apples, because Chipotle is a competitor of

McDonald's, and their profits are based on what they sell something for less their expenses, and this is basically saying that McDonald's has to incur 209 percent higher rental expense than a competitor. They're not going to do that. They're going to compete with their competitor and pay something commensurate with what other people are paying. So from that example, the rent being applied in this case here is 209 percent higher than one of its competitors, Chipotle, which doesn't seem reasonable considering that the store is only 109 percent larger; so at 109 percent larger, that's 100 percent lower than the 200 percent you were having. So a downward adjustment, from 209 percent down to 109 percent is a 50-percent downward adjustment, so you adjust the rent down 50 percent or the value down 50 percent. It's just kind of an overall adjustment, and when you do that, his value conclusion on this particular property was $426 a square foot. Because his rent is overstated by 200 -- or 100 percent or 209 percent, depending on your math there, a 50-percent downward adjustment would put this property at $213 a square foot. That's just some math that's there. I'm at $162 a square foot. So there's more adjustments that would need to be made and some of those adjustments would need to be made as well for age, condition, and quality. This is a newer building. So, you know, that's -- 209 percent more is on a newer building, so you have to adjust that down. So there was a lot of adjustments that would need to be made from that standpoint, and this is not the only one.

The other one -- this is -- and it's four -- I'm starting this as being 4.73 percent of the gross sales of your average Chipotle store as a reference to his 6 1/2 percent, so it should be lower. If, you know, Chipotle is doing it at 4.73 percent, McDonald's should be able to do 4.73 percent or maybe even better.

I also looked at all of the rental comps that he has, and the rental comps, except for No. 7 and No. 8, because those were on a gross -- modified gross basis, so the first six that he has on Page 39, I multiplied the rental rate on a price per square foot times the square footage, added it up, divided by the six triple net leases that he has there, and the average rental, annual rental rate of these rent comparables is $86,358. So that tells me that the market is saying on average we can operate restaurants and compete with our competitors if we

pay about 80 -- 80 to $90,000 a year in rental. The $86,000 average divided by the 4,686 square feet of the subject property is $18.43 a square foot triple net. He's at $38. I believe I was at $15.50 a square foot on mine, so other adjustments would need to be made. So from that standpoint he's adjusting all of these rents an average upward of 106 percent versus the average for the McDonald's, the subject property.

The other issue that I had was that on Page 38 of his report he has a rent comparable and he has modified gross rent, and the rental rate is $25 a square foot.

The expenses that he uses on Page 41 of his report, he uses two columns of expenses, and the expenses that would be triple net reimbursed are either going to be $21.72, if you use property taxes at its high value of $14.72 of property taxes, or at the current tax assessed rate, which is higher than my appraised value, but he's got it at $12.60 of reimbursable expenses, and that's on Page 41, in his chart. Well, taking $12.60 a square foot of reimbursables to make the $25 a square foot modified gross rent, you subtract that from the $25, and you're at $12.40 a square foot triple net equivalent.

And this particular property is about a mile away from both subject properties we're talking about here today. So that's $12 a square foot when you make those adjustments.

Q. The former Krispy Kreme?

A. Yes.

Q. About a mile away?

A. Yes. So -- and he has another gross rent in here. It was a former -- it's No. 8 -- excuse me, No. 7, a former Taco Bell that's in the market. It's in the Moraine -- Kettering and Moraine share the same school district, very similar type demographics, and they're at $12.30 modified gross. When I made the adjustment to the Krispy Kreme, it came to $12.40 triple net, so this would even be lower than that, so -- these are the most local, and the rents are significantly lower than what he concludes to. He's using outside the market. He's applying the rents on an overall annual basis, 209 percent higher than some of these comparables. It just leads you to question whether or not those were actually -- the comparables, whether or not those rents included FF&E or personal property, turnkey operations, incentives for the developer to develop the property for them, and they're brand new rental

rates. So I think for that property -- let me go ahead and see if I had anything else, if there were major differences or issues.

Going back to special use, I'm not sure how hard we need to go on this, but on page -- on Page 6 of the report he defines fee simple versus leased fee. I guess this is really just a fee simple versus leased fee argument here, and he defines it, "Absolute ownership" -- fee simple, "Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."

With a -- typically the sales being leased fee, those aren't fee simple transactions, and you'd have to make the proper adjustments to get from leased fee back to fee simple. He defined it as unencumbered, and the way we did the report, we were looking at it as if it was one seller, one buyer per sale, and you could have 100 percent ownership of the property, or on the rental rate you have all the rights to occupied or lease the property, what it would lease for at that particular point if you owned all those rights. So that's an important differentiation in terms of how these things are

handled or not handled. Also --
Q. On that point, can I ask you to turn to Page 28 and look at the table? Can you tell from the table by what amount or what percentage he made an adjustment for the leased fee sales?
A. Because he reconciled his -- and he did a sales comparison approach between $425,000 -- $425 a square foot and $450 a square foot, but he reconciled his final value at $425 a square foot. You make the assumption that when he's making these adjustments to Sale No. 1, which was sold at $436 a square foot, that he made a $10 downward adjustment to get to 426.
Q. But my question, Mr. Weis, is from the table that's contained within his report, can you tell what adjustments he specifically made, each of the sales for the different factors?
A. Well, all the factors, you can't tell specifically what they are.
Q. In contrast, in your report you can actually tell because you put percentages in?
A. Yes.
Q. Thank you. That's what I wanted to ask you.
A. Okay. Now I wanted to expand upon that

and talk about Sale No. 5, which was a fee simple sale. It was $180 a square foot. That sale, in order to get it to the 425 has to be upward adjusted of over 100 percent. Now, Miss Fox has grilled me on it on cross-examination about --
ATTORNEY EXAMINER HIGGINS: Okay. Stop, Mr. Weis, with the characterizations of being asked questions; okay?
THE WITNESS: Okay.
I've been asked on cross-examination about my adjustments, and my adjustments overall on a sales comparison approach range from about 10 percent overall adjustment to 37 1/2 percent overall adjustment I believe in the reports. This is -- we'd have to go over 100 percent upward --
(Discussion off the record.)
THE WITNESS: Sale No. 2, this is a downward adjustment of about 50 percent. Sale No. 4 is a downward adjustment of about 50 percent. So he's got his adjustments anywhere from, you know, a low adjustment of $10 a square foot all the way to 100 percent adjustments on -- so fairly vast adjustments. You can make large adjustments, but when you're making such large adjustments, it's prudent to discuss how you're making those

adjustments, why you're making those adjustments, and show the basis for it. There may be perfectly logical reasons why it is. It's not shown here. I have a hard time discerning what that would be, so -- they're also such a large percentage adjustment that you ask the question is it -- are they comparable.
BY MR. BLUESTONE:
Q. Delaware County is the fastest growing county in the State of Ohio; correct?
A. I believe that's accurate.
Q. And are you familiar with the location of Sales Comp No. 5?
A. I am.
Q. Okay. And how would you describe that location?
A. It's a good location, growing location. There has been some good road improvements in the area, and growth of the population out into the Powell, southern Delaware County area that has been growing pretty rapidly.
Q. All right. Thank you. Anything else?
A. Yeah. I'm not sure I mentioned this, but on Page 15 he stated that functional obsolescence -- has good functional utility as a single-tenant restaurant, not necessarily fast

food --
MS. FOX: I think you --
A. I already talked about it. I already talked about that. I apologize. I think that's -- from that report, I think that's basically everything that kind of jumped off the -- no, it's not. There's more.
The Page 43, he has market derived cap rates, he calls "local," and there's seven of those, and the prices are listed for these -- I'm assuming because most of these -- a lot of these addresses are similar to what he has in his comparables with the other restaurant properties, and the average sale price of these properties is $1,365,000 and change. The average NOI for these properties is approximately 85,000, $84,000. The subject's NOI, that he uses for the subject, is $177,000, I believe, so it's so much larger than these properties in terms of the overall NOI. We talked about the size, adjustments, that sort of thing.
And the other thing, in terms of rate, the cap rate, I know he uses a seven percent cap rate. He tries to derive them from these cap rates, which are long-term leases to credit tenants, which wouldn't be necessarily appropriate, but he also uses

Page 233

a national triple net lease survey which basically comes out with an average of seven percent, and that's included in his addenda, and this goes to special use and goes to the applicability of this cap rate. If you read the national net lease market where he gets his capitalization rates from, it includes capitalization rates for office buildings and for industrial buildings that are triple net leased.

You read on further, and it talks about how the people are paying -- I don't want to misuse his words, but -- it talks about how -- in the triple net investment properties for industrial, that people are paying very low capitalization rates. They're extremely low, which is going to skew his average of seven percent. The retail, if you want to talk about, would be higher. So that capitalization rate of seven percent is, in this particular case, not supported. It should be something higher than seven percent, I think eight percent or eight and a quarter or something like that in my reports. So he's deriving his market capitalization rates from various property types, which basically would indicate that this is not necessarily a special-use property. Also, with the triple net industrial property skewing

Page 234

this to a lower capitalization rate, maybe a higher capitalization rate would be appropriate for retail.

Q. In your review of Mr. Sprout's report for the Wilmington Pike property -- presumably counsel for the school district gave Mr. Sprout a copy of your report. Your report contains, on Page 15, construction cost information and using the county auditor's assessed valuation of the land, indicates that the total cost of -- for the restaurant was $1,317,867. Mr. Sprout, in his report for Wilmington Pike, concludes to a final reconciliation of $2,055,000. He's about $700,000 above what you've indicated was the actual construction costs plus the land value.

A. Are we switching properties at this particular point? Because we were doing Stroop Road and now you're talking about Wilmington.

Q. We are. Yeah, we are. We're going to switch.

A. We're going to switch.

Q. We're going to switch.

A. And go back through -- back and forth. Okay.

Q. So switching to Wilmington Pike, you gave in your report the construction cost information

Page 235

supplied to you by McDonald's, $1,317,867, including the auditor's assessed land value. Sprout concludes to $2,055,000 for the value of that restaurant. Anyplace in his report does he discuss the disparity between these numbers?

A. Not that I saw, no.

Q. Okay. And the numbers that were provided to you by McDonald's plus the auditor's land value, they really are more aligned with your final value conclusion for Wilmington Pike?

A. Yes.

Q. Okay. And are there any other comments that you'd like to make about Mr. Sprout's Wilmington Pike appraisal report?

MS. FOX: Can we clarify that they're different than the comments that have already been raised? We'll assume that any problems with data that's contained in both reports has already been address? Is that --

BY MR. BLUESTONE:

Q. Is that correct?

A. That's fine. Yes, I won't go over those in detail again.

Q. Right.

A. The first thing in -- that I want to

Page 236

point out is that -- we talked about in my testimony the size of the building being 5,118 square feet, which is based on my field measurements and based on a survey provided by McDonald's. Public records has 5,381 square feet, and I was talking about how our number was accurate. Mr. Sprout uses 5,381 square feet, so he uses -- it's a larger building, five percent difference. So when you're applying it to the square footage, you immediately have to take off five percent basically from the value type stuff. I don't necessarily fault him from having that information. It's from the public information, but if he did have my report and looked at my report, you hope that -- we try to reconcile those things --

MS. FOX: I'm going to object. Nobody has established that Mr. Sprout had anybody else's report.

ATTORNEY EXAMINER HIGGINS: That's true. Has anybody --

A. I would hope -- I would hope that he didn't have my report actually, because if he looked at it, he doesn't have mention of the costs that were in here in --

ATTORNEY EXAMINER HIGGINS: Okay.

A. -- the history section and --

ATTORNEY EXAMINER HIGGINS: All right. Since it hasn't been established that Mr. Sprout saw Mr. Weis' testimony, I'm going to ask that we move on -- saw Mr. Weis' appraisal report. Sorry about that.

THE WITNESS: That's okay.

BY MR. BLUESTONE:

Q. Does not measuring the building suggest to you a lack of due diligence?

MS. FOX: Okay. Objection. He stated in his testimony that he did measure and that he found the measurements to be close enough to the auditor's records to rely upon, which is exactly what Mr. Weis testified to last week.

MR. BLUESTONE: I'll withdraw the question.

ATTORNEY EXAMINER HIGGINS: Okay.

A. Differences, this particular property of Wilmington is a newer constructed building, and yet he has a lower rent on this one and a higher rent on an older building. That kind of threw me a little bit.

The average rental rate in this two-mile radius, he shows it as being $9.51 triple net, yet he's at $35 a square foot, over 3 1/2 times higher

than the average. Market participants are going to look at why would I pay 3 1/2 times more than that if I can get on average -- an average building for a lot less, and I'll pay more than the average to build it nice, but I'm not going to pay 3 1/2 times more, is what their market is going to come back with.

Same with the sales, I think all his sales I think were all the same as he used before, so with the adjustments and everything, similar testimony I would give. The rental rates, again at the percentage of -- percentage of average gross sales, and I'd like to be able to back up just a bit because I didn't talk about this, on the Stroop property. The Stroop property is located right next to a Wendy's. The Wendy's has average sales of $1.4 million.

MS. FOX: Objection. Do you have something that shows that? You keep talking about average sales with regard to Chipotle or Wendy's. Is that evidence that's in the record?

THE WITNESS: I don't believe it's in the record. It's my research that -- from quick service restaurants, they rank and provide data on the average sales for the major competitors and --

MS. FOX: Okay. I'm objecting to his

testimony that it's based on facts that are not in evidence.

ATTORNEY EXAMINER HIGGINS: I'm going to overrule your objection, and the Board will afford this portion of Mr. Weis' testimony as to weight.

Continue.

A. And so basically he concluded the $35 a square foot rent or $38 a square foot rent for properties. At 6 1/2 percent of gross sales would have -- would be appropriate based on a $2.7 million in sales. Well, the average store -- and let's say the average store or above average store is next-door, the Wendy's, at $1.4 million. That property can only support, if the square footage was the same, would be $91,000 in annual rent. He's affording these properties 177,000 -- $170,000 and change, I think it is; so it's, you know, 200 percent higher, and so, you know, as a support -- I realize he does it as a support, but his report is saying this is what it is. That lends you to say well, what if the sales are $1.4 million, the support would only be at $15 a square foot or $20 a square foot, where I'm at on my properties. So the Wendy's property right next-door, based if they can sell more hamburgers or less hamburgers shouldn't be valued --

it shouldn't be valued more or less than the other property that's very similar to it next-door.

I believe that from that standpoint all the other information basically is carried back and forth between the two reports, is very similar. I don't have any other comments. All the comments I would have made about the Stroop Road property will basically carry over to the Wilmington Pike property.

Q. Thank you.

I have nothing further.

ATTORNEY EXAMINER HIGGINS: Any cross-examination?

MS. FOX: Yes.

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CROSS-EXAMINATION

BY MS. FOX:

Q. You talked a lot about total rent rather than looking at it as far as a per-square-foot-rental basis when it comes to -- well, primarily the sales break analysis, but with respect to Page 39, the rent comparables in Mr. --

A. Which report are we on?

Q. Mr. Sprout's report.

MR. BLUESTONE: Stroop Road?

Q. Either one, because the comps are the

Page 241

same.

A. The pages are different.

Q. Okay.

A. They were going by one page at one point, but --

Q. 39 on the Stroop Road report.

A. Thank you.

Q. And you're looking at the actual triple net leases there. Did you calculate the average per square foot? Because you talked about the average of total annual income for those properties.

A. I did.

Q. And what was the average per square foot for the ones that were triple net leases, in other words, one through six?

A. I calculated it, but I don't have it -- let me see if I have a note of what that average was. I don't believe -- no, I don't have the -- that calculated. I could do it pretty quick -- quickly.

Q. No. That's okay.

A. The rents on the triple net help maybe bracket it. It's between $30 and 45 -- $46 a square foot basically, and so the average is somewhere in that 30 to $46 a square foot range, probably close to the 35, 36 that he uses.

Page 242

Q. Okay. With regard to Sale 1 that -- I think it was the Chipotle that you talked about. Again, you were discussing, I think with regard to the sales break analysis, the total annual rental rate for this property, but, in fact, the per-square-foot value is, again, $38 per square foot is right in line with what Mr. Sprout used in his report; correct?

A. Yes, that is. And my point was -- talking about the total rent is there are an extreme amount of similarities in terms of developing of a rent for the property. There is the land site. Land sites are very similar in size. The cost to put in a curb cut on a 2,000 square foot building is the same to put in a curb cut on an 8,000 square foot building. The tax --

Q. I'm going to stop you right there.

A. The tax fee --

Q. I'm going to stop you right there.

ATTORNEY EXAMINER HIGGINS: Mr. Weis, I've asked you before when there's an objection --

THE WITNESS: Oh, I didn't hear her object.

MS. FOX: I'm going to ask of the witness -- he answered my question many, many minutes

Page 243

ago.

ATTORNEY EXAMINER HIGGINS: Okay.

BY MS. FOX:

Q. I just wanted to -- I'm just trying to -- it's confusing because we're talking about total rent, annual rent versus a per square foot rent, and I'm just trying to make it clear as far as the per square foot rent. That's all I'm asking.

A. Sure.

Q. Okay. With respect to the -- to the cap rates that were listed on Page 43 of Mr. Sprout's report, which you indicated were local and he indicates were all fast-food restaurants, do you dispute the accuracy of the reported cap rate on that page --

A. No.

Q. -- for those sales?

A. No. They just weren't listed as being restaurant sales, and I made the assumption -- oh --

Q. Up above.

A. It's called fast-food restaurants at the top. And I was just basically -- I assumed they were because many of them were also in the sales comparison approach and they were fast food, so I assumed they all were fast food.

Page 244

Q. Okay.

A. I wasn't --

Q. Okay. With respect to the vacancy data on Page 17, you recognize that that data on that chart includes all of the vacant retail space in the area, which would be far more than fast-food restaurants. It could also include strip malls, big boxes, any type of retail space; correct?

A. Vacancy rate, yes.

MS. FOX: All right. That's all I have. Thank you.

ATTORNEY EXAMINER HIGGINS: Any redirect?

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REDIRECT EXAMINATION

BY MR. BLUESTONE:

Q. Steve, in Sprout's report he refers to a recent development I think of a Target store and a --

MS. FOX: Objection. This is beyond the scope of my cross.

ATTORNEY EXAMINER HIGGINS: I agree.

MR. BLUESTONE: Okay. No. Then I have nothing further.

ATTORNEY EXAMINER HIGGINS: Okay. Thank you.

All right. Thank you, Mr. Weis.
THE WITNESS: Thank you.
(Witness excused.)
ATTORNEY EXAMINER HIGGINS: Any objection to Appellant's Exhibits A and B, Mr. Bluestone?
MR. BLUESTONE: Not beyond my comment regarding what I believe to be a misleading statement of qualifications.
ATTORNEY EXAMINER HIGGINS: Okay. Well, noting your objection, I'm overruling it to the extent that I didn't previously. The Board will afford Mr. Sprout's appraisal reports their due weight.
(EXHIBITS ADMITTED INTO EVIDENCE.)
ATTORNEY EXAMINER HIGGINS: Briefing schedule for both cases, you can file them together or separately, just please make it clear.
MR. BLUESTONE: I'm sorry?
MS. FOX: Meaning one brief or two for the two cases.
MR. BLUESTONE: Not you guys have to get together and do it together.
ATTORNEY EXAMINER HIGGINS: Right. All right. First brief due by -- on or by November 7th,

and a reply due on or by November 21st.
MR. BLUESTONE: Okay.
ATTORNEY EXAMINER HIGGINS: Is there anything else that we need to take care of before we go off the record?
MR. BLUESTONE: No.
MS. FOX: No. Thank you.
ATTORNEY EXAMINER HIGGINS: All right. There being nothing further, this concludes the hearing.
(Thereupon, the hearing was concluded at 4:13 p.m.)

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Thursday, October 6, 2016, and carefully compared with my original stenographic notes.

____
Valerie J. Sloas, Registered
Professional Reporter and
Notary Public in and for
the State of Ohio.

My commission expires June 10, 2021.
(VJS-82103)

TRANSCRIPT 4

The subject property discussed in this transcript is a freestanding, single-user, retail building leased on a 1.209 acre lot, leased to Walgreen's.

BEFORE THE BOARD OF TAX APPEALS
STATE OF OHIO
- - -

Bronx Park South III and :
Lancaster, LLC and :
Fairmont Lancaster, LLC, :
:
Appellant, :
:
vs. : Case No. 2015-973
:
Fairfield County Board of :
Revision, et al., :
:
Appellees. :

- - -

PROCEEDINGS

before Christine Mendoza, Hearing Examiner, at the Board of Tax Appeals, 30 East Broad Street, 24th Floor, Hearing Room B, Columbus, Ohio, called at 9:00 a.m. on Monday, May 2, 2016.

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-4620
(614) 224-9481 - (800) 223-9481
Fax - (614) 224-5724
- - -

APPEARANCES:

Siegel Jennings
By Victor V. Anselmo, Esq.
23425 Commerce Park Drive, Ste. 103
Cleveland, Ohio 44122

On behalf of the Appellant.

Rich & Gillis Law Group, LLC
By Kelley A. Gorry, Esq.
6400 Riverside Drive, Ste. D
Dublin, Ohio 43017

On behalf of the Appellee, Lancaster City Schools Board of Education.

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INDEX
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Monday Morning Session,
May 2, 2016.
- - -

(EXHIBIT MARKED FOR IDENTIFICATION.)

EXAMINER MENDOZA: This is the hearing before the Board of Tax Appeals, State of Ohio, relative to an appeal styled Bronx Park South III and Lancaster, LLC, and Fairmont Lancaster, LLC, versus the Fairfield County Board of Revision, et al., Appellees, having been assigned Board of Tax Appeals Case No. 2015-973. Through the appeal, Appellant challenges a decision of the Fairfield County Board of Revision determining the value of the subject property, Parcel No. 053-10111-00 for tax year 2014.

This hearing is being convened in the offices of the Board of Tax Appeals, on the 24th Floor of the Rhodes State Office Tower, 30 East Broad Street, Columbus, Ohio, on May 2nd, 2016, at approximately 9:03 a.m., before Christine M. Mendoza, Attorney-Examiner for the Board of Tax Appeals.

At this time, will the Appellant's representative please enter his appearance by name, mailing address, and telephone number?

MR. ANSELMO: Yes. My name is Victor Anselmo, I'm an attorney with Siegel Jennings. My address is 23425 Commerce Park Drive, Suite 103, Beachwood, Ohio 44122.

EXAMINER MENDOZA: Thank you. And at this time, will the Appellees' representative present her appearance by name, mailing address, and telephone number?

MS. GORRY: Thank you. May it please the Board, I'm Kelley Gorry, Rich & Gillis Law Group, business address of 6400 Riverside Drive, Suite D, Dublin, Ohio 43017, telephone (614) 228-5822. Thank you.

EXAMINER MENDOZA: Thank you very much.

Mr. Anselmo, as you represent the Appellant in this matter, would you like to begin with an opening statement?

MR. ANSELMO: I would. Thank you.

Briefly, this appeal involves the 2014 valuation of Fairfield County Permanent Parcel No. 053-10111-00, located at 909 North Memorial Drive in Lancaster, Ohio. This property consists of a 13,650 square foot freestanding, single-user retail building on a 1.209 acre lot. Property's leased to Walgreen's.

For tax year 2014, the Fairfield County Auditor assessed a fair market value for this

property at $1,084,660. Board of Education filed an increase case based upon a July 11th, 2014, sale price of the subject property recorded at $5,641,025. At the Board of Revision hearing, Board of Education submitted a deed and an unsigned conveyance fee statement in support of its increase complaint. Board of Revision increased the value of the property to the sale price.

The taxpayer has appealed that decision to this Board, and challenges the increase to the $5,641,025 value. Board of Education relies solely upon the submission of sale documents in support of its complaint. These documents create a presumption of fair market value, but this is a presumption only, which can be overcome by evidence that the sale is not representative of value.

The taxpayer will offer evidence today that will irrefutably demonstrate that the sale price of $5,641,025 does not represent the value of the real estate subject to this appeal. Ohio law was recently amended to clarify that valuation of real estate for tax purposes must be based upon a valuation of the unencumbered fee-simple interest of that real estate. That is a standard set forth in Ohio Revised Code 5713.03 as amended. That amendment

is effective for tax year 2014.

The requirement that real property be valued for tax purposes at the value of its unencumbered fee-simple estate applies whether the value is determined by appraisal or by reference to a recent sale. The amendment recognizes that a sale does not always represent the value of the unencumbered fee-simple estate. For that reason, the amendment also clarified that officials charged with the responsibility of determining tax value are not required to blindly accept a sale price as evidence of value in all cases. Such officials may accept a recent arm's-length sale price as evidence of value only if it represents the value of the unencumbered fee-simple estate.

The taxpayer will offer evidence to prove that the 2014 sale price did not represent the value of the unencumbered fee-simple interest of the subject property. The taxpayer will be presenting the appraisal and testimony of Sara Coers, MAI, of Pillar Valuation Group, who appraised the subject property fee simple as if unencumbered, in accordance with Ohio Revised Code 5713.03. Ms. Coers has investigated this sale, and will testify that it was the encumbrance of the above-market lease to a high

creditworthy tenant which drove the sale price in this matter. Thus, the buyer purchased the lease obligation, not just the fee-simple interest in the real estate.

All of this evidence overcomes the presumption that the sale price represents the value of the unencumbered fee-simple interest in real estate as required Ohio law. The School Board will not submit any evidence to support a finding that the sale reflects the value of the unencumbered fee-simple interest in the subject property, and in the end the evidence will demonstrate that Ms. Coers' value is the only evidence as to the value of the fee-simple interest as if unencumbered of the subject property, and the taxpayer's met its burden in rebutting the sale price and the Board of Education has failed to meet its burden. Thank you.

EXAMINER MENDOZA: Thank you very much.

Ms. Gorry, do you have an opening at this time?

MS. GORRY: Yes. Very quickly. Thank you.

The Lancaster City School District filed this complaint for tax year 2014 based upon a recent arm's-length sale of the property on July 11th of

Page 9

2014 in the amount of $5,641,025, which on our complaint we've rounded to the nearest hundred.

At the hearing before the Board of Revision, the Board of Education presented the conveyance fee statement and the limited warranty deed for the subject transaction. Those have been attached to the Board of Education's complaint and are included in the Statutory Transcript.

At such hearing, neither a representative of the ownership entity or the tenant, Walgreen's, appeared at the BOR hearing to rebut either the arm's-length nature or the recency of such sale. The Board of Revision accepted the sale price, and the Board of Education will be respectfully requesting that this Board affirm that decision.

The arguments regarding the recent revisions to 5713.03 have been recently addressed on a number of occasions by this Board. Perhaps the most applicable here is in the case called Oregon, as in the state, RA Associates v. Lucas County Board of Revision. In that case, the Board considered the sale of a Rite Aid Pharmacy subject to a long-term lease, and there the Board held that the recent revisions do not overrule the consistently held directive from the Ohio Supreme Court regarding the

Page 10

utility of an arm's-length sale for true value purposes when the evidence of such sale is before it. Therefore, based upon Oregon RA Associates, the Board of Education would contend that the sale price here is the best evidence of value.

Thank you.

EXAMINER MENDOZA: Thank you.

Mr. Anselmo.

MR. ANSELMO: Thank you. We'd like to call as our first witness Sara Coers.

EXAMINER MENDOZA: Please come up. Thank you. May I have you raise your right hand?

(Witness placed under oath.)

EXAMINER MENDOZA: Thank you very much.

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SARA COERS,

being first duly sworn, as hereinafter certified, deposes and says as follows:

DIRECT EXAMINATION

BY MR. ANSELMO:

Q. Could you please state your name, occupation, employer, and address for the record?

A. Sara Coers, MAI, I'm a commercial real estate appraiser. I'm senior vice-president of Pillar Valuation Group. My address is 3500 DePauw

Page 11

Boulevard, Suite 1079, Indianapolis, Indiana 46268.

Q. Okay. Ms. Coers, we have a document marked as Appellant's Exhibit 1. Did you prepare this report in connection with this matter?

A. I did.

Q. Okay. You have a copy of it there?

A. Yes.

Q. Okay. And that's marked as Appellant's Exhibit 1. Thank you.

Is that a true and accurate copy of the report?

A. From what I can tell, yes.

Q. Has this appraisal been certified?

A. I've certified to USPAP.

Q. Yeah.

A. Yes.

Q. Can you turn to Page 109 of your appraisal?

A. I find USPAP on 104.

Q. 104, I'm sorry. You have certified it, correct?

A. Yes.

Q. Okay. Thank you. Could you briefly review your qualifications for the Board?

A. They are listed on page -- starting on

Page 12

Page 110 of the report. I'm an MAI, which is a Member of the Appraisal Institute. That's the designation. I am a certified general property appraiser in Indiana and Ohio. I have appeared before this Board and numerous other boards in the past. I've been appraising for approximately 12 years.

Q. Okay. How long have you had your MAI designation?

A. Since 2009.

Q. Okay. And how many single-tenant commercial properties like the subject have you appraised?

A. Between 200 and 250.

Q. Okay. And you state your credentials are included in the addendum of your report, correct?

A. Correct.

MR. ANSELMO: Okay. For purposes of this hearing, I'd ask if the Board of Education would stipulate to Ms. Coers' credentials?

MS. GORRY: Yes, we will.

MR. ANSELMO: Okay.

BY MR. ANSELMO:

Q. Was your compensation for the preparation of this report contingent in any way on

Page 13

the results of this case?
A. No.
Q. Have you had the opportunity to inspect the subject property and form a determination of value?
A. Yes.
Q. Okay. Is your analysis and determination contained in the appraisal report marked as Exhibit 1?
A. Yes.
Q. Okay. What interest in the property did you appraise?
A. The fee-simple interest as if unencumbered.
Q. Okay. Can you define this interest for the Board?
A. It's on Page 15 of my report.
Q. Uh-huh.
A. Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat.
Q. What was the valuation date for this report?
A. January 1st, 2014.

Page 14

Q. Okay. Were there any extraordinary assumptions, limited conditions used in this report?
A. As related to it being a retrospective date of value.
Q. What does that mean?
A. That means that I appraised it for a date in the past, and I inspected in the current timeframe, and I need to make an assumption that it was the same on that date as it was when I visited the property.
Q. Okay. Can you briefly describe for this Board your process for collecting and verifying the data you used?
A. Well, I use every resource that's available to me, including public records, subscription databases, I speak to buyers, sellers, brokers, as many market participants that I can talk to. I try and only use sales that I've been able to verify with a party to the transaction, and all my data is verified through some source such as, you know, like the US Census or some reputable source.
Q. Okay. Is the subject property encumbered by a lease?
A. It is.
Q. And it was encumbered at the time of

Page 15

your appraisal, correct?
A. Yes.
Q. Okay. Have you reviewed the lease?
A. I have.
Q. Okay. When was the lease entered into?
A. March 2003, I think March 21st, 2003.
Q. Okay. Was that before the building was built?
A. Yes. To my knowledge, it was before the land was actually closed upon. It may have been under contract at the point. It closed at the end of March that year.
Q. Okay. To your knowledge, was the lease that is encumbering the subject property ever exposed to the open market?
A. No. It was executed between Walgreen's and one of their preferred developers that they already had relationship with.
Q. How does that work there, if you can explain to the Board just briefly how that works?
A. They have a preferred developer network, and it's just a few people that they'll deal with in each area of the country. And they go to them and they say, "We want a store in this area," or perhaps the developer comes to them and says, "We think we

Page 16

can put a store in this area." They will agree to pay the lease based on what it's going to cost that person to acquire the land, to build it, and then a rate of return that -- and they're willing to sign these leases so that they don't have to deal with anybody else or ever go out to the market.
Q. And, again, this lease was entered into prior to even the building being built?
A. Correct.
Q. Okay. What are the terms of the lease?
A. They are described --
Q. Page 85 of the appraisal.
A. 85 of my report?
Q. Uh-huh.
A. It is a 75-year lease with a 25-year firm term, which means that they have to pay for 25 years, and after which they can elect to terminate their lease.
It has rent fixed at $24.18 per square foot annually for the entire 75-year term, and they also have a percentage rent clause which requires them to pay 2 percent of gross sales less food and prescription items, plus 5 percent of gross sales of food and prescription items. So it's a calculation, and that amount based on their sales over their base

Page 17

rent in excess was what they would pay. I wasn't -- no percentage rents were reported to me, and the tenant is responsible for all expenses.

Q. Okay. In your opinion, is the term of the lease -- you said it's 75 years with 25-year first option, is that above market?

A. Yes. It exceeds the physical life of the building.

Q. Okay. All right. In your opinion, the lease rate -- what did you say it was?

A. $24.18.

Q. Okay. In your opinion, is that lease rate above market?

A. It is based on my research for market comparables that have been actually exposed to the market.

Q. Okay. And the tenant is Walgreen's you say?

A. They are a high-quality tenant. They're considered top-tier national credit.

Q. Okay. And how did you confirm that?

A. There are different rating services, Moody's and Standard & Poor's, that I consult, and in particular I looked them up on Moody's for this report.

Page 18

Q. And you would consider them to be above-market creditworthiness?

A. Absolutely. They're considered the bond of real estate.

Q. Okay.

A. Bond quality.

Q. In our opening statements, we discussed the sale of the subject property that took place on March -- or excuse me, July 11th, 2014, for $5,641,025. You're aware of the sale; is that correct?

A. I am.

Q. Did you investigate this sale?

A. I did.

Q. What steps did you take to investigate the sale?

A. I contacted the buyer. He referred me to his attorney who had brokered the sale and was intimately familiar with it, and I interviewed the attorney for the buyer.

Q. What did you learn?

A. I learned that they had never been to the property, had never been to Lancaster before. They had not considered any physical features of the property. It was for a 1031 exchange. This buyer

Page 19

had a lot of money that they needed to place in a certain amount of time in order to conform to their 1031 exchange requirements, and that they based their purchase price entirely on the security of the investment based on the tenant's creditworthiness. They were purchasing it based on the cap rate to buy this lease to this tenant for this term.

Q. Okay. Can this purchase be described as a leased-fee sale?

A. Yes.

Q. Can you define that for the Board, what a leased-fee sale is?

A. A leased-fee sale is the sale of a property that is encumbered by a lease.

Q. Okay. Can the price paid in leased-fee sale of real estate ever equate to its fee-simple value?

A. It can.

Q. And how so?

A. When the terms of the lease, including the length of the lease, the rent, the expense -- who pays the expenses, if all of the factors of the lease relate to market, then the fee simple and the leased fee of that real estate will be the same.

When that contract begins to exceed

Page 20

those market terms, the contract value rises, but the real estate value stays the same, but that's when the leased fee and the fee simple appear to be unequal.

Q. Okay. In your opinion, does the July 11, '14 sale represent the fee-simple value of the subject property?

A. No.

Q. And why not?

A. Because there are multiple factors to consider. One, the high quality tenant that drove the sale, the above-market terms of the lease, including an above-market rental rate and an above-market lease term. These typically lease for -- retail properties typically lease for five to 10 years, 25 years firm, 75-year total lease term is well above market. And the buyer's motivations were very clear that they were driven solely to purchase this as an investment based on the quality of the tenant, the terms of the lease in place.

Q. And you say you spoke -- that you called the -- you spoke with the owner who referred you to Vinson Friedman, and you note that on Page 19 of your appraisal. He had firsthand knowledge of the terms of the sale?

A. Yes. He negotiated it for his client.

Q. Okay. Excellent.
You address and analyze this sale on Page 19 and Page 20, specifically Page 20 there's an analysis. I'd like to bring it to the Board's attention here. What is the purpose of the analysis that you performed on Page 20 of your appraisal?
A. This is to help break down the sale price into its different components. So to show what portion of the sale price represents the risk premium allocated to a purchase of a Walgreen's leased building on a long-term lease, and then I do a second analysis that shows what that portion of the sale price can be attributed to the above-market rent, them paying more than the market would command if exposed to the market, and I then deduct those from the sale price to show what the fee-simple interest as if unencumbered of that real property is.
Q. Okay. Can you take us through these three -- through these calculations just to explain to the Board so we have it on the record?
A. At the top of Page 20 it says "Risk Premium Analysis," and the first thing I do is I take the annual contract rental income. This is what Walgreen's is paying, not offset by vacancy or expenses, which is what people buy these based on

because they're such diminished risk of nonpayment because of the tenant in place.
I took the market capitalization rate that I determined based on my market data and I've capitalized that, and that indicated value is $3,882,353. If I subtract that from the sale price of $5,641,025, I've isolated a risk premium of $1,758,672 -- $1,758,672.
Q. Okay.
A. The next table is Market & Contract Rent Differential Analysis. This is, again, where I take the annual contract rental income of $330,000, and I deduct my market-based net operating income. So I've taken my market rent less a market vacancy less market expenses and arrived at a market-based NOI. This difference is $185,664.
Again, I take my market capitalization rate and I capitalize the difference, and it results in an indicated leased-fee value above fee simple of $2,184,277.
Q. When you say you take your market capitalization rate, that's the market capitalization rate you determine later in your income approach --
A. Correct.
Q. -- is appropriate for this area and

timeframe, correct?
A. Right, for this property.
Q. Okay. Please continue. Sorry.
A. The third table is the Adjusted Fee Simple Allocation. So the first line is the actual sale price of $5,641,025, and I've subtracted my risk premium from table -- the first table of $1,758,672, and then I've subtracted the indicated value of the above-market rent, that contract rent differential analysis from Table 2, of $2,184,277, and the fee-simple allocation is $1,698,076.
Q. And how does that compare to your final conclusion of value for the subject for 1-1-14 fee-simple valuation?
A. It's within a very small range, it's slightly higher, but it's very close.
Q. Thank you. Okay. Let's move on to your valuation of the subject property. You have a detailed location -- Neighborhood Description and Analysis and submarket analysis beginning on Page 21. Can you briefly take this Board through that and describe the -- you know, the regional summary, the immediate neighborhood in the market area?
A. Okay. This property's located within the Columbus metro area. This area is generally

growing below -- cost of living below the US average. The job market has been expanding.
In general, the real estate market, different areas of it, apartments have been doing very well. Retail and office have been relatively soft. Industrial's done really well. Overall, this region is in a stage of growth and it's stable.
On Page 23 I identify where it's located within Lancaster, which is its neighborhood. On Page 24, I have a description where it's located. The Memorial Drive corridor runs through the length of Lancaster. Further north and west of the subject is the River Valley Mall, which is sort of the center of retail development for this area. This is where the newest community development has occurred.
If you go further southeast, the subject is located in an older area of Lancaster at the intersection with Fair Ave. Most of the retail development in this area was developed 30-plus years ago. This is a suburban location. Overall, it's considered to be stable.
I've shown on Page 26 some demographics for the one- and three-mile radii, as well as Lancaster and Fairfield County. Those are presented on Page 29 in very tiny, tiny little numbers, and

Page 25

then they're bigger on Page 30.

This just basically shows that this area is in a very slight decline, this area of Fairfield County. It's shown from 2010 to 2014 marginal decreases in population. Median household income is generally below the county and the state. Within Fairfield County, the northwest corner, Pickerington, Canal Winchester, these areas are more affluent, they've brought up the county median, but this area of Lancaster is -- was the original center of Fairfield County, and it has lower median household income levels and thereby less money to spend.

I've presented on Page 31 some data about neighborhood and community centers for the metro area, including the outside county submarket of which Fairfield County is a part. It shows that vacancy rates in this area are lower than the Columbus metro overall, but they're still quite high, close to 13 percent.

I've shown traffic counts on Page 32, and this is -- I would consider this to be a moderate traffic area. This is not high traffic by any stretch of the imagination, but this is not a low-traffic area, either.

On Page 33, starting there, I've

Page 26

presented some data from CoStar where I did a survey of retail space within the one- and three-mile radii, and you can see that vacancies have trended downward since the recession and reached stabilized levels.

Net absorption, starting on Page 35, has been good, although if you look at the numbers on the left side, we're not talking about a huge amount of square footage that has been absorbed. So this is a fairly small market with not a ton of deliveries which are shown on Page 37 and 38. But overall, this is an area where the population is fairly stagnant. It's in a slight decline. Median household incomes are on the lower side for this county, and -- but supply and demand are in balance, and it's a fairly stable area to support neighborhood goods and services.

Q. Could you briefly describe the subject property itself?

A. This is an irregularly shaped size, it's almost trapezoidal located on the corner of Memorial Drive and West Fair Ave. It has roughly 1.2 acres. It's zoned commercial general. It has quite a few variances, because this site is quite small for a building of this size. It's not in a floodplain. It has typical easements for this type of development.

Page 27

It has adequate parking, typical site improvements.

Q. Uh-huh.

A. I've presented, you know, plat maps, aerials, et cetera, starting on Page 43.

Q. 43 is -- you've got an overhead picture here which shows the irregular shape of the plot.

A. Correct.

Q. Okay. What about the building itself?

A. This building is 13,650 square feet. It was built in 2003, 2004. It is a very typical retail box, it's concrete block, steel frame. The outside is brick and split-face concrete block. It has a flat roof.

The interior finish is commercial grade vinyl tile and wood laminate and inlaid tile ceiling, painted walls. They've got a stockroom area that is unfinished. This is by-the-book, typical retail construction.

Q. Your square footage is significantly larger than what the County has it on. I think the County has it at 9,000 square feet, I think you made a note of that. But you've got a blueprint drawing on Page 46; is that correct?

A. On Page 46, yes, I have a survey, and I also measured this building to confirm that.

Page 28

Q. So the 13,650 square feet is accurate?

A. Correct.

Q. Okay. Thank you.

Now, can -- you made an analysis as to the highest and best use of the subject. Can you take us through that? That's on Page 50.

A. I can. The first step in a highest and best use analysis is to look at what's legally permissible. This is an area or a zoning that is broadly permissible, it allows retail, office, heavy commercial, lodging. This doesn't eliminate a lot of potential uses.

If we go next to the physically possible, this is located on a corner, it's a very small site. Realistically we're only looking at retail and office that could fit. Considering the frontage of the property, retail is the most likely use.

I concluded that financial feasibility demonstrated that build-to-suit or owner-occupied retail was most likely, but neighborhood retail was financially feasible and was the maximally productive use.

Then highest and best use as improved I considered to be the existing use as a neighborhood

Page 29

retail building.
Q. Thank you. We're going to move on to your valuation analysis, but you spent some time taking us and this Board through your analysis on Page 19 of the sale. At the conclusion of that analysis or based on your finding there, did you conclude that the sale price of $5,641,000 did not represent the fee-simple value of the subject property?
A. I did conclude that.
Q. Okay. And did you determine that a full appraisal using market data was necessary to determine what the fee-simple value of this property would be?
A. I did.
Q. I would like to go through that analysis. What methods of valuation did you use and why?
A. I developed a cost approach, income approach, and sales approach. I thought the cost approach was useful for this analysis, it's not something I would necessarily rely on. Market participants would not necessarily consider the cost approach for a building of this age; so I didn't give it as much weight in the reconciliation, but I did

Page 30

develop it.
I developed a sales comparison approach. There are a lot of owner occupants in this submarket for a retail building of this size, and the sales comparison approach best reflects how they view it if they're going to buy an existing building.
The income approach best reflects the view of investors and speculators who are looking at what this property could be leased at if they expose it to the market at typical vacancy, market expenses, et cetera.
Q. Right. Okay. Well, let's begin with your cost approach. You do a land evaluation that begins on Page 54. Can you briefly take this Board through your land sale comparables and tell us what your conclusion of value was for land?
A. My first land sale was approximately .82 acres, located at 3349 Refugee Road in Columbus. This sold in November of 2013 for just under $305,000 per acre. It was developed with a Dollar General store.
Land Sale No. 2 is located at 1908 North Memorial Drive in Lancaster. It sold in December of 2013. It was 1.65 acres, and it sold for just under $361,000 per acre, and it was improved with an Aldi

Page 31

store.
Land Sale No. 3 is located at 1850 to 1854 North Memorial Drive in Lancaster, sold in April 2014, approximately .728 acres, and it sold for just under $598,000 an acre, and it was improved with a two-tenant strip center with a Five Guy's and a Sherwin-Williams and it's an outlot to a Big Sandy Furniture store.
Q. Your adjustments are contained on Page 60 and -- well, on Page 60, correct?
A. Correct.
Q. Page 61 is an overhead view of where these land sales occur as compared to where the subject's located, correct?
A. Correct.
Q. So you found two sales right on the same street?
A. Right.
Q. Okay. What were your adjustments to these sales?
A. Well, I considered multiple adjustments that I didn't make such as property rights conveyed, financing, et cetera. Any time I didn't make an adjustment, I found that they were to be comparable.
I did consider an adjustment for

Page 32

location for Sale No. 1. It's not located in Lancaster, it's located inside the I-270 loop. It is located closer to Columbus, but it's located in an area with less surrounding and complimentary retail development. It is an area that has a much larger population in the immediate area, but it does have a lower household median income. And I looked at all of the indicated adjustments based on the different factors such as traffic count, and I made a judgment that a 30 percent upward adjustment was appropriate for Sale No. 1.
Then I looked at size as the only other income requiring adjustment, and I did this based on a paired sale between Comparables 2 and 3, and I looked at a rate of change between them and what it would indicate to adjust Sales 1 and 3 upward as sales under one acre tend to have that -- a much higher dollar per acre. So I've adjusted these based on that rate of change. Ultimately, the range of these sales was $335- -- roughly $335,000 per acre up to $478,000 per acre.
I considered the two sales in Lancaster to be the best indication of value, especially Sale 2. Sale 2 is very similar to the subject. It's a larger site -- a larger site, it was very recent, it

Page 33

sold almost on the date of value. Although Sale 3 I did give some consideration because of its location in Lancaster, it did receive more adjustments. Ultimately I concluded a land value of $400,000 per acre, which results in a total land value of $480,000 per acre.

Q. Excellent. Please take us through the remainder of your cost approach.

A. The first step in a cost approach is to determine a base cost. And I used Marshall Valuation Service and I used their Drug Stores Cost Tables. This exact building is the prototype, the example that they gave for the average drug store in Marshall Valuation Service.

So I used the average drug store base cost, which is $98.55 per square foot. I applied a -- an upward adjustment of $3.07 for the presence of sprinklers, which results in a subtotal base cost of $101.62, and then I looked at a series of multipliers.

There is an area of perimeter multiplier which looks at the relationship between the total square footage of the building and the length around it. This is interpolated from the factors directly from Marshall Valuation Service. I looked at the

Page 34

story height multiplier based on the story height that I measured at this property, multi-story, which is one, and then I've got current costs, which brings it up to the date of writing of the report, which is one, and then the local cost, which the closest available was Newark, of .99 and this brings it up to $101.08 as of the writing of the report.

I then have to trend it back to the date of value of January 1st, 2014, by dividing it by that trend factor of 1.021, and I get a total base cost per square foot of $99 even.

Q. Please move on. I'm sorry. Feel free to flow here, Sara, but please let the Board know what page you're on when you're on your appraisal.

A. Sorry, that was on Page 65. At the bottom of Page 65 going on to Page 66, I looked at site improvements. Again, I'm using these based on my measurements or counts in the case of the paving, which is based on a dollar per parking space and the unit cost from Marshall Valuation Service. The first table on Page 66 is the site cost new, and then I've done an age/life depreciation based on my estimated effective age of these improvements and their useful life from Marshall Valuation Service, and develop a total depreciated value of these of $60,995.

Page 35

The next thing I considered was soft costs. These would be appraisal fees, excessive engineering and architectural fees, leasing commissions, et cetera. I determined that 5 percent was appropriate for this location.

I next looked at entrepreneurial profit, or otherwise known as entrepreneurial incentive. Developers' general expectations range from typically 10 to 20 percent. The riskier the project, the higher their return. This is considered, you know, a pretty small project. You know, a large, huge development with condos and retail, et cetera, would be a very risky project. This is a fairly nonrisky project. And I went to the lower end of 10 percent, and found that to be appropriate to attract a developer.

The next thing I did was I estimated depreciation. And I did the breakdown method, so I've looked at short-lived and long-lived depreciation, functional obsolescence, and external obsolescence separately. So on Page 67, my short-lived item, which is the incurable physical deterioration, I don't have any physical -- curable physical deterioration, which would be deferred maintenance.

Page 36

I've broken down these costs, and determined that there's $118,100 of incurable short-lived deterioration. And then I've looked at long-lived deterioration, which takes the replacement cost new of just the building, plus the soft costs for just the building and the entrepreneurial profit for just the building and deducts the depreciation already allocated to short-lived items, which is the full cost of those items up above, and then I depreciate the long-lived items on an age/life basis, and concluded to $346,000 of long-lived physical deterioration.

Q. Let me ask you this: Did you conclude that there was any functional obsolescence?

A. No.

Q. Did you conclude that there was any external obsolescence?

A. No.

Q. So the only depreciation you're using is age/life, correct?

A. Just physical deterioration, correct.

Q. Physical, okay.

Your conclusions of your cost approach are on Page 68?

A. Correct.

Q. So why don't you take us through that.

A. On Page 68 there is a table, and it shows that initial calculation of the -- based on the base cost that I developed and the size of the property. I've added in my depreciated site improvements. I've calculated soft costs based on that total of those two items. I've calculated entrepreneurial profit on the total of those two items, site improvements and the building. I deducted the total of those two physical incurable depreciation estimates that I just talked about. I arrive at a depreciated value of the site and the building improvements, and then I add in the land value. The value indicated is $1,650,000 rounded.

Q. Okay. Ms. Coers, just a point I would like you to make, or an illustration for this Board. Can you tell us what the term "all-in costs" mean?

A. All-in costs are typically used to describe what it costs to acquire the land and building, the building new without any offset for depreciation, obsolescence, anything, it's the total cost to produce the property.

Q. Okay. You've already given us the background of it. So you determined it was $480,000 to buy this land. What would it cost to build it,

soft costs, entrepreneurial profits, add that into it, what are the total all-in costs?

A. Well, it would be this total cost of $1.6 million, and you'd have to add back about 50,000 for the site costs that have been depreciated.

Q. So what would that number be, the total all-in costs, if you can make that calculation?

A. About $1,680,000 before the land.

Q. Okay.

A. And about two-million-two roughly.

Q. So if I can -- if someone can buy the land and build this building brand new -- and that's as of tax lien date 1-1-14?

A. Correct.

Q. -- for 2.2 million, why would they pay 5.64? Why would it sell for 5.6?

A. Well, the sale has nothing to do with replacing utility for the property. They're not purchasing real estate, they're purchasing a bond. Essentially they're purchasing the rights to receive rent from Walgreen's, a high-quality tenant, for a long period of time with very little risk of default. This is a case where contract value greatly exceeds the value of the actual real estate.

Q. Thank you. Can you take us through your

sales comparison approach beginning on Page 69?

A. I can. My first sale is on Page 70. This is a freestanding retail building at 6225 East Main Street in Columbus. It sold in December 2013. The purchase price was for $675,000, and they -- according to the buyer, they did approximately $500,000 in improvements to this building, and they -- it became a Family Dollar. It's approximately 8,100 square feet, built in 2004, on about .86 acres. It was formerly an auto repair shop. It is a metal building.

Sale No. 2 starts on Page 72, and this is the subject. This is -- shows the leased fee sale price, and we've already discussed what the subject is.

Q. So you've -- let me just save you time and save this Board time. Your adjustments to this sale price are all included on Page 19 of your appraisal --

A. Correct.

Q. -- when you went through it?

A. Correct.

Q. Okay.

A. Sale 3 is a former Borders Books & Music that was converted to a multi-tenant retail property,

it's located at 4545 Kenny Road in Columbus. It sold in September 2012 for $1,710,000. It's just over 21,000 square feet, on 2.17 acres, and was built in 1989.

Sale 4 on Page 76 is located at 2014 Baltimore-Reynoldsburg Road in Reynoldsburg. It sold in October 2011 for $975,000. It's just under 10,000 square feet, on 1.2 acres, built in 2007.

Sale 5 is located at 2644 Taylor Road, it's a Gander Mountain, sold in June 2014. It's approximately 31,000 square feet, on 3.19 acres, it was built in 2000 and renovated in 2014.

Q. Before we get into your adjustment, what parameters did you use for your comparable sales when you looked for your approach?

A. I was looking for physically similar properties. I was looking for a sales where I knew that the fee-simple interest had transferred or that I could quantify the difference between the leased-fee and the fee-simple interest to make sure that they were either the same or that I could make an adjustment. I wanted them to be within a certain size range, I wanted them to be single-user properties, and I wanted them to be as close as possible to the subject.

Page 41

Q. Okay. You use both leased-fee sales and fee-simple sales. What adjustments become necessary when using a leased-fee sale in a fee-simple appraisal?
A. I need to make sure that I can equate the leased-fee interest to the fee-simple interest. So if there are considerations for tenant quality such as there are with the subject sale, above-market rent such as with the subject sale, or if there's no consideration of market vacancy or market expenses, which was the case with not only the subject, but Sale 5, I need to be able to make adjustments for that to equate the leased-fee interest to the fee-simple interest.
Q. Thank you. Your adjustments are contained on Page 80 of your appraisal. Can you briefly take the Board through those adjustments?
A. The first adjustment was for property rights conveyed. For Comparable No. 2, which is the subject, I have that negative 69.9 percent adjustment, which is based on that analysis I did on Page 19. So I basically have taken the portion I've allocated to the leased-fee interest and the risk premium and used it to adjust this to the fee-simple interest.

Page 42

In Sale 5 they purchased it without consideration for market vacancy or market expenses. And so I have deducted those, and this is -- equates to that amount that this price would be adjusted downward if that were factored in. I didn't have any other items above that that were considered except for market conditions.
Sale 4 sold in October 2011. This market really started to turn around in mid 2012, and that's when it really became comparable to the conditions as of January 1st, 2014. Looking at changes in pricing and demand, I estimated an upward adjustment of 5 percent for Comparable 4.
For the location adjustment, I did consider the same types of things that I considered in the land sales. I looked at traffic counts, area development, area demographics such as population in the one- and three-mile radii, I looked at median household income, at buying power, and I looked at what all of those factors indicated and I estimated adjustments.
Comparable 1, I estimated a negative 10 percent adjustment; Comparables 3 and 4, I estimated a negative 15 percent adjustment; and negative 20 percent for Comparable 5 because it was located right

Page 43

on the interstate.
The next item I considered was building size. The only sale that I considered requiring adjustment -- because within a certain range within retail there's no inverse relationship between sale price and size -- but with one as large as Comparable 5, 31,000, I felt that there was some inverse relationship, and I estimated a 15 percent upward adjustment.
I've done an age and condition adjustment based on my estimated effective age for each of these properties. And that age and condition percentage of 1.75 percent is based on a 40-year life with 70 percent of the value attributed to the improvements. So this is an annual depreciation rate essentially. So any property that had an older effective age would be adjusted upward to the subject, anything with a newer effective age would be adjusted downward to the subject.
Ultimately, I ended up with a range of about $75 to around $124 per square foot.
Q. And what was your final conclusion for the subject?
A. I concluded to $120 per square foot, which resulted in a value of $1,640,000.

Page 44

Q. And you have a detailed writeup of all your adjustments on Pages 82 and 83, correct?
A. That's correct.
Q. Okay. Why don't you take us through your income approach. I believe it begins on Page 85.
A. I have the decision of the lease that we've already gone through on Page 85.
Q. Uh-huh.
A. My next step was to establish market rent, and so I look at comparables. Those comparables are presented on Pages 86 and 87.
Q. Before we get there, though, you do address the lease in place.
A. Uh-huh.
Q. And you've testified this property is encumbered by a lease. In conducting a fee-simple appraisal, though, how do you determine what rental rate to use?
A. Well, I'm looking for leases that were exposed to the market that have had an opportunity to be based on a negotiation between a willing tenant and a willing landlord, just like a sale -- a market sale would be a willing buyer and a willing seller. So these are properties where they are existing

Page 45

buildings that were exposed to the market and they were able to negotiate a lease at market terms.
Q. What parameters did you use in gathering your lease comparables?
A. Well, I was looking for them to be negotiated around the time of my date of value. I wanted them to be as recent as possible. I wanted them to be newer buildings. I wanted them to be freestanding and larger, and I wanted them to be as close to the subject as possible.
I scoured the area, and I end up with a funnel process. You start with every property in this area, and then you have to funnel it down to what's had actual transactions and what meets your parameters of physical features, and then what are you able to get confirmed, good data for, and this is what you end up with essentially.
Q. Okay.
A. And I feel like they're all really pretty good. They're located in similar markets, they are similar properties, they're recent transactions.
Q. Okay. Pages 86 and 87 have your five lease comparables.
A. Correct.

Page 46

Q. So why don't you take the Board through those briefly, and then discuss your adjustments afterwards.
A. Rental No. 1 is a Family Dollar that's subleasing a Rite Aid. It's located at 2136 Bethel Road in Columbus. It's just over 11,000 square feet, built in 1997. It's a modern design building. This lease was negotiated in February 2012 for $8.05 per square foot net, and the tenants took the space as is.
Rental 2 is an Auto Zone at 3520 Gender Road in Canal Winchester. This is a former Blockbuster. It's just over 6,500 square feet when it was leased. They did add 1,500 square feet, but the lease rate was based on the original square footage because the tenant paid for the addition themselves. This is a 2004 modern building, and it was leased in September 2014 for $15 a square foot net. When I say "net," it means that the tenant is paying directly or reimbursing expenses.
Family Dollar on Page 3 is my -- one of my sale comps. This is the lease that was executed with Family Dollar after they purchased that building and renovated it. It's just over 8,000 square feet, built in 2004, renovated in 2014. It is alow-cost

Page 47

metal building, but it has a lease executed in 2014 for $15.61, and this did include the amortized cost of $500,000 to renovate the building.
On Page 87, Rental 4, with OhioHealth is one of my sale comparables, 2014 Baltimore-Reynoldsburg Road, just under 10,000 square feet, built in 2007. This is a former Cord Camera building. They performed $300,000 in improvements, the tenant did, with an allowance from the landlord to convert this to a -- it's kind of like a clinic -- a medical clinic, you know, where you can just stop in. It's leased for 17.50 a square foot net, and the lease date was 2012.
Rental 5 is Gander Mountain, lease at 2644 Taylor Road, also one of my comparables, 31,000 square feet, built in 2000, and this is, again, a modern building. The lease was from 2014 and was for $11.35 per square foot net, and this was a new lease for an existing tenant.
Q. And your adjustments are on Page 88?
A. Yes.
Q. Okay.
A. The first thing I did was I removed any amortized tenant improvements that were built into that rate, which is the second line where on Rental 3

Page 48

I've subtracted $6.17, and Rental 4 I have subtracted $3.01 to get to what it would be to lease the building as is.
I've looked at market conditions adjustments. Again, for those early 2012 leases I have two of them, Rentals 1 and 4. I've estimated that 5 percent upward adjustment like I did with the sales, because that was prior to the market really turning upward, then I've adjusted for location using the same methods that I've used in the past two analyses that I've discussed.
I did do an upward adjustment for construction for Rental 3, which is based on the difference in cost between that style of building, this is the metal building and the style of building that the subject is. Then I've done an age and condition adjustment, again, based on those same parameters I discussed before, and I've done some size adjustments.
Again, I adjusted Rental 5, which is one of my sales, upward 15 percent, and I also adjusted Rental 2 downward 10 percent, because it's such a small building it would have an inverse relationship between rent and square footage.
The range I ended up with was just under

Page 49

$8 all the way up to $12 a square foot.

Q. What did you -- well, you have some pictures of your comps on Page 90 to 91.

A. Correct.

Q. But what conclusion did you make from market rent?

A. I concluded that Comparables 1, 2, and 4 had the best market exposure and were the most physically similar, and I ultimately concluded to a rent of $11.50 per square foot net.

Q. Okay. Is there any additional revenue that you add to that in your income approach?

A. I reimburse the insurance expense so that a vacancy can be deducted from it, because it would have to be paid by a landlord in times of vacancy. So there's a small deduction there, but that is the additional income.

Q. Okay. And what did you determine for vacancy and collection loss?

A. Well, I cited the REIS data that I had talked about in my neighborhood approach for neighborhood and community shopping centers, and then I looked at my CoStar surveys of vacancy and availability.

Around this time, they both within a

Page 50

one- and three-mile radii strongly supported a range of 6 to 7 percent, which is a stabilized vacancy and collection loss, and I concluded to 6 percent.

Q. Okay. All right. So any other expenses that you threw on here?

A. Well, I considered market expenses. Like I said, the lease terms in the market are net; so these tenants would be paying directly a lot of expenses, but the landlord would be responsible for fixed expenses in times of vacancy. So I included insurance, which is a fixed expense, and as I said before, reimbursed it. I based this on the typical range I see within all of the data within my files of 25 cents per square foot.

Then the only other expense would be the landlord's management expense. And single-tenant properties tend to have a lower management burden, especially if the tenant's paying a lot of their own expenses or reimbursing them. However, there is still -- a prudent owner would still want to be compensated or would pay someone to manage this property to do the accounting, handle if the property needs to be leased or if something needs to be done and billed back to the tenant, et cetera. So I applied a 2 percent management fee, which is --

Page 51

results in a 22 cents per square foot expense which is at the low end of what I see in the market.

Q. So take us through your pro forma on Page 97 of your report, and tell us how you conclude a net operating income.

A. Okay. My -- at the top is base rent, which is based on that $11.50 per square foot times the 13,650 of square footage of the subject, and it results in a potential gross income of $156,975. I've added in that insurance that I've reimbursed at $3,413. I ended up with a total potential gross income of $160,388.

I deduct my vacancy and collection loss of 6 percent, which is $9,623, and I come up with an effective gross income of $150,764. Then below I have deducted that same insurance expense of $3,413 and the management fee of $3,015. Total operating expenses of $6,428 deducted results in a net operating income of $144,336.

Q. Okay. And just briefly take the Board through how you determine a capitalization rate that you're going to use against that net operating income.

A. Okay. I have quite a bit of experience appraising properties like this, and I've interviewed

Page 52

a lot of brokers and talked to them about what plays into some of these cap rates. One of the most important things is the lease terms, how long they have remaining on their lease.

So I tried to focus on leased-fee sales, because inevitably they're leased fee if there is a cap rate derived of similar properties where the tenant is as close to market levels. It's not a vastly superior tenant necessarily, but if it is that they have a closer-to-market term remaining.

If you have, for example, one of my comparables, Sale 3 is a Walgreen's with only eight years remaining on its lease. The lower the lease term gets when it gets within the market range, then the cap rate tends to gravitate towards the market, too. So I have looked at sales that I can comfortably see where they relate to the market.

So Sale 1 is obviously the subject, and we've already discussed the terms of this sale. It was a 1031 exchange. There have been empirical studies that say that sometimes they pay up to 15 to 20 percent more for these. I've already interviewed the buyer, I know -- and have done the analysis, so I know that there was some above-market terms there that they were considering.

Page 53

Sale 2 is a Family Dollar in Reynoldsburg. It had a lease -- a nine-year lease that it was three years into, so it had six years remaining, and it sold at 8.15 percent based on gross rents, no consideration for vacancy or expenses. Family Dollar is an unrated tenant, but they are considered to be of good quality. They're sort of the next tier down from a Walgreen's.

Sale 3 is a Walgreen's, at 6320 East Main Street in Reynoldsburg, and this sold with eight years remaining on its initial lease term for 8.94 percent based on gross rents.

Sale 4 is Page 100, is the resale of one of my sale comps on a leased-fee basis once it was leased to OhioHealth with a 10-year lease in place to a medical tenant, high-quality medical tenant for 7.65 percent based on gross rents.

Sale 5 is another one of my sales, the Gander Mountain, that sold on a cap rate of 8.13 percent based on gross rents. This was a sale that had been flipped. The people who sold it had purchased it when there was little remaining time in the lease, negotiated a new lease with Gander Mountain and then resold it.

Sale 6 was a Family Dollar, also one of

Page 54

my earlier comparables that resold leased fee, and it sold 8.22 percent based on gross rents. And this was for a newly executed lease that had an above-market component.

I also looked at -- on the bottom of Page 100, I looked at different market surveys, Realty Rates, RERC, PwC, formerly known as the Corpus Report. And I looked at the range that they indicated, and ultimately concluded to an overall rate of 8.5 percent was appropriate for this property in this location.

Q. And you included a tax additur?

A. I did, because I had not included a tax expense.

Q. Okay.

A. So I have taken the tax rate, multiplied it by the assessment ratio of 35 percent, and then multiplied it by the landlord's portion of the taxes during times of vacancy, which would be 6 percent of that, and it results in a tax additur of 0.0934 that's added to that cap rate. So ultimately I end up with a loaded cap rate of 8.95 percent.

Q. When you apply that cap rate to the net operating income you determined, what did you come in for a value conclusion?

Page 55

A. $1,680,000.

Q. Okay. Excellent. That's on Page 101?

A. Correct.

Q. Okay. So your reconciliation of your three approaches is included on Page 102. Can you take us through that?

A. I reported all of the values. They were in a fairly narrow range from one-million-six-forty to one-million-six-eighty. Ultimately, I think the cost approach would not be considered very relevant by market participants because of the age of the building.

Sales comparison approach has good data, good quantity and quality of data and represents how owner occupants, who are at least half of this market, would view this.

The income approach represents how even visitors, speculators would view this property, they'd be looking at what can I get for this property if I lease it at market levels, market vacancy, market expenses. So ultimately I relied on both the sales and the income approaches, and concluded to a retrospective market value of the fee-simple interest as of January 1st, 2014, of 1,660,000.

Q. What was your land/building breakdown of

Page 56

that?

A. Well, the land is $480,000 of that based on my land valuation, leaving 1,180,000 for the building.

Q. Okay. Ms. Coers, does that -- what is that final breakdown, if you take your conclusion of value, a-million-six-sixty, what does that equate to as a per-square-foot value land and building merged?

A. It's around 100 and I think 21, 22 dollars a square foot.

Q. Okay. 121.61 as I have. Does that sound accurate to you?

A. Okay. That sounds correct.

Q. Okay. Did you investigate the submarket of the subject property to see how your conclusion of $121.61 a square foot compared to other commercial properties in the area?

A. Yes.

Q. How does it compare?

A. It's assessed much higher than the other properties that are similarly assessed. So they're assessed as retail stores, they're newer properties, or they're in the immediate area. They tend to be assessed well below half of what the subject is assessed at.

Q. When you're saying what the subject's assessed at, what is the subject assessed at currently? It's on a -- the auditor's assessment based upon the Board of Revision's conclusion is $5,641,125. What does that come to per square foot land and building merged?
A. It's -- I think it's about $388 a square foot.
Q. Do you want to make that calculation? Do you have a calculator?
A. No. Let me get my calculator.
Q. Okay.
A. Oh, it's $413 a square foot.
Q. Okay. So based on a valuation of the sale price, the per-square-foot value is $413 a square foot?
A. Correct.
Q. How does that compare to other commercial properties in the area?
A. Well, I looked at some of the newer properties, there's a Mattress Firm and a Verizon, an Aldi, they're all assessed in the same category, newer properties. They're --
Q. One second here. I'm going to ask you to mark this.

(EXHIBIT MARKED FOR IDENTIFICATION.)
BY MR. ANSELMO:
Q. I'm sorry to cut you off.
A. That's okay.
Q. I'm handing you a document marked for purposes of identification as Appellant's Exhibit 2. Do you recognize this document, Ms. Coers?
A. Yes.
Q. Okay. What is this document?
A. It's a tax comp map that I made. It just shows -- it's kind of an aerial shot of the area that shows the assessments on a dollar-per-square-foot basis of some of the different retail properties immediately surrounding the subject, although the two that I found are much older because this is in an older area, and then some newer properties more similar in age up by the River Valley Mall.
Q. Okay. Can you tell the -- take us through the ones and what the per-square-foot values were?
A. If you go to the top of the map, there's a Verizon that's 4,500 square feet, 2009, so this is a newer smaller building, it's assessed at $214 a square foot. This is pretty much the high end of the

market for assessments.
There's a Pier 1 Imports of about 9,000 square feet, 1994 construction, at $104 a square foot; a Mattress Firm, again, around 4,500 square feet, 2012 construction, at $138 a square foot; an Aldi, just under 17,000 square feet, 2014 construction, at $90 a square foot; and then if you go down to the bottom of the map near the subject, there's a Goodwill right by it, it's a much older building but it's been renovated, and it's at $45 a square foot for around 14,650 square feet; then there's a Payless Shoe Stores which, again, is quite small, under 4,000 square feet, 1970 construction, at $90 a square foot.
Q. So is it a fair statement to say that the Fairfield County's Board of Revision's conclusion of value of $413 a square feet for the subject puts it at significantly higher than surrounding properties in this area?
A. That's true.
MR. ANSELMO: Okay. I don't have any further questions for Ms. Coers.
EXAMINER MENDOZA: Thank you.
Do you have any cross-examination for this witness?

MS. GORRY: Yes, just a couple. Thanks.
- - -
CROSS-EXAMINATION
BY MS. GORRY:
Q. Let's turn to the highest and best use analysis on Page 50. Okay. So according to the definition of the highest and best use by the Appraisal Institute, you cited it there at Page 50, when you're doing an improved highest and best use analysis, won't you necessarily have to consider potential alternative uses of the property so that you are able to determine which achieves the highest value?
A. That's the process of highest and best use, yes.
Q. Okay.
A. You start with everything possible and go from there.
Q. Okay. And so on Page 51, tell me what your highest and best use is as improved.
A. The existing use.
Q. Okay. And so did the -- the recent sale of the property -- of the property as it existed, did that figure at all into your highest and best use analysis?

Page 61

A. Well, when I'm looking at highest and best use, I'm looking at the use of the property, not necessarily user, and so this is -- my conclusion is that this should be neighborhood retail. This should be essentially the building that it is, which could serve a number of users. And, of course, the user that sold in place with the tenant in place, I've had to consider its above-market factors in my analysis.

Q. Okay. So you are -- you're determining that it would be converted to a different use, then, for your highest and best use analysis?

A. No. This is a neighborhood retail building that's used by a neighborhood retail tenant right now.

Q. Okay. And so the fact that your valuation is $123 a square foot, but the property recently sold for $413 a square foot, that's no problem for your highest and best use analysis?

A. Well, I'm appraising the fee-simple interest, and I have to be able to differentiate between contract value and real property value, which is what my highest and best use is based on. My highest and best use is for a use, not a user. So I'm looking at if they could put anything on the site, what would they put on it, probably something

Page 62

close to this building that could be used by any number of retail users.

Q. Okay. But any number of retail users, excluding a first-generation national pharmacy, correct?

A. Well, they would be in the pool of users, but they are -- some of them, such as Walgreen's, have a certain credit rating and terms on their leases that place them well in excess of the fee-simple interest as if unencumbered.

Q. Okay.

A. So I have to factor that in.

Q. So the rent, for example, that a Walgreen's or a CVS or a Rite Aid is willing to pay, that's not relevant to market rent?

A. No, because it's never exposed to the market. It's based on what they're willing to pay for -- essentially turnkey. They have these preferred developers build them a building that they can walk into and start operating. Sometimes it includes personal property in their lease rates. And I know from interviewing a lot of these developers that these costs are developed beforehand, before the building is even constructed, so they've estimated on the high side what these costs will be so that they

Page 63

don't get burned. So they tend to be inflated costs that these leases are negotiated based on.

Q. Okay. And so when Walgreen's negotiates with its preferred developers, it doesn't matter what the actual cost of the construction is, it doesn't make a business decision to attempt to reduce its bottom line?

A. They never consider what it's going to cost for anyone else to build this property. They never look at what the -- the market might pay for rent. This is -- there's no real negotiation.

The preferred developer basically comes to them and gives them a number, and they look at their business analysis and see if they can afford to pay it. They are not in the business of making prudent real estate decisions, they're in the business of operating a retail store. So if they can afford the rent within their business analysis, they're willing to pay it because they want to be in that location.

Q. Okay. I'm sorry. So you're suggesting that Walgreen's is not a sophisticated real estate owner?

MR. ANSELMO: Objection. That's not what she's stating.

Page 64

MS. GORRY: She just said Walgreen's isn't a prudent real estate investor. I'm sorry. Where does that come from?

EXAMINER MENDOZA: I'll overrule the objection.

THE WITNESS: What I said was that they're not in the business of making prudent real estate decisions. So they're not worried about whether they get the best rent, they're worried about getting into the location they want to be in and making sure they can afford the rent.

So, you know, if they had said, well, we think we can pay X amount for this property, it's amazing how the developers tend to come in right at that maximum dollar because Walgreen's is willing to pay it. So there's not a lot of negotiation involved.

Now, I've seen a lot of these properties when they are leased at market levels and they do get exposed. You know, if Walgreen's were to go into an existing building, there would be a negotiation involved and there would be market exposure, but this is -- they basically have a -- one relationship with one person. There is no exposure.

It's not like when municipal entities

Page 65

build a building and they have to expose it to multiple contractors. This is just a one-to-one relationship with people that they know.
BY MS. GORRY:
Q. Okay. And then so you made a comment that Walgreen's would never consider what someone else's costs would be to build the building. What someone else's are you referring to?
A. I'm saying a different contractor.
Q. Okay.
A. So they would go out into the market and say, "Our preferred developer says they can build it for us. Who can beat their price?" They don't do that.
Q. Okay. But Walgreen's in selecting a developer, let's go to page -- I think you have a real nice discussion of this on -- what did I do with it? Okay. On Page 67. Tell us about the unique and special features involved in the -- in specifically this property.
A. They -- properties like this can have awnings, glass atriums that's at their front, they might have a special brick design. This one doesn't. They might have, you know, functional utility only for that user.

Page 66

In this case, this matched the prototype for the costs that I was using, so I didn't consider any functional obsolescence, but it can occur.
Q. Okay. And do these buildings have a typical layout? Does Walgreen's construct them all -- or lay them out all the same?
A. It's built like almost every other freestanding retail store I've ever been in, Walgreen's or not. It's an open floor, and then they've got a -- the Walgreen's will have a little desk area at the back for the pharmacy, and then they've got a storeroom, but it's a fairly generic building.
Q. Okay. Does it have a drive-thru for the pharmacy?
A. Yes.
Q. Okay. And then -- so, I'm sorry, the -- so you're concluding here that this Walgreen's -- with this statement on the bottom of Page 67, you're concluding that this doesn't have any of those special features?
A. I said there was no functional obsolescence from them.
Q. Okay. And then let's go to -- let's go to the sales. Were you not able to locate --

Page 67

A. Can you tell me what page?
Q. Oh, I'm sorry. I'm on Page 80 and 81.
Were you not able to locate any sales in Lancaster?
A. No. This is like that funnel process I was talking about. Lancaster's a fairly small market, and if you look at what has sold and what fits my parameters of being freestanding that has sold, you know, where I can quantify what the fee-simple allocation is or that sold fee-simple interest, and it sold within a specific timeframe, there was just nothing that fit my physical parameters.
Q. Okay. But you did search in Lancaster first?
A. Exhaustively.
Q. Okay.
A. I drove up and down and wrote down every building I thought might be a possibility and then tried to track everything down and, yeah, I spent a lot of time --
Q. Okay.
A. -- trying to find something there.
Q. Okay. I'm curious as to your cap rate, Sale 3 on page -- sorry -- yes, on Page 99, the one

Page 68

that's out on Main Street in Walgreen's -- I'm sorry, that's a Walgreen's out on Main Street. Why did you not use that sale in the sales comparison approach?
A. I was looking at sales that I thought were more appropriate. I know that there is a component here of risk premium because it was a Walgreen's. There is a lower remaining lease.
For my sales approach, I was trying to use primarily fee-simple sales if I could or leased-fee sales where there was very little difference or a difference I could quantify between the leased-fee and the fee-simple interest.
Q. Okay. What was the sale price per square foot of that Walgreen's?
A. I don't have it in front of me.
Q. Okay.
A. It's in my file.
Q. Okay. And, I'm sorry, by fee simple, you mean vacant?
A. Well --
MR. ANSELMO: Objection. I don't -- can you -- I don't think that's a clear question.
BY MS. GORRY:
Q. Okay. When you were selecting your sales, you were assuming that Walgreen's would not be

occupying the premises, they would have vacated it, and thus it would be selling to a party in the open market as vacant, correct?
A. Can I just clarify what you're asking?
Q. Sure.
A. I'm not following whether you're -- I thought you were asking about the comps, and then now it sounds like you're asking about the subject.
Q. Yes. I'm sorry. But in selecting --
A. I was looking for sales --
Q. -- your comparable sales?
A. -- for the sales that were the fee-simple transfer, which for an owner occupant who would give the most consideration a building that they could occupy, the physical features, they wouldn't be necessarily looking to buy a building that they can't occupy for 20 years. So if I were going to value this as vacant, I'd have to do an adjustment to account for leasing or selling costs. This is just the sale price being able to purchase that building, so to me that equates to market levels of the fee-simple interest.
Q. Okay. And then -- shoot, I had a follow-up, but I forgot it.
Okay. Let's move on. Let's go to the

income approach on 86. I can't remember, was that the -- I think Family Dollar's been there a long -- quite a while before that. Was that the -- was that a renewal of the sublease between the owner and Family Dollar?
MR. ANSELMO: No. 3?
MS. GORRY: I'm sorry, Rental 1.
MR. ANSELMO: Rental 1, okay.
THE WITNESS: From what I know, this was a -- like a newly executed lease, so maybe they had reached the end of their initial term.
BY MS. GORRY:
Q. Okay. So Rite Aid's original lease term -- I'm sorry. So it was not a sublease, it was a new lease with just the owner and Family Dollar?
A. No. It was my understanding that was still a Rite Aid sublease, but that --
Q. Okay.
A. Maybe the time had come for a new -- like, the next term or whatever.
Q. An extension perhaps?
A. Yeah.
Q. Okay. And then, let's see -- actually I don't think I have any questions. Let me check back, though.

(Pause.)
Q. Then, I'm sorry, one final question: On Page 100, the -- tell me about, for example, the Realty Rates Investor Survey, freestanding, national cap, what's included in those?
A. That is their survey of all freestanding buildings that have sold either with a cap rate or a cap rate expectation that through their survey it's national, it does not distinguish between different tiers.
Q. Okay. So that would include, let's say, for example, both a Walgreen's and a Family Dollar?
A. Yes. It would include the full range of investment quality; so it would range from the top to the very bottom.
Q. Okay. And then the second one there, the Winter 2014, first-tier neighborhood, does that refer to -- does the first tier -- and I'm not familiar with this -- does that refer to the community location or the tenant?
A. This, as defined by RERC, it's actually footnoted, it's new or newer quality construction in prime to good locations.
Q. Okay.
A. This is a national rating, so these are,

like, the very best locations.
Q. Okay. And then so second tier, again, refers to the location and condition?
A. Correct. It's defined as aging, former first-tier properties in good to average locations.
Q. Okay. That's all the questions I have. Thank you.
EXAMINER MENDOZA: Thank you.
Do you have any redirect?
MR. ANSELMO: Just briefly.
- - -
REDIRECT EXAMINATION
BY MR. ANSELMO:
Q. I just want to make this clear, Page 67 of your report, in your cost approach, you determined there was no functional obsolescence in conducting your cost approach for the subject property; is that correct?
A. Correct.
Q. Okay. You -- you were asked the question about -- I can't remember exactly how it came across, but valuing this property as if vacant. Did you value the subject property as if it were vacant?
A. No. I was trying to value it based on

Page 73

market terms; so market occupancy, market lease, market expenses, et cetera, for the -- the income approach and for the sales approach, that it would be able to essentially go from market occupancy to market occupancy.

As I said, if I valued it as vacant, I would have to account for leasing or selling costs and lower the value.

Q. Okay. You were asked about a -- you used a cap rate from an actual sale of a Walgreen's, but were asked why didn't you use that sale in your sales comparison approach. Had you used that sale in your sales comparison approach, you would have had to make similar adjustments as -- you know, to that sale?

A. Yes.

Q. Okay. That you didn't on the subject then?

A. Correct.

Q. Finally, you were asked a question on the highest and best use regarding -- and I think you defined it as you're using it -- you were looking at use, not user.

A. Uh-huh.

Q. And I don't know if you were able to

Page 74

give a full answer to that. Is there anything you felt you needed to respond to on that?

A. I don't think so. I mean, the highest and best use is for use of the building, in this case it would be a neighborhood retail building, and that could lease to any number of tenants as a brand new building. I don't want to confuse use and user here.

Q. Okay.

A. I want to specifically focus on the real property at hand, not the real property with one specific user involved.

Q. Thank you.

MR. ANSELMO: I didn't have any further questions.

EXAMINER MENDOZA: Thank you very much.

Do you have anything further, Ms. Gorry?

MS. GORRY: No. Thank you.

EXAMINER MENDOZA: Thank you very much for your testimony today.

THE WITNESS: Thank you.

EXAMINER MENDOZA: Mr. Anselmo, at this time would you like to move Appellant's Exhibit 1 and Appellant's Exhibit 2 into evidence?

MR. ANSELMO: I would.

EXAMINER MENDOZA: Ms. Gorry, do you

Page 75

have any objection?

MS. GORRY: No, none.

EXAMINER MENDOZA: We will accept Appellant's Exhibit 1, which is a copy of the appraisal report, and Appellant's Exhibit 2, which is a photograph indicating other retail properties, into evidence.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER MENDOZA: Mr. Anselmo, you would like to give a closing statement?

MR. ANSELMO: I would rather -- are we going to do post hearing briefs?

MS. GORRY: I would prefer.

MR. ANSELMO: Would it be easier if we just skipped the closing statements and do post hearing briefs?

MS. GORRY: I would do that.

EXAMINER MENDOZA: How long are we looking for briefs?

MS. GORRY: Couple weeks on my end is fine, a little longer.

MR. ANSELMO: Yeah. If we could get it -- I was going to ask for 60 days, but -- you know, because you have to get the transcript in, and I want to look at that. Would that work? I don't

Page 76

know how you like to do it, Your Honor, if you want to do simultaneous or back and forth.

EXAMINER MENDOZA: We could do simultaneous. I think 60 days is a little long for the Board. Could we do initial briefs by June 6th? Would that be -- that's just over 30 days. Do you want Monday, June 13th?

MR. ANSELMO: Yeah, that would work.

EXAMINER MENDOZA: Okay. So we'll do initial briefs will be due Monday, June 13th; and replies, if any, will be due one week later on June 20th.

MS. GORRY: Super. Thanks.

MR. ANSELMO: Thanks so much.

EXAMINER MENDOZA: There being nothing further, this hearing is now concluded.

(Thereupon, the hearing was concluded at 10:32 a.m.)

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CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, May 2, 2016, and carefully compared with my original stenographic notes.

____
Carolyn D. Ross,
Registered Professional
Reporter and Notary
Public in and for the
State of Ohio.

My commission expires April 3, 2019.

(CDR-80874-Bronx)

TRANSCRIPT 5

The subject property discussed in this transcript is a freestanding building containing in excess of 50,000 square feet used as a fitness facility. This is the BTA transcript in the *Terraza 8* case, decided by the Supreme Court in *Terraza 8, L.L.C. v. Franklin County Board of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415.

BEFORE THE BOARD OF TAX APPEALS

STATE OF OHIO

- - -

Terraza 8 LLC,	)	
Appellant,	)	
vs.	)	Case Nos. 2015-279
Franklin County Board	)	2015-280
of Revision, et al.,	)	
Appellees.	)	

- - -

Hearing Room C
State Office Tower
30 East Broad Street
24th Floor
Columbus, Ohio 43215
Wednesday,
September 30, 2015

Met, pursuant to assignment,
at 8:55 o'clock a.m.

BEFORE:

Carrie C. Young, Attorney-Examiner

- - -

APPEARANCES:

ON BEHALF OF THE APPELLANT:
Todd W. Sleggs, Esq.
Sleggs, Danzinger & Gill Co., LPA
820 West Superior Avenue, Seventh Floor
Cleveland, Ohio 44113
(216) 771-8990 Fax: (216) 771-8992
toddsleggs@sdglegal.net

ON BEHALF OF THE COUNTY APPELLEES:
(No appearance)

ON BEHALF OF THE APPELLEE HILLIARD CITY SCHOOLS BOARD OF EDUCATION:
Richelle L. Thoburn, Esq.
Rich & Gillis Law Group, LLC
6400 Riverside Drive, Suite D
Dublin, Ohio 43017
(614) 228-5822 Fax: (614) 540-7476
rthoburn@richgillislawgroup.com

ALSO PRESENT:
Jim Williamson, Chairman
Ohio Board of Tax Appeals

INDEX

- - -

- - -

PROCEEDINGS

- - -

Wednesday, September 30, 2015
Morning Session

- - -

Thereupon, Appellant's Exhibits 1 through 4 were marked for purposes of identification.

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THE EXAMINER: This is a hearing before the Board of Tax Appeals, State of Ohio, relative to two appeals styled Terraza 8 LLC versus Franklin County Board of Revision, BTA Case Nos. 2015-279 and -280.

These cases are being heard in Hearing Room C in the offices of the Board of Tax Appeals, 30 East Broad Street, 24th Floor, on September 30, 2015, at approximately 8:55 a.m., pursuant to assignment before Carrie C. Young, Attorney-Examiner for the Board of Tax Appeals.

The subject cases are appeals from decisions of the Franklin County Board of Revision relating to the subject property for tax years 2013 and 2014.

At this time, will the property owner's

counsel please enter an appearance.

MR. SLEGGS: Thank you. May it please the Board, my name is Todd Sleggs, and I am here on behalf of Terraza 8 LLC. Our office filed the notice of appeal on their behalf. Our office address is 820 West Superior Avenue, Seventh Floor, Cleveland, Ohio 44113, and our telephone number is (216) 771-8990.

THE EXAMINER: Thank you.

And at this time, will the Board of Education's counsel please enter an appearance.

MS. THOBURN: Thank you. Richelle Thoburn of Rich & Gillis Law Group, LLC, 6400 Riverside Drive, Suite D, Dublin, Ohio 43017; telephone number is (614) 228-5822. And I am here today on behalf of the Appellee Hilliard City Schools Board of Education.

THE EXAMINER: Thank you.

And I would just like to note for the record that there is no one present on behalf of the County Appellees.

Mr. Sleggs, at this time, would you like to make a brief opening statement?

MR. SLEGGS: Just very briefly.

This is a 2013 and 2014 tax year appeal

out of Franklin County. The case originated through the filing of a complaint by the Appellee Board of Education for the tax year 2013, which was heard by the Franklin County Board of Revision on January 6, 2015. Since the County had already conducted the 2014 update, they exercised continuing jurisdiction over the tax year 2014; and in their decision made a determination for tax year 2013 in response to the School Board's complaint, and then also the tax year 2014 since they had already completed the update at the time that the Board of Revision heard the complaint.

We filed two notices of appeal, one from the tax year 2013 determination and one from the tax year 2014 determination, and the two appeals were consolidated by the Board for purposes of this proceeding.

Subsequent to the filing of the notice of appeal, we did file witness and exhibit lists in both of the cases, and identified Patricia Costello as our real estate appraiser, and subsequently filed her report with the Board and opposing counsel on August 3rd. And today we intend to submit her appraisal report and testimony in support of our appeal to the Board.

THE EXAMINER: Okay. Thank you.

Ms. Thoburn.

MS. THOBURN: Yes, very briefly.

We agree with opposing counsel's recitation of the facts; but, additionally, at the Board of Revision hearing, counsel for the Board of Education was present. Counsel did present a deed and convenance fee statement for a transfer of the subject property. There was no appearance on or behalf of the property owner at that hearing, so there was no testimony at all with someone with firsthand knowledge of the sale to rebut the sale.

As a result, the Board of Revision properly increased the value of the property to the transfer price for tax years 2013 and 2014. We believe that, with no evidence of the record with anybody with personal knowledge regarding the transfer, the transfer has not been rebutted and this Board's decision should affirm the sale price of the property.

Thank you.

THE EXAMINER: Okay. Thank you.

Mr. Sleggs, you may call your first witness.

MR. SLEGGS: Thank you. I'd like to call Patricia Costello to the stand.

MS. THOBURN: And before we start with the testimony, I guess I should note an objection for the record. Since there has been no testimony rebutting the sale of the subject property, we believe it's improper to consider or present any appraisal evidence. The Board cannot get to appraisal evidence until the sale has been rebutted.

THE EXAMINER: Okay. Thank you.

Mr. Sleggs, any response to that?

MR. SLEGGS: Just very briefly.

As the Board is aware, Revised Code 5713.03 --

Patty, you can sit down if you want.

MS. COSTELLO: Okay. I wasn't sure it was okay.

MR. SLEGGS: Revised Code 5713.03 was amended in early 2013 to direct the county auditor to assess the fee simple value of the real estate as if unencumbered. And the Ohio Administrative Code rules under the income approach in 5703-25-07(D)(2) direct appraisers to look at not just contract rent, but also current economic

rent. And we believe that the amendment of the statute in 2013 and the directive in the Ohio Administrative Code make it a appropriate for this Board, or any board -- board of revision throughout the state, to consider appraisal testimony when there's been a sale of the property to determine whether the sale reflects the fee simple value of the real estate.

And what we did in this case, and the evidence will show, is we requested Ms. Costello to look at the lease that was in place at the time of the sale and opine as to whether the lease reflected market rent as of the valuation date in the appeal. Her conclusions are contained in the report. And once that determination was made, we had her proceed with a fee simple appraisal that was filed with the Board.

So I understand Ms. Thoburn's objection, but I believe that the evidence that we're submitting today is appropriate under the change in the statute.

THE EXAMINER: Okay. Your comments are certainly noted for the record. I will reserve ruling, and the Board will make its determination in our final decision in consideration of your

Page 10

comments and the testimony presented here today.
You may proceed.
MR. SLEGGS: Thank you.
THE EXAMINER: And I need to swear you in. Would you raise your right hand.
(Witness placed under oath.)
THE EXAMINER: Thank you.
You may proceed.
MR. SLEGGS: Thank you.
- - -

Page 11

PATRICIA COSTELLO
of lawful age, being first duly placed under oath, as prescribed by law, was examined and testified as follows:
DIRECT EXAMINATION
BY MR. SLEGGS:
Q. Ms. Costello, I'm handing you a document that's been marked as Appellant's Exhibit 1. I'm going to ask if you can identify it for the record.
A. Yes. This is an appraisal report that I prepared --
Q. Okay.
A. -- for you.
MR. SLEGGS: And would you like -- I know we filed a PDF copy, but if you want that one --
THE EXAMINER: Sure.
MR. SLEGGS: I did offer Ms. Thoburn a copy, as well.
I have an extra copy if you'd like one to follow along.
COMMISSIONER WILLIAMSON: (Nods head.)
BY MR. SLEGGS:
Q. Ms. Costello, your appraisal -- do you have a copy of the report --

Page 12

A. Yes, I do.
Q. -- on the stand there with you?
Thank you.
Your appraisal qualifications appear as the very last two pages of the appraisal report that's been marked as Appellant's Exhibit 1. Are there any changes or additions to your qualifications as they appear on those pages between the time that you prepared the appraisal and your testimony here today?
A. No.
Q. Okay.
MR. SLEGGS: I know that Ms. Costello has testified before the Board in other cases. And rather than go through her qualifications, I would just ask for a stipulation from opposing counsel as to her qualifications as a real estate appraiser.
MS. THOBURN: We will stipulate to your qualifications as they are contained in the report.
MR. SLEGGS: Thank you.
THE EXAMINER: Thank you.
BY MR. SLEGGS:
Q. Ms. Costello, the appraisal report

Page 13

contains a summary of facts and conclusions. It's an unnumbered page, but it's the fourth page in from the front of the report.
In order to give the Board a flavor for the property that we're going to be discussing in your appraisal, could you briefly summarize the nature of the real estate and improvements that you valued in the appraisal?
A. Yes. This is a property that's on Hilliard Rome Road in Columbus. It is on a 3.41-acre site. It has somewhat limited frontage, it's a little difficult to see from Hilliard Rome Road. It's zoned CPD, commercial planned development, and it's a legal conforming use.
The Auditor's office lists the square footage as 35,178 square feet, but they also indicate that it's a one-story structure. In reality, it is a two-story building with extensive mezzanine space that overlooks the first floor. The property owner has provided 54,261 square feet, which includes the mezzanine space, which is very functional. And the size is consistent with the size indicated in the first amendment to the lease. So that is the size that we've utilized.
Q. The fifty-four-thousand- --

A. Correct.

Q. -- two-sixty-one?

A. Yes. That is what was utilized in the income and the sales comparison approach.

It's mostly open space on the first floor. It has carpeting and stain-sealed concrete flooring. And then the mezzanine area is accessed by several stairways. It did not have an elevator, which, frankly, I found a little surprising in, you know, not meeting ADA requirements. But the mezzanine area is -- there are some demised areas, but it is primarily carpeted.

Q. You have some photographs in the addendum to the report, and I don't want you to spend a lot of time on them, but I'd like to just go there very briefly since we're talking about the description of the property, and just kind of have you touch on what sections of the property are shown.

A. There are photographs of each side of the building. There is a photograph of the parking area. You can see that the asphalt is getting a little bit worn, but is still functional.

There's, you know, the reception desk and

reception area. There is an unused room that's next to the reception area.

I apologize. When we take these pictures, we try to be very diligent and not get any employees or clients in them, so sometimes they're a little -- not as descriptive as we would like them to be.

There's an office -- office area that's on a raised platform with a couple of demised offices. There is the spinning room, which that was kind of dark. I did not inspect the men's locker room; I only inspected the women's locker room. They have really beautiful, you know, wood lockers. And there is a separate workout area for -- for each of these where it would be gender specific; you know, you would be in the women's locker workout area or the men's.

And most of the rest of these are just pretty generic pictures. You can see in the basketball court that there are some chairs sitting there. The manager wasn't exactly sure when the issue arose with the basketball court, but there -- the floor is bowed where those -- where those chairs are.

And then there's -- there are restrooms

also on the second floor and pictures of the workout areas. There's a storage room. It's a pretty typical sort of office/retail building.

Q. Okay. And in the appraisal itself, the assignment, as I understand it, was to determine the fee simple value of the property?

A. Yes.

Q. Okay. Now, there was a lease in place, and I know that you discuss the lease on Page 20 in the appraisal report. Did you also review the lease that was in place at the property as part of this appraisal assignment?

A. Yes, I did.

Q. And what were your findings with respect to the lease that was in place at the property?

A. It's my understanding that this lease was basically a financing mechanism. It --

MS. THOBURN: I just need to object to this. I don't think she was personally involved in the negotiation of the lease. Again, we have no personal -- or, testimony from anybody involved with the property owner to testify with firsthand knowledge regarding this information.

THE EXAMINER: Your objection is noted for the record. However, I will allow you to

testify as to your understanding and how that plays out, then, within your report.

THE WITNESS: It is my understanding that -- that this lease was negotiated back in 2007, which was a vastly different economic climate than we have now. That it was based on the cost of constructing the property, the land, the improvements, and a fee to the developer.

I didn't do a lease analysis for 2007, but it appears to me to be above market, even at that time. You know, we consider these leases, but they're -- they're not what we would consider market rent leases, they're not negotiated in the marketplace with what we consider to be a back-and-forth I -- I offer you this rent, the landlord says no, this is what I want, I'll give you these kind of tenant improvements if you pay this much rent. These are just solely based, from what I can determine, on the cost of development. And I believe that some of the equipment may also have been included in this.

BY MR. SLEGGS:

Q. Now, in your appraisal, you're valuing the property as of January 1 of 2013 and January 1 of 2014. Was the market as you found it in your

Page 18

appraisal report different than the market would have been back in 2007 when that lease was entered into?

A. Well, as I said, I didn't specifically do a rent study for 2007, but the economic climate in 2007, we were still in the boom. Nobody really saw the recession seriously impacting values and rents the way it ended up doing so.

Q. Okay. Now, we'll get into it a little bit later in your testimony, but as part of your appraisal report, did you make a study for what market rent for the property would have been as of January 1 of 2013 and January 1 of 2014?

A. Yes, I did.

Q. Okay. And, again, we'll get to how you got there. But as I see on Page 31, was it your conclusion that market rent would be $11 a square foot as of those valuation dates?

A. Yes.

Q. Okay. Now, I want to go back and touch on one other thing relative to your valuation of the fee simple interest of the property. You talk about the ownership history on Page 2 in your appraisal. And as I noted to the Board in my opening statement, this case came to be because of

Page 19

a February 8th, 2013, transfer of the property.

Were you aware of that when you prepared your appraisal?

A. Yes.

Q. And what weight did you give that in your valuation of the fee simple interest in the property?

A. I -- I looked at it and I looked at the lease. Typically, in the central Ohio market, a retail lease is three to five years. I mean, if you can get somebody to sign a seven-year lease, you are considered to be ahead of the game. If you can get somebody to sign a ten-year lease, you will throw anything at them to get that.

This is a 20-year lease to a national tenant. And most of the tenants in this market are not necessarily national retail tenants. There are some, but a lot of those own their own properties.

So the fact that it was such a long-term lease and it was a national company, I think, drove that purchase price. I don't think if that was leased to a local company on -- on a five-year lease that you would have seen anywhere near this kind of purchase price.

Page 20

Q. Now, the -- you know, you -- are you familiar with the term "leased fee"?

A. Yes, actually, I am.

Q. Okay. And what does leased fee mean?

A. Leased fee is when, basically, the property owner has given away a portion of his rights to the property, he is giving them to the person who is occupying the space, and he has a leasehold interest and they have a leased fee interest.

Theoretically --

Q. Or the landlord has the leased fee interest?

A. Yes.

Q. Okay.

A. Yes.

Q. And then what --

A. They're --

Q. -- what interest does the tenant have, just so the --

A. Leasehold interest.

Q. Okay. Go ahead.

A. Theoretically, if a lease is at or near market, the value of the property should be very similar to the fee simple value.

Page 21

Q. The leased fee value?

A. Yes, the leased fee value would be very similar to the fee simple value if everything is at market. The expenses are market, the lease rate is market, if, you know, vacancy is reflected accurately, they -- they should be very similar.

Q. Okay. So since you're determining the fee simple value in your appraisal, what weight did you give to the February 2013 sale of the property?

A. If I were valuing on the leased fee basis, I would have given it weight. But I'm valuing a fee simple value and this lease rate is above market, it's on a verylong-term lease. I -- I didn't accord it great weight in my analysis.

Q. Okay.

A. I considered it, but did not accord it great weight.

Q. Okay. And did your determination of market rent later on in your appraisal affect your decision to, you know, affect the weight that you gave to the February 2013 sale?

A. Yes, it did.

Q. Okay. We've talked a little bit about

where the property is located. You have a section called "Economic Overview of the Market Area" that begins at Page 5. I don't want to spend a lot of time in this section of the report unless you feel that there is something important in here to the Board's understanding of your analysis later on in the appraisal.

A. I -- I guess the only comment that I would make is that, technically, the property is located within Columbus, but it is very heavily influenced by the Hilliard market, and that's a good market. I think it enhances the value of the property to be associated with that market.

Q. Okay. We have talked a little bit about the site. You've got a more detailed discussion of the site that begins at Page 10 in the appraisal and then a picture of the plat map on Page 11.

I know you talked a little bit about the fact that the visibility of the site from the road isn't that great. Could you just comment on that as it relates to the plat map on Page 11?

A. Yes. You can see the -- the entire frontage of this parcel has been developed with outlots. So -- So it is -- it is difficult to see

the property. Additionally, I will point out that, although the subject is a separate parcel, it is part of a larger structure. It is actually physically attached to a Target and a strip center.

Q. Okay. We've talked a little bit about the improvements, and you've got a more detailed discussion of the improvements that begins at Page 12 and 13.

Are there any other features of the property that you think the Board should be aware of in order to understand your valuation of the property?

A. Not particularly, other than what we've gone over. I will say that it -- you know, the property has been very well maintained. The only deferred maintenance that I noted was the bowing in the floor of the gymnasium --

Q. Okay.

A. -- the basketball court.

Q. And just -- I know that we have already touched on this, but Page 14 shows the foundation sketch. And based upon your earlier testimony, this foundation sketch doesn't capture the mezzanine space that you talked about --

A. Correct.

Q. -- earlier?

So when the Board is looking at this section of the appraisal relative to your analysis, you're actually valuing the mezzanine space as part of the rentable area of the property?

A. I am. It's fully functional. It's as functional as the first-floor space, which is, you know, not always the case with mezzanine space.

Q. Right.

A. But this is finished comparably to the first floor.

Q. Thank you.

The next section in your report before we get into your approach of the value is your highest and best use analysis. What were your findings and conclusions with respect to the highest and best use of the property in your appraisal?

A. It's basically a single-tenant building. And it would be difficult to use it for -- as a multi-tenant building. Additionally, there'sa problem with there not being an elevator. And so the stairways are sort of in the middle of the

building, which would make it also more difficult to demise it for multi-tenant use. It's a single-tenant building and I think it has, you know, an equal -- equally as retail or office. I can see a high-tech firm going into a building like this and using it as office space. Alternatively, I could see somebody like, I don't know, maybe Dick's or somebody going in and leasing space like this or owning space like this.

Q. Okay. And that -- those conclusions are summarized in your findings with respect to highest and best use?

A. Yes.

Q. Okay. I want to move now into the valuation section of the report.

You did an income approach that begins on Page 19. How did you go about valuing the property under the income approach?

A. We utilized CoStar to -- and there's a chart on Page 20 that shows the properties that were included in this study. Itried to get properties that were constructed from 2000 forward so that they were newer, and from 10,000 to 100,000 square feet because the subject falls just about in the middle of that.

Page 26

And on Page 21 you can see the asking rents. And for '13 and '14, they were just above $10 a square foot. And these are asking rents, these are not actual rents.

I also included leases that start on Page 22. I tried to, you know, do strong retail locations and newer properties. The Gander Mountain lease on Taylor Road is the renegotiation of a lease. And I would point out that this is becoming more and more common; that even though leases have an option price for the next five years or the five years after that, tenants almost always are renegotiating these right now because they were generally done in more favorable economic climates.

Q. So Gander Mountain was probably in this property and then they renegotiated the lease that you're showing commencing on October 1st of 2016?

A. Correct.

Q. So they're in the property as we're sitting here today; and what you're showing here is what their renegotiated lease rate will be when October 1st, 2016 --

A. Correct.

Q. -- rolls around? Okay.

Page 27

A. Yes. The building was actually constructed for them originally.

Q. Okay.

A. Circuit City in Polaris, this is one of the prime retail locations. This building sat vacant for four years after Circuit City left. That's how long it took them to re-lease it. And they had to give $150,000 or 4.28 a square foot to entice a tenant in there. And this is a very local company, it's a father and son, and it is a bowling lane and restaurant.

Q. And that's on Page 24?

A. Correct.

Q. And the lease rate for the initial term which started March 1st of 2013 is $11 a square foot?

A. Yes.

Q. Okay.

A. Hobby Lobby is the third lease comp. It is also in the Polaris area. Although this was constructed specifically for Hobby Lobby, it was not -- the lease rate is not based on the construction cost; it is a negotiated lease rate.

I verified this with, actually, the company I was with prior to this, Bob Weiler is

Page 28

the developer of Polaris, and they constructed this building for Hobby Lobby.

There is another Hobby Lobby lease, Buckeye Parkway.

Q. And that's Comp No. 4 on Page 28?

A. Correct.

Q. Okay.

A. Again, this is a negotiated lease. This is part of a larger multi-tenant building, like the subject.

Q. And that -- that particular property is very close in size at 56,054 square feet?

A. Yes.

Q. Okay.

A. And like the subject, it's -- it is -- although it's a separate parcel, it is part of a larger building.

Q. Okay. And that's shown on Page 29?

A. Yes.

Q. Okay. Now, which -- just so I know, can you just point out on Page 29 where the Hobby Lobby is? I mean, my eyes are not too bad, but I can't read the print on the middle piece there.

A. On the very right-hand side of -- and this is the second exhibit -- that's the movie

Page 29

theater, and then there is sort of a little pass-way, and then Hobby Lobby is attached to the larger building that's anchored by Target.

Q. Okay. So is it -- is it this --

A. It's the second structure from the right.

No.

Q. Second structure from the right. So it's this one?

A. Yes.

Q. Okay. Got that.

A. And then there's sort of a smaller strip center, you can see it doesn't have the depth that the Hobby Lobby store has. And then Target is the anchor on the left of the exhibit.

Q. Okay. Thank you.

So you looked at the asking rents and then you looked at these leases. What were your findings and conclusions based upon that data for market rent as of January 1 of 2013 and January 1 of 2014?

A. I went pretty much almost to the top of my range at $11 a square foot because the subject is a nice building, it's a new building, and it's in a good location.

Q. Okay. You needed to consider vacancy and

collection loss and other expenses as part of your income approach. What were your findings and conclusions with respect to those aspects of the income approach?

A. I utilized the same survey that I referenced previously from CoStar to look at vacancy. And vacancy was low in this market, even, you know, as they were coming out of the recession. So I stabilized vacancy at 3-1/2 percent and I did an additional factor of 2 percent for collection loss. Any ancillary income is basically reimbursement of operating expenses, so ancillary income is equivalent to reimbursable operating expenses.

On Page 33 there is a chart with some expense comparables. I concluded to 3.55 a square foot for the reimbursable expenses, and there were some minor expenses that were not reimbursable, and I just stabilized those at 2 cents a square foot.

Q. So if we go to Page 34, this is your pro forma income and expense statement for the subject property?

A. Yes.

Q. And just to your point about ancillary

income, when I look at ancillary income of 192,627, you know, that's kind of a wash because you're getting reimbursed for that up top, and then it's coming out at the bottom under reimbursable operating expenses at the same number, 192,627?

A. Yes.

Q. Okay.

A. And to be honest with you, when vacancy and collection loss is this low, you could have thrown almost any number in there and it would have just washed out. But I tried to base it on the expense comparables.

Q. Okay. So once you determined what the income and the expenses are and you came down to the net operating income on Page 34, what was the next step in your income approach?

A. We have to select an appropriate capitalization rate. And first we look at sales. And Sales No. 1 and 2 in my sales comparison approach were bought for owner occupancy, so they can't provide an overall rate.

Comparable Sale No. 3 transferred twice on the same day. And this is a pretty interesting sale because the first sale indicates an overall

rate of 9.5 percent. And this is basically the transfer of the fee simple interest in the property based upon income in place at the time of sale. This is a lease that was almost at its end.

The other sale, which it actually occurred on the same day, although there was a large negotiation process that occurred between the times that these two prices were negotiated, is an overall rate of 8.1 percent. And this overall rate reflects the added value of a ten-year lease signed by the existing national tenant.

Q. And that's discussed -- I don't want to jump too far ahead in the report.

A. Yes, there's a -- there's a whole discussion.

Q. But Comparable Sale No. 3 is discussed on Page 44 in your appraisal?

A. Yes.

Q. And in the Comments section, you discuss the two transfers and the cap rates that are shown --

A. Yes.

Q. -- in the two transactions?

A. Yes. And the sellers from the

original -- well, they would have been the buyers from the original sale -- had to pay the tenants $400,000 to sign this long-term lease. And I just think that's -- shows the strength that tenants have in this market currently.

Q. Okay. So you had that information. And then what other market data did you consider in determining your cap rate?

A. There is a -- Sale No. 4 had a cap rate of 10 percent. And the lead tenant, Golf Galaxy, had vacated the premises, but they are continuing to pay the rent.

Comparable Sale 5 provided a cap rate of 7.1 percent, but this is an office building occupied by a national tenant on a long-term lease. We also used PricewaterhouseCoopers, which used to be called Korpacz, and we also used RealtyRates. And I concluded to an overall rate of 9.5.

Q. Okay. And that's summarized -- the RealtyRates and Korpacz are shown on Page 35, as well as your conclusion of 9.5 percent?

A. Yes, but it's called Pricewaterhouse -- -waterhouseCoopers now.

Q. Okay.

Page 34

A. It's not called Korpacz anymore.

Q. All right.

A. And then on Page 36, the tax additurs are very similar for both years, and those are just added to the 9.5 overall rate. And I didn't see a big fluctuation in rental rates, vacancy rates, or values between 2013 and '14, so the value is the same for both years.

MR. SLEGGS: Okay. And I would just note for the record that the County Auditor's assessment for 2013 was the same, that will be -- that's reflected in the record, and the Board of Revision decision was the same for both years. So I think Ms. Costello's approach is consistent with what's in the record with respect to the assessing authorities.

BY MR. SLEGGS:

Q. I just want you to touch on one thing on Page 36. In terms of the tax additur, are you just including a provision for real estate taxes for the period of vacancy, that 5.5 percent that you used in the income approach?

A. Yes, only the vacancy rate is applied to that.

Q. Okay.

Page 35

A. Because that's -- that's what the owner would be responsible for if the property were vacant.

Q. Okay. So the --

A. Otherwise, he's being reimbursed for taxes.

Q. Okay. And so that's why we see the calculation at the top of Page 36 where you show the effective rate for 2013 and '14 times 35 percent, and then you're just applying 5.5 percent of the cap -- of the real estate tax additur in your cap rate?

A. Correct.

Q. Okay. So what was your conclusion for the property fee simple as of January 1 of 2013 and January 1 of 2014?

A. The income approach provided a value of $5,650,000.

Q. Your sales comparison approach begins on Page 37. How did you go about valuing the property under the sales comparison approach?

A. I looked for sales of properties that were as new as I could find in the same general size range of the subject, as close as I could. It's -- The subject, quite frankly, is a little

Page 36

bit of a sticky wicket size-wise because we've got sales of things that are over a hundred-thousand square feet and sales of things that are 10- to 30,000 square feet, but there are -- there are not a lot of sales that are in this exact size range.

But we looked at the market. I tried to find sales that were in good retail locations or good office locations, and then they're adjusted appropriately.

Q. Now, Page 39 you have a chart at the top that identifies the five sales that you considered, and then also the adjustments that you made. There are details of each of the sales that begin at Page 40. Could you briefly touch on each of the sales that you considered, and then we'll talk about your conclusion of value?

A. Sure. Comparable Sale No. 1 is located on Britton Parkway. This is a pretty strong retail location that was -- although this is in Columbus, it is more influenced by the Dublin market. There are a lot of big boxes on this street; Wal-Mart's there, Kittle's Furniture is there. There are some restaurants. And this is a building that was constructed in 1996.

And the building was purchased for owner

Page 37

occupancy. They told me that there were no major repairs, but they were instituting cosmetic changes so that the interior will reflect their own identity. And it will be occupied by Comfy Couch, which also has a location on Morse Road in the Easton market.

Q. Okay. And that would be -- you've identified that as a fee simple sale?

A. Correct.

Q. Okay. What about Sale No. 2 on Page 42?

A. This is in a very strong retail corridor, the corner of Powell Road and U.S. 23. It was vacant at the time of purchase. It used to be occupied by Specialty Golf. And it has been converted to a cosmetology school. And this is a fee simple sale.

Q. Okay. The next sale is Sale No. 3 and the discussion appears on Page 44. Could you briefly summarize that sale?

A. Yes. This is the same Gander Mountain building --

Q. Okay.

A. -- that I discussed in the income approach. This was one of the comparable leases. And it has good visibility from Interstate 70.

Page 38

Gander Mountain has been in the building since it was constructed. And the details, which we've gone over already, included, you know, the tenant being offered $400,000 to stay in the building and sign a new lease. And the lease was negotiated between the purchaser and Gander Mountain.

Q. Okay. And then the first sale is the sale that you utilize in your analysis here, the sale on June 25th of --

A. Yes.

Q. -- 2015?

And you have a notation there, based upon the short remaining term of the lease, that it was a fee simple sale.

A. Correct.

Q. Okay. The next sale, which is Sale No. 4, is discussed on Page 46. Could you briefly describe this property and the sale?

A. This sale is driven, actually, by the Golf Galaxy lease, which was running until 2018, was five years, but they had been in the building for a long time. And shortly after the purchase, they vacated the building and moved to the Easton Town Center, but they continued to pay rent on their space. And they have not been able to

Page 39

re-lease that space at this point in time.

Q. Now, you identify that as a leased fee sale in your discussion.

A. Yes.

Q. And did you take that aspect of the sale in consideration when you were valuing the fee simple interest of the subject property?

A. Yes.

Q. And then the last sale, which is Sale No. 5, is discussed on Page 48. Could you briefly discuss that sale?

A. This is a leased fee sale. It was purchased on the strength of the existing lease. It's occupied by Mac Tools, which is a division of Black & Decker, which is a national company. The lease runs until 2022, so it's a pretty long-term lease. They've got, like, eight more years onit. It's -- And it's a beautiful office building. But it actually looks sort of like the subject, to be honest with you.

Q. And you considered this sale because in your highest and best use analysis you discuss the fact that office is a potential use of the subject property?

A. Yes.

Page 40

Q. Okay. Let's go back to Page 39, then. How did you use the data in those sales to arrive at your conclusion of value for the subject property?

A. I made the adjustments that -- that you see in this chart, and I considered the age of the subject, the condition of the subject, and its location. And those -- those were the -- really the primary concerns as far as I was concerned.

I concluded to $130 a square foot, which is kind of in the midrange. You know, the sale -- I thought the sales were strong. I thought they were good sales.

Q. So what was your conclusion of value for the property under the sales comparison approach as of January 1 of 2013, and January 1 of 2014?

A. $7,055,000. And, you know, as I said, I haven't seen much movement in the market between '13 and '14, so the value applied to both years.

Q. The last section of your appraisal begins on Page 51, which is your Summation and Final Reconciliation.

How did you go about weighting the approaches and arriving at your final conclusion of value for the property?

Page 41

A. I think that most buildings like this are generally purchased for owner occupancy. So I accorded the most weight to the sales comparison approach, but I think the income approach was supportive of that. In general, owner occupants will pay more than an investor will pay because they have different economic considerations than an investor does.

Q. Okay. So as of January 1 of 2013 and as of January 1 of 2014, what is your opinion of the fee simple value of the real estate?

A. My opinion is that it's 7,055,000.

MR. SLEGGS: All right. Thank you. That's all I have for this witness. Thank you.

THE EXAMINER: Thank you. Cross-examination.

MS. THOBURN: Yes, thank you. Just noting a continuing objection for the record to Ms. Costello's testimony. Because there was direct, we would like to cross-examine the witness.

THE EXAMINER: Certainly.

\- - -

CROSS-EXAMINATION

Page 42

BY MS. THOBURN:
Q. Ms. Costello, am I correct that you were not personally involved in the transfer of the subject property?
A. No, I was not.
Q. So any conclusions that you made regarding the transfer would be pure speculation, correct?
A. I don't know that they would just be speculation. I don't think that verifying the subject sale is any different than verifying any of the other sales in my report. I assume that the information I get from people is accurate.
Q. Okay. And you also were not personally involved in negotiation of the lease at the subject properties, correct?
A. Absolutely not.
Q. So, again, any conclusions that you made regarding the lease, again, you had no personal knowledge; it would be speculation on your part, correct?
A. As in the leases that I use in the report, you know, I had a copy of the lease. That's actually better than I usually have for my lease comps, to actually have a copy of the lease.

Page 43

So I guess I don't see it as speculation. Perhaps that's a legal term.
Q. But you don't know what went into negotiating the actual terms of the lease that you ultimately saw?
A. No.
Q. On Page 21 of your report, in the middle of the page you say that the lease rates plummeted sharply in '11 and then they began to increase, rising sharply at the beginning of 2015, correct?
A. Correct.
Q. Okay. If you could describe how these rates were increasing from 1-1-13 to 1-1-14. Because from your statements here, it sounds like they began to increase, at least.
A. Well, these are asking rates. These are not actual rates.
Q. But you took these into consideration, correct?
A. Yes, I did.
Q. Okay. And so were the leases -- or, lease rates increasing from 1-1-13 to 1-1-14?
A. No, they were pretty level. It wasn't until '15 that the asking rates started to go up again. They were -- They were basically flat from

Page 44

the beginning of '12 until almost halfway through '14.
Q. Okay. So they didn't begin to increase, in your opinion, until mid-2014?
A. Yes.
Q. And then they increased sharply after that?
A. Yes.
Q. Okay. Let's turn to Page 31 of your report. And this is where you discuss your comparable leases, correct?
A. Correct.
Q. First, were you able to verify the terms of each lease with someone personally involved in the negotiations --
A. Yes.
Q. -- of the lease?
And it looks like from this page you did not make any quantitative adjustments to the lease comparables, correct?
A. I don't do quantitative adjustments.
Q. So we aren't able to tell from your report exactly how much you adjusted each category, correct?
A. Correct.

Page 45

Q. It looks like Comps 1 and 2 -- are they older than the subject property?
A. Yes.
Q. I guess I should clarify. When was the subject property constructed?
A. 2007.
Q. And do older properties typically lease at lower rates than newer properties?
A. Sometimes they do, but a lot of it depends on how well they've been kept up. These are in markets where maintenance levels are very high. I think you see more of a difference in a sale for age than you do in a lease for age.
Q. And so the subject property is newer than those two comps. And I believe your testimony was that the only deferred maintenance you saw was some bowing in the floor in the gymnasium, correct?
A. Correct.
Q. So, otherwise, it was in pretty good condition?
A. Yes, it was.
Q. Comps 3 and 4 appear to be larger than the subject property; is that correct?
A. Comp -- I'm sorry. I'm back in my sales

Page 46

again.
Well, Comparable 3 is about the same size as the subject, within a couple hundred square feet. And Comparable Lease No. 4 is also about the same size as the subject.
Q. That's right. Because you're using -- you're saying the building is 54,000 square feet --
A. Correct.
Q. -- as compared to the Auditor's.
So on the bottom of that page, you give an unadjusted lease rate range, correct?
A. Yes.
Q. You ultimately concluded to $11 per square foot, correct?
A. Correct.
Q. So that is on the high end of the unadjusted range, correct?
A. Correct.
Q. Is there any sense of if there is an adjusted range, where that would be?
A. I don't do quantitative adjustments in -- for leases or for sales.
Q. Turning to Page 32 of your report, looking at the vacancy rate chart that you have

Page 47

here, would you happen to know the mile radius that that vacancy rate covers?
A. I don't have an exact mile radius, but if you look at Page 20, you can see the properties that are included in both the asking lease rate analysis and the vacancy analysis.
Q. So the vacancy chart on Page 32 may not indicate the vacancy rate of the subject's immediate area? Because it looks like the chart -- or, the picture on Page 20 covers a fairly large area.
A. No, it covers the area that's in the chart on Page 20. But like I said, the subject's location is fairly strong, and I think this probably accurately reflects vacancy in that area.
Q. Looking at your operating expenses on Page 33 of your report, first, is it fair to say that older properties generally have greater expenses, they require more upkeep than newer properties?
A. In general, yes. But you have to also differentiate between operating expenses and capital expenditures. Capital expenditures are typically higher in older properties. You know, maintenance levels on an ongoing basis will very

Page 48

much influence what actual operating expenses are.
Q. In your report, do you differentiate between the two, or do you lump them into one category?
A. No, I differentiate between them, because when I look at operating statements for expense comparables, I pull out all the capital expenditures. And then if you look on Page 34 at the top of the page, I use a replacement allowance. And that's to account for ongoing, you know, capital expenditures.
Q. The comps that you use in this chart on Page 33, am I reading that correctly that they were constructed in 2003, 2004, 2005 and 2007?
A. Yes.
Q. So the subject property would be the newest of those properties?
A. Correct.
Q. Okay. You concluded to a midrange conclusion for expenses based upon those comps, correct?
A. Correct.
Q. Even though the subject is on the newer end or newest end of those properties?
A. Well, that comparable is at 3.59 a square

Page 49

foot and I'm at 3.55 a square foot, so I think that that's, you know, pretty consistent.
Q. And, again, though, you don't know if that includes -- does that include both capital expenditures --
A. No. There are no capital expenditures included in these expense comps.
Q. Okay. Let's look at Page 35 of your report.
I believe your testimony was that Comp Sale No. 5 was at a 7 percent cap rate, approximately; is that correct?
A. Yes.
Q. And I believe your testimony was that that was a national tenant on a long-term lease; is that correct?
A. Correct. That was the Mac Tool Division of Black & Decker.
Q. Okay. But you concluded to a cap rate of, let's see, 9.5 percent --
A. Correct.
Q. -- is that correct?
A. Yes.
Q. Okay. So, first of all, how does Comparable 5 compare to the subject property?

Page 50

A. It's an office building, which I think the subject has an alternative use, but it has a term -- it has a national tenant that's in there on a long-term lease which I think, you know, implies a lower cap rate than you would see than if they were in there -- a local tenant on a five-year lease, if you could get five years.

Q. So how comparable is that property to the subject?

A. I think it's comparable. I mean, you know, we would always like to have absolute duplicates of our subject property that sold six months ago, but, you know, that'sjust not there.

Q. But you did conclude to a cap rate quite a bit above that comparable, correct?

A. Correct, but consistent with -- I think, with the other evidence.

Q. And I believe you testified that there was not a big fluctuation in cap rates from 1-1-13 to 1-1-14; is that correct?

A. I -- I haven't been able to see that, no.

Q. Was there any fluctuation at all?

A. Cap rates always fluctuate, but I don't see that there has been a -- a measurable fluctuation that I could see in that time period.

Page 51

Q. Because you did use the same cap rate for 1-1-13 and 1-1-14, correct?

A. Correct.

Q. Your value conclusion on Page 36 from your income approach, am I correct that that is above the Auditor's value for both 1-1-13 and 1-1-14?

A. That it's above the Auditor's value?

Q. Yes.

A. Let me look here.

MR. SLEGGS: I could object as to relevance. I don't know how that's relevant --

THE WITNESS: I have the --

MR. SLEGGS: -- to what you have to determine, but --

THE WITNESS: I have that the Auditor's value was 15,403,200.

MS. THOBURN: I think that's the Board of Revision's value. If I'm not mistaken, the Auditor's original value was $4.85 million. I'm just trying to establish that, even though we don't believe this evidence is properly in the record, if the Board does accept it, it illustrates that the Auditor clearly undervalued the subject property for both tax years.

Page 52

THE EXAMINER: Can you verify her statement?

THE WITNESS: I can't.

THE EXAMINER: Okay. That's fine.

THE WITNESS: All I have is what --

THE EXAMINER: Sure.

THE WITNESS: -- we saw when we looked at the Auditor's Web site.

THE EXAMINER: Sure. That's fine.

(Commissioner Williamson exits the hearing room.)

BY MS. THOBURN:

Q. Let's move on to your sales comparison approach. Let's just move straight to your chart on Page 39 of your report.

Again, I believe your testimony was that you do not make quantitative adjustments, correct?

A. Huh-uh.

Q. Looking at Comp Sale 3, is that property older than the subject property?

A. Yes.

Q. Am I correct that you don't make any upward adjustment, however, for age or condition?

A. No, I didn't. I think -- Let me take a look at the sale.

Page 53

No, I didn't make an adjustment. The tenant has been there. They have maintained the property, have been in this building. It's seven years older than the subject, but it's very well maintained, plus they were given $400,000 to further improve it if they so choose.

Q. I guess I would have the same question for Sale No. 5. It appears to be older than the subject property, but you made no upward adjustment for age or condition?

A. Not for three years, no.

Q. And while we can't tell exactly what adjusted range you have, as you don't make quantitative adjustments, you did state, I believe, that you concluded to $130 per square foot, which is in the middle of your range. Was that your testimony?

A. Yes.

Q. Can you explain why, I believe, with your rent comps you concluded to the high end of the range based upon the condition and location of the property, but for the sales comparison approach you concluded to a value in the middle of the range?

A. Because the lease comps are different

Page 54

than the sale comps.
Q. In what way?
A. The lease comps were adjusted based on their own characteristics, whereas the sale comps are adjusted based on their characteristics. And most of the adjustments in this chart are downward.
Q. And, again, you may not know the answer to this question based upon your previous testimony, but your final opinion of value of just over $7 million, do you recall if that is above the Auditor's originally assessed value for the property as of 1-1-13 and 1-1-14?
A. I don't have any personal knowledge of what the original assessed value was.
Q. Okay. Going into the detail of your sales comps, if a comparable property was vacant at the time of purchase, would that have negatively affected its transfer price?
A. I don't necessarily think so, no.
Q. Am I correct that you didn't make any adjustments for market conditions for any of your sales?
A. No, I did not. They're -- They are all practically bracketing the effective dates of

Page 55

appraisal and I simply haven't seen a big fluctuation in market conditions since about '12.
Q. Specifically looking on Page 45 in your comments section, this is the Gander Mountain comparable. You have some discussion on Page 45 regarding the difference in the sale prices and why you believe there was a difference in the sale prices --
A. Yes.
Q. -- I guess. Can you tell me what information you base that conclusion upon?
A. Other than the information that's included here?
Q. I mean, was it just conversations with somebody personally involved --
A. Yes.
Q. -- and they said this is what happens?
A. Yes.
Q. Or did you analyze separate data to determine?
A. I spoke with the person who was the purchaser in the first transaction and would then have become the seller in the second transaction. And this -- that is where I obtained this information.

Page 56

Q. So you didn't analyze separate data or anything like that, is what I'm trying to get at? It was just based upon your conversations with somebody who made their conclusion?
A. Correct.
Q. On Page 48, I just wanted to clarify something. I don't know if I have a missing page or what, but at the bottom it says, "Black and Decker has a...", and then I have nothing else.
A. You are absolutely right. I apologize. And I -- And I can't finish that sentence for you. I don't know what -- I apologize, but I don't know -- it looks like -- I don't know.
Q. I'm sorry to jump backwards. I just realized I missed a question.
Back to the Comp Sale No. 4, there were the two sale prices. You used the lower of the two transfer prices; am I understanding that?
A. Yes, because that more accurately reflects the fee simple value of the property.
Q. During the course of your testimony, you testified regarding some long-term leases of properties and then properties that transferred with -- near the lease end.
You only referenced transfers as being

Page 57

fee simple if the leases were about to end --
A. Or they were --
Q. -- would that be --
A. Or they were vacant.
Q. So that's your opinion?
A. Yes.
MS. THOBURN: I believe those are all the questions I have on cross. Thank you.
THE EXAMINER: Thank you.
Mr. Sleggs, redirect?
MR. SLEGGS: Just very briefly.
\- - -
REDIRECT EXAMINATION
BY MR. SLEGGS:
Q. Just picking up on Ms. Thoburn's last question about when you were analyzing the data if a property was at the end of the lease, that would be considered fee simple. And I think that was your conclusion with respect to Sale No. -- the first sale of Sale No. 3 --
A. Correct.
Q. -- on Page 44.
A. Yes.
Q. Would that be -- Would the reason that that reflects fee simple be that the lease has

very little impact at that point on the interest of the owner of the property?

A. Yes. When this property was purchased on what I would consider fee simple with the short term, they did not know that Gander was going to re-sign. So all they knew, they were buying a building that was going to go dark --

Q. Okay.

A. -- in a relatively short period of time. They were only able to negotiate by throwing $400,000 at the tenant --

Q. Okay.

A. -- to get them to renegotiate the new lease.

Q. So at that particular point in time on that sale, was the leased fee value similar to the fee simple value?

A. Yes.

Q. Because of the fact that the lease had so little left on it --

A. Yes.

Q. -- that it had not as big a --

A. We kind of do this with apartments, too. A lot of the units are on a year lease; the lease term is so short that we consider the leased fee

and the fee simple to be the same.

Q. Okay. And, obviously, a -- we've -- you've already touched on this in your testimony, but a longer-term lease with an above-market rent would have a positive impact on the leased fee value?

A. Correct.

Q. And a very short-term lease, as you had here on Sale No. 3, would have very little impact on the leased fee value?

A. Correct.

Q. Okay. And that's why in this instance it was your conclusion that the leased fee value was very close to the fee simple value?

A. Yes.

Q. Okay. Ms. Thoburn asked you some questions about the cap rate on Sale No. 5. And the cap rate, as you report it on that sale, was 7.1 percent.

A. Yes.

Q. Did the fact that that was a leased fee sale, as you describe it, to a national tenant on a long-term lease impact the cap rate that was derived from that particular sale?

A. Yes.

Q. Okay. And so is that one of the reasons why that sale is below the range of the other sales? If you believe it to be on -- below the range. I'm not trying to put words inyour mouth, so...

A. It's within the range of the other sales.

Q. Okay. Okay.

MR. SLEGGS: Those are my only questions.

THE EXAMINER: Okay. Thank you. Thank you, Ms. Costello. You may step down.

THE WITNESS: Thank you.

(Witness temporarily excused.)

THE EXAMINER: Anything else, Mr. Sleggs?

MR. SLEGGS: No. If we are -- I do have a copy of the lease. I don't know if the Board wants it. That's the only thing I didn't do with Patty is...

Do you want -- Do you want the lease? I had it marked as an exhibit.

THE EXAMINER: I leave that to your discretion. If you would like to have that --

MS. THOBURN: Was the lease disclosed as a potential exhibit?

MR. SLEGGS: No. It was just given to

you. I just had it marked in case we discussed it a lot today.

I'd have to put her on the stand to identify it. I'll just proffer it just so that I have done it.

Can I put her back on the stand very briefly?

THE EXAMINER: Sure. Sure.

MS. THOBURN: And, again, we would just need to note an objection --

MR. SLEGGS: Sure.

MS. THOBURN: -- to this wasn't disclosed, and we are not prepared to cross-examine regarding an exhibit that was not disclosed prior to this Board's hearing.

THE EXAMINER: Your objection is noted for the record. I don't believe, based on Mr. Sleggs' comments, he is going to ask for testimony regarding the lease --

MR. SLEGGS: No.

THE EXAMINER: -- only identification of it --

MR. SLEGGS: Right.

THE EXAMINER: -- as being, in fact, the document that the appraiser reviewed in preparation of her report. Correct?

MR. SLEGGS: That's correct. Right.

THE EXAMINER: Okay. Ms. Costello, I just remind you that you are still under oath.

And you may proceed, Mr. Sleggs.

MR. SLEGGS: Thank you.

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PATRICIA COSTELLO

of lawful age, being previously duly placed under oath, as prescribed by law, was examined and testified further as follows:

FURTHER DIRECT EXAMINATION

BY MR. SLEGGS:

Q. Ms. Costello, before I finish up with you, I did have the lease marked. I know that you discussed it fairly extensively today and Ms. Thoburn had some questions for you about the lease.

And I'm going to identify a document that's been marked as Appellant's Exhibit 2 and ask if you can identify it for the record.

A. This appears to be the copy of the lease that I was provided.

Q. Okay.

A. I will just note that there is no square footage in this lease; that the square footage actually occurs in the lease -- first lease amendment.

MR. SLEGGS: Okay. Thank you.

THE EXAMINER: Thank you. You may step down.

(Witness excused.)

THE EXAMINER: So, Mr. Sleggs, I'm assuming you would like to offer into evidence Exhibits 1 and 2?

MR. SLEGGS: That's correct.

THE EXAMINER: And, Ms. Thoburn, any response to that, other than what you've already stated?

MS. THOBURN: Nothing beyond what I already objected to, and just to note that I don't believe the lease is included in the appraisal report, so we didn't view it through that means.

THE EXAMINER: Okay. Your objections to Exhibits 1 and 2 are noted for the record. And, ultimately, the Board will determine the amount of weight, if any, to be attributed to either of these documents, but Exhibits 1 and 2 are received into evidence.

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Thereupon, Appellant's Exhibits 1 and 2 were admitted into evidence.

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THE EXAMINER: Ms. Thoburn, do you have anything on behalf of the Board of Education today?

MS. THOBURN: We have no evidence to

submit today. We will just do a closing argument.

THE EXAMINER: Okay. Thank you.

Mr. Sleggs, closing statement.

MR. SLEGGS: Yes. As I noted in my opening statement, this case really comes to the Board under the change or amendment in Revised Code 5713.03. I actually had it marked as an exhibit before we went on the record, so I'm going to offer that to the Board just because whoever has to decide the case will probably want a copy of it, if that's all right.

THE EXAMINER: Trust me, we have lots of them.

MS. THOBURN: We won't object to that.

MR. SLEGGS: In any event, we believe that the change in the statute where the Auditor may consider a sale is tempered by the fact that the Auditor is required to value the fee simple interest of the real estate as it is identified in the amended statute.

In this particular instance, Ms. Costello reviewed the lease that was in place at the time of the sale, and her findings were that the lease was above market and that the sale would reflect a leased fee value and not the fee simple value.

Page 66

The remainder of her analysis in the appraisal, we believe, supports the fact that the fee simple value of the property as of January 1 of 2013 and January 1 of 2014 is actually $7,055,000, which is a little bit above what the Franklin County Auditor determined for those two years at $4,850,000, but significantly below the leased fee sale of the property.

The other section of the Ohio Administrative Code that I referenced in my opening statement is Ohio Administrative Code Rule 5703-25-07, dealing with appraisals. And, again, in (D)(2) of that section it talks about the income approach. And it says that, "While the contract rental or lease of a given property is to be considered" -- which Ms. Costello did, she testified to that in her testimony today -- "the current economic rent should be given weight."

And we believe that those two provisions from the Revised Code and the Ohio Administrative Code make it appropriate for the Board to consider Ms. Costello's appraisal, which we believe should set the value of the real estate as of January 1 of 2013 and January 1 of 2014.

And I thank the Board for their time.

Page 67

THE EXAMINER: Thank you very much.

I'll just note for the record, counsel has provided the Board with copies of the statutory -- I'm sorry -- of the Revised Code section as well as the Administrative Code Section and have marked those as evidence. However, we will not treat those as evidence --

MR. SLEGGS: Right.

THE EXAMINER: -- but simply just include those in the Board's records for reference. But certainly the Board has those particular provisions on hand at all times.

MR. SLEGGS: Thank you.

THE EXAMINER: Ms. Thoburn, closing statement?

MS. THOBURN: Thank you.

As indicated earlier, the Board of Education at the Board of Revision hearing did present a deed and conveyance fee statement regarding the transfer of the subject property. This -- The presentation of these documents created a rebuttable presumption that the sale was the best indication of the property's value.

There has never been testimony at any point in this process from anyone personally

Page 68

involved in the transfer of the subject property. Therefore, we believe that the presumption has not been rebutted that the sale is the best indication of the property's value.

Despite this, the property owner argues that the transfer of the subject property is a leased fee sale and should not be considered. It then asks this Board to adopt the value of its appraiser.

First, this Board cannot get to the testimony of the appraiser as the sale has never been rebutted. If the property owner had wanted the appraisal testimony to be considered, it should have presented someone personally involved in the sale at either the Board of Revision level or at the hearing before this Board.

Second, as was brought out during the course of this Board's hearing, there are several issues as to why the appraisal may not be probative of the value of the subject property. Counsel brought up the change in the statute from the "may" to "shall" language. I believe that was not effective until after January 1st, 2013, so we believe it's not applicable anyway to that tax lien date.

Page 69

This Board has addressed the same scenario as presented in this case in another very recent case of this Board, the case is Oregon RA Associates, LLC, versus Lucas County Board of Revision, Case No. 2014-3398. Again, this was issued very recently, on August 3rd, 2015.

In that case, the property owner made very similar, if not the same, arguments that were presented here today by the property owner that the sale was the best indication of the property's value as it was a leased fee sale and because of the change in Revised Code 5713.03.

This Board rejected those arguments. They found the sale to be the best indication of the property's value. We request that this Board find consistent with that decision in this case and affirm the decision of the Board of Revision to increase the value of the subject property to its recent arm's-length transfer price.

Finally, just to note, if the Board does consider additional evidence beyond the sale, all of the evidence contained in the record thus far indicates that the Auditor did drastically undervalue the property for both tax lien dates.

And that's all we have. Thank you.

Page 70

THE EXAMINER: Thank you both very much. And if there is nothing further, this hearing is concluded.

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(Thereupon, the hearing was concluded at 10:14 o'clock a.m. on Wednesday, September 30, 2015.)

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Page 71

C E R T I F I C A T E

\- - -

State of Ohio,)
) SS:
County of Franklin,)

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I, Linda D. Riffle, Registered Diplomate Reporter, Certified Realtime Reporter and Notary Public in and for the State of Ohio, hereby certify that the foregoing is a true and accurate transcript of the proceedings hereinbefore set forth, as reported in stenotype by me and transcribed by me or under my supervision.

Linda D. Riffle,
Registered Diplomate
Reporter, Certified
Realtime Reporter and
Notary Public in and for
the State Ohio

My Commission Expires: July 26, 2016

\- - -

TRANSCRIPT 6

The subject property discussed in this transcript is a Lowe's store.

BEFORE THE BOARD OF TAX APPEALS

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Lowe's Home Centers, LLC, :
:
Appellant, :
:
vs. : Case No. 2017-39
:
Cuyahoga County Board of :
Revision, et al., :
:
Appellees. :

\- - -

PROCEEDINGS

before Samantha L. Cowne, Attorney Examiner, at the Board of Tax Appeals, Rhodes State Office Tower, 30 East Broad Street, 24th Floor, Columbus, Ohio, called at 9:10 a.m. on Monday, November 13, 2017.

\- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481

\- - -

Page 2

APPEARANCES:

The Gibbs Firm, LPA
By Ryan J. Gibbs
The Barrister Building
2355 Auburn Avenue
Cincinnati, Ohio 45219
On behalf of the Appellant.

Brindza, McIntyre & Seed, LLP
By David H. Seed
1111 Superior Avenue, Suite 1025
Cleveland, Ohio 44114

On behalf of the Brooklyn Board of Education.

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Page 3

INDEX

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Witness	Page
Richard Racek, Jr., MAI	
Direct Examination by Mr. Gibbs	9
Cross-Examination by Mr. Seed	64
Redirect Examination by Mr. Gibbs	130
Karen Blosser, MAI	
Direct Examination by Mr. Seed	140
Cross-Examination by Mr. Gibbs	210
Redirect Examination by Mr. Seed	301

\- - -

Appellant's Exhibit	Identified	Admitted
A 2015 Racek Appraisal Report	10	312
B First Amendment to and Restatement of Deed of Declaration	135	312
C Third Amendment to Lease	243	312
D First Amendment to Lease	277	312
E First Amendment to Lease	243	312
F Brice Road Aerial Photo	37	312

Appellee's Exhibit	Identified	Admitted
1 2012 Racek Appraisal	64	312
2 2015 Racek Appraisal	88	312
3 Sam's Club Comparable	124	312
4 Sam's Club Comparable	125	312
5 Limited Warranty Deed	125	312
6 Blosser Appraisal Report	224	312

Page 4

Appellee's Exhibit	Identified	Admitted
7 Appraisal of Real Estate, 13th Edition	193	312
8 Dictionary of Real Estate Appraisal, 6th Edition	194	312
9 Property Rights Adjustment	196	312
10 Letter dated 10/10/17	200	312

(Exhibits retained by the Attorney Examiner.)

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Page 5

Monday Morning Session,
November 13, 2017.
- - -

THE EXAMINER: Let's go on the record. This is a hearing before the Board of Tax Appeals, State of Ohio, relative to an appeal styled Lowe's Home Centers, LLC, versus Cuyahoga County Board of Revision, et al., Appellees, having been assigned Board of Tax Appeals Case No. 2017-39.

This hearing is being convened in the offices of the Board of Tax Appeals on the 24th floor of the Rhodes State Office Tower, 30 East Broad Street, Columbus, Ohio, on November 13th, 2017 at approximately 9:10 a.m. before Samantha L. Cowne, Attorney-Examiner for the Board of Tax Appeals.

Will the Appellant's representative please enter an appearance by name, address and telephone number.

MR. GIBBS: Sure. Ryan Gibbs of the Gibbs Firm, LPA. Mailing address is 2355 Auburn Avenue, Cincinnati, Ohio, 45219, phone number 513-381-3890.

THE EXAMINER: Thank you.

Will the Appellee Board of Education's representative please enter an appearance.

Page 6

MR. GIBBS: David Seed, Attorney, Brooklyn Board of Education, 1111 Superior Avenue, Suite 1025, Cleveland, Ohio, 44114, 216-621-5900.

THE EXAMINER: Thank you.

Finally, let the record reflect that the County Appellees waived their appearance at this hearing on November 9th, 2017.

With that, Mr. Gibbs, would you like to make an opening statement?

MR. GIBBS: Yes, very brief. Just wanted to draw the Board's attention to the fact that the law has been clarified recently by our Supreme Court here in a series of decisions, some of which are the Rite Aid decisions, starting with our Marietta Lowe's decision from 2010 tax year, as well as the Steak and Shake decision and then most recently the Terrazza decision.

What those decisions have all consistently held is that if leased fee sales and data is to be used to determine the fee simple value as if unencumbered in accord with the Revised Statute 5713.03, that those sales and data, it must be adjusted and adjusted properly.

The evidence will show that the Appellant's expert, Rick Racek, has done exactly what

Page 7

the Court has required in this instance, and that the evidence put forth by the Brooklyn Schools does not comport, and that there are additional credibility issues as well with that appraisal. Thank you.

THE EXAMINER: Thank you.

Mr. Seed, any opening statement?

MR. GIBBS: Yes. The School Board will be presenting as Appellee an appraisal of a Lowe's prepared by Karen Blosser, MAI, who in conformance with the Supreme Court and this Board has prepared an appraisal in compliance with the law including undertaking any adjustments for any leased fee sale to account for benefits under if it's above or below market lease and the occupancy of the property.

Further, in conformance with a prior decision regarding a Home Depot by this Board in Brooklyn for which this Board held in favor of Miss Blosser's appraisal, the School Board will present evidence that the market conditions have remained similar in this market as a desirable high occupancy market.

Third, through examination, the School Board will show that the appraisal presented by the Appellant is not credible, competent and probative evidence of value due to the inconsistencies in the

Page 8

report including the significant discrepancy between the opinion of value cited for today's -- in the appraisal presented today and an earlier appraisal presented in a weaker economy and weaker market. Thank you.

THE EXAMINER: Thank you.

Mr. Gibbs, if you'd like to proceed with your case in chief.

MR. GIBBS: Sure. I'd like to call Richard Racek.

MR. SEED: We have a motion first.

THE EXAMINER: I'm sorry, go ahead.

MR. SEED: We'd like to have a motion for separation of witnesses.

MR. GIBBS: I concur with that.

THE EXAMINER: I already advised the front desk when Miss Blosser arrives, to keep her in the waiting room.

MR. SEED: I apologize for that interruption.

MR. GIBBS: We'll call Richard A. Racek, Jr. to the stand.

(Witness placed under oath.)

MR. GIBBS: I'd ask for a stipulation to Mr. Racek's credentials as an MAI appraiser who's

Page 9

testified before this Board previously.
MR. SEED: The School Board will stipulate to the credentials of Mr. Racek that are in the appraisal report and acknowledge he is a -- Mr. Racek is a member of the Appraisal Institute, and we acknowledge he has testified before the Board of Tax Appeals.
MR. GIBBS: Thank you.
THE EXAMINER: Thank you.
- - -
RICHARD RACEK, JR.
being first duly sworn, as prescribed by law, was examined and testified as follows:
DIRECT EXAMINATION
By Mr. Gibbs:
Q. Mr. Racek, how did you become familiar with the big box retail property at 4900 Northcliff Avenue in Brooklyn, Ohio?
A. I was hired by Lowe's to make an appraisal of the property.
Q. For what purpose were you hired by Lowe's?
A. To value the property for ad valorem tax purposes.
Q. As of what date?

Page 10

A. January 1st, 2015.
Q. And I'm going to offer to you a copy of a report that's already been previously marked as Exhibit A. Can you confirm that that is your written report?
A. Yes, it is.
Q. For the January 1st, '15 date?
A. It is.
Q. Now, Mr. Racek, in connection with your report, did you inspect inside and out the subject property?
A. Yes.
Q. Okay. And what interest, legal interest, were you asked to value?
A. Fee simple.
Q. The fee simple interest?
A. Yes.
Q. And is that made clear in your report?
A. Yes.
Q. Okay. Can you tell us when the subject property was built?
A. It was constructed in 1999.
Q. Can you tell us how many square feet the building is?
A. Approximately 135,346.

Page 11

Q. Okay. Now, you mentioned that you were asked to appraise the fee simple interest. Can you tell us what value you were asked to provide. Was it use value? Was it liquidation value? Which value were you asked to provide?
A. Value in exchange.
Q. And when you say value in exchange, to you is that synonymous with market value?
A. It is.
Q. I want to turn to Page 16 of your report, please. You've got some bold letters there, definition of market value. Do you see that in the middle of the page?
A. Yes.
Q. I want to draw your attention to, bear with me just for a moment here, a statement there in the italicized paragraph beginning with the word "Implicit...", would you read that?
A. Beginning with the word implicit... "Implicit in the definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby..." Do you want me to read....
Q. You don't need to read on. This definition makes it clear that you're presuming that

Page 12

a sale takes place for this appraisal; is that right?
A. Yes.
Q. I want you to look at Page 19 then. And here's where you discuss marketing time and exposure; is that right?
A. Yes.
Q. Okay. I want you to read the sentence that starts with, "It is the estimated..." that is italicized.
A. "It is the estimated length of time that a property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at a market value on the effective date of the appraisal."
Q. So again, is it fair to say when you're appraising the subject property in terms of value in exchange and in the fee simple interest, you're presuming a transfer of the subject property on the assessment date?
A. Yes.
Q. Is this property leased, Mr. Racek?
A. No.
Q. So is it fair to say it's owner occupied?
A. Correct.
Q. Would this subject property be attractive

Page 13

to an investor who's looking for cash flow, who's looking for an income stream?
A. No.
Q. Why not?
A. It's not leased.
Q. So there's no income stream?
A. Correct.
Q. When you assume this hypothetical transfer, hypothetical sale, with respect to the subject property, does that mean the owner occupant's leaving?
A. Possibly.
Q. What are the other possibilities?
A. The other possibility is that the owner occupant stays around, they sell it in a sale leaseback transaction.
Q. Are sale leaseback transactions good transactions for property tax purposes in Ohio?
A. No.
MR. SEED: Objection.
Q. Why not?
THE EXAMINER: Mr. Seed, go ahead.
MR. GIBBS: Mr. Racek is not an attorney, he's an appraiser. He can't offer legal opinions.
THE EXAMINER: We'll take his testimony

Page 14

in light of the testimony that he's here to provide as an appraiser, not as an attorney, but your objection is noted.
Q. (By Mr. Gibbs) Mr. Racek, are you familiar with some of the court cases that govern this area of law?
A. Yes.
Q. Okay. Why is that? How do you become familiar with this?
A. I think I have to review case law as it pertains to value in real estate in order to perform my job in a competent manner.
Q. And isn't it true that at times, you're involved in some of the cases that make it to the courts?
A. Many times, yes.
Q. So back to my question, in your hypothetical sale, the owner occupant's leaving; is that right?
A. Yes.
Q. Is that any different than when I put my home up for sale and we identify a buyer and there's a closing date set and we close the transaction, am I staying?
A. Generally not, no.

Page 15

Q. No. I'm moving out and I'm moving in; is that right?
A. Yes.
Q. Okay. Now, I want to turn to facing Page 23. I think it's facing Page 23.
A. 24 would be my guess.
Q. Facing Page 24. What is this?
A. I assume you're looking at the site plan?
Q. Yes.
A. The site plan shows the relationship as to where Lowe's is in relationship to the surrounding shopping center.
Q. I see something on the right side, maybe it's the top in your copy, it says Ridge Park Square. What's Ridge Park Square?
A. Ridge Park Square is the name of the shopping center in which the subject property is locate within.
Q. But the subject property's on its own tax parcel?
A. Correct. Ridge Park Square Shopping Center is owned by a different entity. Lowe's owns their own building and parcel and the surrounding properties are owned by somebody else.
Q. But when you say it's a shopping center,

Page 16

are they sharing a parking lot?
A. They are.
Q. So all you've appraised is the owner occupied big box?
A. Yes, and a bigger idea of what our parcel looks like, if you look at the tax map I provided on Page 17, you can see where our building is located on the site. The site itself that's included in the appraisal is outlined in blue, and you can see that there's parking on either side of the blue area that is shared parking or has reciprocal easements with the adjoining owner for parking and access.
Q. Back on facing Page 24, I want to ask you about a couple of these other outlying boxes here. If you were facing the Lowe's building, the building marked Lowe's, the box immediately to the right, what is that?
A. Immediately to the right? Are you talking about --
Q. If you were facing the front door of Lowe's.
A. Oh, the front door, okay. Immediately to the right or to the west of the building would be Ashley Furniture.
Q. Okay. And what do you know about that

Page 17

Ashley Furniture?
A. Ashley Furniture is in a building that was originally designed to be Circuit City.
Q. Okay.
A. When Circuit City was vacated, it was subsequently re-leased to Ashley Furniture.
Q. So when did that lease occur?
A. It began in 2014.
Q. Where are you looking when you reference that?
A. My facing Page 53. It's one of my rental comps.
Q. And so what is Ashley Furniture paying per square foot?
A. $4.86.
Q. It's right next door to the subject; is that right?
A. Correct.
Q. And it was negotiated fairly closely to the assessment date?
A. Yes.
Q. What did Ashley get for that $4.86? Did they get a white box, a vanilla box?
A. No, it was built out for their needs. It's a store that contains approximately 34,116

Page 18

square feet.
Q. So it's like, what, one-fourth or one-fifth the size of the subject?
A. Less than 25 percent, yes.
Q. Okay. And --
A. About 25 percent.
Q. Have you been in the Ashley Furniture?
A. Yes.
Q. Okay. How does a finish in that Ashley Furniture compare to the subject in terms of the floors, the ceilings, the walls?
A. Better. There's more interior finish in that store than we have in ours.
Q. Do they have furniture displays, that sort of thing?
A. Yes.
Q. So there's carpeting and hardwood floors?
A. Correct.
Q. And they're paying $4.86?
A. Yes.
Q. Looking at this site map again on facing Page 24, the white box that says in very small print "Available," what's that?
A. That's a space that has historically been a grocery store.

Page 19

Q. Okay.
A. As of the tax lien date, it was leased to Valu King.
Q. Who is Valu King?
A. Valu King is a grocery store operator that's affiliated with Giant Eagle.
Q. How many square feet is that space?
A. 50,537.
Q. Are you taking that again from your facing Page 23?
A. Yes.
Q. Is it another one of your rent comps?
A. It is.
Q. You said it was occupied by Valu King on the assessment date. What was Valu King paying?
A. $5.
Q. And they moved out?
A. They did.
Q. And so this space is across the parking lot from the subject; is that an accurate description?
A. Yes.
Q. And it's approximately a third the size?
A. Correct.
Q. Okay. And when Valu King was there, as a

Page 20

grocery store, does it have more buildout inside or less buildout than the open truss set-up of the Lowe's?
A. This one had more buildout.
Q. When you say this one....
A. This particular store had more buildout than our property has.
Q. I want to go to the bottom of Page 20 and also on to Page 21 of your report. You give a pretty detailed description of the location and neighborhood there. And you mention that much of the crosstown traffic abandoned Brookpark Road. What effect did that have on that neighborhood?
A. Well, before Interstate 480 was built, most of the traffic heading in an east and west direction would go along Brookpark Road, so there was a lot of retail development in that location.
After the freeway was established, obviously the majority of the traffic moved to more of a freeway, so that there was less traffic running up and down Brookpark Road which ultimately impacted the retail users in that area.
Q. And so how did that manifest itself in the area?
Are all the retailers who came to the

Page 21

area originally, are they all still there?
A. All of them, no.
Q. No. You mentioned a number of facilities by name. If you move to the second and third paragraphs on Page 20, what about HH Gregg, where did they move?
A. HH Gregg ultimately went out of business.
Q. Right. At one point you mentioned they had moved into a Giant Eagle; is that right?
A. Yes, it would basically be if you look at our property basically is situated at the northwest quadrant of Ridge Road and Interstate 480, HH Gregg would be on the southeast quadrant of Ridge Road and Interstate 480.
Q. But HH Gregg, they weren't the original tenant, they're a second generation tenant; is that right?
A. Yes.
Q. They moved into something Giant Eagle moved out of?
A. Yes.
Q. You also mentioned a former Super Kmart. What happened with that here in this area?
A. Super Kmart which was along Brookpark Road was in their property since it was built in I

Page 22

believe 1994, and they vacated the property in 2014. And the property was sold to another user who ultimately tore the building down.
Q. Okay. And so what does that tell you about the value of a 20-year-old box?
A. Big box stores, while they can physically last longer than 20 years, are -- there's clear evidence that they're being torn down in the 20-year timeframe.
Q. Okay. Can you think of another example of where maybe a Kmart or something was torn down in a similar circumstance recently that kind of supports what you're saying?
A. There's another Kmart in Lorain County located in the City of Lorain that was built in 1994, sold in 2017 that Meijer purchased, and they're going to be tearing that store down as well.
Q. So is it fair to say that those pieces of information support a life of these boxes, give or take, 20 years?
A. I think that's reasonable.
Q. Okay. Still on Page 20 and I want to ask you about a couple more at the bottom of Page 20, you mention a former Flower Factory --
A. Yes.

Page 23

Q. -- and a former Value City. These are other tenants who left the area?
A. Correct.
Q. So are second generation tenants in their space now?
A. Yes.
Q. Is it fair to say there is a market for second generation space?
A. I think so, yes.
Q. I want to move to the top of Page 21. You talk about a Clarkins store, a Kroger's and an Uncle Bill's. What happened to those tenants in the area?
A. All of those original tenants moved out and they were subsequently backfilled with other users.
Q. Okay. So there must be a lot of examples of leasing activity that's gone on that is not build to suit, is not sale leaseback, is actually arm's-length lease transactions; is that fair to say?
A. Leases or --
MR. SEED: Objection.
THE EXAMINER: Mr. Seed?
MR. SEED: I mean, that's a lot of questions.

Page 24

THE EXAMINER: Understood. I think a lot of this is coming from the report, though. I think we're just for time saving....
MR. SEED: I can read the report.
THE EXAMINER: Understood.
Q. (By Mr. Gibbs) I can move a little faster. I want to move to Page 26 now, Mr. Racek. You looked at highest and best use, right?
A. I did.
Q. You do that in every appraisal; is that right?
A. Yes.
Q. I'm not going to ask you about your highest and best use as vacant, but I want to talk about your conclusion of highest and best use as improved at the bottom of Page 26. If you could read the last two sentences there, I want to ask you about those beginning with "While the improvements..."
A. "While the improvements were approximately 16 years old as of the tax lien date and considered to be in average condition, they're functionally obsolete for most second generation users; therefore, there is a substantial amount of accrued depreciation which is mostly from functional and economic obsolescence."

Page 25

Q. So are you referring to the fact that some of these box properties we discussed are being torn down there; is that what you're talking about?
A. That's part of it.
Q. What else are you referring to there or what were you thinking when you wrote this?
A. My thought was that buildings that are designed for the original tenant have little utility to the market when they get to be 15, 16, 20 years old. And the market would indicate that there's very little demand for buildings of that size and to be used in its current configuration.
And generally they're either being torn down or purchased by a second generation user who may subdivide it into multiple tenant spaces, but that there's little demand for buildings of 135,000 square feet.
Q. It's a lot of space?
A. Yes.
Q. So the subject property was how old on the assessment date?
A. Roughly 16 years.
Q. It would have been 75, 80 percent through its life possibly?
A. Possibly.

Page 26

Q. So this is a nice segue to the approaches you considered. What approaches did you consider?
A. I considered all three approaches, but I think only two of them are applicable in this analysis, and I utilized the sales comparison and income capitalization approach.
Q. Why didn't you use the cost approach? Just thinking about your statement under highest and best use, why didn't you use the cost approach?
A. I think there's so much depreciation from all sources that it would possibly develop a misleading value indication; and secondly, I don't know of any investor or owner user that would review a cost approach in determining a value or potential price, purchase price utilizing a cost approach.
Q. Okay. So I want to turn to facing page -- I'm sorry, I'm going to turn to Page 28, that's where you introduce the sales comparison approach; is that right?
A. Yes.
Q. What were you thinking about and what were you looking for when you set out to locate comparable sales?
A. Ultimately, I'm trying to find sales of properties that sold unencumbered first that are of a

Page 27

similar size, age and location.
Q. Let's talk about that. In the statute in Ohio, 5713.03 says fee simple as if unencumbered. You just used the word unencumbered. What does unencumbered mean to you?
A. It's not leased. It can be purchased by somebody who wants to either owner occupy it or potentially lease it to somebody, but the purchase isn't based upon the income that it generates.
Q. It's being offered with the possibility of immediate occupancy by the buyer; is that fair to say?
A. Yes.
Q. Turning to Sale No. 1, is this an example of a property that sold unencumbered or fee simple?
A. Yes.
MR. SEED: Objection.
THE EXAMINER: Mr. Seed.
MR. SEED: I'll withdraw the objection.
Q. (By Mr. Gibbs) Did you confirm Sale No. 1 with one of the parties?
A. Yes.
Q. Okay. And you've seen Sale No. 1, you've been in it?
A. Yes.

Page 28

Q. Okay. When it comes to the location on Polaris Parkway, what can you tell us about the location and how it compares to the subject?
A. This location is at Polaris Mall which is probably the best retail location in Central Ohio.
Q. Okay. It's obviously attached to a successful mall. It has an abundant amount of outlot either shopping centers or other big box stores, hotels, office buildings in its immediate vicinity. I think it's a better location as compared to our property.
Our property has excellent highway visibility and is located at a freeway interchange, so that our shopping center, if you will, is in a pretty decent location. The problem is when you get half a mile away from it, you're not in the same general vicinity as this property which is better than ours.
Q. This is literally attached to a mall?
A. Yes.
Q. Is there traffic, a lot of traffic driven by a mall?
A. There are.
Q. Do you know of any fee simple box sales in Ohio that sold for more than this?

Page 29

A. I do not in fee simple title.
Q. Is it fair to say this represents the high end of unencumbered fee simple?
A. From what I was able to find, yes.
Q. Is it fair to say a substantial location adjustment downward would be necessary?
A. I believe so, yes.
Q. So no adjustment for property rights here; is that right?
A. Correct.
Q. I want to turn to Sale No. 2, Page 31. You've inspected this property?
A. I have.
Q. You confirmed the sale with one of the parties?
A. Yes.
Q. Now, what was the sale price per square foot?
A. $15.01.
Q. Who was the seller?
A. Wal-Mart.
Q. Was this transfer a leased fee or a fee simple interest?
A. Fee simple.
Q. So no adjustment needed for property

Page 30

rights?
A. Correct.
Q. Sale No. 3 in Dublin, how does that area compare to where the subject is?
A. It's located at a freeway interchange, basically Sawmill Road and Interstate 270. There's quite a bit of retail development in this area. I think Dublin is a superior location as compared to Brooklyn. This property does have some visibility and access issues which make it -- which somewhat offset the location adjustments.
Q. What was it originally? Who was the first occupant?
A. I think the first occupant was I believe Heckinger's and BJ's was most recent.
Q. The sale price of $36 a foot, you confirmed that with one of the parties?
A. Yes.
Q. You've been to this property?
A. I have.
Q. Again, other fee simple sale?
A. It is.
Q. Sale No. 4 in Montgomery County, is this a fee simple transaction?
A. It is.

Page 31

Q. Have you been in the property?
A. I have.
Q. Did you confirm it with one of the parties?
A. Yes.
Q. I'm looking at the sale dates, a number of them are in the same year as the tax year, others are before. Is that an important consideration, the timing of when the sale occurred?
A. Surely. Ultimately I like all my sales to occur on January 1st, 2015, but nothing sells on January 1st, so I've got to get as close as I can.
Q. To jump ahead just a moment, when it comes to the income approach and you're looking for lease data, is the proximity of the negotiation of the lease to January 1, '15 as important as it is with the sales?
A. I believe so, yes.
Q. So you're looking for parties that came together on a lease deal somewhere in close proximity to 1-1-15?
A. Yes.
Q. So you've got four fee simple sales here. What's the range of the fee simple sales, the first four sales?

Page 32

A. Between $15, roughly $15 to roughly $70.
Q. Okay. And I just want to jump ahead to Page 49 just by way of explanation. What's on Page 49?
A. 49 starts the market data analysis where I discuss adjustments that are made to each sale.
Q. Now, I want to turn back to your page -- so you adjusted four kinds of things. What kind of things did you adjust the sales for?
A. Condition, location, size, things of that nature.
Q. But no property rights for the first four?
A. Correct.
Q. I'm on Page 37, Sale No. 5. Was this a fee simple or leased fee transfer?
A. Leased fee.
Q. You confirmed that with the seller or buyer?
A. Buyer broker.
Q. You've been to this property?
A. I have.
Q. At the time it sold, who was the tenant?
A. Burlington Coat.
Q. And you have income and expenses from the

property?
A. I provided those on Page 38, yes.
Q. So you were able to extract a cap rate?
A. Yes.
Q. What was that cap rate from this sale?
A. 9.7 percent.
Q. What was the sale price per square foot?
A. $37.49 per square foot on a gross basis.
Q. You had a fee simple sale in Dublin and we talked about that submarket. Is it fair to say that you believe Dublin is superior to the subject submarket?
A. I think it is, but if you're talking about the entire Dublin neighborhood, I think it's better. Our property, like I said, being at the freeway interchange, is fairly desirable as far as location with access and visibility from a freeway interchange.
Q. Okay. Demographically in general, I'm not going to ask you a lot of specific questions, but what's happening in places like Dublin and Hilliard and Greater Columbus versus what's happening in Cuyahoga County demographically, unemployment, household income, things like that?
A. Franklin County has constantly

experienced growth and Cuyahoga County has generally -- or the Cleveland/Brooklyn areas have generally been declining in population.
Q. Is the population expected to increase in Cuyahoga County?
A. Not to my knowledge, no.
Q. In Brooklyn, is it expected to increase?
A. No.
Q. How about household income, is it above the state average in Brooklyn?
A. I don't remember the exact numbers.
Q. Okay. Moving on to No. 6, was this a fee simple or a leased fee transfer?
A. Leased fee.
Q. Now I can see from the picture that this is actually Lowe's in place here as a tenant; is that right?
A. Yes.
Q. When did the lease commence on this property; do you know?
A. The property was built in 1993, so that the lease would have commenced when the building was completed but entered into before construction started so, to the best of my recollection, was about 1992.

Q. So is what you describe as the circumstances, this is a build to suit, No. 6?
A. Yes.
Q. And so would the rent that they're paying be indicative of market as of January 1st, 2015?
A. I don't believe so, no.
Q. Why not?
A. Well, the building was constructed in 1993. That's roughly 21 years old at the point in time when it sold. The rental rate was established prior to the building being constructed. You know, that's basically -- they basically starting paying rent for a brand new building. When it sold, the building is 21 years old. Obviously it's no longer brand new and not indicative of a rental rate for a building that is 21 years old.
Q. I mean, if you go to lease a car, it's brand new and it's $500 a month, the lease payment, and three years into the lease, the lease is up and they offer you the car again, it's now three years old, are you going to agree to lease it for $500 a month again?
A. Not generally, no.
Q. It's not a new car, is it?
A. Correct.

Q. Talking about the fact that this is a build to suit, in general terms with respect to build to suits, how is the rent determined with respect to a build to suit?
A. It's a function of the cost.
Q. When you say cost --
A. Cost to acquire the land, the cost of building the building, the developer's profits and overhead, all of that gets added together in order to apply a rate of return that's acceptable as an investment to generate a rental rate.
Q. Okay. When you say generate a rental rate, is that number the total cost plus a rate of return? Is it like divided into the number of lease payments?
A. Basically. When you look at the term of the lease.
Q. It's not a result of market forces, am I hearing that right?
A. No.
Q. Sale No. 7 on Page 41, where's this property located?
A. On Brice Road in Columbus.
Q. Was this a fee simple or a leased fee transfer?

Page 37

A. Leased fee.
Q. Mr. Racek, I want to ask you about a visual aid I have here, and I'd like to mark this as F.
THE EXAMINER: You may need to turn it for the witness.
MR. SEED: Before he asks questions, can we authenticate where this document came from and its source of information.
MR. GIBBS: Sure. I created it. I can ask him foundational questions I think that will solve any problems.
MR. SEED: Well, I mean there's information on it, and my objection is, is I don't see this in Mr. Racek's report. Where's this derived? Is my opposing counsel going to be a witness? There's information about looks like there's legal terminology, sale information, rent -- looks like various information and this is not part of any of the record we have here today.
THE EXAMINER: Mr. Gibbs, what's the origin of the information?
MR. GIBBS: Sure, the origin of the information is public records, deeds and conveyance fee statements. And, your Honor, I could take

Page 38

Mr. Racek through the same questions and establish the same things. It's just a little bit more abstract without the visual aid. I mean, I'm going to ask his witness about these as well and she's going to say the same thing, so....
THE EXAMINER: I'm going to allow you to question Mr. Racek on it, but we'll get to admissibility towards the end because I don't know what we're doing with this yet.
MR. GIBBS: Okay.
THE EXAMINER: I'm going to note your objection so far, Mr. Seed, and I'll let Mr. Gibbs continue at this point.
Q. (By Mr. Gibbs) Thank you. Mr. Racek, you mentioned that Sale No. 7 is at Brice Road?
A. It is.
Q. I want to direct your attention to what I have referred to as Appellant's Exhibit F. It's an aerial photo, do you see that?
A. Yes.
Q. And there are a number of arrows and labels here, but could you tell the Board which one of the rooftops there that's labeled Sale No. 7?
A. Looking at the Exhibit, it would be the top left corner.

Page 39

Q. And is it labeled in the aerial in the same way that you recite the facts of the Sale No. 7 in your report?
A. Slightly different.
Q. Okay. In what way?
A. The recorded price was slightly different than what you have indicated there.
Q. Is it to a degree that it would in any way impact the utility of your sale?
A. No, my sale price is correct. It's $6,445,959.
Q. Is the difference on the chart de minimis or is it significant?
A. It's de minimis.
Q. Did Sale No. 7 sell in the fee simple or leased fee?
A. Leased fee.
Q. Did you have an option to confirm that sale with one of the parties?
A. I confirmed and appraised it.
Q. You've also inspected it then, I assume?
A. Yes.
Q. Now, what can you tell me about the rooftop marked Target?
A. That's a building that let's call it two

Page 40

properties to the west because this picture is upside down from the Lowe's store. It was a building built by Target, was owned by Target and when they vacated the store, they sold it. And that March 2014 sale date was for $300,000.
Q. $300,000?
A. Yes.
Q. Was Target a tenant pursuant to a long-term lease at the time that store sold?
A. No.
Q. Is that an example of the leased fee interest being sold or the fee simple interest being sold at Brice Road?
A. Fee simple.
Q. Moving clockwise again, you'll see another rooftop. What's that marked to be?
A. That was a Meijer store.
Q. And we're still at the Brice Road interchange; is that right?
A. Yes.
Q. What's the significance of that transfer there, the Meijer transfer?
A. Meijer owned the building. They had vacated the building, marketed it for sale and eventually sold it in this transaction.

Page 41

Q. How much did they sell it for?
A. About $429,000.
Q. Was Meijer still a tenant? Was that a fee simple transfer or a leased fee transfer?
A. Fee simple.
Q. Sale No. 7 was leased fee, I believe you testified?
A. Correct.
Q. Who was the tenant in Sale No. 7?
A. Lowe's.
Q. They were on a long-term lease; is that right?
A. Yes.
Q. I'm moving further clockwise and wanted to point out the final transfer that's I guess just south -- or just north actually?
A. Basically north, a little bit west.
Q. And how is that labeled?
A. That was Hobby Lobby.
Q. And what's the significance of that sale?
A. That one sold a couple of months after the Lowe's property sold in a fee simple transaction for $780,000.
Q. So what's the range of sales that occurred at the Brice Road interchange for the fee

Page 42

simple transfer there?
A. Roughly from $2 to just over $7 a square foot.
Q. How do you square that with what happened with the Lowe's property at Brice Road when it sold in October of 2014, your Sale No. 7? How do you square that?
A. What was purchased was the leased fee interest and an investor bought it subject to the contract rent that was in place.
Q. What does this demonstrate to you?
A. It demonstrates that the properties that are leased are impacted by -- or the properties that are purchased with leases are impacted by the rental terms that are in place at the time of sale.
Q. Okay. I just want to turn to Page 49 again and have you read three sentences under here beginning with -- it's the first paragraph at the top beginning with "Sales No. 1..."
A. "Sales No. 1 through 4 sold in the fee simple interest while Sales No. 5 through 10 sold in the leased fee interest."
Q. Continue, please.
A. "This report values the subject property in the fee simple interest. Adjustment to the leased

Page 43

fee sales have been made as a premium was considered to have been paid for the property rights conveyed. The nine sales provided make it clear that the presence of a lease at the time of sale is a factor which impacts the sale price."
Q. Is Sale No. 7 an example of what you just read?
A. Yes.
Q. Looking at just the four sales that we have here at Brice Road, what can one conclude was the magnitude of the adjustment needed from leased fee to fee simple looking just at the four sales at Brice Road?
A. Well, if you look at the fee simple sales, they're roughly in the $2 to $7 square foot range. And a leased fee sale at over $51 a foot, obviously it would show that leased fee sales in this location sell for roughly 10 percent of what the leased fee transaction indicates.
Q. Now, you have income expense information on Sale No. 7, don't you?
A. I do.
Q. Would you say that the payment that Lowe's was making at the time this Sale No. 7 occurred was at market for the area?

Page 44

A. No.
Q. Why not?
A. Well, Lowe's was paying basically $4.16 a square foot as an annual rent. And three examples in this neighborhood show you can buy the whole property somewhere between $2 and $7 a square foot and basically pay it once and own the property versus paying it annually.
Q. Right. So why would a tenant agree to pay $4.16 or did they agree, or is it a function of something that was done years ago?
A. Well, Lowe's had been in the property since -- basically the building was built in 1994, so it's been in there as an established business for roughly 20 years.
Q. All right. So is this a way that can be illustrated why using rents that may still be paid but commenced 20 years ago is not a good idea to establish market rent?
A. I think that's accurate.
Q. Okay. I want to move on to Sale No. 8. This one's in Hilliard. How does Hilliard compare locationally to where the subject is?
A. Well, again, this particular property has very good visibility from Interstate 270, similar to

Page 45

ours having visibility along 480. So in terms of access, they're very similar.
Q. Okay.
A. Hilliard, however, I think is a more desirable community than our Brooklyn area.
Q. This is a leased fee sale; is that right?
A. Yes.
Q. So it would require adjustment?
A. Yes.
MR. SEED: Objection.
Q. What would it require?
THE EXAMINER: Mr. Seed, you have an objection?
MR. SEED: Yes. He's asking would it require adjustment. It's a leading question.
THE EXAMINER: I think it's in the report adjustments have been made, so I don't know that it has any bearing. You may continue.
Q. (By Mr. Gibbs) Did you confirm this sale with someone?
A. Yes.
Q. You have been to this sale?
A. I have.
Q. I'll move on to Sale No. 9. Is this a leased fee sale?

Page 46

A. It is.
Q. I see that it's another Lowe's?
A. It is.
Q. When was this one built?
A. 1994.
Q. Do you know when the lease commenced?
A. At the time the building was completed, but they entered into lease negotiations and signed the lease prior to the building being built.
Q. So about 20, 21 years before the assessment date?
A. Accurate, yes.
Q. Now, in your experience on these box store leases, is there an initial term of maybe 20 or 30 years?
A. Yes.
Q. And are there rights within those leases in your experience for the tenant to remain beyond that?
A. Option periods, yes.
Q. Option periods. Is the rent due in those option periods generally determined at the time a lease is negotiated?
A. Yes.
Q. So any rent due in the option period

Page 47

would have been determined back in '94?
A. Correct.
Q. Would this have been a build to suit?
A. It was, yes.
Q. So your testimony earlier about the way build to suit rents are calculated, would you stand by that with respect to Sale No. 9?
A. Yes.
Q. Has this property, Sale No. 9, been exposed to the market for lease, to your knowledge?
A. To my knowledge, no.
Q. So Lowe's has been there from the beginning?
A. Yes.
Q. I want to talk about Sale No. 6 again. That's another Lowe's that's the one in Richland County. Do you know whether that store was ever exposed on the market for lease? I mean, could Big D's or a Hobby Lobby come along and leased it out from under Lowe's?
A. They've been in it since it's been built. I don't think -- to the best of my knowledge, it was never exposed for lease in the open market.
Q. Sale No. 10 in Mentor, did you confirm this with the party?

Page 48

A. Yes.
Q. And was this a fee simple sale or leased fee?
A. Leased fee.
Q. Did it require adjustments for property rights?
A. Yes.
Q. Okay. And you've been to this property and inspected it?
A. I've appraised it.
Q. Now, we discussed the fact that you make a series of adjustments in a narrative on Page 49 and 50. I want to direct the Board's attention to Sale No. 7, the bottom of 50. There was an objection earlier to the Brice Road exhibit. Mr. Racek, do you discuss the sales that appear in Exhibit marked F within the narrative on Page 50?
A. I do discuss that there have been sales in the fee simple title between a range of roughly $2 to $7.
Q. So it was directly addressed in your report?
A. Yes.
Q. When it comes to the sales comparison approach, Mr. Racek -- pardon me, I want to ask you

Page 49

about two more things. Within your sales, you had a leased fee sale where the property was occupied by Garden Ridge. Do you recall that?
A. Yes.
Q. Which sale was that?
A. Sale No. 8.
Q. I'm going to turn to Sale No. 8 which I think is going to be Page 43.
A. Correct.
Q. Do you think this was a good indication of value for the subject property?
A. I do.
Q. Why specifically?
A. Well, the building was not originally constructed for Garden Ridge. It was constructed for the Incredible Universe, and when that occupant moved out, it was subsequently re-leased to Garden Ridge.
Q. When was that?
A. I think it was in the early 2000s, but the negotiation occurred between a willing tenant and a willing landlord to determine a market rent for the space.
Q. So it wasn't a sale leaseback, for example?
A. Correct.

Page 50

Q. It wasn't a build to suit?
A. Correct.
Q. The guy had a space, someone needed a space, they got together and this is what they decided to pay in terms of rent?
A. Yes.
Q. And what is the rent?
A. Rent as of the time it sold was $4.75 a square foot.
Q. What did it sell for per square foot?
A. Roughly 55.
Q. Jumping ahead, your overall value conclusion is about what per square foot, your reconciled value conclusion?
A. I think it's around 50.
Q. $50 a square foot?
A. I'll get to the exact number. $50.17.
Q. And Sale No. 8 transacted for $55 a foot; is that right?
A. Yes.
Q. It's in Hilliard?
A. It is.
Q. Didn't we talk about how you felt Hilliard was a superior market?
MR. SEED: Objection.

Page 51

MR. GIBBS: That's leading. I'll withdraw it.
Q. (By Mr. Gibbs) What did you say earlier about the comparability of Hilliard?
A. The comparability of Hilliard, the city itself, is better than Brooklyn. Now, we have a property that's got excellent visibility and access to a freeway interchange much like this one. So our property is at a decent -- or I should say a desirable interchange with good visibility, as is Sale No. 8.
Q. Okay. But if you're trying to -- if you've got to consider the value in exchange of the subject, you're thinking who buys it in Brooklyn, right? Is the market stronger for 135,000 feet in Brooklyn or is it stronger if you've got 135,000 feet that's become available in Hilliard?
A. Probably more demand in Hilliard.
Q. Another one of your sales was occupied by a Burlington Coat Factory in Dublin. Which sale was that?
A. Sale No. 5 on Page 37.
Q. And I just wanted to ask you why you felt that this sale was a good indication.
A. Well, this building was originally

Page 52

constructed to be a Builders Square. So going back to the early '90s, Builders Square was basically a home improvement store much like Lowe's is today.
When Builders Square vacated the property, it has subsequently been re-leased to Burlington Coat through a negotiated lease structure. It ultimately sold with that contract rent in place in this transaction.
Q. What was the rent in place at the time it sold?
A. Roughly $4.50 a square foot.
Q. I just want to jump ahead a moment. We'll lay the groundwork later. What was your concluded rental rate for the subject?
A. $4.50 a square foot.
Q. So Sale No. 5 transacted at the same rental rate as you project on the subject?
A. It did.
Q. What was the sale price per square foot for Sale No. 5?
A. $37.49.
Q. I just want to ask you what was your conclusion of value under the sales approach on Page 51?
A. $6,770,000.

Page 53

Q. Now I'm going to ask you about your income approach which it looks like there's a map I want to ask you about on facing Page 52. Do you see that?
A. Yes.
Q. How many rental comps did you look at?
A. A total of 14.
Q. There's a cluster in the northeast part of the state. Why is that?
A. That's generally the location of the subject property.
Q. And so was it important to find rent comps from that area?
A. I think so.
Q. Okay. And where are the rental comps provided?
A. Following facing Page 53.
Q. We heard some testimony earlier in connection with facing Page 24, I believe it was, which was a site plan for the Ridge Park Shopping Center we're part of. Do you recall that?
A. Yes.
Q. I'm drawing your attention to your first two rent comps. Are those located within our shopping center?

Page 54

A. Yes.
Q. Okay. So those were the first two that came to mind; is that right?
A. Yes.
Q. And the rents are what? A. $4.86 and $5.
Q. And are these spaces larger than the subject?
A. Much smaller.
Q. So you know what economies of scale are, right?
A. Yes.
Q. Do economies of scale tend to suggest that market rent for the subject would be higher than these two or lower?
A. Lower.
Q. No. 7, the Marc's in Painesville, is that space about 50 percent the size of the subject?
A. Close, yes.
Q. That lease was negotiated when? A. 2010.
Q. What's the rental rate? A. $5.07.
Q. Back to Rent Comp No. 1 and 2, when were those leases negotiated?

Page 55

A. '14 and '12.
Q. When you see '14 and '12 there, that doesn't mean they exercised some kind of lease extension, right?
A. Correct.
Q. That's when they went into the space?
A. Yes.
Q. I want you to look at Rent Comps 11 through 14. Are these actual consummated leases?
A. No.
Q. What are they?
A. These are properties that were available for lease as of the tax lien date.
Q. Okay. Now, the former Flower Factory, is that space larger or smaller than the subject?
A. No. 11 you're referring to?
Q. Yes.
A. No. 11 is smaller.
Q. Is the building newer?
A. It is.
Q. And what are they asking in terms of rent there?
A. $4.75.
Q. To your knowledge, is that leased?
A. The owner in early '17 decided to open up

Page 56

their own furniture company and occupy the store, so it was never -- they never were able to lease it and decided to owner occupy it.
Q. It's a smaller, newer space, they're not getting $4.75?
A. Correct.
Q. No. 12, Rocky River, is that a good area?
A. Yes.
Q. Better than Brooklyn?
A. I think so.
Q. What's the size of that space?
A. 72,500 square feet.
Q. What were they asking?
A. $6.
Q. Not getting it, right?
A. No, it's been for lease for quite a while.
Q. Does that suggest that our property could lease for more than $6?
A. I think it's highly unlikely.
Q. I just want to ask you about the last two. You've got a No. 13, former Wal-Mart. Size is pretty similar to the subject?
A. Yes.
Q. Is the age similar?

Page 57

A. It is.
Q. What are they offering that for lease at?
A. $4.
Q. They're not getting it, right?
A. They haven't yet.
Q. So just to recap, your first two rent comps, they're in our parking lot?
A. Yes.
Q. And the last four are asking rents but not getting; is that right?
A. Yes.
Q. So based on these rent comps, you concluded what per square foot in terms of an achievable rent?
A. $4.50.
Q. Now, have you seen each of these rent comps?
A. I have.
Q. And you verified the terms of any of the leases?
A. I have.
Q. Okay. When it comes to vacancy and credit loss, you start discussing that on Page 54, how did you establish vacancy and credit loss?
A. I looked at multiple sources to try to

Page 58

determine a reasonable deduction for vacancy and credit loss.
Q. What were those sources?
A. I looked to Costar which is included in the report on facing page 54, as well as Collier's International developed a research report where they indicate what the vacancy rate is, and I've included that in the addendum of my report on Page 62 through 65.
Q. And what did you conclude for vacancy and credit loss?
A. I utilize five percent.
Q. What expenses did you take from the income stream? You testified I think that you -- did you analyze this on a net basis?
A. I did. I assumed this to be a triple net rental rate structure where the tenant would then pay operating expenses including real estate taxes so that the only thing I have deducted for is management and administrative costs and a reserve for replacement.
Q. How much did you deduct for management and administrative costs?
A. Three percent of effective gross income.
Q. Replacement reserves, why are those

Page 59

necessary?
A. You're going to have an owner that has to replace a parking lot, roof, heating and air conditioning, pay leasing commissions, do tenant buildouts, and all of that costs money. So that in order to basically amortize those costs or basically have enough in savings to pay for those costs sometime in the future, you set up a reserve for replacement.
Q. How much did you deduct for replacement reserves?
A. 50 cents a square foot.
Q. I want to turn back for just a minute to facing Page 53 where you have your summary of comparable leases.
A. Okay.
Q. I want to direct your attention to the column marked Term. Do you see that?
A. Yes.
Q. How many of those are leases that were build to suit?
A. None of them.
Q. How many of those leases were sale leasebacks?
A. These don't reflect any sales, so it

Page 60

would all be just rental information.
Q. Okay. You don't have any rents here that were negotiated in 1990?
A. No.
Q. 1988?
A. No.
Q. Would you ever use rents that were negotiated in 1990 or 1988?
A. If I was appraising a property going back to 1990, I would, but as of 2015, I don't think it's appropriate.
Q. Now, if you were valuing the leased fee for the subject, let's assume the subject were leased -- let's assume you were -- I'm going to use one of your sales. Let's assume that you were hired, Mr. Racek, not for tax appeal but to value your Sale No. 9 which is a big box store occupied by Lowe's in Hilliard. That's on Page 45, you see that?
A. Yes.
Q. Let's say you were asked to value the leased fee interest for financing purposes rather than the fee simple, what income would you capitalize in the income approach?
A. The contract rent that's in place.
Q. You would capitalize the income even

Page 61

though the lease commenced 20 years prior to 1994?
A. If I'm asked to appraise leased fee interest, it really is irrelevant when the lease started.
Q. Is that one of the major differences the way you would go about valuing the leased fee versus the fee simple?
A. Yes.
Q. I want to ask you about your cap rate. I'm on Page 55. You verified all the sales in the chart on Page 55?
A. Yes.
Q. You've seen them all?
A. Yes.
Q. And what capitalization rate did you ultimately conclude?
A. 7.25 percent.
Q. Now, just to draw the Board's attention back to the table, the bottom of Page 55, all six of these sales are leased fee transactions; is that right?
A. Correct.
Q. There's no way to really calculate a fee simple cap rate; is that right?
A. Exactly.

Page 62

Q. But if you are supposed to be valuing the subject as if unencumbered, that means what?
A. Basically without a lease in place.
Q. Okay. Does buying a property without a long-term lease in place involve the assumption of more risk or less risk than, say, buying your Sale No. 9 with ten more years running on it with any credit tenant like Lowe's?
A. I guess it would depend on who the purchaser is.
Q. If you're purchasing it for the purpose of investment, is there more risk associated with buying an unencumbered fee simple building or is there more risk associated with buying a property with a leased fee interest?
A. There's going to be more risk involved in purchasing a property that is not encumbered with a lease because you either have to find a tenant to lease the property or subdivide it, or whatever the case may be, you're going to have to find a tenant to start paying your rent.
Q. Okay. And the more risk, is it fair to say, the higher the cap rate?
A. Yes.
Q. So you concluded to what cap rate again?

Page 63

A. 7.25 percent.
Q. I'm looking at the bottom of Page 56, there's a table here Income Value Computation. Is that your income pro forma?
A. Correct.
Q. What did you conclude to under the income approach?
A. Total value?
Q. Yeah.
A. $6,810,000.
Q. So the top of Page 57, how did you reconcile the two approaches?
A. Both approaches I believe are developed using market information that was obtained and occurred near the tax lien date. I think both approaches develop a reliable value indication. And ultimately the value opinion is between the range that is in this case pretty tight, basically within $40,000 of one another, and ultimately I arrived at a final value conclusion of $6,790,000.
Q. I think you testified earlier that the 6-million-790 was $50.17 --
A. Roughly.
Q. -- a square foot?
Is that higher than most of your fee

Page 64

simple sales?
A. Yes.
MR. GIBBS: I have nothing further.
THE EXAMINER: Okay. Let's take a short break before we move on to cross-examination. Off the record.
(Recess taken.)
THE EXAMINER: Let's go back on the record. Mr. Seed, cross-examination.
\- - -
CROSS-EXAMINATION
By Mr. Seed:
Q. Good morning.
A. I was making sure it was still morning.
Q. Mr. Racek, do you have Exhibit A in front of you?
A. It's my report, yes.
Q. Have you previously appraised this property --
A. I have.
(EXHIBIT MARKED FOR IDENTIFICATION.)
Q. I marked Exhibit 1. I'm going to hand it to Mr. Racek. Could you identify that document, for me?
A. Say that again.

Page 65

Q. Can you identify the document or take a look at it.
A. Looks like an appraisal report that I wrote as of January 1st, 2012.
Q. That's three years prior to the tax lien date for today's report?
A. It would be, yes.
Q. Have you appraised this property on any other occasion?
A. Not that I can remember.
Q. Okay. Who did you prepare Exhibit 1 for?
A. It was addressed to Mr. Gibbs.
Q. And would that be on behalf of Lowe's?
A. It would have been, yes.
Q. All right. Let's talk about our subject property, the location. I want to look at Page -- we're in Exhibit A. We'll come back to Exhibit 1 in a moment, but on Exhibit A, I want to talk about facing Pages 20 and 22. Can you turn there, please.
A. 20 and 22, okay.
Q. Look on facing Page 22. You see an arrow marker for the subject. Do you see that?
A. Yes.
Q. Now, is there a subject -- does the arrow marker, is that crossing over Ridge Road?

Page 66

A. It would be, yes.
Q. Is that interstate -- just for geography, is the arrow marker going from east to west where it says Subject?
A. Yes.
Q. Okay. And the flood hazard map would be the north on this page?
A. Yes.
Q. Okay. The highway would be -- what highway is that to the south of the property?
A. Interstate 480.
Q. That would be to the south?
A. Yes.
Q. Now, does our subject have direct visibility to Interstate 480?
A. It does.
Q. Is it adjacent to the Interstate 480?
A. The southerly property line of our property coincides with the north property line of Interstate 480.
Q. One traveling from east to west on Interstate 480 will see the Lowe's?
A. Yes.
Q. Now, just keep your finger on that page, but let's go to the larger view. Let me just strike

Page 67

that question. Mr. Racek, there was a question earlier today about the history of Brookpark Road; do you recall that question?
A. Yes.
Q. Brookpark Road, is that located to the south like an inch from the bottom of this picture on facing Page 22?
A. It is designated Brookpark Road. There's a black line that runs....
Q. Now, Interstate 480 was constructed during the 1970s, would you agree with me?
A. '80s, I think, early '80s, late '70s.
Q. So it's been there for over 40 years?
A. A long time.
Q. Now, just turning to Ridge Park Square, is that the property adjacent to the Lowe's?
A. We're part of Ridge Park Square, although we're independently owned.
Q. Was that constructed in the 1980s? 1990s?
A. It was constructed in phases.
Q. Okay. The Phase 1, is that the northerly part of Ridge?
A. Yes.
Q. Was that constructed in the '80s?

Page 68

A. Yes.
Q. Phase 2 where our subject is, was that constructed in the '90s?
A. Correct.
Q. Those were all constructed after Interstate 480 was built?
A. Yes.
Q. Now, let's turn back to facing Page 20. You have an arrow pointing to our subject; do you see that?
A. Yes.
Q. Brooklyn, am I correct that Brooklyn is a geographically small community that is surrounded by Cleveland and Parma?
A. Yes.
Q. So Brooklyn would be the center of this -- is at the center of this map just to the north of the subject marker?
A. Yes.
Q. And Cleveland is on all sides to the north of Brooklyn?
A. To the east, to the north and to the west.
Q. To the west, too, correct?
A. Yes.

Page 69

Q. And Brookpark Road, do you see that below Interstate 480?
A. Yes.
Q. Is that the border of the City of Parma?
A. Correct.
Q. So would you agree with me if you look at facing Page 20, that we're looking at a large swaft of the near southern west side of Cleveland?
A. Okay, yes.
Q. Let's start to the south, Parma. Do you also see Parma Heights?
A. Yes.
Q. Am I am correct there's almost a hundred thousand people in Parma and Parma Heights?
A. Probably pretty close.
Q. And Cleveland to the north, is there probably another hundred thousand residents on this map?
MR. GIBBS: Objection.
A. I don't know how many people live on the map.
MR. GIBBS: Within what radius?
MR. SEED: I'm going to come to that.
THE EXAMINER: If you can clarify, Mr. Seed.

Page 70

Q. (By Mr. Seed) In your appraisal, Mr. Racek, do you provide data as to population within the immediate area of our subject?
A. I do not.
Q. Do you provide information in the report as to income levels within the immediate area of our subject?
A. No.
Q. Do you provide information in the report as to housing information in the immediate area of our subject?
A. Not to great detail, no.
Q. Do you provide for traffic count? Do you provide information as to traffic count?
A. No.
Q. For any of the comparables, do you provide information as to traffic counts?
A. I do not.
Q. Do you provide information as to population for any of the comparables?
A. No.
Q. Do you provide information as to income levels for any of the comparables?
A. No.
Q. Do you provide information as to housing

Page 71

for any of the comparables?
A. No.
Q. Would you agree with me that on facing Page 20, that we have a densely populated area?
A. Yes.
Q. Okay, thank you.
Now, if we turn back to facing Page 22, Ridge Park Square, what's the older part? Let's talk about that for a second. Is that over a hundred thousand square feet of retail space?
A. Yes.
Q. And there's like three or four buildings, am I correct?
A. I don't remember the exact number but it's a complex of buildings.
Q. Okay. And then to the immediate where the subject line is, I think you have a photograph of this, let me find this here, if we turn to facing Page 24, you have a site plan; do you see that?
A. Yes.
Q. What's considered Phase 2 would be the marks, correct?
A. Yes.
Q. Those face the highway, correct?
A. Correct.

Page 72

Q. Those buildings, okay. And on January 1, 2015, am I correct that all of Ridge Park Square was occupied, had a lease in place?
A. I don't know the exact occupancy of Ridge Park Square on the tax lien date. I only appraised Lowe's.
Q. Am I correct there was no significant vacancy as of January 1, 2015 at Ridge Park Square?
A. Again, I couldn't tell you specifically what the vacancy was at this shopping center.
Q. Are you aware of any vacancy as of January 1, 2015 at Ridge Park Square?
A. I'm not familiar with any large spaces. There could be smaller spaces.
Q. I want to focus on larger spaces. I'm not trying to trick you with questions about a 500 square feet, you know....
A. I understand.
Q. He doesn't believe me.
MR. GIBBS: Is that a question?
Q. Let's move on. Mr. Racek, let's turn to facing Page 20. In Brooklyn, there's another major intersection that's immediately to the west known as Tiedeman and Interstate 480; is that correct?
A. Yes.

Page 73

Q. Now, let's start at Tiedeman and Interstate 480, is that a mile, mile-and-a-half away from Ridge and 480?
A. Close.
Q. So in Brooklyn at Tiedeman and 480, am I correct there's a Home Depot at that intersection?
A. No.
Q. There's not?
A. Tiedeman and 480?
Q. Tiedeman and Brookpark Road.
A. Tiedeman and Brookpark there is, yes.
Q. But immediately to the south of Interstate 480?
A. A quarter mile or so, yes.
Q. Okay. And on Brookpark Road as you head -- you see where Tiedeman meets Brookpark Road, Mr. Racek?
A. Yes.
Q. If you head to the east, if you cross Tiedeman, is there a Sam's Club?
A. There is.
Q. Was that Sam's Club occupied as of January 1, 2015?
A. It is.
Q. Was the Home Depot occupied as of

Page 74

January 1, 2015?
A. Yes.
Q. Are they both occupied as of today as far as you know?
A. Best of my recollection, yes.
Q. With the Sam's Club, if you head further to the east, is there a Wal-Mart?
A. Yes.
Q. Was the Wal-Mart occupied as of January 1, 2015?
A. To my recollection, it was.
Q. Was the Wal-Mart expanded in the last five years?
A. I don't know.
Q. Okay. Is the Wal-Mart occupied to the best of your knowledge as of today?
A. Yes.
Q. And as you head further to the east, is there a Jaguar dealership?
A. The auto dealership sells multiple brands, yes.
Q. Jaguar, Mazda?
A. Correct.
Q. As you head further to the east, was there a Super Kmart?

Page 75

A. There was.
Q. And Menards, from your prior testimony, did they purchase that building with plans to construct a Menards?
A. Yes.
Q. Do you recall what they paid for it?
A. 10-million-250, thereabouts.
Q. Did they purchase it for -- do you recall did they purchase it for more than you appraised the Kmart?
A. I don't recall what I appraised it for.
Q. We'll get to that. As you head further to the east, you are then approaching Ridge Park. As you're approaching Ridge Road, are there other retail improvements?
A. There are some, yes.
Q. Is there a former Kmart that's been subdivided we discussed earlier?
A. I don't know if we discussed it earlier, but there's a former Kmart that has been subdivided.
Q. Is there an Arhaus Furniture?
A. An Arhaus outlet center.
Q. Maybe a Staples or home office store?
A. I think Staples vacated.
MR. GIBBS: I would just object on the

Page 76

basis that a lot of this cross seems to be exceeding the scope of my direct. He's asking him about shopping centers and things that weren't discussed during direct, so I have a continuing objection to that.
THE EXAMINER: Mr. Seed, do you have any response?
MR. SEED: I do. Mr. Gibbs went through selected parts of the location in his direct. He went through the description that Mr. Racek had and picked items that he wanted to tell you about and I'm doing the same, too.
THE EXAMINER: I'm going to -- I'm sorry, Mr. Gibbs, did you have --
MR. GIBBS: He's not your witness.
THE EXAMINER: I understand. I think we're just filling in the neighborhood. I'm fine with that.
MR. SEED: I'm almost done with this part.
Q. (By Mr. Seed) Now, as you approach Ridge Park Road, to the east of Ridge Park at Brookpark, is there a Giant Eagle?
A. Say that again.
Q. Is there a Giant Eagle at --

Page 77

A. Where?
Q. I'll strike that. I'm thinking of a different location.
Now, so between Ridge Park -- between Ridge Road and Tiedeman Road in Brooklyn, am I correct there's no vacancy of big box stores, correct?
A. Not that I'm familiar with, no.
Q. At Ridge Park Square, there's no vacancy of large big box stores, correct?
A. As of when?
Q. As of our tax lien date.
A. No.
Q. As of today.
A. There is a vacancy at Ridge Park Square Shopping Center.
Q. Is that a former inline grocery store?
A. Yes.
Q. In your report, you characterize the location as a relatively good location with some strong demand?
A. I think so.
Q. Okay, thank you. Now, if Lowe's were to -- since you know the location, if Lowe's wanted to locate at this area, if they weren't here, what

Page 78

land is available, Mr. Racek, that they could buy that would have similar utility?
A. I suppose any site that was available.
Q. Which site is available?
A. You're asking me a hypothetical question. As of today or tax lien date?
Q. Tax lien date to put up a 130,000 square foot plus or minus big box store.
A. I suppose they could have purchased the Kmart store that Meijer -- or, I'm sorry, Menards purchased.
Q. They would have to buy the property, correct?
A. Yeah, you said what would they be able to buy, and that's what I answered.
Q. They would have to demolish the building, correct?
A. No, they could have used it.
Q. Okay. But they'd have to retrofit it, correct?
A. If that was their choice, then they could have. They could have used it just the way it was.
Q. Does that property have visibility, that Super Kmart, have visibility from Interstate 480?
A. They had a pylon sign you could see from

Page 79

the freeway, but you couldn't see the building.
Q. Are you aware of any property at this intersection that has as good a visibility as our subject property?
A. Yeah, all four corners. The HH Gregg is now vacant. The Best Buy --
Q. Can you see the HH Gregg? You said it was a quarter mile at Tiedeman.
A. No, the HH Gregg is at the southeast quadrant of Interstate 480 -- former HH Gregg because they vacated too.
Q. Can you see that from Interstate 480?
A. Let's look at my facing Page 22. See where my subject arrow is?
Q. I do.
A. Continue on the opposite side of 480. The building that's at the northeast corner of Ridge Road at Brookpark Road is HH Gregg.
Q. Okay. So they would have to buy that building, right, that property?
A. Or they could possibly have bought the Best Buy that's on the opposite corner or the Kmart.
Q. Would you agree with me they would have to buy a property that's currently improved as a retail use?

Page 80

A. That's generally what you're going to find in this neighborhood because it's been fully developed for many years.
Q. Are you aware from your client Lowe's of plans to close this property as of the tax lien date?
A. I am not familiar with Lowe's business plans, no.
Q. Well, in preparing an appraisal report, do you acquire whether they plan to make improvements or leave the property?
A. I ask if they're going to make improvements. I don't ask if they're going to leave.
Q. As of today, is this Lowe's currently at the property using the property?
A. As far as I know they are, yes.
Q. Now, let's go on. In your report, do you have a section of the report that discusses the retail market in general?
A. I don't touch on it specifically, no.
Q. Like looking at retail on an overall basis, do you have that in the report?
A. I don't think so, no.
Q. Do you have an analysis in your report of retail in northeast Ohio?
A. The closest would be the Collier's

Page 81

International Survey.
Q. Okay. But you don't have your own specific write-up of the detail in northeast Ohio?
A. I don't.
Q. Do you have a write-up on retail in general in the market area of our subject property?
A. I don't believe so, no.
Q. Okay. Do you recall something known as the great recession, Mr. Racek?
A. Yes.
Q. Thank you. Have market conditions improved between January -- let me strike that question.
When was the great recession?
A. Started in September of 2008.
Q. And when did it end?
A. I don't know the exact date.
Q. A few years after, would you agree with me?
A. Generally.
Q. Have market conditions improved since the great recession?
A. Generally.
Q. Did properties decline in value before -- when we entered the great recession shortly

Page 82

thereafter?
A. Some of them.
Q. Now, if I turn to your report, I'm going to move into a new area here, if I look at your report marked as Exhibit A that you did for Mr. Gibbs for today, what's your opinion of value on the facing page?
A. On which facing page?
Q. Today's report, what's your opinion of value, Exhibit A?
A. My opinion of value for the property as of January 1st, 2015 is $6,790,000.
Q. And if you turn to facing page of Exhibit 1, what is your opinion of value?
A. Which facing page?
Q. Exhibit 1, your 2012 report.
A. Which facing page?
Q. I'm sorry, not facing page, cover letter.
A. 8,825,000.
Q. So your value between January 1, 2012 and January 1, 2015 declined by about 20, 25 percent; is that correct?
A. I didn't do the math, but it declined.
Q. By over $2 million?
A. Correct.

Page 83

Q. Turn to Page 16 of Exhibit A and Page 15 of Exhibit 1. Could you please open both up. I'm going to be asking you some questions in this format. The purpose of the appraisal between the two reports did not change; is that correct?
A. Correct.
Q. Both reports, you're determining the fee simple value of the property, correct?
A. I did.
Q. Definition of market value, the definition of market value did not change between the two reports, correct?
A. Correct.
Q. If you could turn to Page 17 of Exhibit A and 16 of Exhibit 1. There's a section called Property Rights Appraised; do you see that?
A. Yes.
Q. Is that section identical in both reports?
A. Looks to be.
Q. Okay. So am I correct that the January 1, 2012 report and January 1, 2015 report, you were appraising the fee simple interest of the property?
A. Yes.

Page 84

Q. Now, without going -- I'm not going to go through all these sections here, but generally until we come to highest and best use, are the two reports fairly similar except you've taken different photographs and you might have made some minor changes to the description of the improvements?
MR. GIBBS: Objection. That's a pretty sweeping question.
MR. SEED: I can go through it.
THE EXAMINER: I'm going to let him answer to save time.
THE WITNESS: I haven't read my 2012 report recently. The format is generally the same and similar, so that I would say that generally speaking, they're going to be similar.
THE EXAMINER: I'll just note, too, the documents are before us as well.
Q. (By Mr. Seed) Okay. Now, one question I forgot that we focused on before, you said Brookpark Road was a primary east-west thoroughfare. Am I correct that construction of 480 would have had a greater positive benefit to this property than it not being created because of the heavy traffic count and two highway exits in Brooklyn?
A. I think I've stated already that the

Page 85

property has good visibility from Interstate 480 and benefits from that.
Q. But you write in the report and Mr. Gibbs asked you about Brookpark Road, as if that used to be a major east-west thoroughfare.
A. It still is a major east-west thoroughfare, but it doesn't have the same amount of traffic as Interstate 480 does now.
Q. So overall the traffic count of having Interstate 480 is much greater than Brookpark Road, correct?
A. Yeah, there's more cars going up and down 480 than Brookpark Road.
Q. That positively benefits the subject and its location?
A. I think so.
Q. I'm going to ask you about Page 25 of Exhibit A, today's report. Bottom section, you indicate that this is built as a single tenant retail building, correct?
A. Yes.
Q. In the last sentence, you indicate that it has a recognized demand and is improved with similar style buildings; is that correct?
A. Yes.

Page 86

Q. If you turn to Exhibit 1 on Page 22, same section called Subject Review.
A. Okay.
Q. You provide some more descriptive information. You indicate that the property is in a stable area. Do you still agree with that?
A. Yes.
Q. That the surrounding properties comprise residential office and commercial development; do you agree with that?
A. Yes.
Q. And that the subject is in close proximity to employment centers, population and other transportation arteries; would that still be correct?
A. Yes.
Q. And then what I was interested in, you state in the next sentence, "Considering the location of the subject, the amenities provided and the physical condition of the improvements, the subject is considered to be a retail facility that provides adequate functional utility."
A. Correct.
Q. Okay. Was this property built to the specifications of Lowe's?
A. It was.

Page 87

Q. Does Lowe's tend to build their stores in 30,000 square foot buildings?
A. They do not.
Q. When you drove up from Cleveland to Columbus, did you see the new IKEA?
A. I probably didn't see it this morning, but I've seen it.
Q. Would that be too large of a building for a typical Lowe's?
A. Truthfully I don't know how big IKEA is.
Q. But does Lowe's typically go into 300,000 square foot buildings?
A. Not generally, no.
Q. If you turn to Page 26 of Exhibit A, the next page, you write in the second sentence of Highest and Best Use As Improved, "While the improvements were 16 years old as of the tax lien date and considered to be in average condition, they are functionally obsolete for most second generation users"; do you see that?
A. Yes.
Q. If you turn to your prior report, the same section on Page 23, you don't have that type of sentence in the report, correct?
A. I do not in this report, no.

Page 88

Q. You indicate even, Mr. Racek, that the improvements add value above and beyond the vacant land alone, correct?
A. I think that is true.
Q. Okay. Now, you earlier testified that you thought Rocky River was a better location than our subject; do you recall that?
A. I don't know if I said it was a better location, but it's a good location.
Q. Good location?
A. I mean, it's not near a freeway interchange, but there's high demand for properties in that area.
(EXHIBIT MARKED FOR IDENTIFICATION.)
Q. Could you look at this document for a second.
THE EXAMINER: This has been marked as Exhibit 2?
MR. SEED: 2.
MR. GIBBS: Your Honor, I want to make a general objection to 1 and 2 so far. These were not on the exhibit list.
THE EXAMINER: Any response, Mr. Seed?
MR. SEED: They're used for cross-examination.

Page 89

THE EXAMINER: They appear to be in the nature of rebuttal. I'll overrule the objection. We're not quite to admissibility, but I'll note your objection. Mr. Seed.
Q. (By Mr. Seed) Would you take a moment to look at the document.
A. Okay.
Q. Are you familiar with this document?
A. It looks like something I prepared.
Q. Is this the Lowe's in Rocky River, Ohio?
A. Yes.
Q. Is Rocky River a western suburb of Cleveland?
A. It is.
Q. Could you turn to Page 25. You see the bottom paragraph, Mr. Racek?
A. Yes.
Q. Here the language, the second sentence is identical, am I correct, to the second sentence on Exhibit A, Page 26 except it's six years old instead of 16 years old.
A. Okay.
Q. Is that correct?
A. Looks like it.
Q. So in the Rocky River report, you

Page 90

indicated that a six-year-old building was functionally obsolete, correct?
A. For a second generation user.
Q. Is that your assumption of what you're appraising this property for, for a second generation user?
A. Well, if we're assuming that the property would be sold unencumbered, it would have to be to somebody who was either owner occupied as a second generation user or re-leased to somebody who would be a second generation tenant.
Q. Why would it necessarily be functionally obsolete, Mr. Racek?
A. Based upon what's happening in the market, you will find that stores of this size, being 135,000 square feet, there isn't much demand for other tenants in the market to occupy a building of this size.
Q. Would Lowe's have an interest in it?
A. Lowe's is the owner occupant pant.
Q. If this property was available, would they have an interest in it?
A. If the property was on the market to be sold, Lowe's would be moving out of it.
Q. Your assumption is that we're looking at

Page 91

a property that's vacant, correct?
A. No, we're looking at a property that is available to a potential owner user or tenant that can occupy the building according to zoning regulations.
Q. We'll come back to that in a second. Let's look at your income approach, Mr. Racek. I want you to turn to facing Page 53, please.
MR. GIBBS: In which Exhibit?
MR. SEED: Exhibit A, we'll start there.
Q. No. 1 -- we'll go through these and we'll try to go quickly. No. 1 is a quarter of a size of our subject?
A. Roughly is.
Q. Does it have the utility to be used as a Lowe's?
A. No.
Q. Okay. No. 2 is a third of the size of our subject?
A. Correct.
Q. Is that inline in a shopping center?
A. It's directly across the street from the subject.
Q. I understand that. Is it within an existing building with other tenants adjacent to it?

Page 92

A. Technically ours is as well but yes.
Q. Ours is freestanding.
A. No, ours --
Q. You say in your report ours is freestanding.
A. No, ours has buildings attached to it that are not owned by Lowe's. If you look at our site plan --
Q. I haven't asked you that question yet.
A. I'm trying to explain my answer. If you look at facing Page 24, you can see that there's a building attached to our structure immediately to the east. As further supported, if you check out the tax map on facing Page 17, you can see that the blue line clearly separates the Lowe's store from the physically attached multi-tenant building.
Q. But on that same page in the background is an L shaped Phase 1 of that shopping center, correct, Mr. Racek?
A. Yes.
Q. The Valu King is part of that L-shaped shopping center?
A. It is.
Q. Okay. Does Lowe's tend to locate itself within L-shaped shopping centers as one of a number

Page 93

of tenants?
A. Sometimes.
Q. Can you give me an example?
A. They're in a shopping center in Hilliard. They're in a shopping center in Fairfield. They're in a shopping center in Chillicothe.
Q. As attached or stand-alone?
A. Attached.
Q. No. 3 is Hobby Lobby?
A. Yes.
Q. That was entered into in 2010?
A. It was.
Q. That's a third of the size of our subject?
A. Roughly.
Q. No. 4 is in Columbus, correct?
A. It is.
Q. No. 5 is a Hobby Lobby, it's a third of the size?
A. Roughly, yes.
Q. Okay. No. 6 in Sheffield Village, is that in Cuyahoga County?
A. Lorain County.
Q. No. 7 is a Marc's. Is that in Cuyahoga County?

Page 94

A. Lake County.
Q. Is that about a third or a little bit more than a third of our subject property?
A. Roughly half the size.
Q. And No. 8 is in Columbus?
A. It is.
Q. No. 9 is in Oakwood Village. Is that Cuyahoga County or Summit County?
A. Cuyahoga County.
Q. Is that part of a shopping center?
A. It is.
Q. Now, you've appraised stuff for a while, doing leases and sales. When there's -- when a sale takes place or a lease takes place, do negotiations tend to take place months before the start of the start date for a lease or the sale date?
A. Yes.
Q. Now, if you look at the dates of your transactions, you have terms. Is that the year that terms started?
A. Yes.
Q. So if I look here, Mr. Racek, I see the Valu King is from 2012, that's No. 2, right?
A. Yes.
Q. Hobby Lobby is from 2010, correct?

Page 95

A. Yes.
Q. Burlington is 2008?
A. Yes.
Q. Hobby Lobby is 2010?
A. Yes.
Q. Marc's is 2010?
A. Yes.
Q. Levin is 2012?
A. Correct.
Q. Mr. Gibbs asked you earlier about the significance of having lease comps that were close to the tax lien date; do you recall that question?
A. Yes.
Q. Do you have any -- all I see here, Mr. Racek, is one lease comp from 2015; is that correct?
A. There is one in '15, yes.
Q. You have none from '16, correct?
A. I do not.
Q. None from '17, correct?
A. I do not.
Q. You have one from 2014, correct?
A. Yes.
Q. And one from -- none from 2013?
A. There is one in '13.

Page 96

Q. Okay. So what we have here is you have three lease comps and only two of the lease comps are within two years of our tax lien date, correct?
A. Three of them are within two years of the tax lien date.
Q. Okay. Now, if you turn to Exhibit 1, if you could turn to facing Page 47, do you see that?
A. Yes.
Q. Am I correct, Mr. Racek, that rent comp -- in seven of these rent comps you used in your prior report, and I'll go through them, the Valu King was in the prior report as Rent Comp No. 1?
A. Yes.
Q. The Hobby Lobby was Rent Comp No. 2 in the prior report?
A. Yes.
Q. Rent Comp No. 4 -- Was Rent Comp No. 3 in the prior report?
A. Say that again.
Q. The Burlington Coat Factory, No. 4, was No. 3 in the prior report?
A. Yes.
Q. The Hobby Lobby Rent Comp 5 in the '15 report was Rent Comp 4 in the '12 report?
A. Yes.

Page 97

Q. Marc's, Rent Comp 7, was Rent Comp 8 in the '12 report?
A. Yes.
Q. Garden Ridge, Rent Comp 8 was Rent Comp 10 in the prior report?
A. Correct.
Q. And the former Wal-Mart, No. 10, was Rent Comp 12 in the prior report, correct?
A. Yes.
Q. Now, let's look at some of your other rent comps. Rent Comp 11 in Exhibit A is a former Flower Factory you indicate is in Bainbridge, Ohio?
A. Yes.
Q. When was that first available?
A. I want to say around 2012 or so.
Q. And it's about a little bit more than half the size of our subject property?
A. Yes.
Q. Rent Comp 12 is in Rocky River, correct?
A. Yes.
Q. Wasn't Rent Comp 12 redeveloped as a Fitworks and then a Whole Foods store?
A. As of the tax lien date, the Fitworks had already been carved out of the space, and what's left here is 72,500 square feet is what was available as

Page 98

of the tax lien date.
Q. Didn't Whole Foods subsequently take over that space?
A. If they did, it just happened recently, in '17, to my recollection.
Q. Didn't Whole Foods open in 2015 in Rocky River?
A. Not in this space.
Q. Wasn't that property -- was this property owned by Walton Fisher?
A. It is.
Q. Didn't Walton Fisher redevelop the space as a Whole Foods location?
A. If they did, they didn't do this space because I've driven by more recently than that. Whole Foods is not there.
Q. What's there?
A. The fitness center was in the space you referred to. And of tax lien date, this space was still available.
Q. Did the fitness center take over all or part of this space?
A. The 72,500 square feet that I say is available for lease is what is available as of the tax lien date.

Page 99

Q. How long has that been available for lease?
A. Since Target vacated it and moved down the street.
Q. Wasn't that over a decade ago?
A. No, they moved into the old Westgate Mall area that was redeveloped in....
Q. 2008-2009?
A. Something like that.
Q. So it's been available for nine -- eight or nine years, correct?
A. Yeah, that's a good indication as to why big box stores have very limited demand.
Q. Am I correct, Mr. Racek, Fitworks took over part of the former Target?
A. Yes, the former Target was more than 72,500 square feet. It was probably over a hundred thousand square feet. So what was available as of tax lien date is what is left of the store, of the original Target store.
Q. You just made a comment before that this shows that's there's lack of demand because the Target was vacant?
A. Lack of demand for people who need this much space, yes.

Page 100

Q. Why would Menards pay over $10 million to Kmart with their financial problems if these properties are so functionally obsolete, Mr. Racek?
A. Because they wanted 22 acres.
Q. Okay. And then they had to pay to redevelop it, right, if they were to -- strike that. Let's talk about Rent Comp 13, Mr. Racek. That's a former Wal-Mart?
A. Yes.
Q. In Cleveland Heights, correct?
A. Yes.
Q. Isn't that what's known as Severance Town Center?
A. Correct.
Q. Did Wal-Mart relocate about a mile away to a Super Wal-Mart?
A. Close, yes.
Q. Did Severance Town Center go through one or two foreclosures in the last two years?
A. I truthfully don't remember how many times.
Q. Is there a significant vacancy at Severance Town Center?
A. There is.
Q. Theaters closed, correct?

Page 101

A. Correct.
Q. Some of the stores next to Wal-Mart are closed?
A. Some of them.
Q. And then on the other side of the center is a shopping center next to a Dave's; is that correct?
A. Correct.
Q. Is there a vacancy within that shopping center?
A. There is.
Q. Now, Wal-Mart, is there a deed restriction on this property?
A. Not to my knowledge.
Q. With Wal-Mart relocating a mile away, would Wal-Mart be logically selective in who they would sell the property to and avoid in selling it to a direct competitor?
A. Wal-Mart doesn't own it.
Q. Who owns it?
A. Shopping center owner.
Q. Are you sure about that?
A. Positive. I appraised it.
Q. Now, the former Tops in Avon Lake, is that in Cuyahoga County?

Page 102

A. No, Lorain County.
Q. Is that about a third of the subject property?
A. Roughly.
Q. So if I look here on your list, Mr. Racek --
MR. GIBBS: I'm having a lot of trouble trying to figure out which -- he's not referencing the Exhibits each time, so I don't know which -- we've got three different appraisals now.
THE EXAMINER: If you can make that more clear, Mr. Seed. I think you're looking at Exhibit A currently?
MR. SEED: Correct.
THE EXAMINER: Those were the comps that we just discussed all in Exhibit A?
MR. SEED: Yes.
THE EXAMINER: Thank you.
Q. (By Mr. Seed) Mr. Racek, in Exhibit A, 7 of your 14 Rent Comps that you have actual leads for we discussed were in the prior report, correct?
A. I don't remember the exact number, but yes, several of them were in the prior report.
Q. The majority of the leases for which you have stated terms for were in the prior report,

Page 103

correct?
A. Yes.
Q. Okay. Now, if you turn to Page 47 of Exhibit 1, fifth paragraph, am I correct that you concluded in Exhibit 1 to a rent of $6 a square foot?
A. I did.
Q. If I turn to the last paragraph of Exhibit A, Page 53, last paragraph on Page 53, you conclude to a rent of $4.50 a square foot?
A. I do.
Q. Where do I find in this report the discussion that market rent has declined by 25 percent in three years between January 1, '12 and January 1, 2015 when you're using the majority of the sales in both reports?
A. Sales or rentals?
Q. The rentals in both reports.
A. I don't make that kind of an analysis in this report.
Q. Okay. Do you have any analysis in the report showing a 25 percent decline in lease rates in retail in general in Cuyahoga County?
A. No.
Q. Do you have a summary in your report showing any decline of lease rates in Cuyahoga

Page 104

County?
A. I don't talk about that in the report, no.
Q. You mentioned before you had -- did you have a survey in your report?
A. Collier's International Survey.
Q. Do they indicate there's been a 25 percent decline in rents?
A. They talk about current rents or rents in this case as of first quarter 2015.
Q. Now, turning back to Page -- Exhibit A, Page 53, Mr. Racek.
A. Exhibit A, what?
Q. 53, facing Page 53.
A. Go ahead.
Q. I think we covered that. We'll move on here. I'm going to go through the sales approach in a second. Mr. Gibbs at the beginning of the hearing asked you about the term unencumbered; do you recall that?
A. Yes.
Q. And do you believe that means that property is not leased or do you believe it means it's leased at market rent?
A. It's not leased, unencumbered.

Page 105

Q. So in Ohio tax law, are you appraising the property as vacant fee simple or appraising the property leased at market rent? Which of the two is it?
A. I'm appraising the property that's unencumbered.
Q. So that would be vacant?
A. No, doesn't necessarily mean vacant. It means that you have the ability to buy it and owner occupy it.
Q. I just asked you earlier, and I'm going to do it again because it's an important point, does your understanding of Ohio tax valuation law from your reading of the cases that you're to appraise a property --
MR. GIBBS: Objection, asked and answered. This is the same question he just asked him.
THE EXAMINER: I'm going to allow him to ask one more time because I'm not sure we got the answer clear. Mr. Seed.
Q. (By Mr. Seed) Am I correct you stated earlier that unencumbered means not leased, correct?
A. Yes.
Q. So when you're appraising property for

Page 106

Ohio tax valuation purposes, are you appraising the property as if it's for fee simple for property tax purposes, are you appraising the property as if it's vacant or if it's leased at market rent, if it's not vacant, if it's leased? Which of the two?
A. I'm confused now.
Q. Let me go through it again. If you're appraising property for Ohio tax purposes, are you a assuming that the property is vacant?
A. I'm assuming it's unencumbered.
Q. What does that mean to you?
A. That it can be occupied by an owner user or a potential tenant.
Q. Can unencumbered also mean for purposes of Ohio tax law that it's leased but leased at market rent?
A. I think if it's leased, it's unencumbered.
Q. Okay. So if it's leased, does that mean it has to -- does that mean there has to be an adjustment?
A. Yes.
Q. Why does there have to be an adjustment?
A. You have to determine whether or not the rent is at, above or below market.

Page 107

Q. Okay. So if the rent was -- let me give you a hypothetical. If the rent was $7 a square foot, Mr. Racek, and it was leased at $20 a square foot, would you have to make an adjustment for an above market contract rent?
A. You confused me with $7 and $20.
Q. The contract rent is $20 and the market rent is $7. Do you have to make an adjustment for the above market contract rent?
A. Yes.
Q. If the rent was $1, the contract rent was $1 a square foot and the market rent was $7 a square foot, would you have to make a similar adjustment?
A. Yes.
Q. So in appraising this property, Mr. Racek, have you appraised this property assuming that it's vacant or not?
A. Not.
Q. That it's not vacant?
A. I'm assuming it can be occupied by an owner user or a potential tenant.
Q. Now, if there was a potential tenant in the property, okay, not a potential, if there's an actual tenant of the property, of the lease, you would have to adjust the lease if it was above or

Page 108

below market, correct?
A. I would --
MR. GIBBS: Objection. Relevance. There's no tenant at this property.
Q. If there was a tenant?
THE EXAMINER: I think this may have already been asked and answered in your last line of questioning about whether there would be an adjustment to an above or below market lease.
MR. SEED: Okay, I'll move on.
THE EXAMINER: Thank you.
Q. (By Mr. Seed) Sale No. 1, Mr. Racek, that's attached to a mall; is that correct?
A. Yes.
THE EXAMINER: Again, Mr. Seed, you're in Exhibit A?
MR. SEED: Exhibit A.
Q. That's not a freestanding big box, correct?
A. It's the grantor individually owns the building even though it was attached to a mall that was owned by other people.
Q. You can walk -- it's like a mall anchor tenant, correct?
A. Yes.

Page 109

Q. That's in Columbus, correct?
A. It is, yes.
Q. At this mall, is there a Lowe's or Home Depot?
A. Across the street.
Q. But at this mall?
A. In the neighborhood.
Q. Are you aware of any malls that have Lowe's or Home Depot as anchor tenants, malls?
A. Not off the top of my head, no.
Q. Do malls typically have one or two stories? Typically two stories?
A. They can.
Q. Do they often have two stories?
A. Sometimes.
Q. Would a department store at a mall have great utility for use by Lowe's or Home Depot?
A. If they wanted to be a part of the synergy of the mall, they could be.
Q. Okay. No. 2 is a former Wal-Mart in Streetsboro?
A. Yes.
Q. That contract had a deed restriction?
A. It did.
Q. Did that limit the ability to sell the

Page 110

property?
A. I don't think so.
Q. Did that deed restriction limit it to sell to various retail uses?
A. You could be a retailer and occupy the property.
Q. Did you review the deed?
A. Yes.
Q. Did it restrict various retail uses?
A. It did.
Q. Back to Sale 1, Sale 1 was $67.79 a square foot?
A. Yes.
Q. You indicate that you made adjustments for sale and condition?
A. Say that again.
Q. You made a downward adjustment for sale and condition, correct?
A. For sale....
Q. For conditions.
A. For conditions, yes.
Q. You made a downward adjustment for location?
A. Yes.
Q. You made a downward location (sic) for

Page 111

the condition, correct? I just asked you, the sale condition, I'm sorry.
A. Sale condition, what do you mean by sale condition?
Q. You mentioned because there was a premium paid by the mall owner.
A. Yeah, the mall owner bought it so they could control who occupied the property.
Q. So what were those specific adjustments you made, Mr. Racek?
A. A downward adjustment because the mall owner paid a premium to acquire the property, a downward adjustment for location, a downward adjustment for superior interior finish.
Q. What specific adjustment did you make?
A. I just told you.
Q. You made a downward adjustment?
A. Yes.
Q. So what did you adjust that sale to, Mr. Racek?
A. I don't have a specific adjusted unit price because I don't do quantitative adjustments, I do qualitative analysis.
Q. That doesn't tell me anything, Mr. Racek.
A. Pick up the dictionary or the Appraisal

Page 112

Institute tax book and it's a proper way of adjusting sales that the Board of Tax Appeals has accepted time and time again.
Q. You mentioned there was a modest adjustment upward for the increase in property values that occurred since the date of the sale.
A. Yes.
Q. So how much was that adjustment?
A. I don't have a specific quantitative adjustment, David.
Q. I'm trying to understand. Property values increased since the date of the sale for sale 1, correct?
A. In their market it has, yes.
Q. In the two appraisals you've done in this property for January 1, '12 and January 1, '15, you're arguing that market rent for this property declined by 25 percent from $6 to 4.50, correct?
A. That's right.
Q. Where do I see in this report any evidence of a decline in market rent or an increase in the market of sale of values for the sales to support your conclusions?
A. My conclusions are contained with reviewing all of the sales information that I've

Page 113

provided in the report.
Q. Okay. We'll come back to that in a second. Sale 2, you indicate you make an upward adjustment for the location.
A. Yes.
Q. And you make an upward adjustment for the condition.
A. Yes.
Q. And you make a downward adjustment for the larger land to building ratio, correct?
A. Yes.
Q. And you make an upward adjustment for the deed restriction?
A. Correct.
Q. You have four adjustments. So which -- which adjustments carried more weight?
A. They aren't weighted. They're looking at at them in totality. They're looking at this sale that sold for $15. I think our property is better. That's why I put the value in at $50 a square foot.
Q. As a reader --
A. So as an appraiser, maybe I'm too high on the subject. Maybe it should only be worth 25.
Q. Maybe you should be higher at 85?
A. I have no support for that.

Page 114

Q. But I have no support, Mr. Racek, in reading your report to see how you come to $50 if you aren't making the effort to show how you make the adjustment from 15. You don't show me in this report, Mr. Racek, how you go from 15 to 50 for this comparable sale.
A. Because I use qualitative analysis, not quantitative adjustments which I can show you a case where the BTA will not accept quantitative analysis -- I'm sorry, quantitative adjustment.
Q. But do you make the effort to say which of these is greater? $15 is significantly different than 50; am I correct?
A. It is.
Q. How did you go from your thinking from 15 to 50?
A. Looking at all the sales I've provided in the report.
Q. Am I correct under that analysis someone else could say it's $30 or $100, they could just look at all the analyses in their reports and come to a conclusion?
A. What I've done, I've tried to bracket what our property is. By Sale No. 1, I think it's a better location, a better condition building, better

Page 115

located. So if that's at the top end of the range, it's roughly 70. And this one is basically similar in size, older, inferior location and it sets the lower limit at 15, we should be somewhere in that range.
Q. Maybe. We'll come to that. No. 3, Mr. Racek, you make adjustments for location, condition, correct?
A. Correct.
Q. Land to building ratio, correct?
A. Yes.
Q. Okay. That was $36, correct?
A. Yes.
Q. Again, do you have any analysis in your report as to how much weight you gave to each of the adjustments?
A. No.
Q. Sale 4, $21 a square foot or $22 a square foot, you see that?
A. Yes.
Q. You make adjustments for location, condition and land to building ratio, correct?
A. Yes.
Q. You make an overall upward adjustment, correct?

Page 116

A. Correct.
Q. Is there any analysis in the report as to how you weighted those adjustments?
A. Same as the other adjustments.
Q. Sale 5, $37.49 a square foot, do you have adjustments for condition and land to building ratio?
A. Correct.
Q. Do you have any analysis as to how you weighted the adjustments in the report?
A. The answer is the same, David.
Q. Would it be the same for all these other sales?
A. Yes.
Q. Now, Sale No. 6 is a Lowe's store, correct?
A. It is.
Q. Now, you make an adjustment because you indicate that the in-place rent is above market, correct?
A. Yes.
Q. That's based on your analysis in the income approach for $4.50 a square foot, correct?
A. It's based upon my analysis of what I believe market rent is in this property in this location.

Page 117

Q. At $4.50 a square foot?
A. No, based on my analysis of what I believe fair market rent is in this property in Ontario, Ohio.
Q. This is Sale No. 6, correct?
A. Yes.
Q. That lease expires in 2023, correct, Mr. Racek?
A. It does.
Q. Now, that lease at the time of sale had eight years, eight-and-a-half years left on it?
A. Close, yes.
Q. Thank you. Where is Ontario, Ohio, Mr. Racek?
A. Richland County.
Q. Isn't that like a rural location as related to Cuyahoga County?
A. It's Mansfield.
Q. Sale No. 7, Brice Road?
A. Yes.
Q. We're going to talk about this for a second. That lease expires in 2019, correct?
A. It does.
Q. That's a Lowe's store, correct?
A. It is.

Page 118

Q. When did that lease start?
A. Back in 1994.
Q. So it's a 25-year lease, right?
A. I don't remember if it was a 20 or 25-year lease, but there was options.
Q. So does that mean at the time of sale there was about five years left on the lease?
A. Close.
Q. Now, if a lease is 25 years and there's five years left on the lease, at the end of the lease, am I correct the tenant could vacate the property?
A. Sure.
Q. Is there more risk at the beginning of a lease or towards the end of a lease if a tenant of -- of an owner not receiving rent because a tenant vacates a property?
A. It's a difficult question to answer because if you're under contract to pay the rent, I don't understand --
Q. Let me rephrase it. If the lease started on -- the sale here is October 17 of 2014. If the lease started on October 17 of '14 and ran for 25 years, okay, you understand that --
A. Yes.

Page 119

Q. -- the buyer, all things being equal, is going is to receive rent for 25 years?
A. Hopefully.
Q. Of a credit worthy tenant they would?
A. Hopefully.
Q. And if a lease had only five years left in a 25-year lease, the buyer is only guaranteed to receive rent for five more years, correct?
A. Hopefully.
Q. There's options to renew, correct?
A. Yes.
Q. But there's no guarantee the tenant will exercise the option.
A. True.
Q. So as you move closer to the expiration date of the original lease term, does the risk of nonrenewal of the lease increase?
A. It can.
Q. Why would it increase?
A. Because the tenant could leave.
Q. Could that impact the sales price?
A. It can.
Q. So Sale 7 had only five years left as we discussed, Sale 8 is another --
A. Sale No. 8 is Garden Ridge or now known

Page 120

as At Home.
Q. That lease only had six years left, correct?
A. Pretty close, yes.
Q. Do you have any leases in your report that were -- excuse me. Do you have any sales in your report with leases that were towards the beginning of their term? Do you have any sales in the report where the --
A. I heard the question. No. 5 was at the beginning of a five-year term.
Q. For a big box, is the term typically longer than five years in the original lease when it's build to suit?
A. If you look at my rent comps, they're generally five to ten-year leases. Five, five, ten, ten, ten, five. Five to ten-year leases is generally what you're going to find.
Q. Brice Road, Mr. Gibbs was kind enough to put up this diagram. Did you prepare this map?
A. I did not.
MR. GIBBS: So I guess we're stipulating it's in now.
MR. SEED: I didn't ask a question.
THE EXAMINER: I don't think we're quite

Page 121

there yet.
MR. GIBBS: Okay.
THE EXAMINER: I appreciate your design for efficiency here. Again, this is Exhibit F, correct?
MR. SEED: Exhibit F.
MR. GIBBS: Yes.
Q. (By Mr. Seed) Is Lowe's the property we discussed a few minutes ago?
A. It is.
Q. Target, did Target leave this location?
A. They did.
Q. They did leave it?
A. Yes.
Q. Did Meijer leave this property, this location?
A. Yes.
Q. And who was at this property?
A. It was originally a Builders Square. It was a Hobby Lobby.
Q. So you have three or four properties where the original tenants vacated, correct?
A. Yes.
Q. Do you have -- I mentioned to you before with our subject's location, okay, Home Depot,

Page 122

Lowe's, Sam's Club, Wal-Mart, do you have any examples at our subject's location where a large big box has vacated?
A. Kmart, HH Gregg.
Q. But did Kmart vacate and were they -- was their site then purchased by Menards?
A. It was.
Q. Is Menards a big box?
A. They're entering the market and plan on building a store, yes.
Q. Now, I can verify this again, but I'll agree with you they paid over $10 million for the Menards?
A. For the Kmart site, yes.
Q. How much was Target? What was that price?
A. $300,000 for $2.44 a square foot.
Q. And the Meijer?
A. $429,400 at $2 a square foot.
Q. And Hobby Lobby?
A. 780,000 or $7.52 a square foot.
Q. If Brice Road, three big boxes are sold for under a million dollars, it would have been under 200 -- about half a million dollars, and our subject's location, a big box, is then sold for over

Page 123

$10 million, doesn't that show a difference in demand in locations?
A. No, it shows you that fee simple sales and leased fee sales need substantial adjustments.
Q. Why wouldn't the Kmart that was sold in Brooklyn be sold for $300,000, Mr. Racek?
A. Why wouldn't it?
Q. Why wouldn't it be sold for $300,000 if there was -- if -- why would Menards -- are you familiar with Menards?
A. Yes.
Q. If on Brice Road a big box -- vacant big boxes go for under a million dollars, why wouldn't the former Kmart in Brooklyn go for under a million dollars?
A. We're talking about two different locations.
Q. That's what I mean. Thank you.
A. But what you're failing to understand here --
Q. You've answered my question, Mr. Racek.
Now, in your appraisal sales, you have leased fee Sales 6 -- is it 6 through 10 or 5 through 10?
A. 5 through 10.

Page 124

Q. Okay. As we just discussed, a few of these leased fee sales were at the end of their -- towards the end of their terms. Are you familiar with the Sam's Club in Brooklyn?
A. I'm familiar with it, yes.
Q. Am I on No. 3?
THE EXAMINER: 3.
(EXHIBIT MARKED FOR IDENTIFICATION.)
Q. (By Mr. Seed) Are you aware that the Sam's Club in Brooklyn was sold within the last few years?
A. Yes.
Q. Do you recall what it was sold for?
A. No.
Q. Have I asked you about this before in prior hearings?
A. Probably.
Q. Yes. Do you subscribe at your office to a service called Costar?
A. Yes.
Q. Are you familiar with Costar?
A. Yes.
Q. This would be 3. I'm going to hand you, ask you to take a look at that for a second. I have one more document I'm going to mark.

Page 125

MR. GIBBS: I'll make an objection. This is not a self-authenticating document such as a deed or a Conveyance Fee Statement.
MR. SEED: I have that.
THE EXAMINER: Noted for the record.
MR. GIBBS: Okay.
MR. SEED: That would be 4.
(EXHIBIT MARKED FOR IDENTIFICATION.)
MR. GIBBS: Same objection, your Honor.
THE EXAMINER: Noted.
Q. (By Mr. Seed) Are you familiar with a service called Real Capital Analytics?
A. I know it exists, but I'm not familiar with it.
MR. SEED: This is 5.
THE EXAMINER: This is 5?
MR. SEED: 5.
(EXHIBIT MARKED FOR IDENTIFICATION.)
Q. Mr. Racek, tell me when you're ready for a question. We're almost done with my cross.
MR. GIBBS: I would just object to 5 on the basis that it's not a certified copy.
THE EXAMINER: Again, noted for the record. We'll get to it at the end here.
MR. GIBBS: I'm just protecting my --

Page 126

THE EXAMINER: I appreciate that.
THE WITNESS: Okay.
Q. (By Mr. Seed) In your report Exhibit A, could you turn to facing Page 20.
A. Okay.
Q. Do you see the arrow for Subject?
A. Yes.
Q. Could you tell us where -- Do you know where the Sam's Club is located?
A. I do.
Q. Where is that?
A. Northeast quadrant of Brookpark Road and Tiedeman Road.
Q. Okay. So within a mile of our subject property?
A. Yeah, close.
Q. Am I correct that the Sam's Club in Brooklyn was sold in 2013 for $21,000,425?
A. That's what it appears to be on the deed.
Q. Is that $144 a square foot according to the Costar write-up?
A. That's what Costar indicates.
Q. Now, am I correct that the Sam's Club Brooklyn sale is not included in your report, Exhibit A?

Page 127

A. It is not.
Q. Now, none of your comparable sales in your report are in Cuyahoga County?
A. True.
Q. And six of your ten sale comps are leased fee sales, correct?
A. Six of the ten are leased fee sales, yes.
Q. In your opinion, it's appropriate to use leased fee sales in an appraisal of our subject property, correct?
A. If it can be verified, they know what's included in the sale, yes.
MR. SEED: Let's see if I have any other questions....
Q. So Mr. Racek, you have not used a Cuyahoga County sale we just discussed in Exhibits 3 through 5 and you have Sales 1 through 10 are not from Cuyahoga County; is that correct?
A. Yes.
Q. And we discussed before you determined the market rent has declined from $6 to $4.50 a square foot between your two appraisals; is that correct?
A. Correct.
Q. So in reading your report, how is a

Page 128

reader to determine or to know why the value declined by 20 to 25 percent between January 1, 2012 and January 1, 2015 when in your report you point out that market values have increased during that timeframe?
A. I said market values have generally increased. Big box stores, there's been not much change in terms of rental changes. What has changed is cap rates. Cap rates have come down which has given you upward movement in pricing.
Q. So then wouldn't that indicate the value would go up if cap rates have gone down between '12 and '15?
A. Yeah, and I've used a lower cap rate.
Q. But your overall value is over $2 million lower, Mr. Racek.
A. I used a lower rental rate but a lower cap rate as well.
Q. What is the support, Mr. Racek, for the rental rate to have declined from $6 to 4.50 a square foot during those three years?
A. The more recent rental rates that I have used indicate that rental rates are decreasing.
Q. But the majority of your rental rates were in both reports, correct?

Page 129

A. But the ones that are closer to the tax lien date show lower rental rates.
Q. But most of your rental rates, the ones you have dates for are further away from the tax lien date.
A. I have dates for all of them.
Q. The ones that actually have leases are closer to 2010 and '12.
A. Look at the one in 2015.
Q. But you have, Mr. Racek, on facing Page 53, you have nine rent comps with lease terms, correct?
A. I do.
Q. Six of the nine are before 2013?
A. That's correct.
Q. So what's the support for a decline of rent from $6 to $4.50?
MR. GIBBS: Objection. Asked and answered. He's told him the more recent leasing activity is the answer to the question.
THE EXAMINER: I tend to agree. I'm going to allow you to get this answer out and then move on.
MR. SEED: We'll just move on.
THE EXAMINER: Okay.

Page 130

MR. SEED: Let's see if I have anything else and I'm done. I have no further questions.
THE EXAMINER: Okay.
MR. GIBBS: Just a few on redirect.
- - -
REDIRECT EXAMINATION
By Mr. Gibbs:
Q. Mr. Racek, do you remember some questions from Mr. Seed about why you don't have detailed traffic counts and demographics associated with each of your sales comps?
A. Yes.
Q. Are all your sales in either a densely populated area or a strong retail corridor?
A. Generally, yes.
Q. You also had some questions from Mr. Seed about where would Lowe's be able to build a 135,000 square foot store in Brooklyn. Do you remember those questions?
A. Yes.
Q. From what you know about what's going on with the big box industry and to the extent you talked to Lowe's, are they building 135,000 square foot stores today?
A. I have not seen a recent Lowe's store be

Page 131

built in Ohio, and it's been many years.
Q. What does that tell you?
A. That they've either expanded as far as they're going to expand in Ohio or they're not building stores in Ohio any longer.
Q. Okay. Mr. Seed asked you about the absence or perceived absence of surveys and analysis. Specifically he was looking for some sort of a retail market overview. Do you recall that question?
A. Yes.
Q. Would this kind of study or overview be any substitute in your mind for actual sale and actual lease data?
A. I don't believe so.
Q. You've got plenty of actual sales data and lease data, don't you?
A. Yes.
Q. Mr. Seed asked you about the Rocky River report which I believe he marked Appellee's 2; do you recall that?
A. Yes.
Q. And he pointed out that at the time you did the Rocky River report which was also for January 1st, 2015, the Rocky River store was only six years old; do you recall that?

Page 132

A. Yes.
Q. Do you remember Mr. Seed expressing concern that you had said that that store, the Rocky River store, at six years old was functionally obsolete; do you remember that?
A. Yes.
Q. Isn't that consistent with your treatment of the subject property in this case?
A. Yes.
Q. Does it matter how old the store is if the market trends are what they are? A one-year-old store could be functionally obsolete; isn't that true?
A. It is.
Q. So is it your testimony that your treatment or description of the functional obsolescence of the subject is consistent with that description of the Rocky River store that was described in Appellee's 2?
A. Yes.
Q. Why didn't you use the sale of the Sam's Club in Brooklyn which was the subject of Appellee's exhibits which are in contention, 3, 4 and 5?
A. Had multiple income sources.
Q. What do you mean by that?

Page 133

A. There was more than one tenant on the property.
Q. Really?
A. Yes.
Q. What were the other tenants?
A. Part of it was ground lease to BP gas station.
Q. You mentioned that in response to a question Mr. Seed had around that time, that you only used sales you could verify; do you recall saying that?
A. Yes.
Q. What was the problem with verifying the Sam's sale?
A. Well, it basically has more than one income source. Not only does Sam's Club pay a base renter, they have the potential of paying a percentage rent, and there's also a ground lease being paid. So basically we have multi-tenanted property which our property is single tenant.
Q. Do you find that reliance on Costar alone, which is the subject of Appellee's Exhibit 3, is ever professionally reasonable?
A. I use it as a starting point and have to verify things further.

Page 134

Q. What about Real Capital Analytics, I know you said you don't know much about it, but would you ever rely solely on this Real Capital Analytics one-page write-up?
A. Again, I am familiar with it being a data service. And other than that, I don't know how they obtain their data, so I would say that it's similar to Costar and requires further verification.
Q. When it comes to Appellee's Exhibit 5, which is a Limited Warranty Deed, do you have that in front of you --
A. I do.
Q. -- what's the stated consideration in the body of the deed itself?
A. To the stated -- you mean the stamp at the top?
Q. No, in the body.
A. $10.
Q. Right. So how do you go about determining what actually might have been paid?
A. You've got to contact the party involved in the transaction.
Q. Have you ever come across instances where the stamp at the top relates to a Conveyance Fee Statement that was completed improperly?

Page 135

A. Frequently.
Q. Frequently. Do we know whether this $21 million includes the BP or not?
A. Well, if you look at Exhibit B of the deed, No. 3.
Q. We're talking about Appellee's Exhibit 5 now?
A. Correct, No. 3 there's a lease dated August 17th, 1994 by and between Betco Properties as lessor and BP Exploration and Oil as lessee.
Q. You heard Mr. Seed make a big deal how much traffic went down 480; do you remember that?
A. Yes.
Q. How much is a BP filling station likely to be worth if it's along 480? A significant amount?
A. Well, this property does not have frontage along 480, but it is a corner at Tiedeman and Brookpark Road.
Q. I want to ask you again about Appellee's 3. And you testified that we don't know whether the BP rent is in the calculations or not in the calculations; is that right?
A. Correct.
Q. I'm confused by the transaction notes on the second page of the Costar printout. Would you

Page 136

read the section of the transaction notes that begins with "A source deemed reliable..."
A. "A source deemed reliable reported that this trade occurred at a 6.93 percent cap rate equating to a NOI of about $1,484,752.50; however, another source deemed reliable reported that in-place NOI of $1,471,580 equating a cap of 6.87 percent."
Q. Does that say whether the BP rents are included?
A. It does not.
Q. Doesn't say whether BP is paying percentage rent?
A. Doesn't say anyone's paying percentage rent.
Q. Does it say if Sam's Club is paying percentage rent?
A. No.
Q. Is the lease attached anywhere here?
A. I have not seen it.
Q. Okay. Would you go on and read the sentence beginning with "The base rent was reported..."
A. "The base rent was reported to be $1,356,882 for this fiscal year."
Q. Now I'm confused. That's $130,000 less

Page 137

than they said the NOI was, right?
A. I see three different dollar figures. I don't know which one is correct.
Q. Mr. Seed asked you a lot of questions about why your rent's $4.50; do you remember that?
A. Yes.
Q. I want to turn to your facing Page 54 in Exhibit A. Now, Mr. Racek, if we just stay in our parking lot, we just stay in our parking lot, we've got a couple of rent comps, don't we?
A. Basically, yes.
Q. Which ones are those?
A. Ashley Furniture, No. 1, and Valu King, No. 2.
Q. We have not heard from Miss Blosser yet, but you have seen her report?
A. I've seen it.
Q. Do you know if she's used any of these rent comps that's in the same parking lot?
MR. SEED: Objection.
THE EXAMINER: Mr. Seed.
MR. SEED: There's no foundation. We don't have a report in the record yet.
MR. GIBBS: I'll just recall him later then.

Page 138

THE EXAMINER: I'm going to allow him to ask the question since he's here.
A. She does not use either one of those as an actual rent.
Q. Mr. Seed asked you questions about the fact that the Ashley is about a quarter of the size and the Valu King is about a third of the size or half the size; do you remember that?
A. Yes.
Q. What does that mean vis-a-vis the rents that are being paid?
A. It would tell me that stores that are substantially smaller in this particular area rent for in this case between $4.86 and $5. And given economies of scale, you would think that something that's roughly twice or three times the size should rent for something less.
Q. Isn't that the real story in the income approach?
A. Yes.
Q. With respect to Valu King, you did utilize that in the earlier appraisal report, didn't you?
A. I did.
Q. And the Ashley, that's a newer lease,

Page 139

isn't it?
A. It is.
Q. So is that what you meant when you said recent leasing activity?
A. Correct.
Q. Isn't that critical to an appraiser when they get a Rent Comp in the same parking lot?
A. I think so.
MR. GIBBS: I have nothing further.
THE EXAMINER: Okay. Mr. Racek, you may step-down.
THE WITNESS: Wonderful. Thank you.
THE EXAMINER: Anything further from the Property Owner at this time?
MR. GIBBS: No, your Honor.
THE EXAMINER: Let's go off the record.
(Off the record.)
(At 12:10 a lunch recess was taken until 1:10.)
THE EXAMINER: Let's go back on the record. Mr. Seed, if you'd like to present your case in chief.
MR. SEED: Thank you. I'd like to call Karen Blosser to testify.
THE EXAMINER: Thank you, if you'd come

Page 140

up here.
(Witness placed under oath.)
- - -
KAREN BLOSSER
being first duly sworn, as prescribed by law, was examined and testified as follows:
DIRECT EXAMINATION
By Mr. Seed:
Q. Good afternoon.
A. Good afternoon.
Q. Could you state your name for the record.
A. Karen Blosser.
Q. And do you have a business profession, Miss Blosser?
A. Commercial real estate appraiser.
Q. Are you familiar with a Lowe's store in Brooklyn, Ohio?
A. Yes.
Q. How are you familiar with it?
A. I've appraised the property for the tax appeal.
Q. Would you take a look at what's marked as Exhibit 6 and tell me when you're ready for a question.
A. Yes.

Page 141

Q. What is Exhibit 6?
A. Exhibit 6 is the appraisal that USRC prepared on the Lowe's in Brooklyn for tax appeal.
Q. And when did you prepare this appraisal?
A. The final appraisal draft or appraisal was submitted September 11, 2017.
Q. Does Exhibit 6 contain information about your background or credentials?
A. Yes, it does in the addendum.
Q. Where is that?
A. At the rear of the report.
Q. Could you briefly describe your background.
A. I've been a commercial appraiser for over 25 years.
MR. GIBBS: I can stipulate that she's an MAI appraiser if that's okay with you.
MR. SEED: That's fine.
MR. GIBBS: I'll do that.
THE EXAMINER: Okay, thank you.
MR. SEED: And she's testified at the BTA before?
MR. GIBBS: Sure.
MR. SEED: Okay. Saves me two questions, thank you.

Page 142

Q. (By Mr. Seed) Are you a commercial, just briefly, beyond that?
A. Right, I'm general certified with the State of Ohio and six other states. I've had my MAI designation for many years now, and like I said, I've been appraising for a little over 25 years.
Q. What kinds of properties do you tend to appraise?
A. Commercial properties.
Q. How much of this work involves tax valuation work?
A. Maybe five percent or so. Not a huge amount, but maybe five to ten percent for the overall company in terms of --
Q. How much of your work is involved in tax work?
A. Probably closer to 30, 35 percent maybe. That's just an estimate.
Q. Okay. And do you appraise big box stores?
A. Yes.
Q. Do you appraise office buildings?
A. Yes.
Q. Apartments?
A. Yes.

Page 143

Q. Parking garages?
A. Yes.
Q. Did you recently appraise a parking garage in Cleveland for the taxpayer against the School Board?
A. Yes.
Q. Do you do work for both sides in tax appeals?
A. Yes.
Q. Did you have any assistance in preparing the report?
A. Yes, Melissa Hamilton, who is an appraiser with our firm, very experienced appraiser, worked with me on this report.
Q. Have you previously appraised any other properties in Brooklyn, Ohio specifically?
A. I've done the Sam's Club in Brooklyn.
Q. Have you appraised the Home Depot?
A. The Home Depot many years ago.
Q. Did you have to go to a hearing on that case?
A. I believe I did.
Q. Did you appraise the Wal-Mart?
A. Yes.
Q. Thank you. What I'd like to do because we had a hearing before is I'd like you to just go through the beginning of your report and highlight on the location of the property so we can quickly get to the substance, but I'd like you to -- what I'd like to start with is what date of value did you prepare a report for?

Page 144

A. January 1st, 2015.
Q. What is the intended use of the report?
A. For tax appeal.
Q. And on Page I-6 or 1-6, you have a definition -- you provide a definition of fee simple. Could you describe what fee simple means in your definition?
A. Fee simple is basically absolute ownership unencumbered by any other interest or estate subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power and escheat.
Q. We're going to have some questions about this word unencumbered today. What is your understanding the term unencumbered means in terms of tax appeals?
A. Well, it shouldn't be based on an actual in-place lease; it should be based on what is a market lease. And that's the way the Appraisal

Page 145

Institute talks about how you value fee simple interest.

Q. So if a property is leased, what does this definition mean to you?

A. Leased?

Q. If a property is leased.

A. If it's under a contractual lease, then the terms of that lease dictates what the payment will be, who takes care of what expenses and that kind of thing and it encumbers the property for whatever period of time the lease is in place.

Q. And in looking at if there's an actual lease in place, how does that have to be treated or handled in appraising a property for tax purposes based on your understanding?

A. If it actually is leased, certainly that lease is one indication of what is market rent, but if you're doing it for tax appeal, you're evaluating the entire area, the type of building and the age of the building and what it is and where it is and all of that in trying to determine what would be a reasonable market rent.

And that market rent may be the same as the in-place lease or it may be lower or it may be higher, but it's determined by looking at other

Page 146

properties that are similar and seeing what they lease for to see what is market rent.

Q. That's what you would do if the property is leased?

A. Correct, well, if asked for market value fee simple. If asked for leased fee, I'm going to base it on the lease in place.

Q. If a property happens to be occupied, owner occupied, what do you have to do when you consider leases in valuing the property?

A. Again, you're looking to find properties that are similar. So if I have a building that was constructed for and being used as a big box retail, then it makes sense to go look at rents that were paid for similar big box retail because that is what the market was doing, that's what an owner of the property and the tenant of the property agreed to. That's market rent.

Q. Okay. Do you have to make adjustments for that?

A. I mean, certainly you're looking to -- you would adjust different properties to the subject to determine what is market rent. If those -- if those are not similar, there might be adjustments, maybe they're superior construction or better

Page 147

location, then there might be adjustments made to the rents because you're trying to come up with the appropriate rent for that property in that location.

Q. If a property was leased at a dollar a year or $100 a year, $1 a square foot or $100 a square foot, would you have to make adjustments?

A. It would be different adjustments because again, you have to determine what's market value, what's market rent. So just the fact that something's encumbered by a lease doesn't make it superior to fee simple because a property can be leased below market and that's actually a negative to the property. Somebody's not going to pay you as much for a property that's leased below market as to one that's leased at market.

Q. We'll come back to that throughout this discussion. What I'd like you to do is beginning on descriptive data, could you just start to describe the property, where it's located, walk us through your report.

A. Sure. The subject is located as part of the Ridge Park Square Shopping Center which is located in Brooklyn.

Q. What page are you looking at now?

A. There's an illustration of that on II-11

Page 148

in the appraisal report.

Q. Okay.

A. The property itself actually has exposure to I-480 which runs just to the south of it, and it's visible from I-480. There's access to I-480 from Ridge Road which accesses the property just north of I-480.

Again, it's part of a larger shopping center that's there. It's located in a high population area, and it was constructed in 1999. And it has 135,346 square feet and was built for a Lowe's and is operating as a Lowe's as of the date of value and currently.

Q. If you turn to Page II-13, could you identify some of the primary improvements.

A. This is a flood plain map. The subject is located where the circle is and then other parts of Park Ridge Square are surrounding that. To the left there's actually some inline space attached to the right. There's some outparcels, then there's another L-shaped property on the north side.

Across 480 is a location, what used to be a Kmart that has now been razed and Menards has purchased that. And then there's other retail, that Brooksedge Shopping Center and I think the Savers is

Page 149

where the HH Gregg is now that's shown on that map, but there's a fair amount of retail right there. There's also another retail center located just to the north of that at Biddulph Road.
Q. Biddulph?
A. Biddulph, sorry.
Q. If you turn to Page II-9, do you have a neighborhood analysis?
A. Yes.
Q. How would you characterize the neighborhood the property is located in?
A. It's located in an urban area with, like I said, a significant amount of residential back-up. The commercial is along the main roadways with significant residential behind. I don't know if it matters, but there's two different addresses that go for the subject. The tax card is at 4900 Northcliff. The address that's identified as Lowe's is 7327, and if you put either in Google, they both come up to the same building. I don't know if that matters.
Q. Do you have information about the population count, income, demographics of the area?
A. Yes.
Q. Where is that?
A. Starting on Page III-6, basically within

Page 150

three miles of the subject in 2017 there was 149,000, just over 149,000 population and a little over 62,700 households.
Q. Why is that important?
A. Well, for retail, you obviously want to have people nearby that are going to need your product. For a home store, a lot of what they do is people either working on their own homes or builders working on homes, so definitely to have that number of residential property nearby is a benefit.
Q. Why do appraisers provide information about income, households, population in reports?
A. It kind of feeds into the ability to buy product, and for a retail store you need to have people out there and people that have money that can come and spend money at your store. If you don't have population around you, you're not going to have the benefit.
Q. Is this type of information helpful when comparing the subject to comparables?
A. Yes, absolutely.
Q. Why?
A. Because, again, people tend to shop generally close to where they live, and again, for something like a home store, home goods store, having

Page 151

a lot of households around you gives you a larger customer base.
Q. Okay. In the subject's immediate area, is this subject's immediate area densely developed?
A. Yes.
Q. How does that impact the valuation?
A. I mean, to some degree, if it's built up, it makes it harder for anybody new to come in. Just like with the Kmarts or the Menards purchase, they had to buy something that was already improved to get into the area because there's not a lot of available land to build on.
Q. And if there was a lack -- strike that. Let's go to the Menards. In your report, do you have a photograph that shows the Menards, where it might be located?
A. That sale is under a land sale in the cost approach.
Q. In the beginning, would it be on II-13?
A. Right, on the flood plain map. It's on the south side of 480, not the one where it says Arhaus. The big building to the left of that is where the former Kmart was.
Q. Do you recall what that property was purchased for?

Page 152

A. It was a little over $10 million, $10,352,500, and that was in December of 2014.
Q. Why would Menards have an interest in this property if you know?
A. Again, I think in general, it's a -- it's an area that has a significant amount of population and households, and those are attractive to a retailer. And a Menards is somewhat similar to a Lowe's or a Home Depot. They have a lot of home products that they sell out of those stores.
Q. Who owns Kmart?
A. Sears.
Q. Is Sears having financial problems if you know?
A. Yes, they are.
Q. Has Sears been closing stores?
A. Yes.
Q. Thank you. If you can say, if the former Kmart sells for $10 million or a couple hundred thousand dollars, what would that indicate?
A. It's basically talking about what the desirability of that location is. Somebody's going to pay what they think that property is worth. A sale is depending on both a seller and buyer coming to terms. So if they're willing to pay $10 million,

Page 153

they find that area attractive and want to be there.
Q. If they were only willing to pay 2- or $300,000, what could that indicate?
A. It would indicate that they can't really make -- it's probably not as desirable an area, maybe doesn't fit the criteria of the population base that they're trying to reach.
Q. Or some buyer?
A. Some buyer, right.
Q. Do you provide a market analysis in your report of big box stores?
A. Yes.
Q. Where is that located?
A. Starting on Roman numeral -- starts on III-1 where first talking about some national information with cap rates and that kind of thing and kind of just a general big box property. The median asking price which is shown on III-2 is $189 per square foot for an investment grade and $139 per square foot for a non-investment grade. But a lot of that discussion on those first couple of pages are predominantly towards cap rate information.
But then starting on III-3, present the Costar Cleveland Retail Market Overview which the first chart on the top of III-5 shows the overall

Page 154

market, and then the second chart shows the southwest market of which the subject is a part. And that would show that as of the fourth quarter of 2014, the average quoted rents in that area were 1,104, currently in 2017 they're at 1,112, so relatively similar.
Q. What's the trend for rents in the Cleveland market?
A. You can see that kind of in the chart there. Relatively stable. I mean, looking at the southwest market, they were 1,025, and second quarter of 2013 they went up to a high of 1,152, and they're currently at 1,112. So a little bit of a variability but relatively stable.
Q. Do you see any evidence of decline of market rent such as a decline of 25 percent?
A. No, not at all. Then next on Page III-6 we provided, there weren't any as large as the subject.
Q. I'll come to that in one second. But if we turn to Page III-13, the aerial of Ridge Park Square, I think it's on the site plan you have on II-11.
A. Uh-huh, yes.
Q. Do you see an item in white?

Page 155

A. Yes.
Q. Is that a former Valu King store?
A. I believe that's correct, yes.
Q. On III-6, go ahead with your discussion.
A. Basically there was space available in the Ridge Park Square Shopping Center which all together has 561,149 square feet. And the spaces available range from 1,413 to 50,537 square feet.
And the 50,537 square foot, again, this is currently when we discuss or talked to them, they had a temporary tenant in there operating a Halloween store, but according to Zach Sogoloff with Goodman Real Estate, that space is available on a long-term lease or to be leased at $10 per square foot on a triple net basis and the smaller space are at $18 to $35 asking.
Q. Have you seen Mr. Racek's report?
A. I have.
Q. Or Exhibit A, I'm sorry. I apologize. You've seen Mr. Racek's report?
A. Yes.
Q. Are you familiar with on facing Page 53?
A. Right.
Q. Do you see item 2, Valu King?
A. Right.

Page 156

Q. Do you see the square footage?
A. Right, that matches the available space.
Q. Do you see a term indicated?
A. It ran from 2012 to 2017.
Q. And do you know whether Valu King left shortly after they commenced the lease?
A. I know they're gone because the Halloween store is in there and that spot is available for lease.
Q. So is this a -- item 2, the lease, as of what date would this item 2 be?
A. Probably as of 2012, if that's when they started, they would have negotiated somewhere around 2012.
Q. Okay. And what is the asking rent for that space?
A. The current asking rent is $10.
Q. $10 a square foot?
A. Correct.
Q. How are you able to confirm that?
A. Again, that was speaking with Zach Sogoloff with Goodman Real Estate.
Q. Are they marketing the space?
A. They are.
Q. Go ahead, you were discussing some other

Page 157

rents.

A. There were a couple other larger spaces that were available in the general area at 7240 to 7340 Brookpark Road in Brooklyn. There was a retail center that was built in 1968, renovated in '95 with 98,741 square feet. They had a space of 38,108 square feet that was available. They did say it was divisible into smaller spaces.

And according to David Stein with Passov Real Estate Group, that space is available for $12 to $14 a square foot net depending on the size and strength of the tenant.

The only other larger space we found in the area was 31,128 square feet available within a 56,997 square foot center located at 7200 Brookpark Road that was built in 1977, and that space was being listed for $14 per square foot net.

Q. These are in Brookpark Road in Brooklyn?

A. Correct.

Q. Immediate area of our subject?

A. Yes.

Q. The former Valu King, the former Staples and the 7200 Brookpark, these are smaller than our subject property?

A. Correct, they are smaller.

Page 158

Q. These are three rent comps, right?

A. Correct.

Q. What do they provide evidence of?

A. They certainly provide evidence of what is being asked currently in the market. Again, from the Costar information, it does not look like there's been any significant variability in rentals over the last couple of years, so those would in theory be predictable or nearly predictable of a rent as of the 2015 date of value.

Q. Okay. Go ahead and then what's the next two pages?

A. We kind of already talked about the demographics, again, just highlighting there's nearly 150,000 people within three miles. There's over 338,000 people within five miles of this location, and then in terms of households, there's 62,726 households within three miles and over 146,000 households within five miles, so again, just kind of showing there's a significant population and household base that are around that would support this location.

Q. You then go through a discussion of market analysis looking at rents.

A. Correct.

Page 159

Q. What was your thinking when you were looking for rents?

A. Again, when you're looking for market rent, you want something that's similar to what you're appraising. And what we're appraising was a building that was built for a Lowe's. It was operating as a Lowe's. As of 1-1-15, it was continuing to operate as a Lowe's. So we primarily looked at big box facilities that were similar to that including a significant number of Lowe's.

Q. If you see, Mr. Racek has a Rent Comp No. 1, facing Page 53, it's Ashley Furniture.

A. Right.

Q. What's the size of the Ashley Furniture?

A. 34,116.

Q. What's the size of the Lowe's?

A. 135,346.

Q. Okay. Does the size -- does the differential in the size indicate -- does the differential in the size provide for less reliability for a Rent Comp if it's significantly different in size?

A. It is. It's often difficult to find similar size. The one thing you typically find is that the larger -- if you have two buildings and one's 30,000 square feet and the other one's 100,000 square feet, typically, not always but typically the one at a hundred thousand square feet will have lesser rent than the one at 30,000 square feet.

Page 160

Q. The class of big boxes, who do you include in those? What kind of users?

A. Lowe's, Home Depot, Sam's Club, BJ's. They're similar big boxes that build a facility that's generally the same, similar size. Wal-Mart, they all tend to build a fairly large sized building that meets their criteria.

Q. What size ranges do they tend to be in?

A. They normally will be somewhere from a hundred to -- some of the Super Wal-Marts get up to 200,000, but they're usually between 100- to 150,000. They can vary.

Q. Would they consider a 30,000 square foot space to be relevant?

A. Not for what they're doing. Again, from an appraiser's standpoint, you just try to find out what rents are there, and that's why we did look at the local rents and the ones that were bigger, and that's why we do want to talk about those, so like the former Valu King and those. It at least gives you some indication of what's going on in that

Page 161

market.

But to find comps, you have to a lot of times go outside the market and find similar buildings and then adjust for location and that kind of thing, but you want to find similar buildings that would be at similar type of product of what you have.

Q. Any of the big boxes in Brooklyn or the immediate area vacant as of tax lien date?

A. Not that I'm aware of, no.

Q. Now, in your report, you continue on. You do a Rent Comp analysis of some rent comps. Could you briefly go through those.

A. Yes. Do you want me to go through each one or just kind of summarize?

Q. Just hit the high points of them and why you selected them so the Examiner can know why you felt they were important.

A. We basically have eight comps. There's kind of a summary grid that might help instead of looking at the individual ones. And that's located on III-19. And again, our analysis included five Lowe's, one Sam's Club, one Wal-Mart and one Arhaus Furniture.

These -- The Arhaus is a little bit smaller -- actually, it's quite a bit smaller at

Page 162

41,000 square feet, but the others all range between 125,000 and the large Wal-Mart was at 200,000.

And the actual in-place rents and the dates of those rents are shown. They basically range from $4.25 to $9.25. And these were leases that were signed between 2011 and 2017. And, again, each of those were net leases, and we've done a discussion on all of them for market conditions, location.

And for location, there's a detailed grid on Page III-17. Again, a retailer wants to be in an area where there's population and where there's good traffic counts and those kinds of things and households. So for location adjustments, we use Esri, which is through Site City Business, and we look at the traffic count, the population, household incomes and then compare that to the subject and rate whether that comparable is in an inferior or superior location.

Q. Did you use any leases that were of properties where the tenant renegotiated the lease?

A. Yes. For example, in the Comp 1 was a Lowe's in Fremont, and that tenant was in place and continued to pay rent at $5.18, and that lease expired in 2016. They renegotiated. The property sold in December of 2013, and prior to that sale, the

Page 163

tenant went into negotiations and basically did a renewal but with a revised rent. So that rent was negotiated in 2013 at $4.92.

Q. Let's go through this. Does a lease have a stated term usually?

A. It does, yes.

Q. Do leases often have options with extensions?

A. They do.

Q. Are those rents of the options usually stated at the beginning of the lease term?

A. They typically are, but the tenant, they can have the ability to say no, I don't want to renew. They may decide to renegotiate which they did here.

Q. Just explain this to the Board from your experience, that if a tenant has a lease, what can happen at the end of lease term before the options begin? What are the various things that can occur?

A. They can leave. I mean, they can basically decide they don't want to stay in that location and leave. They can take the option.

Q. As is?

A. As is, wherever it was written, or they would have the ability to -- maybe the market has

Page 164

changed some and they don't think that rent is fair anymore but they would like to stay there, they can go and renegotiate which would be basically coming to new current terms.

Q. From your experience, why are some leases renegotiated and some are not renegotiated?

A. Well, certainly if a tenant that's in there is doing well, their sales are good, they like that location, then they're going to want to either take their option or renegotiate but still they want to stay in that location.

Q. What about from a landlord's perspective?

A. I mean, the landlord certainly wants a tenant in place. If he's got an investment property, he wants a tenant. If the option is not good in his favor -- although I take that back, if it's an option that's written in, he has to honor that, but if they are to the end of it and he thinks he can do better by starting with a new tenant, then he may not renegotiate with that current tenant. He may just say no, you're done.

Q. Does a tenant and a landlord have different bargaining strengths?

A. Certainly. Again, the landlord wants the income stream, so he wants to make sure he has a

Page 165

tenant in place. The tenant is doing business. They don't want to pay over market, so they're both coming at it from their own priority to set whatever rents or terms. So they have to come to a mutual agreement to actually set a new agreement.
Q. Any others that were renegotiated?
A. No. 2, the one in West Carrollton, they renegotiated a ten-year extension at $6.49 in September of '11. Again, on No. 3, the one in Zanesville, it transferred in December of 2013. Again, in order to get the tenant to renew, they wanted the tenant to renew the lease early because the buyer wanted a longer term with the tenant in place, so they renewed at a rental rate of $5.95.
Q. Was No. 5 a renegotiation?
A. Yeah, they had a lease that was going to expire in 2019, so they signed a new five-year extension in June of '13. Lowe's in Columbus, that was a five-year extension, and the Lowe's in Hilliard, that was a ten-year extension. Then the Wal-Mart was a renewal. It was an option, so that was a renewal option.
Q. So in that negotiation, if the tenant does not renew, what financial impact does that have for the owner?

Page 166

A. Then they have to find a new tenant for them. So there would be leasing costs and holding costs until they get a new tenant in, they have commissions to pay to a realtor or broker to try to get in, potentially TI if the tenant needed tenant improvements.
Q. Did you make adjustments? We can quickly go through this.
A. Yes, on III-19, all of the leases were evaluated in comparison to the subject. And basically from that, the range was narrowed to somewhere around or above $6.49 and below $9.25. Then on Page III-20 we kind of summarized all of the different information that was looked at, the Costar, information, the local larger second generation tenant.
Those were at $11.04 for the Costar and $10 to $14 for the second generation spaces around it. And then the larger big box after adjustment was -- the range was $6.48 to $9.25. All of that information was analyzed and a market rent of $7.25 was concluded for the subject.
Q. Rent Comp No. 4 on Page III-12.
A. Okay.
Q. Was this property involved in a recent

Page 167

sale?
A. It was.
Q. Where is this property located?
A. The property's located in Brooklyn on Brookpark Road.
Q. What is the property?
A. It's a Sam's Club.
Q. Go ahead.
A. It transferred. We talked about the sales and the sales comparison approach, but it was rented at $9.25 per square foot.
Q. Now, was the property at the time of sale in the original lease term or was it in the option period?
A. A new extension had been -- they signed a five-year extension in June of 2013.
Q. How were you able to obtain this information on III-12?
A. I may have more information on the sale comp. The sale was confirmed which Scott Wiles of Marcus and Millichap, and he also provided information on the rental information, and that's on Page VI-23. This has that information.
Q. As an experienced appraiser, would an appraiser be familiar with the Sam's Club sale if

Page 168

they appraised big box stores?
A. I'm sorry?
Q. Would an appraiser appraising a big box store in Northeast Ohio be familiar with the --
A. They should be. It was a transaction, yes.
Q. Okay. And the techniques that you use to obtain the information, would an experienced appraiser have the skill sets to find that information?
A. Sure. I think it's -- there are sources out there like Costar. There's just the Cuyahoga County website where you can find transactions. And then there's like through LoopNet, you often can find out who the brokers were. So you typically want to try to call and talk to the brokers to confirm the information that you found from other sources.
Q. In this case, did you confirm the information?
A. Yes, we confirmed it with Scott Wiles of Marcus and Millichap.
Q. Okay, let's go on. Did you determine the highest and best use and could you go through that analysis as vacant and improved?
A. Yeah, the highest and best use starts on

Page 169

IV-1 and basically just goes through what's physically possible, legally permissible, financially feasible and what's the highest and best use.

The site is over ten acres, so it physically could support a number of different types of real estate. Legally from a zoning standpoint, it's zones GB, general business, which allows a variety of office, professional, medical and retail uses.

Existing use is legal. And then financial feasibility just has to do with what returns, the highest return to the land. Typically on something like that, that size, you normally are not going to build that until you have a tenant in hand or it's a build to suit.

So typically the highest and best use as vacant would be to hold until you have either a tenant or owner user to develop, so that's as vacant. The highest and best use as improved is for continued operation with the existing facility.

Q. There's a term called maximally productive. What does that mean in terms of highest and best use?

A. Basically what brings the maximum return to that property. I mean, like in this case, both

Page 170

office and retail are feasible legal uses, but if your rental rate for retail would be superior to what you would get for office, then that would be the maximally productive use for that site.

Q. A property such as our subject, what was the intended purpose it was built?

A. It was built for Lowe's.

Q. The building that we're in today, what was it built for?

A. Office.

Q. Is it conceivable that an office building at some point in its future may become functionally obsolete?

A. It could sometime in the future, but when you're doing an appraisal, you're looking at the here and now what's going on.

Q. Exhibit 2, I'm going to hand you a copy of what's marked Exhibit 2, Mr. Racek's appraisal of a Lowe's in Rocky River. Just tell me when you're ready for a question.

A. Okay, I've got it.

Q. What I'm going to ask you about is if you turn to Page 25 --

A. Okay.

Q. -- in the bottom paragraph, second

Page 171

sentence of the bottom paragraph, Mr. Racek states that, "While the improvements were approximately six years old as of the tax lien date and considered to be in average condition, they're functionally obsolete for most second generation users." What's the definition of functional obsolescence?

A. Functional obsolescence means that it may not be what the market would want to see today.

Q. Is that related to construction?

A. It can be related to construction, like the size of the building or the way it's laid out or things like that. So it could be based on those things.

Q. Is a building six years old considered to be functionally obsolete?

A. No, especially if it's being used for what it was designed for. Again, I think that's where it gets into what was the market value as of the date of value, what was taking place. At that point, you still have a first generation user using that building and if there's -- there's no reason to think they're not going to be using it into the foreseeable future, it's not appropriate to assume that, well, they're just going to leave and we're going to find someone else to use it.

Page 172

They built that building for a reason, they paid a lot of money to build that building, and the majority of the time, if they do enter into a lease, they're there for 10, 15, 20 years. So I don't know why you would assume something is functionally obsolete when it's six years old and it's still being used for what it was designed for.

Q. If you're talking about an apartment building or an office building, could the building at some point become functionally obsolete?

A. Any building could eventually become functionally obsolete. Again, you're looking at real estate at a point in time, and real estate does have a life cycle. I mean, there's office buildings that are 150 years old that are still being used.

So, again, it all kind of depends on -- there's a lot of different factors that go into that, but again, I wouldn't see any reason why a building that's new and being used for what it's intended to be used for, why it would be considered functionally obsolete.

Q. Are you familiar with big boxes that were developed in the '60s and early '70s?

A. Yes.

Q. Are you familiar with those?

Page 173

A. I mean, there's a lot of Kmarts that date back that far, and a lot of those are now empty or the Menards, somebody bought it and tore it down.
Q. But in general, when we think of -- is functional obsolescence related to a big box generally, is that typically in regard to a 40, 50-year-old building?
A. Certainly most of them are going to have a longer life than six years obviously, yes, I would say.
Q. If we could turn to your cost approach, where does that begin?
A. Cost approach starts on VII-1. The good news is we're going to a normal numbering soon. I think we're the last appraisers that use the... In the cost approach, we started by looking at six land sales, and those took place between September of 2014 and November of 2015.
They had an unadjusted range of 76,614 to 452,667 per acre which is notably a wide range, but four of the six are in a much tighter range at 199,974 to 240,002 per square foot per acre. Each of the sales is written up on an individual sheet with pictures.
Q. Do you have the Brooklyn sale here?

Page 174

A. Yes.
Q. What page is that on?
A. That's Land Sale 3 on VI-6.
Q. VI-6?
A. VI-6. See, that's why we're getting rid of the Roman numerals. Yeah, that was a 22.87-acre sale. It sold in December of 2014 for $10,352,500.
Q. Did that price include demolition?
A. That did not. That was just for the site. Then there would have been demolition costs on top of that.
Q. Any other sales that you thought were particularly relevant and we'll move on?
A. Again, all of the sales were given some weight. They're located generally approximately -- they're all in the Cleveland market. There's a map shown on VII-2, but that sale is the most proximal. All of the sales were looked at and location adjustments were made, again, using the Site To Do Business information in terms of things like traffic count, population and median income and adjustments were made.
Q. What did you conclude the value to be?
A. Land value was completed at $265,000 per acre, 10.954-acre site for a total land value of

Page 175

$2.9 million.
Q. How do you explain Menards' purchase price?
A. Sometimes somebody just really wants to be in an area. It is a highly developed area. There's not a lot of land available, and they were willing to pay that price to get it. And part of that would also have been they wanted to be there and what was Kmart willing to sell it for.
Q. We haven't really talked about this, but quickly, is our subject property located near an interstate?
A. Yes.
Q. And two highway exits?
A. Yes.
Q. What does that mean?
A. To have that availability for more people to get there, I mean, again, you're already in a high population area, but then you also have a significant amount of driveby traffic, and you have an immediate interchange there, so all of those are very positive factors for a retail.
Q. What did you conclude the land to be?
A. $2,900,000.
Q. What's the next step in the cost

Page 176

approach?
A. Basically looking at the construction costs of the building, and that we use Marshall Valuation Service for that. There's a table on Page VII-16 that shows the hard costs at $9,850,695 for the building.
Next you add site improvements and indirect costs and profit or entrepreneurial incentive, and then you look at depreciation based on the age of the building using the age life method and then adding in a land value. Based on that, we came up with a current cost of $11,370,000.
Q. Now, you said you determined the cost. Did you make accommodations for each of the forms of depreciation quickly? Did you account for physical depreciation?
A. Yes.
Q. How did you do that?
A. I mean, physical, again, we're looking at kind of an age life method. So the building was built in 1999. It was 16 years old as of the date of value. That type of building normally has, again, kind of a Marshall valuation, a typical life of 30 years. Real estate typically lasts much longer than that as long as you're maintaining it, but they give

Page 177

kind of an estimated available life.
And based on the 16 years and the 40 years, that was the 40 percent depreciation. We did not feel there was any functional obsolescence. The building was being used for what it was designed for. It was functional. We didn't feel there was any external obsolescence which could be a thing like if a company, like a large employer nearby closed down and there was those kind of negative impacts.
Q. A great recession?
A. A recession. But we did not feel there were any other obsolescence issues, so only the physical was taken.
Q. Now, just briefly, the condition, the argument is that some other big box user would pay a discount. So doesn't that show that there may or may not be functional obsolescence?
A. I'm not sure what you're asking.
Q. Let me rephrase the question. The argument is that in some other part of the state, someone might pay X dollars, you know, we're going to discuss the sales approach in a minute, we're going to discuss the Sam's Club in a moment, doesn't that show potentially that there's functional obsolescence or there's an absence of functional obsolescence?

Page 178

A. I mean, certainly every location is different, and that's why you do multiple looks at sales to see how does it relate. So a sale in another part of the state, it can be on a dying interchange or it could be in an area that has some kind of negative going on. So just because it's a big box somewhere else doesn't make it a perfect comp. You have to adjust for those elements that are different from your subject.
Q. You have a total replacement cost before depreciation of $13 million on Page VII-16?
A. Right.
Q. That's 13 million, right?
A. Yes, right. If you're building it brand new, yes, and that's without land. That's if we're going to replicate that building today.
Q. Now, look at the Menards sale on VII-5 or VII-6. That's a $10 million purchase.
A. Right, just for the land.
Q. Then the old Kmart has to be demolished?
A. Yes.
Q. Do you have any idea what it would cost to demolish that old Kmart?
A. I don't have anything in front of me. I know razing costs can be just a few dollars a square

Page 179

foot to $20, in that range, but they're normally maybe 5 bucks a square foot because there's usually some salvage value out of it. Marshall's actually does that. I don't have that with me to tell you. But it's not a huge number, but it is at least a few bucks a square foot to tear it down and haul it out and make that site ready for new development.
Q. If that old Kmart was over a hundred thousand square feet, you have a land purchase that you indicate in your report, and you have a cost to build the building, you then have a project that's over $25 million; is that fair to say?
A. Probably.
Q. Or around there?
A. That certainly would be possible that that's the cost, yes.
Q. I'm trying to for the sake of what we're trying to accomplish here, we have a building or site that you've indicated a total cost approach. How does that relate in the total picture of the valuation?
A. Well, I mean, that's just one of the three approaches for valuing property. You look at at the different ways. And, again, from a buyer's standpoint, you know, a lot of buyers don't

Page 180

necessarily look at the cost approach if they're buying an existing building, but it does give an indication of value as of that point in time.
So, again, it's just one of the three approaches. It's not an approach that typically with an older building is given a significant amount of weight, but it does at least give you a downside value of, look, today if I was doing this, this thing is at least worth $11 million on a cost approach because of what it would cost to build it and then taking into consideration --
Q. Is the Menards site inferior or superior to the subject?
A. The subject site actually has much better exposure and visibility from I-480. So from that standpoint, I would say it's superior, but I don't have right in front of me -- I don't know if I've got the traffic count. The traffic count on Brookpark may be a little bit better than it is on Ridge, but they're very similar, but I would say the subject has better exposure.
Q. Finally on the cost approach, knowing that we've discussed what Menards land could be with the Menards cost and what it could cost to build it, if a buyer approached Lowe's to pay 6- or

Page 181

$7 million for it, would that be a reasonable value if Lowe's wants to remain in that market?
A. I mean, again, that's kind of a weird question to try to ask.
Q. Thank you.
MR. GIBBS: I thought so, too.
A. You know, again, if Lowe's is there and they're making money, which they obviously are, the parking lot's packed and they wanted to be there, they're not going to sell it for less than what it would cost them to go somewhere else.
So in that case, looking at the Menards, if they wanted to be in the same area, if they too are going to have to go pay $10 million for a site and then build their building, which based on replication costs is 9 million easy, I think that was before the soft costs, then no, they're not going to sell it for $6 million because they want to be there.
They're functioning there. They cannot replicate their store for probably -- again, if we're looking at the cost approach before depreciation, you know, you're at $13 million, and that's before profit, so you're looking at at least $13 million to replicate what they have.
Q. In terms of building costs?

Page 182

A. In terms of building costs. So if they want to be there, which by all indications they do, they're not going to sell for in that case less than 13. Again, that's not taking into consideration there is depreciation on the building, but it's going to cost them roughly $13 million to duplicate.
Q. But am I correct that you're looking at two scenarios: One could be Lowe's vacates the property, abandons the property and is trying to sell it, is that one sale?
A. Right, if Lowe's is moved out of the market -- like one of the sales we have in our analysis is BJ's in Dublin. BJ's left the Central Ohio market, so they left and they actually left before their lease expired. So there was actually one transaction of that property while they were still I think eight years of BJ's lease rent made on it.
That was a business decision by BJ's to leave. So in that case, they may be willing to sell it for something else, for something lower than what would make sense if they're an active participant in the market. You've got Kmarts closing, you've got Sears closing, they're leaving the market. That's not the same thing as a vibrant, existing, ongoing

Page 183

operation. Whether it's fee simple at market or leased fee, they want to be there. They're there.
Q. But I mean, that's one example -- is it two sides of a coin of a sale, of a seller that's motivated and also a buyer that's motivated?
A. Right. You can't have a stupid buyer or a stupid seller. The whole definition of market value is they're both acting in their best interests. So they are going to come to a decision that doesn't overly benefit one or the other. They mutually decide on a sale price that is reasonable and supportive.
Q. Your income approach -- we already covered your market rent. What is your income approach?
A. The income approach starts on V-1. Our conclusion of market rent based on all the evidence is $7.25 per square foot. Because we're doing a direct cap, it's important to look at market occupancy, market vacancy, so we look at what's typical.
And normally at a big box, you're probably going to have somebody in there for 10 to 20 years, and then maybe you get a year or two of vacancy and then you've got another long-term lease.

Page 184

So that's one way of looking at vacancy.
And those two, whether a one year or two-year vacancy between a 20-year lease, you're at either at 4.8 percent or 9.1 percent vacancy. Costar had the local vacancy rate at 7.2 percent. The subject center itself had about a 12 percent vacancy, although it was at 3.2 percent if you included the temporary lease on the 50,000 square foot space. So based on looking at all of that, I concluded 7 percent vacancy and credit loss was included in our analysis.
Q. Next was the expenses?
A. Because it's a net lease, your expenses are really for operating costs, are just during your times of vacancy, so we talk about some expense counts there, and basically assumed operating expenses of a dollar during times of vacancy and applied our 7 percent vacancy rate to that, and that gives a deduction of $9,474. And then we added a 2.25 percent management fee and replacement reserve of 20 cents, and that's all illustrated on V-4 which gives us a net operating income of $853,213.
Q. Was your replacement reserve and management fee supported by the market?
A. Yes, it was.

Page 185

Q. Did you do research for that?
A. Yes.
Q. And what did you determine the net operating income to be?
A. 853,213.
Q. What was your next step in the income approach?
A. Next was looking at what would be an appropriate cap rate. We already kind of previously talked about the Boulder Group cap rates. That was back in Section 3. We also listed PWC, the rates from that, which are shown on V-5, Realtyrate.com, Real Capital Analytics, and all of those are kind of summarized on III-8.
The median kind of ranged from 6.48 to 10.64 from the surveys. And then from the extracted sales, those cap rates ranged from 6.2 to 8.32 with an average of 7.02 and a median of 6.56. Again, looking at all the information, we concluded to 7 percent on the cap rate and then added in the additur since we did not deduct or take into consideration taxes at that point.
Q. The full additur or partial?
A. The partial additur, so just the additur for the 7 percent, that would be what would be due

Page 186

during vacancy. That gave us a rounded cap rate of the 7.20 which applied to the 853,213 gave a market value from the income approach of 11,851,015 which was rounded to 11,850,000.
Q. Did you have a chance to review Mr. Racek's report?
A. Yes.
Q. I'm going to hand you Exhibit A. Did you review his income approach?
A. I did.
MR. GIBBS: Objection. We didn't get any notice of any kind of review that was done. He's using the word review. Was there a review appraisal done? Because there are requirements associated with that, and we didn't get any disclosure of that.
MR. SEED: There was no review appraisal.
MR. GIBBS: You asked if she reviewed Mr. Racek's appraisal.
THE WITNESS: I did read the report.
MR. GIBBS: Well, you're an appraiser, right?
THE WITNESS: I am.
MR. GIBBS: When you review an appraisal, there are certain requirements under USPAP that go along with that, correct?

Page 187

THE WITNESS: Well, there are but --
MR. GIBBS: One of those is a written certification. Do you have that with you today?
THE WITNESS: I do not, no.
MR. GIBBS: Okay. Then I would object to this line of questioning.
THE EXAMINER: I don't know the question's on the table yet. I understand your concern about a review appraiser.
MR. GIBBS: Well, I asked her if she reviewed Mr. Racek's report. I don't have --
MR. SEED: I think he's gone a little far afield.
MR. GIBBS: No, I don't think so.
THE EXAMINER: And I want to see -- I'll allow him to ask the next question; however, I understand your concern, Mr. Gibbs.
MR. GIBBS: It's something that's a new trend that's happening quite a bit and I'd like to --
MR. SEED: Is Mr. Racek coming back later?
MR. GIBBS: I haven't decided yet.
MR. SEED: Okay. The reason this is commonly done, it's for your benefit, is why there are differences in the appraiser's reports. And I'm

Page 188

trying to get candid responses as to why they come to different conclusions, and I have not prepared this with her ahead of time, so she'll offer whatever answer she sees fit.
MR. GIBBS: You know what, I'm okay. It's fine she wants to do it. I would just beg this Board to assess the credibility issue that it creates when someone deviates so cavalierly from USPAP. That's all I would ask.
THE EXAMINER: Your objection is noted and your point's well made. Mr. Seed, why don't you go ahead and ask your question.
MR. SEED: Thank you.
Q. (By Mr. Seed) Have you had a chance to read Mr. Racek's report?
A. I have read the report, yes.
Q. What was your conclusion of market rent?
A. $7.25.
Q. Do you recall what Mr. Racek concluded market rent would be?
A. $4.50 I believe.
Q. Can you turn to facing Page 53 of his report.
A. Yes.
Q. Have you had a chance to review any of

Page 189

the rent comps?
A. I did not do a dive-in. I mean, I think we've already talked about the Valu King, but he shows $5 is currently being offered at $10, and a lot of these are vacant that were former something as opposed to something that's being used for what it was designed for.
Q. Are there significant differences in size?
A. I mean, definitely has a broad range, from 34,000 to 125,000 it looks like.
Q. Some of the rent comps have terms that began in 2010 or 2012?
A. Yes.
Q. Leases that have a term beginning in 2010 and 2012, are those leases negotiated before the terms begin?
A. Typically.
Q. When was the great recession?
A. 2008, '09, '10. That was definitely a bad time for real estate.
Q. Would you have a concern about using leases from 2010 and '12 for 2015?
A. You always want lease information that's as close to date of value. You would definitely want

Page 190

to consider what was happening in the market if you're using older leases.
Q. Did you prepare a sales comparison approach?
A. Yes.
Q. Just before you start, where would that be in your report?
A. Roman VI-1 is where it starts.
Q. I'd like you to discuss pages VI-1 in terms of what do you look for in a sales comparison approach for a big box?
A. Again, you're always trying to find comparable data that's similar to your subject. It's not always you're going to have sales that are similar in the same areas, so sometimes you have to go outside the market to find it and then you make adjustments for that.
But again, the subject was built for and operating as a Lowe's. The definition of market value fee simple says basically at market terms. And so looking at other similar buildings, what leases are in place for those similar buildings was felt to be most applicable.
So we do an analysis of big boxes. We start, again, just kind of a global to kind of get a

Page 191

little bit of perspective. There's a chart that's on VI-2 a number of big boxes that transferred between January of 2011 and forward up to July of 2017.
Q. Do these include first and second generation sales?
A. They do, although primarily first generation, and that's when it's predominantly first generation but not all. And that, again, certainly shows a significant range from $8.12 to $164 per square foot with an average of $55 per square foot.
So again, there can be certainly a huge amount of variability with things like rent or occupancy or location. All of those factor into what somebody is willing to pay on a price per square foot.
After we looked at kind of that global just to kind of give an overview, we looked at ten sales that were analyzed individually. There's a chart for those on VI-3, a map on the following page, then individual write-ups and then we have a grid showing our adjustments.
Q. Briefly could you just go through the -- before you start adjustments, briefly highlight the sales.
A. Yeah. I mean, again, a lot of these were

Page 192

similar big boxes. We had --
Q. Sale 1?
A. -- five Lowe's facilities, one BJ's, one Home Depot and one Sam's Club and one former Wal-Mart and a former BJ's.
Q. So what's Sale 1?
A. Sale 1 is a Lowe's in Zanesville.
Q. Sale 2?
A. A Lowe's in Fremont.
Q. Sale 3?
A. A BJ's in Canton.
Q. Sale 4?
A. A former BJ's.
Q. Sale 5?
A. Lowe's in Chillicothe.
Q. Sale 6?
A. Former Wal-Mart in Streetsboro.
Q. Sale 7?
A. Lowe's in Columbus.
Q. On Brice Road?
A. Correct.
Q. Sale 8?
A. Lowe's in Hilliard.
Q. Sale 9?
A. Home Depot in Highland Heights.

Page 193

Q. And Sale 10?
A. A Sam's Club in Brooklyn.
Q. Let me ask you a few questions. Is there a definition of what's called market rent in the appraisal world?
A. Market rent?
Q. Yes.
A. Market rent is basically the rent that is supported by what is going on in the market. If you look at -- I think I printed it out.
Q. I can get it.
A. In the Appraisal of Real Estate, the 13th Edition --
Q. Hold on a second. I want to mark it.
MR. SEED: Exhibit 7?
THE EXAMINER: Yes.
(EXHIBIT MARKED FOR IDENTIFICATION.)
A. Basically on Page 453 of the book, which is again the Appraisal Institute, Appraisal of Real Estate, 13th Edition, market rent is the rental income a property would probably command in the open market. It is indicated by current rents that are either paid or asked for comparable space with the same division of expenses as the date of the appraisal. Market rent is sometimes referred to as

Page 194

economic rent. Rent for vacant or owner occupied space is usually estimated at market rent levels and distinguished from the contract rent and the income analysis.
THE EXAMINER: There's no need to have Miss Blosser read the entire --
MR. SEED: I'm not.
THE WITNESS: I think this is important.
THE EXAMINER: I just wanted to make sure you weren't going to read the entire thing.
MR. SEED: It's a heavy notebook.
A. Yeah, only got 800 pages to go... no. In the fee simple valuations, all rentable space is estimated at market rent levels. So the important thing to remember is that something that -- when you're talking about market rent and fee simple, you're talking about what the rent that property can get.
So I think it's very important to look at what the building is, how the building is operating as of your date of value to see what is the most reasonable estimate of market rent.
Q. Okay. Are you familiar with the term property rights adjustments?
A. Yes.

Page 195

(EXHIBIT MARKED FOR IDENTIFICATION.)
THE EXAMINER: Exhibit 8.
Q. Do you have an authoritative source for that?
A. Yes, this is out of the Dictionary of Real Estate Appraisal published by the Appraisal Institute, the 6th Edition. A property rights adjustment is an adjustment make to the indicated property value if the value of the property is not at market occupancy or market rent.
Q. What does that mean?
A. It means basically if you're looking at -- for a comparison standpoint, you need to compare the subject to the comparables, so you need to know whether or not that comparable is similar or different from -- from you. And, again, when you're doing it for tax appeal, you're looking at market value at market, so you are assuming it's leased at market.
Q. Okay. Just to be very brief here, because this is important for the sales approach, I can have you -- can you give us an example of what property rights adjustment, how that would work?
A. I lost mine. There it is. I kind of put an example together because sometimes there seems to

Page 196

be the feeling that because something is leased, it's superior to fee simple. So I did an example of let's assume you've got four --
MR. GIBBS: Objection. I don't know what this is. Is this part of your appraisal report?
MR. SEED: Something she prepared.
MR. GIBBS: I just -- first time I've seen it. We had a letter that was submitted after the fact that there's a motion to strike pending on and now we get this.
MR. SEED: I can have her just --
MR. GIBBS: Come on.
MR. SEED: I have to see a stack of documents I'm going to be seeing from you.
MR. GIBBS: I'm sorry, it's all hurting your credibility. We'll just let it in. I'll stipulate to it. It's fine.
THE EXAMINER: This is Exhibit 9?
MR. GIBBS: Yes, and that will be all the exhibits.
(EXHIBIT MARKED FOR IDENTIFICATION.)
A. So basically just wanted to point out that just because something is leased fee doesn't make it superior. And the example that is shown here is let's assume you've got four side by side nearly

Page 197

identical properties and the first property, A, the owner is an out of town owner moving to Florida and he just wants rental income, he doesn't want to deal with the building. So he puts a 15-year lease on it, a dollar per square foot, so that building is leased fee.

The second building, you're lucky and you get an international company that comes in and they want to start a new business right away and the building is available and they come in and they sign a $25 per square foot net lease for five years.

In the third building, it's listed on the market, there's been several showings, and you've got different offers on it and you end up concluding -- or the landlord settles at a market rent of $10 on a five-year lease. So you've got three buildings that are leased fee.

Then the fourth building, let's say, is the owner occupied building that now I've been asked to appraise that building. I'm going to do market value at market terms. My other analysis I do shows that market occupancy for this market is 95 percent.

So I've got these three buildings and lucky for me they've all three sold and they're all leased fee, and now I need to adjust them to my

Page 198

market value. My market value is market value at market terms, market rent, market occupancy.

So I'm very close to identical to property C because market rent we established because that one was on the market and leased at $10, so that's market rent. The only possible adjustment you might make to property C is the fact that because we're doing market occupancy, we're assuming 95 percent occupied and that one was 100 percent occupied when it sold, so maybe you make a minor adjustment.

The other two sales, property A, you're going to have a significant upward adjustment because at least for a dollar a square foot and market's at 10.

Comparable B, it was a $25, so it's going to get a negative adjustment. So the only purpose of this was to say just something is leased does not make it superior because you're adjusting to market, you're not adjusting to vacant.

Q. Right. So the dollar a year or $100 a square feet, would you need to adjust it?

A. You've got to say what is market for what I'm appraising and how are my comps different from that.

Page 199

Q. In your report, did you look at the rental rate, the contract rental rate, of any leased fee sales and compare it to your market rental rate?

A. Yes.

Q. Did you look at the occupancy of the property?

A. Yes.

Q. Did you perform a property rights adjustment in compliance with the authoritative materials you provided?

A. Yes. The only thing I didn't do, I know in the text, the text should have been worded differently because it says we did not do an adjustment, and what it should have said is we didn't do an adjustment under that heading, but we absolutely, positively did a market condition adjustment because we did an occupancy adjustment and we did a rent adjustment.

Q. Is doing an occupancy adjustment and rent adjustment by definition a property rights adjustment?

A. Yes.

Q. Would it be appropriate to just knock off ten percent if the property happens to be leased?

A. No.

Page 200

Q. Is that for the reasons you stated before?

A. Just because it's leased doesn't mean it's superior.

Q. In preparation for the hearing, did we discuss Page VI-26?

A. Yes.

Q. And did we discuss the adjustments you made for rent and occupancy in the report?

A. They were discussed in the report. It was just not done under the property right convey paragraph or heading.

Q. Did we discuss whether you would revise and correct Page VI-26?

A. Yes.

Q. Or for you to write a letter to explain your conclusions?

A. Right, I did a supplemental letter to explain.

THE EXAMINER: For purposes of the record, this has been marked as Appellee's Exhibit 10?

MR. SEED: Correct.

(EXHIBIT MARKED FOR IDENTIFICATION.)

Q. What I'd like you to do because I want to

Page 201

finish up is for you now to go through your -- you could do it here for property rights adjustment, but just go through the adjustments to the sales approach you have done.

A. Okay. There's a table on VI-32 that shows all of the adjustments. Again, under the title Property Rights on that page, there is no adjustment made, but that was because we did those property right adjustments as an occupancy and a rent adjustment which meets the definition of how you take into consideration property rights.

Those are listed at the far right of the table where it shows what the rent was at the comparable, and our subject rent is at the bottom. The market rent is at the bottom, and then it shows the occupancy. So, again, the adjustment was made; it was just not made under the Property Rights heading.

Q. In hindsight, would you have drafted this a different way?

A. I would have written -- I would have explained that on Page VI-26.

Q. Is that the purpose of this letter?

A. That is the purpose of the letter.

Q. Go ahead with your conclusions.

Page 202

A. Again, the ten sales that were looked at ranged in value, and it was a very broad range from $15.70 per square foot to $164 per square foot. But the two sales that sat at the low end of the range were the ones that were former something, they were vacant and available.

That is really contrary to the definition of fee simple at market because fee simple at market means you're occupied at market occupancy and at market rent. So something that is vacant is going to need significant adjustments to come to an appropriate value for your subject at market occupancy.

But, again, all of the sales were considered, adjustments were made for location, size, age, quality and condition and then the economic characteristics and the occupancy. And based on all of those, a range of value was presented. I guess it was around -- was kind of around 87 to around $104 was kind of the median of the range there. Then a second analysis was done on those where the rent was available and again --

Q. Where's that?

A. That is on Page VI-33. Again, that's taking into consideration the market rent, how are

Page 203

these comps different from the subject. The subject is assumed -- or is concluded to have a market rent of $7.25. The comparables where we had rent, the rents ranged from $4.25 to $10.66.

So, again, what we've done is a percentage variance to say, okay, there's obviously a a difference on rent, and based on those, we get an adjusted range of $87 to $119 with an average of $106.61.

So all of those were taken into consideration, the physical adjustments where we looked at the ten and then the economic adjustment alone, not doing any other variances or any other adjustments but just looking at the economics, and based on all of that data, we concluded to $90 per square foot for 12,181,140 or a rounded 12,180,000.

Q. Looking quickly at Mr. Racek's report, did you review his sales approach?

A. I read through it, yes.

Q. Did Mr. Racek make some adjustments to a sale based on his conclusion of market rent versus contract rents?

A. There were no individual adjustments shown. It basically was kind of an upward or downward. And he did indicate that he adjusted many

Page 204

of them downward because of superior rents, although some of those, the rent was actually lower than his concluded market rent for the subject.

Q. So to the extent you can decipher, did he look at a contract rent versus a market rent?

A. It appeared. And again, it's his analysis, but it appeared if it was leased, he assumed it was superior.

Q. Okay. Part of your adjustment was in addition to looking at the difference between the market rent and the contract rent, you made an adjustment for occupancy?

A. Correct.

Q. Why did you do that?

A. Well, again, the subject is 100 percent occupied. It was 100 percent occupied, but when you're doing market, you're assuming market terms, so not only market rent but market occupancy. Since we determined in the income approach a market occupancy of -- I think of 93 percent -- let me double check that real quick -- yeah, so we assumed a market occupancy of 93 percent.

And because those sales were at 100 percent occupied when they sold, we did consider a minor downward adjustment since we were doing the

Page 205

market occupancy.
Q. I have a couple more questions and we're done. Do you need a break for a second or are you okay?
A. Before we go through on here, I'll need a break, but....
Q. Five more minutes, is that okay?
A. Yes.
Q. Can you just describe your letter, your October 10 letter?
A. Can I describe it?
Q. What's that say?
A. Yeah, basically, again, it was worded poorly in the report. Appraisals are not always perfect and that was a mistake to say that we did not do a property rights adjustment because, again, property rights adjustment is looking at occupancy and rent and we did that. We just didn't do it under that heading. And that's basically what was explained in that clarification statement letter dated October 10th.
Q. I have two other quick areas. We covered this briefly, Sale No. 10.
A. Okay.
Q. Is this in Brooklyn, Ohio?

Page 206

A. It is.
Q. Is this sale within a year-and-a-half of our tax lien date?
A. Yes.
Q. How close is it to the tax lien date?
A. It was June '13 and we're January '15.
Q. Why did you select this sale for this report?
A. Well, one, it's very proximal. Two, it's a big box. And three, it's dated time wise within an acceptable timeframe of the subject valuation date.
Q. Did Mr. Racek include the Sam's Club in his report?
A. I don't see it in here.
Q. What's the date of his report?
A. July 2017.
Q. July of 2017?
A. Yes.
Q. Is that a four-year -- did four years pass from the date of the sale and the writing of the report?
A. The date of --
Q. The date of the Sam's Club sale and the writing of the report.
A. The Sam's Club sold in 2013.

Page 207

Q. Would that be enough time for an appraiser to investigate a sale?
A. I would assume so. It was in Costar. We were able to contact the broker.
Q. Finally, you can hand that back to me, are you familiar with Brice Road in Columbus?
A. A little bit, yeah.
Q. How are you familiar with it?
A. I've lived in Columbus for many years. I don't spend a lot of time in that area but I know where it is.
Q. In your report, do you have the Lowe's and Brice Road as a comparable sale?
A. Yes.
Q. Was that the sale of a renegotiated lease?
A. Yes.
Q. Is that a short-term lease now?
A. I don't think it's that short-term, no. They exercised their option which expired in December of 2019 and the sale was in '14.
Q. So five years?
A. Right.
Q. So it's not 20 years?
A. Right, no.

Page 208

Q. So they can leave the property in 2019?
A. Correct.
Q. Are you familiar with what's called -- I'm showing you Exhibit F. Are you familiar -- and we're going to quickly go through this, are you familiar with a former Target and a former Meijer's?
A. I mean, I don't have those sale comps. Again, I know that area somewhat, but I'm not overly familiar. I know Meijer's did leave that area, but I'm not familiar with the others.
Q. Do you know if Target left that area?
A. I don't know.
Q. If -- do you have an opinion if those properties, if the occupants left those properties and the Target sold for 200,000 and the Meijer's sold for $429,400 and the former Kmart sells to Menards in Brooklyn for over $10 million, does that indicate anything to you?
A. Well, it certainly shows what the underlying land is worth. Again, Menards obviously wanted to be in that location and they were willing to pay substantially for that. So this area is I would say not as good if people are paying $300,000 for a large site. It would just say that that's not as desirable an area as up in the Brooklyn

Page 209

area.
Q. Does a number of big box vacancies indicate anything about the location?
A. It would indicate a weakness. If you start getting a lot of vacancies, that will sometimes snowball and the whole area may go down.
Q. Do you think the Brice Road location in general is relevant to the Brooklyn?
A. Again, you've got population back, but that area has struggled. A lot of the retail has moved to other locations and that happens sometimes. That certainly impacts property values, but I don't see -- obviously we didn't look at those sales, so I can't really get into a lot of detail about it.
I don't have the details on it to discuss, but just on face value, it would look like the less desirable area, and that's negatively impacted, and it's not reflective of what's happening in the Brooklyn market.
MR. SEED: I have no other questions.
THE EXAMINER: Let's go off the record and take a short break.
(Recess taken.)
THE EXAMINER: Back on the record. Mr. Seed, you're done with your direct examination?

Page 210

MR. SEED: Yes.
THE EXAMINER: Cross-examination?
MR. GIBBS: Thank you.
\- - -
CROSS-EXAMINATION
By Mr. Gibbs:
Q. I want you to read from one of our statutes here in Ohio, Ohio Revised Code Section 5713.03. Would you read the highlighted portion for me.
A. "The County Auditor from the best sources of information available shall determine as nearly as practical the true value of the fee simple estate as if unencumbered."
Q. Now, you're aware that was amended to this current version about three years ago? Are you aware of that?
A. I'm not an attorney. I'm just doing market value.
Q. Encumbered, Mr. Seed asked you some questions about the word encumbered, remember that?
A. Right.
Q. I think it was how he started his direct of you, something like that, very close to the beginning of his direct. Is a lease an encumbrance?

Page 211

A. A lease can be an encumbrance, yes.
Q. Isn't a lease always an encumbrance?
A. But market value assumes at market terms which assumes a market rent.
Q. Yeah, but when --
MR. SEED: Would you like her to finish her sentence?
MR. GIBBS: She answered my question.
Q. (By Mr. Gibbs) When the owner of a property leases the property to a third party, a tenant, that landlord no longer has the right to occupy that property; isn't that true?
A. Correct.
Q. Which is an encumbrance, it encumbers the landlord's rights with respect to the property. They cannot occupy the property during the term of the lease, correct?
A. Correct.
Q. Okay. So you state in your appraisal report, and I believe it's on VI-26, if you'll turn there for me, you've got a heading there Property Rights Conveyed; do you see that?
A. I do.
Q. The second sentence, would you read that for me, it starts "For tax..."

Page 212

A. "For tax valuation purposes, properties are to be valued fee simple assuming market terms."
Q. Now, who instructed you that was the law?
A. That is my understanding of how you do a tax appeal. You look at market conditions.
Q. But you're not a lawyer, right?
A. I am not an attorney, no.
Q. Did Mr. Seed inform you that that was the law?
A. Not to my knowledge, no.
Q. Okay. I'm just curious because in the next paragraph down, the last sentence -- the first sentence, you say, "We are appraising...", would you read that sentence for me.
A. "We are appraising the fee simple estate and the subject assuming lease at market terms."
Q. So your understanding of your assignment was to appraise the property as if leased; is that fair to say?
A. Market value.
Q. No, I'm just asking --
A. Like the Appraisal Institute says, if you're doing market value, you're assuming market terms, market lease, market occupancy.
Q. No, but I'm asking you about the sentence

Page 213

on VI-26, you're assuming a lease on the property in place; is that correct?

A. We're assuming it's at market terms, correct, market value.

Q. Leased at market terms?

A. Correct.

Q. Okay. But we agree that a lease is an encumbrance?

A. You're saying that then if you have a multi-tenant retail facility, that you're going to assume it's vacant; is that your assumption?

Q. Did you testify that a lease is an encumbrance?

A. Yes, but I don't think that's contradictory to doing market value at market terms.

Q. Okay. So your premise was leased at market terms, and you took your instruction, I think you said, from the Appraisal Institute; is that right?

A. Well, that's the appropriate way to do owner occupied real estate, yes.

Q. So the definition of market value, implicit in that definition is a hypothetical sale of the subject; is that correct?

A. Correct.

Page 214

Q. So if you're to be valuing the property fee simple as if unencumbered under the statute and you're supposed to be developing the market value, isn't it true that in a hypothetical sale, you're trying to determine what someone would pay for the property on the open market, correct?

A. Yes, but, again, you're doing market terms. Why would we do an income approach and put market terms on it if then we turn around in the sales comparison approach and assume it's empty?

Q. Just bear with me.

A. You're mixing two different things. I mean, you have to value it appropriately.

MR. GIBBS: Your Honor, I just want the answers to my questions.

MR. SEED: He keeps interrupting her answers because he doesn't like her answers and that's not the purpose of examination.

THE EXAMINER: I think we just want to get answers to the questions that are being asked. There will be an additional opportunity for you to ask questions of your witness to clarify anything that you think needs to be clarified, too.

MR. GIBBS: Could you read me back my last question.

Page 215

(Record read.)

A. Could you repeat that again, please, what you're trying to say.

Q. So if you're supposed to be valuing a property in its market value, we established that implicit in that definition is a hypothetical sale of the property, correct?

A. An appraisal assumes a sale.

Q. Okay. And so you are to be valuing the property at its market value in fee simple as if unencumbered, correct?

A. Yes, but I think you're misinterpreting unencumbered because, again, let's say that --

Q. So you said yes, though, right?

MR. SEED: Would you let her --

MR. GIBBS: I just want a yes or no.

THE EXAMINER: Miss Blosser, I want to make sure we're answering the questions and not --

THE WITNESS: The way they're worded, they're awfully misleading.

THE EXAMINER: That's up to your counsel to handle. We'll let Mr. Gibbs ask the questions.

MR. SEED: Our objection is that she's trying to -- as she's finishing her answer, he's stopping her in mid sentence, and she should at least

Page 216

be able to finish her thought.

MR. GIBBS: This is how a proper cross-examination is conducted. You end the question with the word, correct, and you ask the question in a way that it could be answered yes or no so that you elicit only the testimony that you want from the witness.

THE EXAMINER: Let's go ahead. Move on, Mr. Gibbs, ask your question.

Q. (By Mr. Gibbs) Again, you're to be determining the market value in fee simple as if unencumbered, correct?

A. Based on market terms, correct.

Q. And you're taking the based on market terms from the Appraisal Institute, not from the statute; is that correct?

A. Can I answer this -- can I explain something? Am I allowed to explain something?

THE EXAMINER: Just answer the question.

A. I've tried to answer the question, but, again, if I'm appraising a multi-tenant retail center and you tell me to do it unencumbered --

MR. GIBBS: Your Honor, I move to strike this.

THE WITNESS: If you tell me to do it

Page 217

unencumbered --
THE EXAMINER: Miss Blosser, I think you're jumping ahead. You know where he's going with this, and I appreciate that. Let's answer the question so we can move on here. Again, Mr. Seed can ask you some questions to make sure that clarification is in the record.
MR. GIBBS: Thank you. I'm trying to be very precise and efficient. I keep forgetting where I was because of all the meandering answers.
Q. (By Mr. Gibbs) So we agree that your challenge or your project or your assignment was to appraise the subject property at market value in fee simple as if unencumbered, correct?
A. Yes.
Q. Okay. And you answered previously that it was at market terms, you added that; do you recall that?
A. Yes.
Q. And isn't it true that you take the support for the idea that you're supposed to value it at market terms from the Appraisal Institute and not from 5713.03; isn't that correct?
A. I would say yes, but again, I think that you have to -- for tax appeal you do an income

Page 218

approach and a sales comparison both, and if you're doing an income approach, you have to assume market rents and market --
Q. Do you have 5713.03 in front of you still?
A. I do not.
Q. Okay. So I've taken it back away from you. I wanted to have you look at it again and tell me where the word market terms appears. I didn't leave that with you?
MR. SEED: Can you note -- can I make an objection? The Supreme Court has already addressed the issue of fee simple as if unencumbered and what a lease is and appraisal terms in their own cases, and it's contrary to what Mr. Gibbs is asserting.
THE EXAMINER: Again, this may be an issue for briefing. Again, Miss Blosser is not an attorney. I think you're getting close to where you're going here.
Q. (By Mr. Gibbs) Would you tell me where the words at market terms appear in the statute there. Do they appear there?
A. I haven't read the entire thing.
Q. You can read the whole thing. This is 5713.03.

Page 219

A. I do not see it in there. It ends at -- but you do have something written out here that you crossed out "but subject to" for some reason.
Q. May I have that back?
A. Sure.
Q. So we agree that at market terms is not part of the requirement under that statute; is that correct?
A. It is not worded in there with those specific terms, correct.
Q. All right. But you made clear in the opening pages of your appraisal that your assignment was as if leased at market?
A. Yes.
Q. Okay. Now, we heard a lot of questions from Mr. Seed about this big land sale in Brooklyn, right, the old Kmart was torn down, purchased by Menards for $10.8 million, I think it's your land Sale No. 3. Do you recall all those questions?
A. Yes, it was bought for 10,350,500.
Q. It's not really relevant, though, is it? It's not really relevant to determining the value of the subject, is it?
A. Well, it's an indication of interest in the market, so yes.

Page 220

Q. Okay. It's a big number to be sure and do you think maybe that's why Mr. Seed kept asking you about it?
A. It's relevant because it's proximal. If you look at this map, it's like right across the street, so I think it is relevant that it's a large land parcel that's proximal to the subject and is going to be used for a big box.
Q. Right, but to be clear, in your cost approach, you didn't think it was very relevant because you only valued the subject property's land at $2.9 million, right? For the record, you got $2.9 million for the subject's land, not 10 million.
A. The subject site is about half as big and that's one sale, so you're not going to give all your weight to one sale.
Q. Right. So Mr. Seed asked you, he said something like would Lowe's sell their -- in your opinion, would Lowe's sell their location in Brooklyn for $6 million; do you remember him asking you that question?
A. Yes, I do.
Q. And you said no, the parking lot's really full, they're obviously doing great there, and you said, you know, it costs Lowe's more -- since they

Page 221

want to be in that market, it costs them more to locate elsewhere within Brooklyn; is that right?

A. That is -- Yeah, there's not a lot of available land in Brooklyn, and if they want to be there, they're going to have to pay for it. And again, if you do just our cost approach numbers, it would cost them over $13 million to duplicate what they have.

Q. Right, but the problem is the Lowe's site is less than half the size of the site that Menards bought, right? Menards paid 10-and-a-half million and we're like 40 percent the size, right?

A. No, about half.

Q. No, I think we're like 10.3 and it's 22.8; does that sound right?

A. Yeah, it's about half.

Q. No, it's about 40 percent. We can do the math if you want. 45 percent.

A. 10 is half of 20, so go with that.

Q. Sale price was 22 million, right?

A. We're not talking about sale price. We're talking about acreage. You were just talking about acreage.

Q. $10 million was the sale price. So if the Lowe's site is about half the size, or

Page 222

40 percent, somewhere in between there, why wouldn't the Lowe's sell for $4 million, $4-and-a-half million? That's what happened at Menards.

A. Well, Menards was the site that was available. The Lowe's site isn't. The Lowe's site is an improved site that's operating.

Q. But you have to assume it's available, don't you, under the market value definition implicit --

A. Again, there's three approaches to value. We did three approaches to value, correct?

Q. I'm not answering your questions. You're answering mine.

A. You're not asking good ones, so I'm trying to help you.

Q. Okay. So you have to imagine the subject property as being offered for sale implicit in the definition of market value provided by the Appraisal Institute; we agree on that?

A. Yes.

Q. I'm asking you to imagine that Lowe's puts the property up for sale unencumbered, right?

A. Okay.

Q. That's the definition of value in Ohio for tax purposes, correct, unencumbered?

Page 223

A. That's what you say.

Q. Did we read the statute together?

A. We did.

Q. So we can agree. So Lowe's puts up less than half the same amount of land that sells to Menards for $10 million; why does Lowe's get more than $4-and-a-half million?

A. Again, Kmart was a vacant available sale, and it's one sale, and that sale was used for land value. It wasn't used for improved value. So you're assuming that my market value for Lowe's is based on redevelopment. That's not the highest and best use of that site. The highest and best use is for as it is being operated.

Q. How old was the former Kmart when it sold to Menards?

A. I don't know.

Q. Let's go to that section of your appraisal report.

A. Again, Kmart is in financial distress and leaving a lot of markets, so it's not -- there's different elements that go into play.

Q. Would you believe that it's correct that Kmart was built in 1994 at that location?

A. I don't have that information with me.

Page 224

Q. Okay. Now, you pulled some comps, let's see, I think that big list is VI-2, right, in your appraisal report, what Mr. Seed marked as Appellee Exhibit 6?

A. Right.

Q. Do you know there are 46 sales in that list?

A. There's a bunch.

Q. Do you believe it's 46?

A. I can count them if you'd like.

Q. I've counted them. Do you have any reason to believe that I'm not correct?

A. There's 46.

Q. Okay. Now, you utilized the sale of the Lowe's property and leased fee at Brice Road, didn't you, that was one of your improved sale comps?

A. Yes.

Q. Does that appear on this list? About midway down.

A. Yes.

Q. Okay. Now, tell me how you went about developing this list. You did a computer search essentially?

A. For this list?

Q. Yeah.

Page 225

A. Basically looked at Costar and Real Capital Analytics just trying to find some big box sales that had transferred.
Q. Your parameters were what?
A. Basically just looking for larger single tenant.
Q. Now, I'm looking at VI-1 under Big Box Market Sales Data, do you see that heading?
A. Yes.
Q. Correct me if I'm wrong, but your parameters were big box and freestanding buildings of 55,000 square feet or more that occurred in Ohio after January 1st, 2011; is that right?
A. That sounds correct.
Q. Now, what we marked as Appellant's Exhibit F, in addition to the Lowe's, which you did include on that list and became one of your improved sales, do you see the former Target on there on your list?
A. I do.
Q. No, is it on your list, on VI-1?
A. I do not see it, no.
Q. How about the former Meijer there at Brice Road, is that on the list?
A. I do not see it, no.

Page 226

Q. How about the Hobby Lobby that was at one time a Builders Square that Mr. Racek testified to the Board, is that on your list on VI-2 one of the ones you considered?
A. Again, Costar does not always pick up all sales and that was the parameter that was used, was to go into Costar and Real Capital and put in those parameters.
Q. So you used the only leased fee sale at Brice Road at $51 but you didn't utilize any of the fee simple sales?
A. I don't have the search in front of me, but again, the search was done based on those parameters, and, again, sometimes sales do not show up on Costar or Real Capital.
Q. Is it possible you excluded those three from your chart on VI-2 because they were distressed or not arm's-length; is that possible?
A. That's very possible.
Q. You say here that you did exclude sales with known distressed or non-arm's-length conditions. What other sales did you exclude? Do you have that with you today?
A. No. Again, the purpose was to kind of get a general idea of arm's-length transactions that

Page 227

were recorded out there in public domain.
Q. Are you saying those three sales aren't recorded in Franklin County where you live?
A. Again, the source that we were using was Real Capital Analytics and Costar.
Q. Is it fair to say the sources you used to select your sales have shortcomings?
A. Sometimes all sources we have have shortcomings. That's why you do follow-up. Again, this was kind of a general overview. Then we focused on ten sales, and those were verified in additional manner.
Q. Okay. So those ten sales, we'll go through them in detail shortly, but my understanding is eight of the ten at the time of sale were encumbered by a lease, correct?
A. Correct.
Q. Two of your improved sales were fee simple unencumbered at the time of sale, correct?
A. That's correct.
Q. Now, I'm looking at this list here, and I think you testified to Mr. Seed where it says Former in that first column, that means they sold unencumbered, correct?
A. Generally, yes.

Page 228

Q. I understand that. Would you believe there are what I would call 20 fee simple sales here unencumbered; would you believe that?
A. If you say so.
Q. Okay. And 26 leased fee --
A. Okay.
Q. -- that were encumbered at the sale. So would you consider 20 fee simple sales to be an ample number to provide a reliable indication of value for when the appraisal assignment is fee simple?
A. Again, I think this is where we're into an understanding of fee simple. There are different -- fee simple is not an easy word. There are different definitions or different things that happen under fee simple. Fee simple, like if a bank engages me to appraise a Lowe's --
MR. GIBBS: Your Honor, my question was --
THE WITNESS: Please let me answer the question.
MR. GIBBS: -- Is 20 fee simple sales enough to determine fee simple value.
THE WITNESS: No, because those are vacant and available. Those are not leased at market and market value is leased at market. Just like you

Page 229

do an income approach and you're saying if I'm valuing the income approach, I'm going to come up with a market rent and market occupancy and do my income approach based on that.

If I turn around in the sales comparison approach and say only my best sales are those that are empty, that's not correct. You would not appraise -- again, you would not appraise a multi-tenant office building for tax appeal assuming it's vacant, and I've seen appraisals for tax appeals that were done for the owners. They don't assume vacant sales for the comparables.

Q. (By Mr. Gibbs) Miss Blosser, do you provide a definition of market value in your appraisal report?

A. Yes.

Q. Because you just said that market value requires lease at market. Do you provide that definition somewhere? I'll direct you to the bottom of I-6. Could you read that?

A. "Absolute ownership unencumbered by any other interest or estate subject only to the limitations imposed by governmental powers of taxation, eminent domain, police power and escheat."

Q. So when you say your task was to

Page 230

determine the value of the property as if leased at market, you're encumbering it with an interest or estate, aren't you?

A. It's not a contracted rate --

Q. Yes or no?

A. -- if it's based on market.

Q. Yes or no?

A. I am assuming market rent, yes, because that is....

MR. GIBBS: Could we go off the record for a second?

THE EXAMINER: Go off the record.

(Off the record.)

THE EXAMINER: Let's go back on. Mr. Gibbs.

Q. (By Mr. Gibbs) I want to refer you now, Miss Blosser, to VI-2. That's the chart of 46 sales again. And I think we established that there were 20 fee simple unencumbered sales and 26 leased fee sales. And I asked whether 20 fee simple sales was a sufficient amount of data to determine the amount of fee simple.

A. No. My answer is no because I don't think they're appropriate sales. I don't know how to answer that yes or no without some caveat on that

Page 231

because you're saying that only the vacant and available fee simple are the appropriate sales, and I don't believe that to be true.

Q. Well, I'm not the one who included them on my table on VI-2, you did, and those are approximately 40 percent of the total amount of sales, but when it came to select just ten for your analysis, basically 20 -- 18 of them got left out even though they sold in the same interest. That's what I'm trying to figure out.

A. Again, my feeling is that I did the appropriate analysis, and I understand what you're saying, but I think we differ on what fee simple market value means. So by saying that we should have only used the ones that were fee simple I think would have inappropriately valued the property.

Q. Okay. Do you know what the average sale price was of the 20 unencumbered sales on your chart on VI-2?

A. I do not.

Q. Would you believe it was $22 a square foot?

A. I'm sure it would be lower.

Q. Your conclusion, correct if I'm wrong, is $88 a square foot; is that correct?

Page 232

A. That's correct.

Q. Would you believe that the average sale price per square foot in the chart on VI-2 of your leased fee sales, those that were unencumbered at the time they sold, was $79 a foot; would you believe that?

A. That probably is correct.

Q. And yet your conclusion of value is nowhere near the average of your fee simple sales, correct, it's four times?

A. It's based on what I feel is the correct market value for the subject.

Q. Okay. So you adjusted up 400 percent?

A. Again, you're mixing the sales, so, again, my market value is based on what I feel is the appropriate market rent for the subject.

Q. Okay. So why is your conclusion of value at $88 so close to the average of the properties that sold in the leased fee but four times the average of the properties that sold in the legal interest you say you appraised?

A. Again, the sales were each individually adjusted to the subject and the concluded value is felt to be appropriately supported by the market data.

Page 233

Q. I want to move now to your highest and best use, and it's on Page IV-2. Now, would you agree with me, Miss Blosser, that highest and best use is sometimes overlooked by appraisers but is extremely important?
A. Yes.
Q. And if you don't get the highest and best use determinations and conclusions correct when your task is to determine the market value of a legal interest, you can err, you can be led astray if the highest and best use conclusion is not correct; isn't that true?
A. Sure.
Q. Because doesn't the highest and best use as improved, for example, when the subject is improved, doesn't that highest and best use as improved conclusion dictate what types of comparables you're looking for? Would you say that's true?
A. I mean, yeah, your highest and best use as improved, you're looking for similar properties.
Q. And so is there a danger that you can define highest and best use too narrowly?
A. I suppose so.
Q. Okay. I want you to read the sentence on the last page of IV-2, starts with "Therefore..."

Page 234

A. "Therefore, the highest and best use of the subject site as improved is for continued use by the current occupant for its ongoing business."
Q. Who is that current occupant?
A. Lowe's.
Q. What is its ongoing business?
A. Home improvement items.
Q. Once you determine that highest and best use to be for use by Lowe's for selling home improvement goods, aren't you then looking at comparables that are other Lowe's?
A. That certainly is one appropriate comparable, yes, but, again, you're -- it's a first generation use, it was built for Lowe's, and it's being used by Lowe's, and it's still occupied by Lowe's, so it's a first generation user, so yes, in my opinion, the better comparables are those that are being used for what they were designed and built for.
Q. I keep hearing the word use. I heard it a lot when Mr. Seed was asking you questions. I think you said it about three times just then. You said used by Lowe's for its current use. You understand there's a concept called use value, right, that's different than market value? Are you familiar with that?

Page 235

A. I am.
Q. So you understand why when I asked you questions earlier about your comments on how many cars were in the parking lot, do you remember that?
A. Yes.
Q. And how it's still being used by Lowe's, that was one of your comments to Mr. Seed. You understand the concern that goes along with that, that you're trying to assign value based on who's using it rather than available for sale in a hypothetical transaction, right, unencumbered? You can understand where the concern comes from?
A. You know, again, by saying there's a lot of cars in the parking lot, that shows it's a viable location. You have people that want to be there. There's a shopping center across the street. You're in a retail area. You have a lot of population and households around you.
So, again, you have a good location, it is being used for what it was intended. It could have been a Home Depot instead of a Lowe's or it could have been a Wal-Mart instead of a Lowe's. But somebody chose that spot, they went in there, they're operating, and they're obviously continuing to be there which would indicate, unlike the Kmart where

Page 236

they moved out, that that is a positive location.
Q. It was built for Lowe's, right?
A. It was.
Q. The subject was built for Lowe's. Do we not agree, though, in determining market value, you have to assume it's put on the market, right?
A. But you have to assume who's your most likely user.
Q. User? So the user again is the concern?
A. Who's the most likely tenant. Who's the most likely tenant of a building that was built for that. Again, I think you can't ignore the fact that it was built for Lowe's, and therefore, what is Lowe's willing to pay for or what is Home Depot willing to pay for.
To assume that it's now second generation, third generation and that we just are trying to make it by, that negatively impacts the value. And, again, if I had been engaged by a bank to appraise the Lowe's and it was owner occupied, I wouldn't go out and look at vacant buildings and say, unless the bank said I want to go dark value. And go dark and fee simple, they're not -- again, they both may be fee simple but they're not the same concept.
Q. But we agree the word at market terms

Page 237

doesn't appear in the statute, right?
A. But that's -- but you're implying that it's distressed. By saying it's vacant, you're implying it's distressed, but it's not. It's there, they're using it for what they want it to be done. Again, it goes back in my mind to a multi-tenant, if you're appraising a multi-tenant center, you don't assume the whole thing is vacant if you're doing market value. You assume it's leased at market, but now suddenly it's a single tenant --
MR. GIBBS: Your Honor, can I move to strike everything that was nonresponsive?
THE EXAMINER: Miss Blosser, I think, again, that's something you need to deal with on redirect by your counsel.
MR. SEED: I think we're covering the same ground over and over.
THE EXAMINER: And I think that's part of the problem. If you'd let Mr. Gibbs get through his questions, I think --
MR. SEED: But he's coming back to the same question.
THE EXAMINER: I think he's trying to get back to the same point, but we're getting there in different ways. I'm going to allow him to keeping

Page 238

asking his questions.
Q. (By Mr. Gibbs) Now, we talked about the fact user, you're concerned with who the user is and what the use is. Of your ten sales, despite those 20 fee simple transactions that turned up in your list from Costar, you used six Lowe's; is that correct?
A. I believe so, yes.
Q. So let's look at VI-5, Improved Comparable Sale No. 1. This is one in Zanesville, right?
A. Yes.
Q. Now, would you consider Zanesville, Ohio comparable to Brooklyn, Ohio in terms of its demographics, its population, its household income?
A. No, that's why adjustments were made.
Q. It's a Lowe's, though, right? It's a Lowe's, right?
A. It's a similar building that sold in the timeframe that was felt appropriate.
Q. Same user, right?
A. That is the same user, correct.
Q. That property sold leased fee, correct?
A. It did.
Q. And you made no specific property rights adjustment. If I go to your sales grid on Page VI-32

Page 239

and I look at the column marked Property Rights next to Zanesville Sale No. 1, I'll see leased fee, zero percent; is that right?
A. That is correct.
Q. So back to VI-5, when was this lease originally signed? How long has Lowe's --
A. Probably would have been there since it was built in 1995.
Q. So it's your understanding that this was a build to suit transaction; is that correct?
A. Correct.
Q. All right. The lease commenced in 1995, correct?
A. Yes.
Q. And the property sold encumbered by that lease, correct?
A. Not exactly, no, because they renegotiated the lease prior to the sale.
Q. Well, you mean the landlord put the building out on the market and offered it for lease?
A. They renegotiated -- They were going to sell it, but they renegotiated with Lowe's with a new lease before it sold because a buyer would want a longer term, so they renegotiated it prior to the sale.

Page 240

Q. But the property was never exposed to the market? Isn't market exposure important to determine the integrity of data?
A. It would have been exposed to market for the sale, it's just that to prepare it for sale, they renegotiated the lease so there would be a term there.
Q. But I'm asking about the lease that you said was, quote unquote, negotiated. Was the market tested? Was the property put on the market and offered to other prospective suitors who may want to become the tenant?
A. Two different things.
Q. Just answer my question.
A. It's two different things. I mean, they weren't selling the property -- they were renegotiating the lease to prepare it to sell. So the renegotiation of the lease would have had to be where the landlord and the tenant came to terms.
Q. You said the lease commenced in 1995?
A. Correct.
Q. So whatever the rental rate was determined based on the 1995 construction costs, plus some return to the developer, that's how the rent was determined, correct?

Page 241

A. The original rent, but they renegotiated prior to sale.
Q. I understand that, but what I'm asking you is, did the landlord offer the space on the market for anyone else to take other than Lowe's?
A. Lowe's didn't buy it.
Q. I'm asking for lease. When you say renegotiated, what kind of negotiation was it? Was it a market based negotiation? Were there other offers received for the space in terms of leasing?
A. It was renegotiated with Lowe's, the tenant that's there.
Q. So this sale price was for how much?
A. 11,500,000.
Q. So you made an adjustment then for the costs that would be incurred by Lowe's to move to a new store; is that right?
A. I made an adjustment of that.
Q. Did you consider an adjustment for that?
A. No.
Q. No, okay. Did you consider the lost profits that Lowe's would have incurred had they decided not to extend or take advantage of an option and move to a new location that might take two years to build? Did you make an adjustment for that?

Page 242

A. Why would I have made an adjustment for that?
Q. Well, not if you're trying to come up with a high value, you wouldn't.
A. No, I'm trying to do market value, and market value is based on the sale that occurred. And the sale occurred with the property that was leased at $5.95. So that was a recently renegotiated lease with Lowe's.
Q. Right. And I'm asking you, isn't that a better indication of what a property would sell for unencumbered by a 22-year old lease?
A. What would be? You lost me.
Q. Were they not within one of their option periods during this, quote unquote, renegotiation as you rephrase it?
A. They would have been.
Q. So if Lowe's decides to stay pursuant to some rental rate that was determined in 1995 under the option, they could have stayed, right?
A. They could have. They did stay.
Q. But instead they renegotiated why?
A. They looked at current market terms and that's why this is an appropriate sale.
Q. How do you know that? Did you speak to

Page 243

Lowe's?
A. They renegotiated the lease. If they wanted to leave, they could have left.
Q. Right, but you're using this as an indication of the value of the subject property, correct, this sale?
A. Yes.
Q. It's premised on a very old lease, correct?
A. The original lease, but again, you had to renegotiate it.
Q. Do you have the lease? Do you have the lease --
A. I do not have the lease.
Q. -- between the Lowe's and the owner of Sale No. 1?
A. No.
Q. I have the lease.
MR. GIBBS: Bear with me just one minute, your Honor. I'd like to mark this as Appellant's B. These are all the exhibits, David, I intend to introduce this afternoon.
MR. SEED: Thank you.
MR. GIBBS: It's marked C. I guess it's marked C. I have one for you, too, your Honor.

Page 244

(EXHIBITS MARKED FOR IDENTIFICATION.)
Q. (By Mr. Gibbs) What does it say at the top, Miss Blosser?
A. Third Amendment to the Lease.
Q. Does it say renegotiated lease?
A. It says Third Amendment to the Lease.
Q. Does it say lease, just lease?
A. It says Third Amendment to the Lease.
Q. What was the original date of the lease? It's referenced there.
A. June 1st, 2011.
Q. That's the date of the amendment, isn't it?
A. Oh, yeah.
Q. What's the lease --
A. October 4th, 1994.
Q. Okay. Now, do you know what other inducements Lowe's may have gotten in order to sign or enter into this renegotiation?
If there was other consideration that you weren't aware of, would that affect --
A. It could, yes.
Q. Okay. For example, are you aware that Lowe's got a right of first refusal in response for signing that extension?

Page 245

A. I did not know that, but, again, I would assume the buyer would have known that and they were willing to pay 11-million-5.
Q. So are you aware that Lowe's previously was responsible for paying percentage rent and that this amendment marked Appellant's C eliminates that I requirement?
A. I did not know that.
Q. Are you aware that Lowe's was given a new roof and/or at their option $250,000 as an inducement to sign this amendment?
A. I did know the landlord was responsible for the roof.
Q. Okay. But you didn't know that Lowe's secured a $250,000 credit toward that?
A. No.
Q. I'm moving on to Sale No. 2. This is VI-7. This is another Lowe's, right?
A. Yes.
Q. Again, another leased fee transaction, right?
A. Yes.
Q. And if I go to VI-32, which is your sales grid, and I look at your Sale No. 2 and I look at the Property Rights column, I'm going to see that the

Page 246

property rights transferred are leased fee, right?
MR. SEED: Objection -- I withdraw the objection.
MR. GIBBS: I'll ask the question again.
THE EXAMINER: There's still a question.
MR. SEED: Go ahead and answer.
A. Not under that column, no, but elsewhere.
Q. And you in terms of the property rights, specific property rights adjustment here, it's marked as zero percent, correct?
A. Yes, because that was adjusted elsewhere.
MR. SEED: Objection. We've already gone through for half hour that we corrected an error in the letter, but to ask a gotcha question on this column you put zero when we went through the testimony that was corrected is not appropriate.
THE EXAMINER: Right, and we have the record before us, and we've had all that discussion before as you said. You can go ahead and proceed.
Q. (By Mr. Gibbs) Let me ask you a question about your letter which I think is marked as Appellee 10; is that right?
THE EXAMINER: Yes.
MR. GIBBS: Is it 10?
MR. SEED: It is.

Page 247

Q. Are you aware this merit hearing was originally scheduled for October 10th, 2017?
A. Yes.
Q. And this letter marked Appellee's 10 is dated October 10th, 2017, correct?
A. Yes.
Q. Are you aware that Mr. Seed and I spoke on October 9th in the afternoon and I told him that we'd be proceeding to hearing on this?
A. I don't know that I got that message. I knew the hearing had gotten changed to this date.
Q. Are you aware, did he call you on October 9th asking you to clarify yourself with a letter?
A. He called me, and we talked about it. And then, like I said, I explained that we did do property rights but we did it under the economic characteristics and the occupancy, so I wrote this to clarify that the way it was written in the report was wrong.
Q. Did Mr. Seed pay you for your time to write the letter?
A. No. He did say that you had brought it up. And when I looked at it, the clarification was needed, but again, the adjustment itself was done; it

Page 248

just wasn't done under that category.
Q. So I pointed out to Mr. Seed that you were very specific in your appraisal that no specific property rights adjustments were made. You say it in writing, and I think it's... let me see, I'll find it. Okay, if you look at VI-26, I don't think we actually covered this yet.
MR. SEED: We did.
Q. The last sentence under the heading Property Rights Conveyed.
A. Right.
Q. Would you read that for me.
A. Again, it says, "For the purpose of this analysis, a specific property rights adjustment is not made."
Q. So you're aware that I pointed that out to Mr. Seed on the 9th?
A. I am, but again --
Q. Then he called you?
A. But the components for the Property Rights condition have been in the report all along.
Q. But he called you and asked you to write this letter; is that right?
A. He called and told me there was an issue and I wrote the letter.

Page 249

Q. And it was not attached to the appraisal that was originally timely filed, correct?
A. Correct, but, again, the property rights were in there with the economic and the occupancy adjustment.
Q. Okay. I want to go back to Sale No. 2 on VI-7. Now, we established I think that that's a leased fee sale and that you do not under the Property Rights column have the specific property rights adjustment. Did you inspect this property?
A. I believe I've been to this one. I'd have to go back and check. It would have been several years ago.
Q. Now, this is part of a portfolio transaction, wasn't it?
A. Yes.
Q. And there was a premium paid according to the broker for --
A. He noted that there probably was a 5 to 10 basis point premium, and therefore, an adjustment was made.
Q. And this is another Lowe's, right? It's the same user?
A. Correct.
Q. Now, when this property sold, the lease

Page 250

originally commenced like 19 years prior to the assessment date in 1996; is that right?
A. Yes.
Q. So when it transferred, what are the chances in your mind that the rent that was in place in any way represented the market as of 1-1-15 in Fremont, Ohio?
A. Again, there was a renegotiation of the lease to get them to renew.
Q. But the property was not offered on the market for lease to another party, correct?
A. No, but it's represented -- they did negotiate, the landlord and tenant negotiated to a new lease.
Q. But as with Comparable No. 1, whatever the resulting rental rate was was not the result of free market behavior, it wasn't the result of the space being offered and securing a tenant willing to pay the highest rent, was it?
A. It was based on a willing tenant paying an agreed upon rent with the landlord. So if they had not come to terms, then Lowe's could have left.
Q. But they're in an option period, so nothing the landlord could do could cause Lowe's to have to leave should they want to stay at the option

Page 251

rent that was determined 19 years previously, correct?
A. Although a tenant would sometimes have control over that if the option rent was higher, they may be able to come back and say, hey, we want to stay, but we want to look at the rent again.
Q. Isn't this what you might call not a real lease transaction but an extension? Wouldn't you call this an extension?
A. To me this is real. It's what is happening between a landlord and a tenant. So, yes, that tenant was already there, but that happens in all kinds of properties. Again, if I'm doing a multi-tenant property and I've got somebody that renewed or renegotiated, that's an indication of what market rent is now. So I don't see any difference as to why that wouldn't be an indication of market rent.
Q. Why use the word extension for transactions like this throughout your report? Is an extension different from a lease? Why make the difference verbally?
A. Because the tenant is still in place, but it was negotiated.
Q. But an extension is different from a new lease, correct, very different?

Page 252

A. Not necessarily very different. You're still encumbering the property with a lease.
Q. Well, but when these stores were constructed for the user Lowe's originally, they got a brand new custom built store that is tailored to their current business plan as of 1996, correct?
A. Correct.
Q. When they extended the lease prior to this sale, Sale No. 2, did they get a brand new store that was custom built for their purposes and their current business plan or did they get a 14, 15, 16-year-old store?
A. Again, that lease is based on what they have at that time, so that is a new lease rate to continue operating there.
Q. But when you look at some of these leases as comparables in your income approach, you use the word extension for them. You don't call them leases, correct?
A. We can go back there if you want. It's an extension of the lease, so I mean, the terminology... I don't know what difference -- I mean, it's an extension of the lease. I think the pertinent is that it was renegotiated so it's more current than the original 1996 lease because some

Page 253

activity happened between the landlord and the tenant to say here's what rental rate we're willing to pay now.

Q. I want to go to III-9 which is the place in your report that you use the lease signed in 1996 as your very first Rent Comp. Do you see that, III-9?

A. Yes.

Q. Am I not correct that you called it an extension?

A. Well, it was a lease extension that was signed in 2013.

Q. Okay. But you're not calling it a lease? I mean, it's not an example of a space that was available and a tenant who came along and reached an agreement with the owner to take the space, correct, that's not what happened here?

A. Again, it was an agreed upon lease between a landlord and tenant so, yes, I think that's appropriate to --

Q. That wasn't the question, Miss Blosser. I asked you isn't it the case that the space was available to anyone who could come along and reach an agreement with the landlord, and that the resulting transaction was an open market lease between two

Page 254

unrelated parties; is that what happened here on III-9?

A. No.

Q. Is that what happened with the lease on the Zanesville Lowe's?

A. No.

Q. So I'm going to go to Sale No. 3 which is the BJ's in North Canton. That's another leased fee sale, right?

A. Yes.

Q. You disregarded the 20 fee simple unencumbered sales that were on your chart, your Costar chart, and you selected another leased fee sale; is that right?

A. Correct.

Q. I remember Mr. Seed asked you to give him some examples of who the big boxes were, and I think you said Lowe's, Home Depot, BJ's, Sam's and then I think you threw Wal-Mart in there, too. Does that sound about right?

A. Yes.

Q. You also mentioned that I think you said 30 to 35 percent of your work is property tax work; is that right?

A. My personal -- I mean, again, I do not

Page 255

know that. Again, I'm a manager. I do lots of review work. The ones that I'm more actively involved with tend to be tax appeal, but if you looked at the total jobs that I had, it probably would be on the lower side of that or maybe a little bit lower, but I do do tax appeals on a regular basis.

Q. Right. I'm not that interested in accuracy, but an estimate is fine. I think the one you gave before, correct, was 30, 35? I don't have any way of disproving that, but that's what you said, correct?

A. Yeah, again, that was....

Q. So how many times have you been engaged by tax counsel to BJ's Wholesale to do an appraisal for them for tax purposes?

A. By BJ's?

Q. Yeah.

A. I don't think I have for a BJ's.

Q. And how many times have you been contacted by me to do an appraisal for Lowe's for tax purposes?

A. I don't know that I've done any. I have done -- again, I've done work for both sides. To me, market value is market value. It doesn't matter who

Page 256

the user is. I'm trying to get at what's a reasonable market value.

Q. But six of your ten improved sales are Lowe's and you mentioned that you considered who the user was, and it's in your highest and best use.

A. The type of user, correct. I mean, to me, those are similar. Those are similar comparables, and that's why they're used, and that's the purpose of an appraisal, is to come up with comparables that are similar.

Q. Has Home Depot's tax counsel asked you to do an appraisal for tax purposes for Home Depot?

A. I do not believe so.

Q. Okay. Sam's Club, the attorney who represents Sam's Club in Ohio for property tax purposes, have they ordered an appraisal from you for tax purposes?

A. Again, I don't have all my company records here. I do know that we do tax appeal for both sides, so I normally --

Q. You only do big box for one side; is that fair to say?

A. I cannot think of one offhand where I've done it for the other side, but again, to me, I don't care what side I'm working for, I'm looking at market

Page 257

value.
Q. I'm at VI-9 looking at Sale No. 3. That's a leased fee transaction, correct?
A. Correct.
Q. If I'm looking at the sale grid which is VI-32 and I went to Sale No. 3 and went across to the Property Rights column, I would see that you've identified that as a leased fee sale, and I would also see that you made no specific property rights adjustment in this column for that sale; is that right?
MR. SEED: Objection.
A. In that column, you're right.
THE EXAMINER: Your objection is noted. I think we've already gone through this.
MR. GIBBS: We can stipulate it will be same for all of them.
Q. (By Mr. Gibbs) So this is another build to suit like the first two, is that right?
A. Yes.
Q. Okay. So the rental rate would have been determined based on what it cost to construct the building back in 1998; is that fair to say?
A. Yes, probably.
Q. That's 17 years before the assessment

Page 258

date?
A. (Nods head.)
Q. Okay. Would you think it was appropriate your appraisal would be adopted if you were to use 17-year-old sales in the sales approach? Would you use 17-year-old sales in the sales approach?
A. No, not typically.
Q. Why would you use sales that are premised on 17-year-old lease rates in your sales approach?
A. Again, it's a current sale. The sale was around the time of and it was felt to be appropriate to use.
Q. Sale No. 2 was 19 years, the lease had been negotiated 19 years prior.
A. But it had been renegotiated. That's correct, yes.
Q. Sale No. 4 is that former BJ's. Now, this is a fee simple sale, right?
A. Yes.
Q. It sold for $36 a foot, correct?
A. Correct.
Q. Now, you did a whole bunch of work on demographics for Brooklyn in the first few pages of your report.
A. Yes.

Page 259

Q. It's got it's losing population, unemployment is up, household income is below the state, below the county, below the national, is that right, in Brooklyn?
A. Yes, but it still has a very significant population and household base.
Q. Sure. Is Dublin losing population, to your knowledge?
A. No, it's not.
Q. What's Dublin's household population compared to Brooklyn? It's got to be double, isn't it?
A. The Dublin population?
Q. I'm sorry, the income, household income.
A. Income, yes, is much higher.
Q. The 1 and 3 and 5-mile radius around this Dublin property, is the population projected to decline?
A. No.
Q. But that is the case around Brooklyn?
A. There's a slight decline, but it's still a very high population. It exceeds Dublin.
Q. Right. But isn't that important to a buyer when they look at the trends? Don't they --
A. Certainly it's one of the aspects, but

Page 260

this property also has very poor exposure. BJ's had left the market. They were no longer in the market at all, so, yes, this is one sale. It's been considered. And all of the things you've been bringing up were considered in the location and other adjustments.
Q. So this is the first fee simple sale that's unencumbered at the time of sale that you provided, correct?
A. It's vacant, yes.
Q. So moving on to Sale No. 5 -- Oh, wait, I want to go back to your sales grid on this. On Sale No. 4, when I look at the BJ's sale on your grid VI-32, I see that it's identified as fee simple under property rights, no adjustments made, and I see the adjusted price about midway from left to right as $36.38; do you see that?
A. Yes.
Q. Now, your final concluded value was $88 a foot; is that right?
A. Yes.
Q. And this fee simple sale is $36 a foot?
A. It's vacant, yes.
Q. Okay. But it's unencumbered, right, that's the statute that we have --

Page 261

A. Well, that's what you're saying, but again, that is not my understanding. Vacant and available is not the same as vacant at market or leased fee at market.
Q. So did you appraise the property in conformity with 5713.03 or not?
A. I believe I did, yes, but I don't think it means it should be vacant because, again, if you look at multi-tenant stuff, you're not going to assume it's all vacant, so why would you assume a single tenant is.
Q. Okay. So what were the adjustments that were made to Sale No. 4? Because the adopted value of $88 is like 245 percent higher than the $36 sale price.
A. Again, that's one sale. That's not -- one sale doesn't make a market, and it was adjusted upward for location because, again, while there's a lot of positives about the Dublin market overall, the subject market was considered superior because of the higher population and the access and the visibility of that site. So it got an upward adjustment for location, it got an upward adjustment for age, and it got a significant upward adjustment for occupancy.
Q. So the only fee simple sale you've looked

Page 262

at so far, you've adjusted twice, once for location, once for age, and then three pluses for occupancy?
A. Correct.
Q. How much is each plus worth?
A. Again, it's a qualitative adjustment and not assigned an actual percentage to it. That is perfectly acceptable appraisal, and each of the sales were adjusted. That's why you look at multiple sales to try to narrow a range to what you think is an applicable value.
Q. So you used a qualitative, not quantitative?
A. Correct.
Q. What I found odd about that is I believe you said earlier in your report that in your grid, you made specific numeric adjustments; do you remember saying that?
A. Well, we do do numeric adjustments for conditions of sale and date of sale.
Q. Right, but you say it's in your grid, but it's not true, is it? In the VI-32, you're not making specific numeric adjustments, you're making qualitative adjustments?
A. It's a mixture of both.
Q. It's a mixture of both, okay. Well, if

Page 263

the value conclusion is $88 and fee simple unencumbered in your appraisal, and Sale No. 4 is a fee simple unencumbered sale, then how much is each plus worth by deduction under the occupancy adjustment? 100 percent each plus? 300 percent?
A. One sale does not make a value. Again, that was one sale that was adjusted and the assumption was that the value would be well above that number.
Q. But you've got to find a way to get that one up, right?
A. I'm doing market value. I am doing what I feel are appropriate adjustments.
Q. Okay. Now, Sale No. 5 is another Lowe's, a leased fee Lowe's?
A. Yes.
Q. What year was that built?
A. 1995.
Q. That's when the lease commenced, correct?
A. That would have been correct.
Q. So about 20 years before the sale date; is that correct?
A. Yes.
Q. Okay. You testified earlier you wouldn't use 20-year-old sale data, right?

Page 264

A. Again, you're mixing metaphors -- or mixing -- you know, this is not a 20-year-old sale. It's almost the same as the sale date. It's July of 2015, so yes, it's considered to be an appropriate sale.
Q. You only used one other fee simple sale out of the ten and that's that former Wal-Mart, Sale No. 6 in Streetsboro, right?
A. Yes.
Q. Now, I want to just draw the Board's attention to the fact that both Sales No. 4 and Sales No. 6 you identify in the Property Rights column as fee simple; is that right?
A. Correct.
Q. So isn't it true that the range of fee simple improved sale comps you established was $15.70 to $36.38?
A. For those two sales but not for all of the sales that were considered.
Q. Right, but you said that these are two fee simple, so the range of your fee simple sales that you've selected is 15 to 36, correct?
A. No, because all of my sales are considered to be adjusted to my subject; therefore, the overall range is what's out there, not just those

Page 265

two sales.

Q. Okay. So you're saying because the subject is owner occupied and Sales 4 and 6 were unencumbered by any lease available, right, just like the subject, you adjusted them up 240 percent for Sale 4, and Sale No. 6, you went from $15.70 to your conclusion of $88. I mean, that's 550 percent?

A. Again, you're not -- you're not taking one sale and adjusting that one sale to whatever your conclusion is. You're looking at all of the sales. So yes, those two sales set the lower end of the bar because they're vacant, but those were only two of the considerations that were made. All of the sales were considered.

Q. How can you demonstrate to the Board today that you gave those any weight whatsoever despite the fact that they're the only ones that sold in the same legal interest you said you appraised?

A. I think the Board will have to read the appraisal and see the analysis, but I believe all of the sales were analyzed appropriately to come to fee simple at market.

Q. So no lease in place, you jack them up for lack of occupancy; is that right?

A. Correct. I mean, it would be inferior

Page 266

because market occupancy is determined to be 93 percent occupied.

Q. And your assignment was leased at market terms, right?

A. That is my feeling of what is the appropriate market value, correct.

MR. GIBBS: Can I have just a minute, your Honor?

THE EXAMINER: Let's go off the record to give the court reporter a break.

(Off the record.)

THE EXAMINER: Back on the record.

Q. (By Mr. Gibbs) So I want to go back to your sales comparison grid, Miss Blosser, VI-32. We just talked about the fact that you made large adjustments for lack of occupancy to the two fee simple sales, Sales 4 and 6.

A. Yes.

Q. When you were first starting out, did you appraise houses?

A. No.

Q. But you understand that people do appraise houses, right, for financing and for other reasons?

A. Sure.

Page 267

Q. When a house is sold by the owner, generally the owner leaves after the sale, correct? The seller has been occupying it and they leave after the sale?

A. Typically, yes.

Q. So isn't that home vacant at the time it sells?

A. But we're talking about investment grade real estate, not a house.

Q. I'm just asking you to answer my question.

A. Yes, the house would normally be vacant.

Q. Would it be your testimony that you would dramatically adjust that sale of the home up for the fact that it's not occupied and that it's worth a lot more when it's occupied; would you do that?

A. A house and investment property is not the same thing, so I mean --

Q. So the answer is no, you would not do that?

A. I don't think you can make an adjustment --

MR. SEED: Objection. Let her answer.

A. You want it to be vacant so you can move in, so it's not a negative that it's vacant.

Page 268

Q. Right. So when you're supposed to be valuing the property in fee simple as if unencumbered, doesn't that mean that all of the rights and the bundle of rights are available for purchase, isn't that what it means, including the right to occupy?

A. Again, I think you're putting words in my mouth. Yes, if you're looking at vacant and available, but I don't think that's the correct definition of fee simple here.

Q. Well, I agree it yields a lower value, but when we're talking about a house, the buyer is interested in acquiring the full bundle of rights. We're all familiar with the bundle of rights, I don't need to go into that, right?

THE EXAMINER: No, you're good.

Q. I know the Board doesn't want me to go into the bundle of rights. A buyer has to be able to acquire that full bundle of rights, they want to occupy the house, right?

A. Right.

Q. So we've agreed that what you're supposed to be valuing is fee simple as if unencumbered. That means all the rights are present and being transferred to the buyer, correct?

Page 269

A. Right, at market terms.
Q. At market terms. You mean leased at market terms?
A. Right. If I'm buying it for owner occupancy, I can turn around and lease it. So what is the appropriate lease rate? I mean, what is that property worth to me.
Q. Let's do this, let's go through your sales comp real quickly. Sale Comp No. 1, that's back on VI-5, when that property sold to who you identify as the grantee, Cole Lowe's Zanesville Ohio, LLC, did Cole Lowe's Zanesville Ohio, LLC get to occupy that property?
A. They weren't buying it for theirselves.
Q. Did they get to occupy the property or was it encumbered by a lease to Lowe's who had the right of occupancy for several more years?
A. It was, but again -- just answer the question, right? It was.
Q. Okay. And so the buyer Cole Lowe's Zanesville did not acquire the full bundle of rights, right?
A. No, they bought an investment property.
Q. They bought something less than the full bundle of rights, it was the leased fee interest?

Page 270

A. You're saying less than but why is it less than? The lease can be an advantage to them. So yes, they couldn't occupy it themselves, but it's not -- you're assuming it's a negative that there was a lease, but the lease doesn't have to be a negative.
Q. So you're saying that with respect to Sale Comparable No. 1, the fact that there was a lease in place with Lowe's was a positive for the buyer?
A. If it's an investment sale or investment type of property, then it's usually a good thing if there's a lease there.
Q. Yeah, but the problem is you're supposed to be valuing the subject property as if there's no lease?
A. At market, at market terms. So, again, that's why adjustments are made to the lease that's in place. That's why we adjusted the lease rate in that sale because that lease rate was different than what we concluded market rent to be.
Q. Now, Miss Blosser, is it typical in your appraisals that you will provide an ownership history?
A. Yes.
Q. Did you provide an ownership history

Page 271

here?
A. It's on Page I-10.
Q. Who do you say the owner is?
A. Northcliff Shopping Center.
Q. Is that important to your assignment to identify who the owner is?
A. I mean, it's -- yeah, you're supposed to identify the owner.
Q. It's kind of a basic fact about the property that you've got to get right; is that fair to say?
A. Correct.
Q. So you would agree that if you were wrong, it would bear on your credibility, correct?
A. I mean, that was the information I have is from the tax information, was that the ownership was under the name Northcliff Shopping Center.
Q. From the tax information, you mean the Recorder's Office or the Auditor's Office?
A. The Auditor's Office.
Q. You didn't examine the title, you didn't look at whether or not the property had soldbefore you had put in the ownership history that it had transferred?
A. Well, we had checked the Auditor's

Page 272

records to see if it had transferred.
Q. But that's not where transfers take place, is it? Don't they take place at the Recorder's Office?
A. They're normally on the Auditor's Office.
Q. Normally on the Auditor's Office....
A. Normally shown on the Auditor's side.
Q. I want to offer Appellant's B and make sure I have enough copies here.
THE EXAMINER: Mr. Seed, do you have this?
MR. GIBBS: Yeah, I gave him all the exhibits, yeah.
Q. (By Mr. Gibbs) If you look at paragraph H at the top --
MR. SEED: I don't have it.
MR. GIBBS: At the top of Page 2.
MR. SEED: I have leases for -- oh, you mean the First Deed and Declaration?
MR. GIBBS: Yes. It's Appellant's B.
Q. (By Mr. Gibbs) Do you see at the top of the second page paragraph H?
A. Yes.
Q. Would you read that to me.
A. "Whereas declarant intends to convey

Page 273

Parcel 3 to the Lowe's Home Centers, Inc., a North Carolina corporation which Lowe's intends to develop and use in an approximately 135,000 square foot building and related improvements in the area depicted on the site plan."
Q. What's the date that the document was recorded?
A. Is that the date on the first page?
Q. It's the date that's stamped on the document on the first page.
A. 5-18-99.
Q. Okay. Now, if we go to I-10, who do you say it's owned by? Northcliff?
A. That's what the Auditor's records show.
Q. But you agree that the Auditor was incorrect and the owner is actually Lowe's Home Centers, LLC?
A. We always request information and did not receive any additional information, but if that's what you say. I mean, again, that's what the Auditor had, was Northcliff Shopping Center.
Q. No, it's not what I say. Isn't that what the document that's recorded since 1999 says?
A. It is, but I did not have a copy of that.
Q. We can agree that you were not correct in

Page 274

that fact stated on I-9?
A. Well, the source I had showed Northcliff Shopping Center.
Q. But nonetheless, it was not correct; is that fair to say?
A. Yes.
Q. May I have it back? Thank you.
I want to take a look at your rent comps, Miss Blosser. We already discussed Rent Comparable No. 1. Would you agree that's a build to suit?
A. Yes.
Q. Okay. And that --
A. Again, that was the recently negotiated price.
Q. Right. The one that you call an extension, correct?
A. Correct.
Q. Now, do you know, were any brokers paid a commission for that extension?
A. I do not know of any, no.
Q. You didn't inquire with the party that you confirmed the lease data with?
A. No.
Q. When a new tenant is brought to a landlord who has a space available by a broker,

Page 275

doesn't that broker typically earn a commission?
A. Sometimes they do unless they do it in-house.
Q. Why is that? Is that in recognition of the fact that the broker has provided a service?
A. Sure.
Q. When it comes to these extensions that are kind of hush hush done between Lowe's and the landlord and the property's not exposed to the market, is it your understanding that a broker gets paid a commission for that extension?
A. Sometimes with an extension, they might have it built in there that they do, but a lot of times, there's not.
Q. Okay. Now, Rent Comp No. 2 on III-10, that's in the Dayton market, isn't it?
A. Yes.
Q. And that store was built in 1994; is that correct?
A. Yes.
Q. So the original lease rate would have been premised on the build to suit costs, correct?
A. Probably.
Q. To your knowledge, was that property ever exposed to the market to see what someone might pay

Page 276

to take the space?
A. Not to my knowledge, no.
Q. So as well as Rent No. 1, Rent Comp No. 2 is not so much an example of market based activity or the result of exposure to the market, it's more an extension of an existing lease; is that correct?
A. But it's a current negotiation between a landlord and a tenant.
Q. Right, but there's all the discussion in your appraisal and most appraisals about exposure time; are you familiar with that concept?
A. Sure.
Q. Now, exposure time is important to be sure that when a sale transacts, it wasn't some quick fire sale or dump of the property, that everybody who might be interested in the property to buy saw the property? Isn't that kind of the purpose of exposure period?
A. Sure.
Q. Why isn't the same true when you're looking at rent comps? Why is it okay for a tenant and landlord to get together to decide what kind of financial deal they're going to do, but it's not okay for a tenant and landlord to get together and sell one another properties without exposing it to the

Page 277

market? Why is it different for leases?
A. Well, a tenant and landlord wouldn't normally be selling the property. The landlord would be selling the property, so, again, the tenant in this case did not have to stay in place. There was a negotiation between the tenant and the landlord to come up with a new agreeable lease. So it isn't like the building was empty and we had brokers showing it day in and day out, but we did have a meeting of the minds of the landlord and the tenant.
Q. You had the lease for Comp No. 2, you have that lease?
A. I do not.
Q. So the information you have is secondhand; is that right?
A. Correct.
Q. I do have the leases. It's marked as Appellant D. As with the other lease I asked you about, are you aware that Lowe's in exchange for this extension they signed, they got a new roof, $250,000 allowance for a new roof?
A. No, but, again, the landlord was responsible for the roof and the structural expenses, so that is kind of typical for that to be happening, that the landlord is going to take care of the roof.

Page 278

Q. But you didn't know about it in advance, is that true, until I gave you that lease?
A. I guess it's stated right here on Page III-10 that the landlord is responsible for the roof and the structural expenses.
Q. Right, but are you saying you made an adjustment for the $250,000 that Lowe's received?
A. No, I'm just saying that it was known that the landlord was responsible for the roof.
Q. Are you aware that as part of the extension and it's there, I guess I didn't give one to Miss Cowne... I apologize, I have so much of this floating around. This is D.
THE EXAMINER: Thank you.
Q. Are you aware that Lowe's also acquired a right of first refusal under this amendment?
A. No, but, again -- no, I'm not aware of that.
Q. Okay. So you yourself called it an extension, right? You didn't use the word lease commencement, you used extension, right?
A. Correct.
Q. Is that correct?
A. Correct.
Q. Now, we talked a minute ago about market

Page 279

exposure, exposure to the market, exposure time, and I asked you why that's something that's necessary to examine with respect to sales but that you didn't feel it was necessary to examine it with respect to your rent comps; do you remember that question?
A. Yes.
Q. Okay. What if pursuant to that right of first refusal in Rent Comp No. 2, the one in Dayton, what if before the landlord could sell it, they had offered it to Lowe's pursuant to extension, Lowe's buys it?
A. Okay.
Q. Good sale? Would you use it? Would you consider that having been exposed to the market?
A. Typically not.
Q. So why would you consider this lease negotiation or extension between the tenant who's already there and the landlord has been their landlord for 20 years and built a store for them, why would you consider that to have been a market transaction?
A. Because, again, you're looking at an investment grade property which is based on a lease and that was a new renegotiation between a landlord and a tenant that occurred within an appropriate time

Page 280

period of the date of value. So in my mind, I see no reason why that's not an appropriate Rent Comp.
Q. So if the landlord's responsible for the roof as you state here at the bottom of III-10, why did the landlord gives Lowe's $250,000 in that amendment? Why didn't they just fix the roof?
A. I don't know.
Q. But you didn't make an adjustment for that?
A. I was not aware of that. I didn't have a copy of the lease.
Q. So did you make an adjustment to Rent Comp No. 1, No. 2 or No. 3, all of which are Lowe's leases, for the fact that when the extensions were signed, that Lowe's no longer had to pay percentage rent? Did you make adjustment for any of those?
A. That would actually be a negative because if they were getting percentage rent before, then their rent was probably higher.
Q. That's not my question. My question is did you adjust for it?
A. I don't think it needs to be adjusted for.
Q. But you didn't know it in advance, correct?

Page 281

A. No, but I -- again, the rent, what you're trying to do is establish what is a reasonable market rent now, and those are the rents that they're paying, so they are currently paying the 595 or the whatever. So those are rents that that tenant is willing to pay, and those are recently renegotiated rent, so I do feel that those are appropriate Rent Comps.
Q. You say you're trying to develop or determine market rent?
A. Correct.
Q. So the first thing you do is look at three rent comps, 1, 2 and 3, that were never exposed to the market, is that what you're telling us?
A. They're still negotiated between a landlord and a tenant. I don't think that's out of line. Yes, it wasn't a retail that was open and available to anybody to use, but it's an excellent example of what somebody when -- what a tenant in a 125,000 square foot building, that tenant is willing to pay that.
Q. Not unless you're relying on them having not known about the roof replacement allowance, having not known about the elimination of the percentage rent obligation and having not known about

Page 282

the right of first refusal that was inserted; is that correct?
A. Again, that doesn't necessarily matter because, again, an appraisal assumes a sale. So if now --
Q. Is it correct that you didn't know?
A. I didn't know, but it doesn't impact the way the rent is being achieved right now.
Q. I can move on then. I wanted to look at Rent Comp No. 4 at III-12. This is that Sam's in Brooklyn, right?
A. Correct.
Q. This was a build to suit back in 1988; is that right?
A. Yes.
Q. Okay. And this property is a little larger than the subject; is that right?
A. It is.
Q. Okay. And the rental rate is $9.25 a square foot?
A. Right.
Q. Now, is that one of the lease options that was put in place back in 1988?
A. It was a new extension that was signed in 2013.

Page 283

Q. A new extension. So like 1, 2 and 3, this Sam's building in Brooklyn was not exposed in the market to see what the market would bear in terms of rent; is that correct?
A. Correct, it was negotiated between the landlord and the tenant.
Q. Anything we should know about with respect to -- I don't represent them, so I don't have the lease, but anything we should know about with respect to roof replacement allowances or rights of first refusals that were inserted at the extension?
A. The tenant is responsible for all the extension expenses with the exception of the roof. They did a bunch of work in 2011.
Q. Okay. Do you have any rents at all from existing properties that were available to a prospective tenant?
A. Yes.
Q. Which one?
A. Well, again, there's -- the conversation that's on Page III-6 talk about some available spaces in the market.
Q. Those were the ones you didn't actually provide the studies or anything, they're not actually here; is that what you're telling me?

Page 284

A. They're asking rents.
Q. You mean the one that's like 38,000 square feet?
A. Well, there's one that's 50,000, there's one at 38 and there's one at 31 which are bracketed by other comps that have been used in Mr. Racek's appraisal as well.
Q. Yeah, the 50,000, isn't that the Valu King?
A. Yes.
Q. That's right. You mentioned that that space is available for 10 bucks a foot?
A. Correct.
Q. No takers so far, right?
A. It's available. It's an asking rent.
Q. No one's taking them up on the $10 offer, correct?
A. Well, that's an asking, sometimes --
Q. Am I correct?
A. Yes, you're correct.
Q. Thank you. Now, Valu King was only paying 5 bucks on the assessment date, did you know that?
A. It was older lease, yeah.
Q. So were all the ones you used, correct?

Page 285

A. No, most of mine were recent extensions.
Q. So that space that Valu King was in, the 50,000 square foot space was worth more than 5 bucks, why didn't Valu King just sublease it out to somebody who was willing to pay 6 or 6.50 or you say 10?
A. I don't think what Valu King's thinking was, but the landlord has it now and asking $10 a square foot for it.
Q. Well, they couldn't make it at 5, though, right?
A. That may be a business decision, not --
Q. But you don't know it to be a business decision?
A. No, but I know they're asking $10 a square foot.
Q. And yet these extensions that Lowe's signs, those aren't business decisions, right? Those are market activity, that's lease activity?
A. It's between -- just like the asking is we haven't agreed to a rent but we're asking $10, then you have to agree to it; whereas, the extensions, they have actually agreed to that. No, they didn't have to stay there, they could have left.
Q. I'm sure they're not thinking at all about how much money it would cost them to shut don

Page 286

their store in that part of the country for two years, they're not thinking about that at all, right?
A. I'm looking at what I feel are appropriate market rents, so you obviously have a different opinion and I think it's up to the Board to decide what's correct, but I feel like recent extensions of very similar buildings are absolutely some of the best rent comps.
Q. Yeah, they're the only things you used.
A. No, they're not.
Q. There is this Arhaus furniture, right?
A. Well, again, we gave consideration to Costar rent, we gave consideration to these rents that we talked about on Brookpark Road and we gave consideration to the big box. All of those are considered in our analysis.
Q. What's a turnkey deal?
A. Turnkey is basically means that you walk in and you don't have to do anything to it.
Q. You have your shelving there, you got your point of sale equipment there?
A. No, no, no, not that much. It's white box. It's ready for you to move in.
Q. Turnkey means white box?
A. Yeah, you're turning it over and you're

Page 287

starting up with --
Q. Why didn't you say white box if that's what you meant? I'm looking at Page III-15. Now, this Rental No. 7, this space was available, correct?
It's a former Kmart space; is that correct?
A. It was part of a former Kmart space.
Q. And Arhaus or their broker came to the landlord and said we want to be here; is that fair to say?
A. Right.
Q. They said we want you here, we'll build the space out for you, it's going to be 7 and a quarter; is that right?
A. Right.
Q. But didn't we discuss the fact that Hilliard is a stronger market?
A. We haven't talked about Hilliard. Hilliard's a high population, high income, but Brooklyn has I think -- I'm pretty sure the population around the Hilliard one is lower than around the Brooklyn one. The population around the Hilliard one is 84,000, where we're 149,000.
Q. Yeah, but isn't the household income like 80- or $90,000?

Page 288

A. It's $79,000 versus $40,000.
Q. Doesn't matter about population when you've got people making double and triple, right?
A. Again, population has a big part of that. You've got a lot of people that can go to your store.
Q. So you must have put a lot of weight on this one because it's 7 and a quarter per square foot and that was your adopted rental rate, right?
A. I think that's kind of coincidental. We weighed all the rent comps. The grid you can find on Page III-19.
Q. And it's, what, a third of the size of the subject, 41,000 feet?
A. It was one of eight comps that were considered and yes, that one was smaller.
Q. Do you remember Mr. Seed asking you whether you looked at Mr. Racek's appraisal?
A. Yes.
Q. He asked you about this Ashley Furniture lease that's in the same parking lot with us at 486 a foot?
A. Right.
Q. He was laying it on pretty thick at that time, he was pretty critical of the fact that that was a much smaller store, right, like 41,000 feet?

Page 289

A. I think I said that you have to look and see what's there, and, again, we used some smaller ones, too.

Q. Right, so this one in Hilliard at 7 and a quarter is only a third the size. Economies of scales would suggest that the subject would be something less than that, correct?

A. Well, but you also got Comp 4 which is at $9.25 which is nearly the same square feet.

Q. Which was never exposed to the market?

A. Again, it was negotiated between the landlord and the tenant.

Q. Would you agree that the economies of scale would tend to suggest that the $7.25 is not appropriate for the subject property?

A. Well, we did a size adjustment, so again, there were adjustments that were made on Comp 7. It was considered to have an inferior location and a superior size. So those were offsetting. So at the end of the day, yes, we concluded around $7.25 on that one single comp.

Q. So Hilliard's an inferior location to Brooklyn, Ohio; is that correct?

A. Based on population. Based on all the characteristics, yes.

Page 290

MR. GIBBS: Just one second, your Honor.

THE EXAMINER: Sure.

Q. (By Mr. Gibbs) Miss Blosser, we have to know why you used eight out of ten improved sales as leased fee when you had so many fee simple sales to choose from. How did you -- What was the process you used to move those fee simple sales you located of which there were 20 off of that table so that they weren't used as one of the improved sales?

A. Well, again, the original table was just kind of showing an analysis of kind of a global effect of what's happening on big box.

Q. Right.

A. But I have a first generation building being used by the original tenant, the building is in good condition, it's in a good location, and the sales that were considered most comparable to that were the ones that had that same type of dynamics going to it.

They were first generation. They were being used by the original user. They weren't distressed. Because again, in my mind, if you are saying that the best comp is a vacant comp, I think that's 100 percent wrong because, again, if you are looking at a multi-tenant building, you would not go

Page 291

find vacant strip centers as your comps. You would look at leased comps.

And to make a different decision because it happens to be single tenant versus multi-tenant, I see no reason for that whatsoever.

Q. So you deliberately excluded a large number of the sales that Costar produced with your parameters, the 55,000 square feet or up and the 2011 to present, you deliberately excluded all but two of the 20 because they were vacant; is that correct?

A. I did not feel like they were the best sales, and I've explained why, and I believe they're appropriate.

Q. The only explanation I've heard is that they were vacant. Were there other reasons?

A. Again, we picked -- again, the ten that were focused on were felt to be the most applicable sales.

Q. Why doesn't that skew your analysis when 80 percent of the sales you used sold in a different legal interest when you have all this data available. Doesn't that skew your analysis high?

A. It think it skews it way the other way when you assume everything is vacant and you're distressed. I mean, again, that is not my

Page 292

understanding of what market value is in this situation because, again, you are not assuming it's vacant and distressed. You are not assuming -- you should not be assuming a go dark value.

Q. Who said distressed? That's not my word.

A. That's what happening, though. If you're looking at a 40-year-old Kmart store and saying that's my best comp because it's fee simple, that to me is skewing it totally the other way.

Again, if I'm doing market value, I'm going to do an income approach -- and in this case I do all three approaches, I do income, sales and cost. In my income approach, I'm applying market rent, I'm applying market vacancy and I'm applying all the market parameters and I'm coming up with a value. To turn around and then in the sales comparison approach --

Q. I haven't asked that question. You're giving answers that are not responsive to my question.

A. I disagree. I think I answered your question.

Q. Did you disregard 18 out of the 20 sales that appeared from the Costar search for the reason that they were vacant?

Page 293

A. I selected the ten sales that I thought were most representative.
Q. And eight of those sold in a different legal interest, correct?
A. Which was adjusted for.
Q. Now, isn't it true that even the leased fee sales in the sales comparison approach on VI-32 were for the most part adjusted upward; isn't that true?
I mean, look at Sale No. 7 on VI-32, the Lowe's at Brice Road, that's only a $51 sale, and you end up at $88 in your value conclusion.
A. Right.
Q. So you must have adjusted that up tremendously --
A. You're assuming everything is going to 88 and that's not what's happening. I'm saying here's my sales and here's what it sold for, it sold for 51, I think it's going to be above that because it's inferior for location, it's inferior for rent, and therefore, my value should be higher than that. I'm not saying that I've adjusted that one from 51 to 88. I'm saying my value should be higher than 51.
Q. Well, your adjustments are here on VI-33.
A. That's a different grid. Do we want to

Page 294

talk about that one?
Q. Here's what I want to ask you about now because this Supreme Court at Steak 'n Shake has said it's the fact that it's leased, not the rental rate that makes them sell for more. I'm looking at VI-33 and I see that you took a leased fee sale of the Zanesville Lowe's for 95 bucks a foot and you adjusted it upwards $20 to 115; isn't that correct?
A. Yes.
Q. You took another leased fee sale, Sale No. 76, you took that one up 40 bucks to 112.
A. Right. Again, it's an investment --
Q. I just want to get if it's correct. Yes or no. Sale No. 3 is another leased fee sale that you took down a little bit and that was because there was a discrepancy in the rental rate, there was a differential in the rental rate, correct?
A. On all of those, those are being adjusted based on the rental rate from what they were renting for when they sold versus the conclusion of market rent.
Q. So rather than adjusting them downward for the fact that these are leased that are subject to long-term leases which made them attractive to investors, you're adjusting most of them up; isn't

Page 295

that true?
A. Well, that's why I did the example I did earlier. Just because something is leased doesn't make it superior. If I got something that's leased on a 15-year lease for a dollar, how is that superior to one that is leased for $10 for five years?
Q. Let me ask you about a hypothetical. If we have two identical boxes in Brooklyn, Ohio situated right next to one another with the same highway exposure, they're both 100,000 square feet, both built in 1998, one of them's leased to Barney's Bargain Barn for $9 triple net, okay. The next one on a two-year lease, two years remaining, the one next door is leased to Lowe's Home Centers at $7.50 a foot with 19 years remaining. Which one brings more money on the market?
A. Well, I would do a discounted cash flow and I'd try to figure out how long I think it's going to take to lease the Barney's after the lease expires and at what market rent. And then I look at the valuation between the two.
Because it's two different things. You've got a long-term lease that you're getting $7 rent for on the leased fee, maybe I have two years that are above market, but then I may have an issue

Page 296

where I can't lease it up again for a while, and maybe when I lease it up again, it will be at $7 a square foot. So the value may be the same by the time I do a discounted cash flow.
Q. I'm lost but I'll move on. Isn't it true that your adjustments were rent based?
A. Yes, and if you go back to --
Q. They weren't property right based at all despite your letter.
A. No, no, no, because what does the Appraisal Institute say about property rights adjustment? It says --
Q. I'm asking you --
MR. SEED: Would you let her finish the answer? You asked her a question. Let her finish it, please.
A. The property rights adjustment is based on occupancy and rent. So it's 100 percent appropriate to adjust those rents to market, and the market is based on what we've established in market rent.
Q. Right, but how does adjusting upward for occupancy when you've got the two properties that sold in fee simple, how is that adjusting to the subject?

Page 297

A. Because you're assuming market, and market occupancy was determined at 93 percent. Market occupancy is not zero percent.
Q. No. If occupancy is 93 percent, then the full bundle of rights is not available as is required to be in the applied sale?
A. Then why in the income approach do we include a vacancy and credit loss? Mr. Racek includes a vacancy and credit loss and so do I.
Q. Right. I don't understand the connection.
A. Because that's what you're doing, you're doing market. You're doing market rent, market occupancy. You can't ignore that from one approach to the other, and that's what you're saying I should do.
Q. Right, but you projected as if leased at market terms.
A. Correct.
Q. But unencumbered means no lease.
A. That is incorrect.
Q. So you did not testify that a lease is an encumbrance?
A. But if you're looking for fee simple market value, you're not assuming it's vacant and

Page 298

available, you're assuming it's at market.
Q. Okay. One minute, your Honor.
THE EXAMINER: Sure. Off the record.
(Off the record.)
THE EXAMINER: Back on the record.
Q. (By Mr. Gibbs) Did you make a downward adjustment to the sales that were 100 percent occupied? I can't remember.
A. Yes.
Q. I'm not asking to trap you. I really don't really remember.
A. Yes, as shown on VI-32, occupancy, a hundred percent was given a minus adjustment.
Q. Miss Blosser, isn't it true that the Appraisal Institute would have you utilize whenever possible comparables that sold in the same legal interest that you're asked to appraise?
A. It just says you have to adjust. It doesn't -- you're just supposed to find the best comparables and then adjust them.
Q. Why go out of your way to find comparables that sold in a different legal interest and then apply subjective and hypothetical occupancy and rental rate adjustments that end up increasing the value even further?

Page 299

A. Again, I think it boils down to what you're saying fee simple is, which you're assuming it's vacant, and, therefore, it's a negative or it's you have to put somebody in there. And again, the definition of fee simple is not that.
If you go back to the Appraisal Institute, it says if you're doing an owner occupied building and you're doing it fee simple, you look at market. So market isn't that it's sitting there vacant. Market is that it's at market terms.
Q. But the subject property is owner occupied, it's not vacant.
A. Again, going back to what does it say, it says rent for vacant or owner occupied space is usually estimated at market rent levels and distinguished from contract rent in the income analysis. Fee simple valuation, all rentable space is estimated at market.
Q. How does an owner occupant acquire a building? How does a business owner who needs a space to occupy, how do they acquire a building? Do they buy it from a landlord who has a tenant in place?
A. No, they'll buy a building.
Q. That's right. So there's a market for

Page 300

that, right?
A. For different types of buildings. Certainly not as much for retail buildings.
Q. You had 20 of those sales, didn't you? You had 20 sales of properties that were vacant and available; is that correct?
A. Again, I picked the sales that I felt were most applicable for what the subject is, where it is and what it is and when it was built.
Q. Did you receive Mr. Racek's appraisal report from Mr. Seed before you wrote your own?
A. No, I don't think so. No, I got it recently.
Q. Okay. So did you know what the assessed value was?
A. Yes.
Q. Okay. Did Mr. Seed tell you what Mr. Racek's appraisal was valued at?
A. No. Like I said, I think he said it after we finished our --
Q. But you did get it before you testified today?
A. Correct.
MR. GIBBS: I don't have anything else, your Honor.

Page 301

THE EXAMINER: Let's go off the record for just a second.

(Off the record.)

THE EXAMINER: Let's go back on the record. Mr. Seed, any redirect?

MR. SEED: I do.

- - -

REDIRECT EXAMINATION

By Mr. Seed:

Q. We've had a lot of questions. Mr. Gibbs sort of asked you to assume that you're valuing the property as if there's no lease. Do you recall those questions?

A. Yes.

Q. He brought up the Streetsboro Wal-Mart. Do you recall that?

A. Right.

Q. Deed restricted vacant building?

A. Yes.

Q. So let's look at it this way, if that was the case, if you were appraising an apartment building, okay, would you assume for tax purposes that there are no tenants in the property?

A. Absolutely not. You would assume market rent, market vacancy, you would evaluate what the

Page 302

comparables -- what's happening in the market.

Q. So apartment building has tenants, right?

A. Correct.

Q. So are leases, are leases with an apartment, are those encumbrances?

A. Yes.

Q. So under Mr. Gibbs' theory, you would have to disregard any lease in the apartment building, correct?

A. Correct.

Q. You have to assume there's no tenants in the building?

A. Correct.

Q. That's a hundred percent vacant?

A. Correct.

Q. Has no income?

A. Correct.

MR. GIBBS: Objection. It's not my theory. I literally read from statutes here in Ohio. It's not a theory.

MR. SEED: Let's go on.

THE EXAMINER: Understood. Objection noted.

Q. (By Mr. Seed) An office building, okay, give me an example in Columbus, a large office

Page 303

believe, the Huntington Center.

A. Yes.

Q. So if you were appraising the Huntington Center, do you have to assume there's no tenants in the building?

A. No, assuming it's at market rent, market occupancy.

Q. But if you were assuming for valuing the property under the analysis Mr. Gibbs has that it's vacant, okay, an office building being vacant would mean there's no tenants.

A. Correct.

Q. It's 100 percent vacant?

A. Correct.

Q. Would an office building and an apartment that's 100 percent vacant have a significantly different value than one at market occupancy?

A. Yes, it would.

Q. Why?

A. Because you're not getting any income. You've got to fill the property back up. You've got to lease the property out. And that may take -- if it's vacant on apartments, it may take months, could take years. So if you're assuming it's vacant, you're totally coming up with a value that is of no

Page 304

reflection of market terms.

Q. If an apartment building and office building were 100 percent occupied, would you have to you make an accommodation for occupancy at market occupancy?

A. Yep.

Q. If the office building had a single tenant paying a billion dollars a year of rent or a dollar a year of rent, would you have to make an adjustment?

A. Sure, because again you're basing it on what that property's worth for somebody to buy it. If I'm going to get a dollar for rent, I'm not going to pay very much, but if I'm getting a billion, I'm going to be real happy, I'm going to pay a lot. So your value has to be based on what the income stream coming from that real estate is.

Q. Are you aware of Ohio law which provides that fee simple in Ohio law is to be valued the same whether the interest is encumbered by a lease or not?

A. I'm not a lawyer and I don't know. Like I said, I valued it, what I thought was appropriate based on market value fee simple.

Q. Are you aware of those Supreme Court decisions?

Page 305

A. I believe you had mentioned them to me.

Q. Two more questions, and I'll be done. If we were having a case today and it was a Lowe's but it was a leased Lowe's, say there was a landlord, there's no recent sale but there's a lease in place, and the lease is a dollar a year of rent or the lease is a hundred million dollars a year in rent, okay, how would you have handled this assignment -- or would you have done anything differently?

A. No. Again, you're going out and you're finding out what's reasonable market value. And if those were sales that you were looking at, then you'd have to make an adjustment because obviously if the buyer is getting a property that is getting way above market rent, they're going to be willing to pay above market, so you again, have to have a lot of downward adjustments for that sale and vice versa if they're paying a dollar in rent and market's $8 in rent, you're going to adjust it up trying to get to market.

Q. If the rent was $100 a square foot in that lease, would you have to disregard that lease and use market rents?

A. Are you doing it as a sale comp or a Rent Comp?

Q. In valuing the property.

Page 306

A. If you're doing a leased fee value, you're looking at what the actual lease is, but if you're doing fee simple, you're going to ignore the in-place lease and you're going to assume market rent.

Q. So if it's $100 a square foot, you ignore the market rent?

A. You're going to say that's not at market. You're going to say that's above market, so you're going to go find out market and use market rent to do a reasonable value.

Q. If it's a dollar a square foot, you ignore that lease?

A. Again, if you're doing fee simple and not leased fee, yes.

Q. So that's for a leased property?

A. Correct.

Q. Now, our subject property is owner occupied, okay. Why would you value the property any differently if it's owner occupied or if it's leased?

A. You shouldn't. You should be looking at market value. You should be looking at market rent comps. You should be looking at market occupancy. You want to determine what is reasonable for that building the way it was sitting the day you saw it,

Page 307

the day you're valuing it.

Q. Disregarding the dollar a year rent or the hundred dollar a year -- excuse me, the dollar a square foot rent or the hundred dollar a square foot rent, is that what it means by valuing the property as if it's unencumbered?

A. Yes. Yes, you're taking it to fee simple at market. You're not doing a leased fee.

Q. So fee simple at market, does that mean valuing the property at market rent, market occupancy?

A. Yes.

Q. The fee simple at market mean the value of the property as if it's vacant and abandoned?

A. No. Again, somebody can ask you for that, but if they're asking for fee simple value at market, it is not vacant and available.

Q. Page VI-32. There's a column called Property Rights; do you see that?

A. Yes.

Q. Do you see a zero in every adjustment?

A. I'm well familiar with that, yes.

Q. Based on your discussion and the letter Exhibit 10, can you just for the last time, have you made a property rights adjustment in this report?

Page 308

A. Yes, because property rights adjustment is dealing with economic characteristics like rent and occupancy, and those adjustments were made in the final two columns before the conclusion column at the right side of the chart on VI-33. That takes care of your property rights adjustment.

Q. So this is essentially a mistake or a typo?

A. It definitely was a mistake to have not indicated what was being done.

Q. A couple more. Mr. Gibbs asked you a question about adjusting a rent for the absence of percentage rent; do you recall that?

A. Yes.

Q. Leases can have base rent and percentage rent?

A. Yes.

Q. Do they often have both?

A. Yes, a lot of times.

Q. If a landlord and tenant agree to decrease or strike the percentage rent, what does that mean?

A. Again, from an appraisal standpoint, you're appraising it based on the income stream. So to me, whatever that negotiated rent that they came

Page 309

to, that's -- that's what the rent is, that's what you're saying basing it on. If there had been higher percentage rent historically, then maybe your rent was higher.

Again, percentage rent is kind of an unknown. Unless you have a lot of evidence that they've actually been getting percentage rent, even if they have a percentage rent clause, a lot of times from an appraisal, you don't give a lot of weight to that income because it's unpredictable, but the actual rental rate that they're getting, that is kind of the crux of what you're basing the value on. That's what the known rent you're getting.

Q. Mr. Gibbs asked you about some rent comps, Lowe's rent comps. In those cases, was the landlord responsible for capital improvements?

A. Yes, typically at least the roof and the structure, yes.

Q. So Mr. Gibbs showed you some documents and asked you some questions about roof replacements that you may or may not have been aware of.

A. Right.

Q. Does that affect your conclusion of market rents?

A. I don't think it does because, again, we

Page 310

know what rent they were basing it on. And we know what the rent was that they put in the place and that's what we're comparing. It's normal for the landlord to take care of the roof and structure, that's part of a typical lease. The more concern is what was the rental rate that they were getting on a price per square foot.

Q. So if the renewal or the extension included a provision for concrete work on the foundation, that wouldn't affect your conclusion?

A. In my mind, no, again, because you're assuming kind of -- especially if that money is paid up front, that's already passed. And you're kind of stepping in now and the rent you're getting is the $5.25 per square foot or whatever, so that's already in the past. And you're looking what's my value based on what's going on.

Q. Let me see if I have another question. Lastly, a number of your lease comps have -- a lot of your sale comps have leases that were renegotiated?

A. Correct.

Q. Mr. Gibbs asked you questions about that as if they were not exposed on the open market, okay. Now, when an office tenant has a lease but the end of that lease, an office tenant can renew that lease?

Page 311

A. Sure, or renegotiate or sign a new lease, yes.

Q. Do office tenants typically look at the market to see what their options are?

A. Sure.

Q. And what market rent is?

A. Sure.

Q. Do landlords look at the market to see what market rent is?

A. Sure. There's a lot of factors that go in but yes.

Q. For apartments, would the landlord and tenant look at the market --

A. Yes.

Q. -- at the time of renewal? Okay.

So Mr. Gibbs asked you that assuming that -- strike that.

MR. SEED: I'm done with my questions.

THE EXAMINER: Okay. No further questions, Miss Blosser, you may step-down.

THE WITNESS: Thank you.

THE EXAMINER: With that, I assume the parties would like a briefing schedule after the hearing today. I also do have the exhibits to deal with. I have Appellant's Exhibits A through F, any

Page 312

objection, Mr. Seed?

MR. SEED: No.

THE EXAMINER: Then we'll receive Appellant's Exhibits A through F.

(EXHIBITS ADMITTED INTO EVIDENCE.)

THE EXAMINER: I also have Appellees' Exhibits 1 through 10. Any objection, Mr. Gibbs?

MR. GIBBS: Only those I already put on the record, I would like to preserve those but....

THE EXAMINER: We'll receive those with the objections noted on the record.

(EXHIBITS ADMITTED INTO EVIDENCE.)

THE EXAMINER: With that I will set the briefly schedule as follows: Initial briefs, if any, due on January 5th, any replies on February 2nd. That work for everyone?

MR. SEED: Appellant goes January 5th?

THE EXAMINER: Right, any initial briefs from any party.

MR. SEED: Simultaneous for both parties?

THE EXAMINER: Yes. January 5th and February 2nd.

With that, if there is nothing further at this time, we will conclude the hearing.

MR. GIBBS: Thanks.

Page 313

(The hearing was concluded at 5:00 p.m.)

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Page 314

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, November 13, 2017, and carefully compared with my original stenographic notes.

____

Cynthia L. Cunningham

\- - -

TRANSCRIPT 7

The subject property discussed in this transcript is a corporate campus consisting of multiple parcels.

Page 1

BEFORE THE BOARD OF TAX APPEALS
STATE OF OHIO
- - -

Columbus City Schools Board of Education, :
Appellant, :
:
vs. : Case Nos. 2017-278,
: 2017-279, 2017-280,
Franklin County Board of Revision, et al., : 2017-293, 2017-295,
: 2017-296, 2017-297,
: and 2017-298
Appellees. :

- - -

PROCEEDINGS

before Temeka M. Higgins, Hearing Examiner, at the Board of Tax Appeals, Rhodes State Office Tower, 30 East Broad Street, Columbus, Ohio, called at 9:00 a.m. on Wednesday, November 15th, 2017.

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481

- - -

Page 2

APPEARANCES:

Baker Hostetler
Edward Bernert, Esq.
Karen E. Sheffer, Esq.
200 Civic Center Drive, Suite 1200
Columbus, Ohio 43215-4138
Ebernert@bakerlaw.com
Ksheffer@bakerlaw.com

On behalf of JDM II SF National, LLC, and LSERF 2 Tractor Reo(Direct), LLC.

Rich & Gillis Law Group
Kim Allison, Esq.
6400 Riverside Drive, Suite D
Dublin, Ohio 43017

On behalf of the County Appellee.

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Page 3

INDEX

- - -

*** NO EXHIBITS B, C, or D ***

Page 4

Wednesday Morning Session,
November 15th, 2017.
- - -

(EXHIBIT MARKED FOR IDENTIFICATION.)

HEARING EXAMINER: This is a hearing before the Board of Tax Appeals, State of Ohio, relative to an appeal styled Columbus City Schools Board of Education, Appellant, versus the Franklin County Board of Revision, et al., Appellees, having been assigned consolidated Case Nos. 2017-278, 2017-279, 2017-280, 2017-293, 2017-295, 2017-296, 2017-297, and 2017-298.

This hearing is being convened in the offices of the Board of Tax Appeals before Attorney-Examiner Temeka M. Higgins, at approximately 9:07 a.m. on November 15th, 2017.

Will the Board of Education's counsel please enter her appearance by name, mailing address, and telephone number?

MS. ALLISON: Kim Allison with Rich & Gillis Law Group, 6400 Riverside Drive, Suite D, Dublin, Ohio 43017. Telephone (614) 228-5822.

And we are here this morning on behalf of the Board of Education of the Columbus City School District.

Page 5

HEARING EXAMINER: Thank you very much, Ms. Allison.

And would the property owner's counsel please enter his appearance by name, mailing address, and telephone number?

MR. BERNERT: Thank you, your Honor. Ted Bernert, 200 Civic Center Drive, Suite 1200, Columbus, Ohio 43215, (614) 262-6887, on behalf of JDM II SF National, LLC, and State Farm.

MS. SHEFFER: Karen Sheffer. I'm with Baker & Hostetler. The address and my phone number -- my address is the same as Mr. Bernert's. My phone number is (614) 462-4727. I'm here on behalf of the Appellees.

HEARING EXAMINER: Thank you very much.

Ms. Allison, would you like to make a brief opening?

MS. ALLISON: Sure. Thank you.

Just for purposes of clarification of the record, State Farm is not a party to these proceedings as they are not the property owner. I just want to make that clear. We've seen this issue on several other cases before the Board.

In this case we have a sale of the subject property on April 7th of 2014 for

Page 6

$26,100,000. The Board of Education filed increased complaints for tax years 2013, '14, and '15.

At issue before the BOR are actually two separate sales. There was a prior sale which the Supreme Court has ruled was a sale/leaseback and not indicative of value. But in their decision they indicated that the second sale was presumed to be the best evidence of value, subject to rebuttal.

So we are here this morning. The Board of Revision increased the value for the subject property for tax years 2014 and '15 to the respective sale prices. For 2013 they rejected Mr. Pickering's appraisal, and instead retained the auditor's value.

So we are just here today to argue that the -- for all three tax years, the April 2014 sale is the best evidence of value.

There's been no evidence to rebut the recency or arm's length nature of the sale, and we will be asking the Board to increase the value to $26,100,000 for all three years. Thank you.

HEARING EXAMINER: Thank you very much, Ms. Allison.

Mr. Bernert or Ms. Sheffer?

MR. BERNERT: No, I'll respond.

So we're here on behalf of State Farm

Page 7

because they are the real party in interest, and it's clear in the records that they are the ones that have to pay the tax.

We are authorized to represent JDM, but for that purpose of ensuring that the -- there's a fair treatment with respect to these taxes.

These are appraisal cases, these are not sale cases. It's interesting there was no discussion of what the law is.

This is 2013, so with 2013 it means that it's fee simple, unencumbered. And so what the court said with respect to sales has to be taken into account that it was talking about 2012.

And Terrazzo 8 tells us that we are going to be using a fee simple, unencumbered, and on that basis the second sale is the same as the first in terms of its weight.

We will present additional testimony about that, and then we get into what this case is about, which is the appraisals.

MS. ALLISON: At this point we would make a motion to preclude State Farm from participating in the cases. They are simply the tenant, they are not the owner of the subject property.

Page 8

This court has specifically held that a tenant does not have a right to participate in the proceedings before this Board, it is the property owner who has the exclusive right to participate.

We would also ask that any exhibits submitted on their behalf be stricken from the record.

MR. BERNERT: Your Honor, we represent JDM, too. We have a witness from JDM II. You've got jurisdiction for --

MS. ALLISON: I thought you said you were just here on behalf of State Farm.

MR. BERNERT: No, I said specifically that I do represent them for the sole purpose of presenting the case, and I have the chief operating officer and general counsel for JDM here to testify.

MS. ALLISON: So are you representing both entities, is that what you're saying?

MR. BERNERT: That is correct.

MS. ALLISON: Okay. Then I'll withdraw my motion.

HEARING EXAMINER: Ms. Allison, would you like to present your case in chief?

MS. ALLISON: We have submitted to the Board what has been marked as Appellant's Exhibit 1,

Page 9

which consists of the Deed and Conveyance Fee Statement, showing that the property sold on April 7th, 2014 for $26,100,000. This exhibit was also presented below, so it's also contained in the statutory transcript.

The Board of Revision found that this sale was a recent arm's length transaction. We will be glad to address the legal arguments in our brief, but just to note, Terrazzo did not say that appraisal trumps a sale, Terrazzo said you still must first rebut the sale. So that's our position, and we'll be happy to address it in our brief.

HEARING EXAMINER: So at this time you're just admitting Appellant's Exhibit 1?

MS. ALLISON: Please.

HEARING EXAMINER: Mr. Bernert, would you like to proceed with your case in chief?

MR. BERNERT: Thank you, your Honor. We would begin by calling Tom O'Malley.

HEARING EXAMINER: Mr. O'Malley, if you would take a seat, please. Is that your stuff up there?

MR. O'MALLEY: It is.

HEARING EXAMINER: All right. If you'd raise your right hand, I'd like to swear you in.

Page 10

Do you swear or affirm that the testimony you are about to provide to the Board today is the truth and nothing but the truth?

MR. O'MALLEY: I do.

HEARING EXAMINER: Thank you very much.

\- - -

Tom O'Malley,

being first duly sworn, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

By Mr. Bernert:

Q. Would you please state your name and business address, please?

A. Sure. Tom O'Malley. Business address is 2400 East Arizona Biltmore Circle, Building 2, Suite 1270, Phoenix, Arizona 85018.

Q. And what is -- what is the business that you're engaged in, what company are you with?

A. I'm with JDM Partners, LLC.

Q. Okay. And JDM II SF National, LLC, what is that?

A. That is a subsidiary of ours.

Q. And do you have responsibility for the subsidiaries as well?

A. I do.

Page 11

Q. And what are your -- just a little bit about what are your responsibilities with JDM.

A. I am the chief operating officer and the general counsel. So any transaction that we undertake, I'm the general counsel. I supervise outside counsel.

I oversee and supervise every purchase and sale transaction. And then once we acquire properties, I manage those properties to the extent they need management, and just essentially oversee the properties while we own them.

Q. Would you give us a little bit of your educational work background, please?

A. Sure. I received my undergraduate degree in 1987 from University of Kansas. I had a Bachelor of Science in business. I then attended the University of Arizona and obtained my law degree in 1994.

Q. Thank you. So tell us a little bit about JDM, how it operates.

A. JDM is a 60-year-old company. Our history is really two-fold. We own most of the professional sports franchises in Phoenix. Owned and operated all of the facilities, constructed the arena, constructed the ballpark.

Page 12

So it was a combination of running sports franchises, but also a real estate management company.

The other arm of our company is a real estate -- we call it a real estate development company. We have done everything from buying bare land, we have built our own buildings, we have purchased existing buildings, we have purchased brand-new buildings.

And so over the course of our history we have done just about every type of real estate that is available.

Q. So talk about the type of investments that you engage in.

A. Over our -- the course of our history we have owned everything. Again, we're currently the largest landowner in Arizona. We own almost 40,000 acres of undeveloped land. It's the next city that will be developed in Arizona.

We have owned resorts, we have owned golf courses, we have owned offices. Again, we own all of the baseball arenas and basketball arenas. We developed kind of a mini city in Colorado, everything from residential, to office, to retail, to hospitality.

Page 13

Our current business is really a real estate equity investment business focused almost entirely on office product. We do own some industrial product.

We have owned some residential, some multifamily apartments, but we're predominantly an office investment company.

What we do is we identify properties to purchase. We then enter into a purchase contract, and then we go out to investors to bring in money to invest alongside of us. We close the transaction and then we operate the properties to the extent they require it.

Q. So what would your operation involve with the property that we're talking about, which is in Columbus, Ohio?

A. This property is what's called a triple net, or absolute triple net lease. The tenant is responsible for virtually a hundred percent of the building.

My job is to have a relationship with the tenant, understand what they are doing to operate the property, but we have very little -- we have no operational responsibilities to this property other than just continuing our relationship with the

Page 14

tenant.

Q. So what is the importance of the tenant in the investment that you made here, please?

A. In our types of investments it's the key issue. We buy -- the focus of our business right now is to buy single tenant, credit tenant, triple net leases.

So we are looking for properties where there is only one tenant. That tenant has a very high credit rating, and that tenant will be responsible for the operation of the building.

And so with the property in New Albany, the tenant was the primary, and really the sole issue that we looked at when we acquired it.

Q. Why is the credit rating of the tenant important?

A. The credit rating of the tenant is issued by third party credit companies, usually Standard & Poor's and Moody's.

And in a very simple sense, what a credit rating tells the world is what is the strength of their credit, what is the strength of their financials, and frankly, what is the likelihood that they will repay their debt or they will pay their obligations.

Page 15

The higher the credit rating the more likely it is this tenant is going to fulfill their obligations. So when we go out to buy a property, if we have a tenant like State Farm, which is an AA credit rating, there's almost none of them left anymore, it tells us, it tells our lenders, and tells our investors that they are the highest level of probability of paying their rent, paying their obligations.

And that's really important to us, because our job is to go out for ourselves and our investors, invest in properties where we have an extremely high likelihood of getting repaid, and repaying our debt and paying a profit to our investors.

Q. What is the focus on a single tenant, where is that important?

A. For us -- and there's multiple different ways to invest in property. For us, we are looking for a long-term investment. We don't want to deal with multiple tenants.

We want to have one tenant that we know, one tenant that we trust, one tenant that takes care of the property.

Our -- our strength, as you would, is

Page 16

not multiple tenant properties where some come, some go, you're re-leasing, you're reletting, you're out marketing, you're having to redo your building.

We want one tenant buildings where they are going to be there for a long time. We don't have to go out and resell the building, don't have to relet the building. We focus on one tenant.

So we do not invest typically, and currently we don't have any multi-tenant buildings.

Q. Would you compare and contrast your involvement as a company with a multi-tenant property versus a single tenant property in terms of your participation and involvement?

A. Yeah. So a multi-tenant property, even if it's two -- a lot of them are more than that -- you have different term leases. You have leases that expire, then you have open office space. You have to go hire a broker to market it to someone else.

You have space that's unrentable, and not paying rent for a while. You typically have to go in and remodel those spaces. There are companies that are very good at doing that. That's not what we do, and that's not what we look for.

So we are not in the business of having buildings that fluctuate in occupancy. Our buildings

Page 17

are typically a hundred percent occupied, and we know for a period of 10 to 20 years that that is not going to change.

So for us, it is simply find the right tenant, purchase the building, and sit for a period of time while that tenant operates the building, takes care of the building, and pays rent.

Q. Is the length of the lease important to you?

A. It's really important to us. And the length of the lease really changes the dynamic of the building.

If we were to buy even a credit tenant building or a building with a credit tenant in it, if there's one or two or three years left on the lease, even though it's a credit tenant, you would typically look at that as a building that's going to require upgrading. It's going to require new tenants. You're not sure if they are going to renew. So that would be a speculative type purchase.

For us, if we can go out 10, 15, 20 years, we know in our minds that we don't have to think about reletting the building, we don't have to think about remodeling the building for a long period of time, and that makes it a different type of

Page 18

investment.

To us it's a long term, almost bond like investment, rather than having to worry about them moving out or renewing or having to go find new tenants.

Q. Have you heard of the expression "bondable lease"?

A. I have.

Q. Would you describe for the Board what a bondable lease is?

A. Sure. There's really -- when you talk about leases, there's a continuum. On some leases they are called full service leases and the tenant essentially pays rent for its portion of its office space.

The other portion is the common areas, the elevators, the outside, are common to all tenants, and the landlord has to take care of all of those.

We don't do those type of leases, we do what's called triple net leases, meaning the tenant is responsible for the building.

Even within triple net leases there are different versions. For example, you have a triple net lease which is the tenant is responsible for the

Page 19

day-to-day operation of the building, but the landlord still is responsible for major building components, usually the structure, the roof, and the HVAC air-conditioning systems.

You then go to what's called an absolute triple net lease where the tenant's responsible for everything. That means the tenant is responsible for the structure.

If the building is damaged, if it catches on fire, if there's a natural disaster that hurts it, the tenant rebuilds it, the tenant ensures it, the tenant fixes all of the major components.

But still, there's two major components in a lease that take it from an absolute triple net in my vernacular, to a bondable triple net, and those are damage and destruction and condemnation.

Typically, even in a -- kind of a pure triple net lease, if the government comes in and condemns part of the property, the tenant will either get rent abatement or can move out if it's a large taking.

Same thing with destruction. If there's massive destruction, a lot of times the tenant can at that point get out of the lease or get a rent abatement.

Page 20

In our State Farm leases it is an absolute bondable triple net, which means if the government takes part of the property it doesn't matter, State Farm is still on the hook, they still pay.

If the building is damaged, doesn't matter, State Farm stays on the bill -- stays on the lease, stays in the building, and they pay the rent.

So for us, a bondable lease means we get to go to our lenders, we get to go to our investors, and say AA credit, bondable net lease, doesn't matter what happens, as long as State Farm is paying their obligations we get our rent, and it makes that investment even more secure.

Q. Define specifically a credit tenant. What do you mean by that?

A. A credit tenant is, again, a tenant that has -- in our case we require a third party credit rating; Standard & Poor's and Moody's.

It's a third party independent company that all they do is go out and they review the financials and the history of the company, and they issue a rating.

And there's a whole series of ratings, everything from AAA credit meaning, you know, the

Page 21

highest credit possible, down to junk bond type credits.

And depending on where you fall in your credit history, your financial history, they issue a rating. And we only invest in buildings that have tenants that have investment grade ratings.

So we will not invest in buildings where tenants are below investment grade, and they become more speculative as to whether they will pay their debts or their rent.

We require that you be at a very high investment grade. We won't look at buildings that don't have investment grade tenants.

Q. And where does State Farm fit according to your --

A. State Farm is currently AA credit rating. The highest you can get is AAA. They are AA, and that's -- again, there's very few of those, and I don't know the number, but we don't see a lot of AA credit tenants or credit companies any more.

Q. In your capacity as chief operating officer and general counsel, do you have occasion to interact with your investors?

A. I do.

Q. Would you describe for us what you

Page 22

understand the investors' interest to be in investing in your company?

A. Sure. There's a lot of different ways that investment companies structure themselves, but there's two fundamental ways that it happens.

Some investment companies go out and raise money, and they show that over a period of years they have been able to return a certain return to their investors. They go out and raise money.

It's not based on a specific investment, it's not based on anything specific at the time. And people give them money, and then they expect that company to go out and buy and sell real estate and create a certain return.

We're on the other end of the spectrum, in that we identify the property first. We don't go out and raise money just to raise money, we'll go out and identify property.

We sign a Letter of Intent or a purchase agreement for that property, and then we go out with that specific property to our investors and show them the specific property that they are going to be investing in.

So our investors know exactly what they are investing in. It's not really a pooled

Page 23

investment group, they invest specifically in properties.

So we, for example, in the New Albany property, it was part of a portfolio purchase, but we identified the properties, we had them under contract, and then we went out to our investors and said here is exactly what you're buying, here is the tenant that's going to be in it, here's the length of the lease, here is there credit rating, and here is how much money we're looking for in terms of investment to be able to acquire those properties.

Q. Do the investors typically go out and look at the building?

A. They never do. Well, I say never. We have had a couple in Arizona that we have purchased and a couple of the investors like to go see them, but typically they don't at all.

Q. From your perspective, why would they not be visiting the property?

A. Our investors really aren't interested in the buildings, in the properties, and the locations, they are interested specifically in who is the tenant, what is the their credit rating, how long is the lease, and what is my return going to be on my investment.

Page 24

Q. So did you identify where all these properties were for the investors as part of your engaging them in this case?

A. We had a list. There's -- we bought, I can't remember, it's 15 or 16 properties in 11 different states, so we had a list of what we were buying, and that was in our offering memorandum.

Q. But what was your discussion with the investors?

A. The discussion with the investors was you take all the buildings together. We added all of the rent that we were going to get and we showed the investors, this is the gross amount of rent we're going to get, this is the purchase price we're going to pay for it, this is the debt we're going to put on it.

And that shows that every month we're going to have -- if they pay the rent every month, we pay our debt every month. It showed the amount of surplus we had, and it showed the return that we were going to distribute to them on a monthly basis.

And then we showed a pro forma over a ten-year basis on rent in, mortgage out, distribution to investors.

Q. So how would you compare the business

Page 25

you're engaged in here and with respect to these properties, with more bond investments? Do you have any familiarity with bond investments?
A. Somewhat. We don't deal with them ourselves. But our -- I would say we are our own investors. We invest in our own properties, and we look at this as really creating a bond.
You could go out and buy State Farm bonds if they issued bonds. They don't. They don't have debt currently.
But rather than investing in real estate or speculative real estate on the value of what the property is going to be worth ten years from now, or can we get new tenants in, and what is the likelihood of getting new tenants at higher rent, what we're able to do is say you're really investing in State Farm, and your investment is the form of a bondable lease with a contractually obligated rent payment over ten years.
They know exactly what our debt is going to be, and we're able to show that on a cash-on-cash basis we're able to return this much cash over the next ten years.
So us as an investor ourselves, what we look at is how much are we going to invest, what is

Page 26

going to be our cash-on-cash return, and over a ten-year period what is our return on our investment. So we look at it ourselves like a State Farm bond.
Q. So let's turn to the transaction that Kim Allison referenced. So there is a purchase that's been disclosed that -- the price between Lone Star Fund and JDM's fund. So first of all, would you please describe for the Board your familiarity with the transaction?
A. I was involved prior to us entering into a Letter of Intent, and then a purchase agreement with Lone Star.
Lone Star bought a large portfolio of State Farm properties. We were looking at buying a subset of those properties from them, so we got information on each property. We got copies of the leases that were already in place.
We did an analysis of how much rent would be coming in. And then we did our own internal analysis of how much we were willing to pay for that.
We then entered into a Letter of Intent, and then went right to a purchase agreement. And then I was involved from that stage forward, all the way through the closing.
And then from the closing, again I kind

Page 27

of put my chief operating officer hat on, went out and met all the State Farm folks and began to oversee the property.
Q. Why didn't you get involved at the time Lone Star did with the portfolio? Why was JDM not involved in that?
A. They just beat us to the punch. We owned other State Farm properties at the time, and we were out trying to buy other State Farm properties and Lone Star was -- beat us -- frankly, beat us to the punch.
And they offered the opportunity from State Farm to sell a large portfolio of properties. Very standard in our industry. One company will go out, for whatever reason they got there first, they had a relationship, we don't know.
They acquired a whole pool of properties, and then they typically will split those into smaller pools and sell them off. And we just happened to be the person who bought the largest split-off pool from them. We would have liked to have been there first, we just weren't.
Q. Did you have any prior familiarity with Lone Star before this transaction?
A. I did not. And I don't believe anyone

Page 28

in our company did either.
Q. What about State Farm, did you have familiarity with State Farm?
A. We did. I can't remember how many buildings we owned. We might have owned one or two State Farm buildings prior to that.
Q. So this particular deal, this portfolio -- and how many properties again, just generally?
A. I think it was 16 properties, and -- 16 physical buildings in 11 different states.
Q. And why was this deal attractive to JDM?
A. It was our opportunity for our fund to add a large investment. We are trying to grow our fund. We're always trying to add properties.
This was an opportunity for us to add multiple properties, multiple State Farm properties. That was our key intent, and it's a way that funds like ours are able to grow quickly.
It was all batched in a pool, and it just -- you know, it was just a way for us to -- to grow our business, grow it with a great tenant and do it all in one transaction.
Q. So I'm going to ask a series of questions that are similar to what I asked before,

Page 29

but specifically focused on this particular transaction. So again, the importance of the particular leases of State Farm in your analysis?

A. The key issue.

Q. And the importance of the real estate?

A. It -- the importance of the buildings themselves was -- I mean, it's always an issue. You own the buildings, you have to deal with them over time. You have to ultimately sell them.

But in this case it was not nearly as relevant, and it was almost irrelevant. We hired -- we had one person in our office, we got a private plane, this gentleman flew around, saw each property in the course of three days.

Our job was to make sure they actually existed and that they were in decent condition. But our -- our investment focus was what were the leases, how solid were the leases, were they bondable type leases, what was the total rent we were going to get, and what was the credit rating.

So the buildings themselves are not insignificant, but I can tell you they are in cities I've never heard of, and probably never see, and so we are the owner, but we care about the lease.

Q. Why would the buildings be in areas that

Page 30

are rural areas?

A. Historically it has been State Farm's practice -- they are "The Good Neighbor", and so they -- I kind of talk kind of the Wal-Mart of real estate.

They like to go into smaller cities, become part of the community. They build their buildings in those cities and they are located in smaller rural towns, all -- not small rural towns, there's some, but we own buildings all the way from Colorado to New York to Florida, Tulsa, Oklahoma, places like that. They are not typically in large cities.

Q. Are they the type of properties that JDM would be interested in if it were not State Farm?

A. There is -- if it wasn't State Farm or some other credit tenant, there's zero percent chance we would have ever bought these properties.

We would not go to Tulsa, Oklahoma and buy an office building where we didn't know the city, we didn't know the players, we didn't know the tenants. That's just not our business.

Q. So let's focus then on the purchase price. How was the purchase price determined for the property?

Page 31

A. Total rent, and then we do an analysis of how much debt we might be able to get on the properties. We look at what the return on our investment would be, and you do an analysis.

We have a minimum return that we have to provide to our investors. So we're able to take the total income, which is rent, apply the debt, and determine whether there's a surplus that provides the return that our investors are looking for.

Q. Are you looking at portfolio, the individual properties, or both. How does it relate between the portfolio of properties, and the individual property?

A. The portfolio of the properties -- the portfolio value, the total rent from all 15 or 16 properties is the number.

We don't look at each individual building, we look at the total value of all of the buildings, all together, the total debt that we put on the property.

And the way that we finance the property -- and the way we go to our investors and go to our lenders is we go in and say here is 15 or 16 leases, gross rent from all of them, we apply one loan to all the rent, and that creates our surplus.

Page 32

They do look at each individual property. They do assign a value to each individual property. In this case we had -- most of them were long-term leases. In our mind that's 15 years.

There was one or two properties that were short-term leases. For example, we own property in Colorado that has three buildings, all State Farm.

One building had a five-year lease. They told us ahead of time that they were planning on vacating that building over time. So that building is, you know -- as I explained earlier, that building is, in our mind, not really a bondable triple net lease building, that's a building we're going to have to release. So that property had a little bit different value assigned to it.

But generally, again, is that we look at the total rent, total debt that we can get on it, total return, and distributions to our investors, without regard to each individual property. They are valued and assigned, but that's not how we look at the purchase price.

Q. Could an identical building have a different value depending on the lease that is attached to that building?

A. Sure.

Page 33

Q. Could you explain to the Board how that could be true?
A. An identical building in different cities or --
Q. No, the identical building in the same -- the identical building in the same spot. Could it be valued differently for your purposes based on the length of the remaining lease?
A. Sure. For our purposes, yes. And the Colorado property is the best example. We have three buildings; one has a 10-year lease, one has a 15-year lease, one has a 5-year lease.
We know in the buildings of 10 and 15, that it's going to be State Farm, credit tenant, rent coming in, no interruptions for 10 or 15 years. The third building is a 5-year lease building. We know, and we knew when we bought it, that State Farm was likely to vacate that building.
So we looked at that building as one that, very quickly, we're going to have to go out and find new tenants, we're going to have to spend a lot of money to remodel it so that new tenants can move in.
And so the two buildings to us, even though they are right next to each other, the two

Page 34

buildings are credit tenants, long-term lease buildings. The third one to us is a multi-tenant likely, reletting building, that we actually went to the bank and got an agreement from the bank that when they move out, we can split that building off from the global loan, sell it, and get rid of it, because again, that's not what we do.
Q. So you're focused on comparable buildings, but could an identical building in the location have a different value to you based on the length of the lease that's attached to it?
A. Sorry. I didn't understand the question the first time.
Q. I didn't ask it right.
A. Yeah, if we went and looked at an identical building and someone told us there were no tenants, we wouldn't buy it. If someone told us there was a tenant in there that wasn't a credit tenant, we wouldn't buy it.
If someone told us there was a credit tenant but there was only two or three or five years left on the lease, we wouldn't buy it. If they told us it was a credit tenant with a long-term lease, that's a property that we would buy.
So the same building, depending on what

Page 35

the lease was and who the tenant was, would be a very different value to us.
Q. Could the same building be different if it were a longer term lease, but 10 years versus 15? For example, could those be different in value?
A. It could be. Ten years is really the important part. Banks look at ten years. Banks typically won't do loans longer than ten years. So ten years is the minimum to, in my mind, qualify as a long-term lease for tenant purposes and for financing purposes.
Q. So we talked about the purchase price for the portfolio. How does it get allocated to the individual properties?
A. We take the global purchase price, and then in our case each property was independently appraised. I don't remember if the same appraiser did it, I don't remember who did the appraisals. Again, they were in multiple states in multiple cities.
But each one obtains its own appraisal, and then the bank assigns its global value to each of the properties.
Q. So the appraisal and the request for appraisal, is the request for an appraisal of the

Page 36

property encumbered by a lease or not encumbered by a lease?
A. In our case, in our lender's case, the appraisal was on the leases.
Q. Why was JDM willing to pay more than Lone Star did, even though that the other sale had occurred just a few months before?
A. That's how real estate works. Again, when you're talking about buying portfolios of properties, it's very standard for the first person in to buy multiple buildings and then divide those up and sell them off in packages.
And it's just the way it goes, is if you're the first person in, you get a little profit when you sell it to the next person.
For us it wasn't so much that we were paying Lone Star profit, we still had to underwrite it. We still had to say what is the rent we're buying, what is the debt we can put on it, and what is the return we're going to get.
So even though we paid Lone Star a profit, they earned it by being the first one in, but it still met our underwriting and investment matrix, and we were willing to do the deal.
Q. Did JDM think that the value of the

Page 37

building itself, forgetting the lease, that the value had increased to warrant a higher price than Lone Star paid for it?

A. It didn't really matter to us whether it increased or not. We looked at the value of the rent, the value of the debts, and what our return was going to be.

Q. Thank you.

MR. BERNERT: Nothing further, your Honor.

HEARING EXAMINER: All right. Thank you, Mr. Bernert. Ms. Allison.

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CROSS-EXAMINATION

By Ms. Allison:

Q. So, Mr. O'Malley, you spent a significant amount of time talking about suggestive reasons why JDM wanted to buy the subject property, and I'd like to focus a little bit more about the elements of what actually are considered an arm's length transaction.

So, specifically, have you seen Appellant's Exhibit 1, which is the Deed and Conveyance Statement?

MS. ALLISON: May I approach? Does it

Page 38

matter which copy he works from? And I know we talked about this a little bit at the BOR, so I apologize if it's repetitive.

THE WITNESS: I don't remember whether I saw this at the time of the transaction or not.

By Ms. Allison:

Q. Okay. But you're aware that 26.1 million was specifically allocated to the subject property?

A. Yes.

Q. And I think you testified earlier that this value was determined based upon an appraisal report?

A. Yes.

Q. Okay. Did you see that appraisal report at the time of the sale?

A. I don't remember. I didn't read every single appraisal report, but I don't remember if I saw this one or not.

MS. ALLISON: Can I approach? You can keep that copy, whichever is easier. This is what has been marked.

HEARING EXAMINER: Can you give Exhibit 1 back, please?

By Ms. Allison:

Page 39

Q. It's been marked Appellant Exhibit 3. Have you seen that document before?

A. I don't remember. Again, we bought 15 at the time, and I probably read a couple. I don't remember which ones I read.

Q. Okay. But you did get a -- JDM did get a mortgage on the subject property?

A. Yes, we did.

Q. And that mortgage was based upon the value of the real property set forth in that appraisal report?

A. We got a mortgage -- I'm sorry. Ask that question again.

Q. So the total mortgage was based upon -- well, the allocation of the sale price were based upon the appraisal report?

A. Yes.

Q. The appraisal report was done for mortgage purposes?

A. Yes.

Q. Okay. And in that appraisal report they are valuing the real property, correct?

A. They are valuing all of the aspects of the purchase, including the lease.

Q. Okay. Well, I mean --

Page 40

A. I'm not an appraiser. I didn't do the appraisal report.

Q. Okay. Then we'll get to that.

A. But we provided the leases to them, and they analyzed the leases -- they required them from us. I can't tell you what the appraisal read and looked at, but they acquired the leases from us.

Q. Other than the contractual right to occupy the property, they don't have an ownership interest in the property, correct?

A. Not ownership.

Q. Okay. If State Farm vacates the property, does JDM get a portion of the purchase price back?

A. No, we continue to receive rent.

Q. But 15 years from now, if you still own the property and they decide not to renew their lease, do you get any of your purchase price back?

A. No.

Q. Okay. And I want to be clear for the record to -- at the time you purchased the property, your investors did not gain any ownership interest in the State Farm company, correct?

A. Correct.

Q. Okay. And have you reviewed the lease

Page 41

that was in place for the subject property?
A. I did.
Q. Okay. Can I hand you what's been marked as Appellant's Exhibit 2?
A. Sure.
Q. And this is the lease between LSERF and State Farm. And we requested that updated lease, we just didn't receive it. So I'm curious, is this the same lease that was assumed by JDM? Were the lease rates the same?
A. Yes.
MS. ALLISON: Okay. I think that's all I have. Thank you.
HEARING EXAMINER: Thank you very much. Mr. Bernert?
MR. BERNERT: May we have a moment, please? Go off the record?
HEARING EXAMINER: Sure.
(Discussion off the record.)
(EXHIBIT MARKED FOR IDENTIFICATION.)
HEARING EXAMINER: Let's go back on the record. Mr. Bernert, you're going to start your redirect?
MR. BERNERT: Yes, your Honor. Thank you.

Page 42

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REDIRECT EXAMINATION
By Mr. Bernert:
Q. I'd like to begin with the discussion about the lease, and I would like to hand you what is Appellee Exhibit A and ask you if you can identify that document, please.
A. This is the -- this is the first amendment to the lease for -- I believe this is for the New Albany, dated March 26, 2014.
Q. So is JDM a party to that agreement?
A. We are not. We are not a named party to this agreement.
Q. So is it -- what is that lease to you? If you're not a party to it, why is -- this was -- did you provide this to me --
A. I did.
Q. -- yesterday? And why is this -- why is Exhibit I in your files?
A. Exhibit I is a first amendment to the lease that we assumed, so when we assumed the lease as part of the purchase we also assumed the first amendment.
I believe last time I testified I believe I signed this amendment after we purchased

Page 43

it. That's what I believed at the time. And then subsequent to that I realized that this amendment was approved shortly before we bought the lease.
We were involved in this, we understood it, and I just believed I signed it after I bought it, but I was wrong, it was signed before we bought it and we assumed it.
Q. So the Board can read the document, but just very quickly, from your perspective, what are those provisions about? And specifically, do they affect the economics to you?
A. They don't affect the economics at all. As part of our purchase transaction we were in contact with State Farm.
They notified us that they were globally changing some of their internal policies, and they wanted all of their -- all of their leases, anywhere they had them, to reflect certain new policies.
One was that there were no weapons allowed in their buildings. Number two, that all their buildings would be no smoking, and third, they wanted to make sure that if there was a natural disaster anywhere in the country, that again, as their being part of the community, that they were allowed to use their facilities as emergency resource

Page 44

centers where they could bring citizens in to sleep there, they could allow the police and fire to have command centers there, and they just wanted to put that in every one of their leases, and we agreed to that.
Q. And then you assumed the lease as amended?
A. As amended, correct.
Q. So to the question of the amounts of the lease payments, were they altered by this acquisition?
In other words, did the amounts that had been set forth for the lease payments in -- in the lease that you assumed, were they revised at all by -- by your acquisition?
A. No.
Q. Would that be important to keep them the same?
A. It was how we underwrote the property. Lone Star, who was the owner at the time, handed us all the leases that they were going to assign to us.
We read each one, determined how much rent was due in each one, and that was the basis of our understanding how much rent we were going to get, and the bank the same way, of the collective rent

Page 45

that we would be buying.
Q. So was the economics of your acquisition based on the lease that had been entered into between State Farm and Lone Star?
A. Yes.
MR. BERNERT: Nothing further, your Honor.
HEARING EXAMINER: Thank you very much, Mr. Bernert. Ms. Allison, I'll allow you to ask one or two questions about this.
MS. ALLISON: I don't think I have any. Thank you.
HEARING EXAMINER: Thank you. Thank you, sir.
(Witness excused.)
MR. BERNERT: We're moving for exhibits at the end?
HEARING EXAMINER: Yes.
And, Ms. Allison, just to clarify, you did ask Mr. O'Malley questions about Exhibit 2, correct?
MS. ALLISON: Yes.
HEARING EXAMINER: All right. All right, Mr. Bernert?
MR. BERNERT: Your Honor, the Appellee

Page 46

would call Mr. Eberly.
HEARING EXAMINER: Mr. Eberly, if you could raise your right hand, I'd like to swear you in.
Do you swear or affirm that the testimony you're about to provide to the Board today is the truth, and nothing but the truth?
MR. EBERLY: I do.
- - -
Ronald Eberly,
being first duly sworn, as prescribed by law, was examined and testified as follows:
DIRECT EXAMINATION
By Mr. Bernert:
Q. Would you please state your name and business address for the record?
A. Certainly. My name is Ronald M. Eberly, Jr., I actually go by Skip. I'm president of Pickering Valuation Group, and also owner and CEO of Principal Real Estate Group.
Q. What is your arrangement with Mr. Pickering as it would effect this appraisal?
A. Mr. Pickering and I performed the appraisals as of 2013, '14, and '15.
Q. What were you engaged to do?

Page 47

A. To appraise the fee simple estate of that property. Well, as of those dates.
Q. So I'd like you to identify just for the record Appellee's Exhibit G and Appellee's Exhibit H. We'll talk about them separately, but just get them on the record.
MS. ALLISON: These are the same as I have, right? The same that were submitted below?
MR. BERNERT: So G is the same as it was at the Board of Revision, and H is the same as I disclosed to you.
MS. ALLISON: Perfect. Thank you.
HEARING EXAMINER: I just want to interject, G and H in the binder are the same as G and H that we have also separately marked as well?
MR. BERNERT: They better be.
HEARING EXAMINER: All right. Go ahead. I just want to make sure the record is clear.
By Mr. Bernert:
Q. So would you please first identify Exhibit G for us?
A. Exhibit G is the appraisal that we performed as of 1-1-2013 and 1-1-2014.
Q. And then Exhibit H?
A. Exhibit H is the appraisal that we

Page 48

performed as of 1-1-2015.
Q. Are your qualifications set forth in the two opinions?
A. They are.
MR. BERNERT: Would counsel stipulate to his credentials based on what is in there?
MS. ALLISON: Sure, we would be willing to stipulate to his qualifications as set forth in the report.
MR. BERNERT: Thank you.
By Mr. Bernert:
Q. Would you -- you testified with respect to the 2013/2014 appraisal at the Board of Revision, correct?
A. Correct.
Q. Jumping ahead a little bit -- and we'll talk about the 2015 separately -- is there a lot in common between the two appraisals, or are they markedly different?
A. No, they are very similar. The 2015 valuation has an extra sale in it, but otherwise they are pretty much the same. Although 2013 and '14, as of 1-1-2013, there was some excess land that had been sold off, so we valued that appropriately.
Q. Explain that.

Page 49

A. There was an additional parcel that was sold, but as of 1-1-2013, that parcel still existed. So we valued that in addition to the fee simple estate of the State Farm building.

As of 1-1-2014, that excess ground had been sold and split away, so the 1-1-2014 valuation, as well as the 1-1-2015 valuation, is exclusively of the State Farm building.

Q. So quickly, please describe the subject property for us, please.

A. The subject property is a four-story brick building constructed and for the sole purpose of an operations/training center for State Farm. It is a -- in our language, a corporate headquarter-type facility that has a highest and best use for a single owner/occupant.

Q. Please describe a little bit, why do you conclude that its highest and best use is as a single occupant.

A. The interior layout of that building has a large cafeteria, has training rooms, has extensive common areas that's specific for a single owner/user. It's wide open areas, very limited relative to demising walls, not set up for multi-tenancy at all.

Q. Have you seen the interior of the building?

Page 50

A. Absolutely.

Q. So there has been some discussion about sales, a sale in 2013 and a sale in 2014, that concern the subject property. Did you take those sales into account in your appraisal?

A. I reviewed those sales, yes.

Q. And talk to us a little bit about how you -- what you understand those sales to be and how you used them.

A. Those sales are reflective of a leased fee value. What that means is the buyer of those sales -- in those transactions the buyer and seller were selling the lease, along with the real property. So it reflects a leased fee analysis or a leased fee valuation.

For that purpose we have ignored those sales, and we have concluded to a fee simple estate based on fee simple market data.

Q. So the next couple of questions are based on your understanding from in your profession, I'm not asking for a legal conclusion here. Describe specifically what a fee simple is in contrast to a leased fee.

A. Fee simple is unencumbered.

Page 51

Unencumbered, having no lease intertwined with the real property. Unencumbered fee simple estate, basic real estate valuation. Leased fee interest has a lease that's encumbering the property, the lease is analyzed and reflected in the valuation.

Q. Have you sufficient information in your opinion to understand the two sales and their importance to your project?

A. Absolutely.

Q. And have you examined the lease?

A. I did.

Q. Okay. So jumping ahead. Of the three common methods of valuation, which of the three did you use?

A. We used a sales comparison approach, as well as a cost approach to valuation. Due to the highest and best use of the subject property, the income approach is not an applicable approach for an owner/occupied office building like State Farm.

Q. Maybe this would be easier to work with. So let's move to the sales comparison approach, the market approach. Could you -- first of all, how did you approach the market for purposes of this property?

A. When -- when we looked for comparable sales, everything ties back to the highest and best use of the property.

Page 52

The highest and best use of the property is an owner/occupied corporate headquarters facility, therefore our sales reflect owner/occupied headquarter facilities, or something very similar to that, unencumbered. And we make adjustments for items of dissimilarity, up and down, to reflect what the subject property is.

Q. So what did you do in order to -- to -- so you developed some comparable sales?

A. We did.

Q. And just generally, what were the criteria you were using in picking comparable sales?

A. Certainly we're always looking to get a location that's as close as possible. In this particular case, the subject property is a 155,000 square foot building, so it's very difficult to get all your comparables in the Columbus MSA.

So we have two choices; we go back in time, or go out geographically, and we have done both in this particular case. And we're looking for similar type buildings for owner/occupied use.

Q. So now I'd like you to focus on Exhibit G. And can you just take us quickly through

Page 53

your list of comparables and how they are being used?
A. Certainly. So if you look on page 32, we have five comparable sales that were included in our analysis. They range in size from 85,336 square feet to 161,280 square feet, thus bracketing the subject property.
The sales range is from 13 years of age to 20 years of age. The subject property, as of 1-1-2013, was 12. So we're pretty close there.
And then we look at condition across the board and so forth, and then we start adjusting for those items of dissimilarity.
Q. So take us through the comparable sales please, quickly.
A. Sale No. 1 is Worthington Industries in Worthington, Ohio. Sold August 2012. Sold for $63.27 a square foot. It was a Worthington Industries corporate office building.
On page 37 of this particular report you'll also see after each comparable is an extraction of depreciation. That extraction is used to identify and define our baseline curve for depreciation purposes in our cost approach.
Sale No. 2 is an office building on Corporate Exchange Drive. It sold December 20th,

Page 54

2012, for $52.70 a square foot. The purchaser was an owner/user that -- with some additional rental space for expansion purposes. The prior use had been multi-tenant.
On page 41, Harbert Road, 20800 Harbert Road in Cuyahoga County, property sold October 20, 2014 for $125.31 a square foot. This particular property is also -- or the purchaser was also an owner/user.
On page 44, Governor's Pointe North, which is in Mason, Ohio, it's an 85,336 square foot building, 14 years old at the time of sale, sold for $70.31 a square foot.
Sale No. 5 is located in Plymouth, Minnesota, and it is a May of 2014 sale, sold for $88.56 a square foot. Again, this property is a single occupant owner/user building. Originally the property was built for insurance headquarters.
Q. Why would you be using a Minnesota --
A. Just from the standpoint that it's -- it fits the bill. It's exactly what the subject property is, a single tenant, owner/occupied -- not single tenant, owner/occupied building, and a very similar use.
Q. Does that complete the --

Page 55

A. That completes the sales.
Q. So then what did you do with those sales to reach an opinion for purposes of the market approach?
A. So we graded them on what we call a sales comparison grade, and we started adjusting for items of dissimilarity in order to get to a range of adjusted values for the subject property.
At that point we zero in on where the subject property lies, and concluded to a value opinion via that approach.
Q. And what was that value opinion? This is for years 2013 and 2014?
A. Let me back up. So if you look at page 67, it gives an outline of our sales and cost approaches.
The sales comparison approach, exclusive without the excess ground, was 12-million-4. In 2014 the sales comparison approach shows an opinion of 12-million-7, so a slight increase via the sales comparison approach from one year to the next.
Q. So let's focus on the cost approach. I believe that begins on page 50.
A. It does.
Q. Exhibit G.

Page 56

A. So the cost approach is a very relevant approach, especially when improvements are of newer construction, or when you accurately estimate accrued depreciation.
In this particular case we have used the cost approach. We have extracted market depreciation from the marketplace, and we were able to establish what's called a baseline curve, which shows how depreciation actually accrues in the marketplace.
And if you go to page 63 you can identify that baseline curve. Each of those points on that baseline curve represents a sale, and each sale has a rate of depreciation depending upon its age.
So when you look at its age and you look at what the depreciation was at that time of sale, that's what identifies that baseline curve.
So we're able to estimate cost new relatively easy, and we're able to estimate -- accurately estimate accrued depreciation.
Now, we have also accurately estimated land value, and were able to get to a value via the cost approach, and a very reliable one at that.
Q. So what is your opinion under the cost approach for the subject property for 2013 and 2014?

Page 57

A. On 2013, our cost approach is at 13-million-300, and as of '14 it was 13 million.

Q. And then would you reconcile the two measures that you used, the market and the cost approach, please?

A. Certainly. So as of 1-1-2013, our sales comparison approach was at 12,400,000, the cost approach was at 13,300,000. We concluded to 12-million-7, gave a little more weight to the sales comparison approach because of the market derived sales.

In the valuation as of 1-1-2014, the cost approach is showing 13-million-7, the sales comparison approach is at 12-million-7. Again, we have weighted more toward the sale side and concluded to a value opinion of 13 million.

Q. So now I'd like to turn your attention to Exhibit H. And this is the valuation as of January 1, 2015. And what I'd like you to do, please, is to compare and contrast that with the report you did for Exhibit G.

A. So the -- what we're looking at as of 1-1-2015 is a date of value one year passed our date of value as of 1-1-2014.

And in this particular analysis -- and

Page 58

on page 66 our sales comparison approach is showing a value opinion of 13 million, the cost approach is showing a value of 13-million-5. Again, giving greatest weight to the sales, we concluded to a value opinion of 13,200,000 as of 1-1-2015.

Q. Did you add any comparables?

A. We did. We added one extra comparable that we found, and I can find that for you. It's in Strongsville. It's actually on page 48.

This particular sale sold June 8th of 2017. It's in Strongsville on Royalton Road. It sold for 8,300,000 or equates to $91.01 a square foot.

This particular building had previously been leased, a hundred percent leased to Medical Mutual of Ohio prior to this transaction. The transaction was purchased knowing that that tenant was vacating that building, which they did.

Q. So this is a single tenant facility?

A. It is a single tenant building, yes, just like State Farm.

Q. And I think you already testified about what your value was for 2015; is that right?

A. Yes. It's 13,200,000.

Q. So that's slightly different than the

Page 59

values from --

A. Slightly higher than the 1-1-2014 value. And we feel land valuations have gone up a little bit, and there's a little bit more pressure -- upward pressure on the real property.

MR. BERNERT: That completes our inquiry.

HEARING EXAMINER: Thank you very much, Mr. Bernert. Ms. Allison?

MS. ALLISON: Thank you.

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CROSS-EXAMINATION

By Ms. Allison:

Q. So, Mr. Eberly, I'm confused. Who wrote these report?

A. Bruce Pickering and myself.

Q. So you were co-authors?

A. Yes.

Q. Okay. Because Mr. Pickering testified at the BOR.

A. I was there, too. I testified as well.

Q. He did the --

A. He primarily did most of the testimony, yes.

Q. And so just so I'm understanding, for

Page 60

2013, you valued the excess land separately?

A. Correct.

Q. So you've kind of viewed them as two separate parcels?

A. Yes, because they have different highest and best uses, which is evidence of the sale of the excess ground from the main property.

Q. Okay. Under your definition of the highest and best use of the subject property, that's different than the actual use as of 1-1-14 and 1-1-15?

A. The highest and best use of the property of the property unencumbered is what we're stating in our report.

Q. But I'm asking, it is different, correct?

A. Highest and best use as improved unencumbered is for a single tenant or a single owner/occupant building.

Q. Which is different than the actual use of the property as of --

HEARING EXAMINER: Please stop. One at a time.

Mr. Eberly, if you could just answer her question, and allow Mr. Bernert on redirect to make

Page 61

any points of clarification.

THE WITNESS: Certainly. It's a little confusing. The methodology -- I shouldn't say methodology.

When you're talking about highest and best use, if you have a lease that is in place like State Farm, certainly from an investment standpoint the --

MS. ALLISON: I understand all of -- I'm asking you a yes or no question.

By Ms. Allison:

Q. Was the use of the property as of 1-1-14 and 1-1-15, a single owner/occupied use?

A. The --

HEARING EXAMINER: Yes or no?

THE WITNESS: Yes, please.

By Ms. Allison:

Q. So it was owner/occupied. State Farm was -- I'm sorry. JDM and LSERF were occupying the property?

A. State Farm was.

Q. But they were not the owner of the property as of those dates?

A. Correct.

Q. So the answer is no?

Page 62

A. Yes. Correct, the answer is no.

Q. Okay. Thank you.

In order to value a property at a use that's different than its current use, don't you have to show a variation in why it's -- that's the highest and best use?

A. No, because we're appraising it to its highest and best use unencumbered.

Q. Does that mean vacant?

A. Not necessarily.

Q. Okay. Tell me a situation where a single tenant owner/occupied property transfers that's not vacant or about to be vacant.

A. Well, in that particular -- in your definition of a single tenant owner/occupied building, then yes, that is correct. It's either vacant or it's owner/occupied. That's why the highest and best use is for that use.

Q. So in your scenario where the highest and best use is a single tenant, there can be no sales of any property other than vacant properties or properties that are about to be vacated?

A. Or they are owner/occupied.

Q. Well, if they sell it, then they wouldn't be the owner anymore.

Page 63

A. Well, correct. Or the next buyer is an owner/occupant. So it doesn't necessarily -- if you're saying that -- one property owner is vacating the property for another owner to come in, then yes, your answer is correct.

Q. Okay.

A. Just like a house.

Q. Okay. Well, okay. So all of your comparable sales then were vacant except for the one that was -- they had given notice to vacate, correct?

A. Correct.

Q. Okay. Was No. -- Sale No. 2 a distressed sale, the Molina Healthcare?

A. I'm sorry, which --

HEARING EXAMINER: Which appraisal report?

MS. ALLISON: I'm sorry, I'll start with '13 and '14. So was that G?

HEARING EXAMINER: Yes.

THE WITNESS: According to our information, that property was exposed on the open market, and it still represented an arm's length transaction.

By Ms. Allison:

Q. Okay. And if I'm understanding you

Page 64

correctly -- well, let me ask one more question about G. In performing your market extraction method, did you appraise any of your comparable sales?

A. No.

Q. Okay. And the majority -- the main difference between the '13 and '14 reports, and the '15 report, is just the addition of the extra comparable sale?

A. Correct.

MS. ALLISON: Okay. I believe that's all I have. Thank you.

HEARING EXAMINER: Thank you very much.

Mr. Bernert, any redirect?

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REDIRECT EXAMINATION

By Mr. Bernert:

Q. Just to clarify, the property was leased, and you're still treating the property as owner/occupied in effect for purposes of the highest and best use?

A. Yes.

Q. So please explain to the Board why you've done that.

A. Because we're getting -- we're trying to

Page 65

get to a fee simple estate, and fee simple means unencumbered.

So the fee simple of that property is what the building was designed for originally, which is a corporate headquarters facility. The fact that State Farm leases it is -- doesn't change my highest and best use of the fee simple estate.

MR. BERNERT: Nothing more, your Honor.

MS. ALLISON: I have one followup to that.

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RECROSS-EXAMINATION

By Ms. Allison:

Q. But in doing that -- so your comparable sales are all being vacant and being offered for second generation use, correct? Whereas the subject property is still in its first generation use?

A. As of right now it is.

MS. ALLISON: Thank you.

HEARING EXAMINER: Mr. Bernert, anything?

MR. BERNERT: No.

HEARING EXAMINER: Thank you very much, Mr. Eberly.

(Witness excused.)

Page 66

MR. BERNERT: So we would move for admission -- that completes our case.

We would move for admission of the documents at this time. And it's -- and some of these are also in the statutory transcript, but just for purposes of getting them together here.

So we have Exhibits A through I, and we would ask -- we would move for their admission into evidence.

HEARING EXAMINER: Any objection, Ms. Allison?

MS. ALLISON: Just going through them specifically, I'm not sure what Exhibit E is.

MR. BERNERT: So there's been testimony, but we would be glad to put Mr. O'Malley back on the stand, or we could describe it, if that's okay. Maybe the best thing to do, would you mind -- it's pretty hard to read, but -- could we have a moment off the record?

HEARING EXAMINER: Off the record, Val.

(Discussion off the record.)

HEARING EXAMINER: Back on the record. Go ahead.

MR. BERNERT: Mr. O'Malley has been called back to the stand.

Page 67

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REDIRECT EXAMINATION

By Mr. Bernert:

Q. And, Mr. O'Malley, I'm handing you what's been marked for introduction as Appellant's Exhibit -- Appellee's Exhibit E. And I apologize for the quality of it, but that's the best that we have. Would you please explain to the Board what that is?

A. This is a letter addressed to our company, JDM II SF National, dated March 14th, 2014, from State Farm Mutual Automobile Insurance Company, and it's essentially referred to as an estoppel certificate.

Q. So not asking you what the intention was of State Farm in writing it, but asking you how you received that document and how you use it for your purposes. What is its purpose?

A. When we acquire a property with a credit tenant lease, we want to assure ourselves of the value of the lease, and one of the values is, is it in place, is it effective, are there any defaults.

So we want to know when we buy the lease with the rent that comes with it, are there any issues that we should be aware of before we buy the lease.

Page 68

This is a letter from State Farm that -- it's a -- it's called an estoppel certificate, very standard to get from sellers and tenants, and it's a list of things -- it's in the record, I don't need to read it, but it's things that State Farm, the tenant, is telling us in terms of in their view it's still an affective lease, they are not aware of any defaults.

They are not aware of anything, that the day I get the lease and I'm the landlord, they are going to make claims against me or claim that the lease is not effective, or that they have got some setoff against the rent.

Q. Do you require a document like that as part of your transactions?

A. Yes.

Q. And do you maintain that record in your files?

A. Yes.

MR. BERNERT: Nothing further.

HEARING EXAMINER: Ms. Allison.

MS. ALLISON: I don't have any questions. Thank you.

HEARING EXAMINER: No objections?

MS. ALLISON: Well, I will just note the objection that the author is not here. I'm not sure it really matters because he already testified they assumed the lease.

HEARING EXAMINER: I'll overrule your objection and the Board will accord Exhibit E its due weight.

MS. ALLISON: I do have an objection to Exhibit F. It's the assignment of the purchase contract.

We requested a copy of the purchase contract in discovery, and it was represented that it's in the statutory transcript. I just want to make it clear that this is not the entire purchase agreement, for what it's worth.

HEARING EXAMINER: Any response, Mr. Bernert?

MR. BERNERT: Well, Mr. O'Malley is on the stand.

MS. ALLISON: And he testified to this below, that this was not the entire purchase contract.

MR. BERNERT: He did. And may I ask a question that I think will address this question?

HEARING EXAMINER: Sure. I like more clarity better than less clarity, so go ahead.

By Mr. Bernert:

Q. Mr. O'Malley, we requested the purchase and sale agreement. Was JDM prepared to give it to us?

A. No, we're not.

Q. And would you please explain to the Board in some detail why JDM has not provided the full purchase and sale agreement?

A. Two basic reasons. The purchase and sale agreement represents, in our mind, or our opinion, our proprietary skill in acquiring properties, when other buyers are out there trying to acquire properties as well.

Secondly, this was a portfolio transaction that involved, again, I believe 15 or 16 buildings in 11 different states, none of which, other than the Ohio property, is at issue here.

And so to the extent that my disclosure to a government entity that would make it potentially a public document and it would then disclose transactions and values of properties that have nothing to do with this case, we're not willing to subject that to public disclosure.

MR. BERNERT: So, your Honor, we are requesting that Exhibit F be included. We do understand it's not the entire purchase and sale

agreement, but it was submitted below and it's some evidence of what's going on.

HEARING EXAMINER: Ms. Allison, do you have any questions of Mr. O'Malley on this document?

MS. ALLISON: I have no questions. I would just note for the record that again, we did request it in discovery and it was not communicated to us that the client would not provideit.

It was communicated to us that it was already contained in the statutory transcript. So I just want the record to be clear that we did attempt to get the purchase agreement.

HEARING EXAMINER: Actually, I think I'm going to defer ruling on this particular objection.

MR. BERNERT: That's all I have for the witness, your Honor. But I would -- I guess I'm not sure where we are on the introduction of documents.

HEARING EXAMINER: So if I recall correctly, Ms. Allison does not have any objection to Exhibit E. She does have an objection, which I have deferred ruling on for Exhibit F.

MS. ALLISON: And would have no objections to the remainder of the exhibits.

HEARING EXAMINER: Well, I will accept the exhibits into evidence, again, noting my ruling

on Exhibit F for my own edification.

I just want to note that even though the binder has an Exhibit I tab, there is actually no Exhibit I in the binder, but we did mark the first amendment to leases as Exhibit I, which is not in the binder.

(EXHIBITS ADMITTED INTO EVIDENCE.)

HEARING EXAMINER: And we can take a 15-minute break.

(Recess taken.)

HEARING EXAMINER: All right. We're back on the record.

All right. So when we went off the record, Mr. Bernert moved for -- moved his exhibits into evidence, which I did, with the exception of Exhibit F that was proffered into evidence. So Ms. Allison.

MS. ALLISON: Yes, we have had -- essentially through the testimony of Appellee's witnesses we had three different appraisal reports submitted, and we would like to present the testimony of Mr. Sprout as a review appraisal appraiser, so we ask for him to take the stand.

MR. BERNERT: Just out of curiosity, three?

Page 73

MS. ALLISON: Well, he identified the bank, so the two from Mr. --

MR. BERNERT: No one provided a foundation for that.

MS. ALLISON: Well, it was provided to us in discovery, and I'm just going to ask him if he reviewed the report and in his opinion if it supports -- I'm not really offering it as evidence of value, I'm just offering it as support to the sale price.

HEARING EXAMINER: Thank you, Mr. Sprout. I have my note here, swear in the witness.

MS. ALLISON: We would request a separation of witnesses.

MR. BERNERT: No, that's -- why would there be a separation of witnesses?

MS. ALLISON: I have a right to request the witnesses be separated.

MR. BERNERT: At this stage of the hearing?

MS. ALLISON: You could have requested it.

MR. BERNERT: I didn't request it.

MS. ALLISON: You could have.

Page 74

BERNERT: It's too late now for --

MS. ALLISON: No. I mean, he's going to be reviewing the report. We absolutely have the right to request a separation of witnesses.

MR. BERNERT: Your Honor, this is not right. First of all, she's talking about separation of our appraiser, who is not a fact witness? The Board doesn't require separation of nonfact witnesses.

And if this is going to be a debate, if the Board is going to permit debating with the appraisers, as opposed to each doing their own independent report, I respectfully submit our appraiser needs to be here. He's heard our appraiser, we need to hear him.

MS. ALLISON: And counsel and the property owner's representative can hear it. I mean, he could have requested a separation of witnesses and Mr. Sprout would have been in the hallway.

MR. BERNERT: It's not a separation of witnesses when it's a fact -- it's not a fact witness.

HEARING EXAMINER: Okay. The Board does grant separation of witnesses when it's expert testimony, but let's go off the record. I'm going to

Page 75

take this up the chain.

(Recess taken.)

HEARING EXAMINER: I believe, Mr. Bernert, you let me know if I have the understanding of where we left off, you objected to Ms. Allison's request for separation of witnesses.

The property owner can have a rep here, so Mr. O'Malley can stay. But Mr. Eberly, if you plan to recall him, or you're unsure if you're going to recall him, will have to step out.

MR. BERNERT: Your Honor, we strongly object to a separation of witnesses for at least three reasons. A separation of witnesses makes sense in a fact context. If one person's testifying as to a fact the other person is testifying, it makes sense to separate them.

Now, the Board, in some cases, might have allowed separation of witnesses, but in other cases you have permitted, over an objection, the ability of an expert to remain in the hearing room, so that there's precedent both ways.

In this case it is a very late request. It could have been made earlier and it wasn't. Their witness sat through this entire testimony, and now their witness gets to testify without the other

Page 76

witness being present.

The third thing is that there is a real unequal basis here to allow someone to come in without an appraisal report and just simply snipe at the other side. That's an extraordinary thing. I don't think the final word has been expressed on that. And we would continue to object to that.

And I think that it really is not appropriate in this case, that if this witness is going to be permitted to comment, to do your job, which is what he's doing, instead of presenting an appraisal report as he should be, that we need to have our expert in the room.

We may be calling him back.

HEARING EXAMINER: Okay.

MS. ALLISON: May I respond briefly?

HEARING EXAMINER: Yes.

MS. ALLISON: Just for the record, the Board does routinely grant separation of witnesses in cases like this.

I don't know what other higher authority you're going to get other than the Ohio Supreme Court that has specifically said that we can meet our burden by producing appraisal review testimony.

As for the separation -- the timing of

Page 77

the exhibit -- I mean, they are prejudiced by their own failure to request separation of witnesses when they were presenting their case in chief.

They could have requested a separation of witnesses, at which point Mr. Sprout would have been required to leave.

MR. BERNERT: The obvious point is if she was planning on doing it -- counsel, excuse me -- counsel should have done it up front, if that was the intention.

MS. ALLISON: I didn't think you had a problem with it.

MR. BERNERT: To wait is extraordinary. If we were going to separate, we would have separated both witnesses, your Honor, not one.

MS. ALLISON: I just assumed he didn't have a problem with it.

MR. BERNERT: And that doesn't make any sense, with all due respect, your Honor.

HEARING EXAMINER: But, Mr. Bernert, you didn't ask that the witnesses be separated, in which case I would have granted the request.

And it would seem, I don't know, that Ms. Allison may or may not have known whether or not she was going -- I don't know. All I know is no

Page 78

request was made prior to Ms. Allison making her request. So I'm going to grant her request and ask Mr. Eberly to step out.

One of the other issues was you raised an issue with Mr. Sprout's ability to offer testimony critiquing Mr. Eberly's report, and you said that you thought that was inappropriate. You tell me if my understanding is correct. I don't want to put words in your mouth.

MR. BERNERT: Yes, just to be clear, in terms of disclosure, this witness was not disclosed as a review -- preparing a review appraisal.

MS. ALLISON: Can we confirm that?

HEARING EXAMINER: I'm looking at it, and the Appellant, the Board of Education, witness and exhibit list states Appellant Board of Education of the Columbus City School District hereby discloses the following witness who may be called to testify at the merit hearing in the above captioned matter; Thomas D. Sprout.

MS. ALLISON: Okay.

HEARING EXAMINER: And there is no disclosure of an appraisal report from Mr. Sprout.

MS. ALLISON: He did not prepare one.

HEARING EXAMINER: Okay. So I'm not

Page 79

going to bar Mr. Sprout from providing testimony on his review of Mr. Eberly's appraisal reports, or I think maybe this Cushman -- the Appellant's Exhibit 3. Am I missing any other issues that you raised, Mr. Bernert?

MR. BERNERT: Fundamental fairness.

HEARING EXAMINER: Fundamental fairness.

MR. BERNERT: We --

HEARING EXAMINER: And I understand your continuing objection.

MR. BERNERT: Yes, ma'am.

HEARING EXAMINER: And it's noted for the record.

MR. BERNERT: Thank you.

HEARING EXAMINER: Mr. Eberly, if you could step out, please.

(Pause.)

HEARING EXAMINER: Mr. Sprout, would you stand for just one second. Do you swear or affirm that the testimony you're about to provide to the Board today is the truth, and nothing but the truth?

MR. SPROUT: I do.

HEARING EXAMINER: Thank you very much, Mr. Sprout. Ms. Allison.

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Page 80

Thomas D. Sprout,

being first duly sworn, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

By Ms. Allison:

Q. Mr. Sprout, can you briefly walk us through -- can you state your name for the record?

A. Thomas Sprout.

Q. And can you briefly walk us through your professional credentials, please?

A. Absolutely. I have been a CPA since 1991. I have been a commercial real estate appraiser since late 1995. I got my -- I received my license from the State of Ohio Certified General in 2001. I became a member of The Appraisal Institute, the MAI designation, in 2007.

I have worked back in the '80s with one of the Big 8 accounting firms. I've worked for custom home builders. I've worked for a development company. I've been a teacher for a couple years. And all of it has been related to accounting and/or real estate.

Q. And you've testified before this Board on several occasions as an expert witness?

A. Many times.

Page 81

Q. On both of both property owners and Board of Educations?
A. On behalf of both property owners and the School Board.
Q. And you've presented appraisal review testimony for this Board's consideration?
A. I have presented appraisal review testimony, yes.
MS. ALLISON: Okay. At this point we offer Mr. Sprout as an expert.
HEARING EXAMINER: Mr. Bernert?
MR. BERNERT: Your Honor, we would not object to his credentials. We strongly object that he's not following the canons of his profession in doing a proper appraisal review.
HEARING EXAMINER: And what is that? Just if you could put that in the record, so the Board can consider that.
MR. BERNERT: We're going to have to find out exactly what he did, but an appraisal review requires a report as well. And it requires more than just, you know, commentary on another person's appraisal.
If you're going to do an appraisal review, you have to be qualified to do that. He

Page 82

hasn't expressed he is qualified. I assume that he has the credentials there, but he is required to do a report.
I think we're going to ask him whether he should do a report, and whether he thinks the Board of Tax Appeals warrants a report when he's giving an opinion as to value.
If he's not giving an opinion of value, he has no business sitting in the stand. If he's giving an opinion of value, he needs to do a report. And Board's proceedings are of a sufficient measure that you deserve a report, or it shouldn't be admitted.
Whatever cases they have, this is -- and we're going to pursue this issue, because this is important.
HEARING EXAMINER: Okay. Do you have any response?
MS. ALLISON: If it's okay, I'd like to give Mr. Sprout the opportunity to reply, because he's familiar with the exact requirements of USPAP and what his interpretation of the requirements are.
HEARING EXAMINER: Okay. Just one second. Mr. Bernert, you plan on pursuing that avenue of questioning on cross?

Page 83

MR. BERNERT: Correct.
HEARING EXAMINER: How about we wait on that?
Noting the issues you've raised, Mr. Bernert, I am going to qualify Mr. Sprout as an expert. If you'd like me to review my ruling at the end of your cross-examination, you can certainly bring that issue back up.
MR. BERNERT: I understand your ruling to be that he has credentials himself to testify as an expert?
HEARING EXAMINER: Correct.
MR. BERNERT: And I don't object to that.
HEARING EXAMINER: I apologize.
MR. BERNERT: I just want to be clear, it's the testimony, not his ability to testify on real estate matters.
HEARING EXAMINER: Then we will, on cross-examination, I guess, get to the issues that you raise. I apologize for my misunderstanding.
MR. BERNERT: No, that's fine.
MS. ALLISON: Thank you. May I approach?
HEARING EXAMINER: Yes.

Page 84

By Ms. Allison:
Q. Mr. Sprout, I'm going to hand you what's been marked as Appellant's Exhibits G and H. Have you seen those exhibits before?
A. Yes, I have.
Q. Okay. And have you been -- were you engaged by the Board of Education to provide an appraisal review of those reports?
A. I was.
Q. Okay. Can you briefly walk us through your findings and conclusions in that respect?
A. Absolutely. Now, I'm going to basically discuss both reports in unison just because they are very similar with the comparable data and the techniques that were utilized in the valuation conclusion.
I'll pretty much get right to the crux of the matter here. The site description and the description of improvements, neighborhood, all those, that information appears to be accurate.
Let's get into the highest and best use analysis to start with. Highest and best use analysis, and you've heard this over and over again, four conditions; legally permissible, physically possible, financial feasible. The last one is what

Page 85

provides the maximally productive use and/or value for the property.

We're looking at a highest and best use as improved, highest and best use as a single occupant owner/user facility. That is on page 26, hopefully, of both reports, so that we don't have any confusion. No, it's on page 27 of the -- is there different exhibits here for the different --

HEARING EXAMINER: Exhibit G is for tax year 2013 and '14, and Exhibit H is for 2015.

THE WITNESS: All right. So this would be on Exhibit G, page 27, and Exhibit H on page 26.

So the highest and best use conclusion states it is a single occupant/owner user facility. So that being the case, as a review appraiser, you're looking for comparable data that supports that highest and best use analysis.

So you're looking for sales of single users, and you're also looking for rents of single users. Now, there are rents of single users.

The conclusion in the report stating that the income approach is not applicable, in my opinion, provides a credibility issue with the overall appraisal.

A single occupant/user -- there are

Page 86

multiple leases and/or offerings in the marketplace of single tenant users of buildings of similar size, condition, and age that because the income approach was not utilized, were ignored.

That's a credibility problem. We're looking at an appraisal here for ad valorem tax purposes with a value conclusion of just over $13 million.

I'll be discussing another appraisal that was done for mortgage purposes that had a conclusion of value of $26 million.

Now, you're talking about what's maximally productive, what provides the highest value to the property --

MR. BERNERT: Your Honor, may I object? To the extent that he's discussing an appraisal that he didn't prepare, meaning the $26 million one, again, on that one we're objecting to this testimony. We also object to him testifying with respect to an appraisal he did not prepare.

HEARING EXAMINER: Noting your objection, I'm going to overrule it. Go ahead, Mr. Sprout.

THE WITNESS: Thank you. So the other issue that needs to be discussed here is the whole

Page 87

fee simple, leased fee situation.

Just because a property is leased doesn't mean that it is not market value, which the definition of market value is included in the report, five conditions that are to be met.

So as an appraiser we are to determine if a lease that is in place is at market rent. And if there's enough evidence in the report to support that, then it would be considered akin to fee simple.

So leased fee, fee simple value, would be approximately the same, if not the same. And that happens in most appraisals.

So if we get into a situation where we have a leased fee interest where the lease is above or below market -- in some cases you might get into a situation where you have improvements that are loaded in for some reason or another, or you have a below market lease.

It is incumbent upon the appraiser at that point in time to address that in the report, talk about why it's above or below market, and then adjust for that based on utilizing a capitalization rate or a risk rate.

So obviously if you have a rent that is considered above market, it's more risky. So the cap

Page 88

rate would address that excess rent as a separate entity.

MR. BERNERT: I'm sorry, your Honor, I've got another objection.

HEARING EXAMINER: That's okay. I understand.

MR. BERNERT: What we're getting here are instructions to the Board of Tax Appeals about how to analyze an appraisal. This Board has a lot of expertise in that, and this is improper, for that reason, in addition to the others.

HEARING EXAMINER: Okay. That's okay. As you mentioned, the Board knows how to analyze appraisal reports and also critiques of appraisals, so noting your kind of objection --

MR. BERNERT: It's an objection.

HEARING EXAMINER: It's a very explicit objection.

MR. BERNERT: Yes, ma'am.

HEARING EXAMINER: I'm going to overrule the objection and allow Mr. Sprout to continue to testify.

THE WITNESS: So effectively, what we're talking about here then is the lease that's in place for State Farm, whether it's a sale/leaseback or how

Page 89

that was all determined, is that $10.50 per foot rent, is that market.

Well, the Pickering appraisal never addresses that. And once again, that's a flaw in the report. I agree with the highest and best use analysis. A single tenant owner/user does provide its maximally productive use. I agree with that.

But how they determine a value conclusion in their report is not credible, in my opinion. And here is the reasons why: We're talking about providing a cost approach to value for this property. It's a 13 year old property.

Investors -- and this is through my own interviews with knowledgeable participants. They are not going to take into account what a building is going to cost when they make a determination of what they are willing to pay.

Every investor has their own parameters and what their -- acceptances of as far as a return on and return of investment. Cash-on-cash, it was very eloquently described by Mr. O'Malley.

Every investor has their own criteria. So that's a subjective based on each individual, and that's the whole point of market value; what's a willing buyer and willing seller able to negotiate.

Page 90

And a willing seller is going to try to get as much money as they can for their property.

So the cost approach that is utilized in this report, to me, is not a credible indication of value conclusion.

It could be used as a guide potentially, but in order to rely upon it, as well as just relying on a sales approach as your two primary indications of value, you're missing that piece of an income approach.

The only time that you would not provide one of the approaches to value is if there's not meaningful data in the marketplace to bring in to provide for credible opinion of value.

In this case, in my opinion, because there are leases of single tenant buildings in the marketplace for it to be ignored goes to the credibility of the appraiser.

So in determining the depreciation that was utilized in the cost approach, in the Pickering appraisal, the extraction methodology was utilized based on the sales.

They attempted to extract from the market what the estimated cost was of that property, less its land value, in order to determine what that

Page 91

depreciation rate is.

Now, in order for you to do that properly you have to have intimate knowledge of the building, you have to -- you have to do an appraisal of the site in order to know what the value is of that site as vacant to pull that properly out.

So, effectively, you're doing an appraisal on every single one of the sales in the analysis.

Now, the sales that were utilized in this report, in my opinion, there are better sales out there that could have been and should have been utilized. And that also goes to how the sales and how the depreciation was determined.

So when we have an older building, or in some of these cases we have 1999, 2000, 2001, we have a couple buildings that are of similar age, a lot of the depreciation that is being picked up here is economic.

There are three types of depreciation; physical, functional, and external, external being the economic piece.

Because the sales utilized in the report were mostly vacant, or distressed, that's going to have a major material impact on what the economic

Page 92

obsolescence or the economic depreciation is going to be when that is being brought back to the cost approach to value.

MR. BERNERT: Your Honor, forgive me, but because it's a long narrative, it's hard to interpose objections.

There isn't a single basis to say those sales are distressed. So to throw out well, they are distressed, without providing the foundation for that, is objectionable.

And I object to the use of the word "distressed" unless this witness is prepared to show that there is distress.

HEARING EXAMINER: Okay. Ms. Allison, do you have a response?

MS. ALLISON: I guess I would just ask Mr. Sprout if he has a response.

By Ms. Allison:

Q. What are you qualifying as distressed sales?

A. I'll clarify one of the sales I have knowledge of. When I say distressed, it was only 13 percent vacant. And in my opinion, when you're dealing with vacant buildings --

Q. Can I interrupt you for a second? You

Page 93

said 13 percent vacant?
A. Thirteen percent occupied.
Q. Thank you.
A. I'm not saying that the vacant sales within this report are distressed, I'm saying that Sale No. 2, which is the 3000 Corporate Exchange Drive --
HEARING EXAMINER: Just one second. Does that help -- does that address the issue you raised, Mr. Bernert, on this particular objection?
MR. BERNERT: We should go forward. I'll withdraw the objection, but subject to cross.
HEARING EXAMINER: Okay. Go ahead. I'm sorry about that, Mr. Sprout.
THE WITNESS: That's no problem at all. I was back with the economic, estimating the depreciation.
So of course you're going to get into a situation where you have vacant buildings that there's going to be a certain amount of motivation by the seller to unload the building, and it goes through the exposure process like it would typically do until we work down to a price.
If the subject building -- the subject property were vacant, no problem, that's how it

Page 94

should be valued. But it's not vacant.
So there are sales in the marketplace, whether they are fee simple or leased fee sales, that could have been utilized and to provide for a more credible opinion of value, which in that place would have backed out the economic depreciation that was pulled out of those sales, and brought it back more to a physical situation like the subject property is.
So from that standpoint, we're looking at some sales here that had those economic underpinnings, the economic depreciation.
Now, just to specifically get into a couple of the sales, one of the items that was interesting, Sale No. 2, we have located at 3000 Corporate Exchange Drive.
Molina Health Care purchased that property in 2012. They turned around and sold that property in 2013. It was a sale/leaseback, but it was a sale. There's no mention of that sale within this report. That's -- that should have been mentioned.
And that sale price during that sale/leaseback was $150 per square foot. I'll get into that. That's going to be in the mortgage report that I'm going to be discussing here in a little bit.

Page 95

So there's absolutely no discussion of that subsequent sale. That should be at least addressed in this. The appraiser should have had knowledge of that going forward.
So when we get to -- and I'm going to kind of finish this up, because the thing is, with the income approach to value not being in the report, that is something that because of its highest and best use single user building, I would have expected to see single user leases or offerings in the report, and then analyzing the existing lease that's in place on this property, whether it's for fee simple or leased fee, analyzing that lease that's in place to determine if that rent is at market. And if it is, then utilize that for ad valorem tax purposes in its fee simple.
If it's not at market, then apply the market rent with the other items that are necessary in valuing a property for ad valorem tax purposes; its fee simple interest, what that market rent is.
So that pretty much kind of winds up my discussion.
By Ms. Allison:
Q. So let's just back up for a second. You said you agreed with the highest and best use as far

Page 96

as single tenant user, correct?
A. Single tenant owner/user.
Q. And regardless of that, an income approach, in your opinion, still should have been performed?
A. It's crucial.
Q. Okay. We heard some testimony earlier today that for single tenant owner/occupied properties, in order to value the fee simple, only properties that were vacant or about to became vacant were appropriate for consideration.
MR. BERNERT: Objection, your Honor. That is not consistent with the testimony.
MS. ALLISON: That is exactly what he said.
HEARING EXAMINER: To the extent --
MS. ALLISON: I'll rephrase. Can I rephrase?
By Ms. Allison:
Q. In your opinion, would it be appropriate to consider only properties that were vacant or about to become vacant in a sales comparison approach for the subject property?
A. In this case, no, because that's not the current -- that's not the current condition of the

Page 97

subject property. That would be a hypothetical.
Q. Okay. And in performing the market extraction method, is it -- would it have been beneficial to appraise the properties involved before performing -- I mean, that kind of goes along with what you were talking about with the vacancy?
A. That's part of the analysis. I'm not saying you have to physically appraise every one of them, but you should have in your work file how you determine what the land value was for each one of those properties; you know, does the appraiser have a license in Minnesota in order to determine what the land value is in Minnesota, or did they go -- did they go and go inside the property to have an idea what's in that building in order to properly cost it out?
Same with the properties that were outside of the central Ohio area. So, you know, those are the two items that I pretty much discuss as far as the extraction methodology is concerned.
Q. And how did you determine your contract rent for the subject property? Did you review the lease or --
A. I reviewed the lease. I just -- based on -- I think it steps every year, but I'm just kind

Page 98

of going off memory here without actually looking at the document that's in here. It's in that range.
Q. And this is for a first generation user still, correct?
A. Once again, that's what this property is.
Q. Okay. Thank you. I am going to hand you what has been marked as Appellant's Exhibit 3.
MR. BERNERT: And I think I have a continuing objection to this.
HEARING EXAMINER: Yes, you do.
By Ms. Allison:
Q. Have you seen that report before?
A. I have.
Q. Is there an analysis in that report of what the contract and market rents are for the subject property just prior to the sale?
A. Yes.
Q. Okay.
A. There is a discussion of the rent, and it's incumbent upon the appraiser to determine if -- if indeed that rent in place is at market.
Q. So does the analysis in that report, in your professional opinion, adequately support that the market rent --

Page 99

MR. BERNERT: Objection. No foundation laid for that particular --
MS. ALLISON: Can I finish the question?
HEARING EXAMINER: Let her finish, and then we can address it.
By Ms. Allison:
Q. In reviewing that report, does the analysis in the report, in your professional opinion, support a finding that the market rents and contract rents were the same at the time -- I'm sorry, the April 2014 sale?
A. There's adequate support in the appraisal.
MR. BERNERT: I did impose an objection, right?
HEARING EXAMINER: You're going to have to clarify, Mr. Bernert.
MR. BERNERT: I'm sorry. Before he answers, I object to him going into that appraisal and testifying with respect to what is in that report that that witness has never appeared on the stand.
So I have a problem -- I mean, he -- he heard everything that our witness had to say about his appraisals, no one with respect to this appraisal has ever testified. And now he's going in and saying

Page 100

in his opinion it meets this or that. It's just I have to preserve it for the record.
HEARING EXAMINER: I understand. Ms. Allison.
MS. ALLISON: Just for purposes of the record, the property owner's witness testified that appraisals were done at the time of the sale.
This document was submitted to us in discovery and represented that it was in fact the appraisal report that was prepared for the subject property at the time of the sale.
So if it's not what it purports to be we have bigger issues than the objection. But the only reason I'm asking him is I want him to -- I mean, an analysis has been done, and in his professional opinion was it a valid analysis.
HEARING EXAMINER: I'm going to defer ruling. However, I am going to allow Mr. Sprout to answer the question, and the Board will consider the objection in its decision.
MR. BERNERT: Thank you, your Honor.
By Ms. Allison:
Q. So I think before -- can you just restate your answer? Does the analysis in the financing appraisal support a conclusion that the

Page 101

market rent was contract rent?
A. Right. And let me just kind of answer that, and then kind of move on from that, that it's -- there's adequate support and adequate data in the report to support a conclusion.
There's also a value in here that discusses the insurable value, which a lot of banks want for whatever reason, for if the thing were to burn down, what would be its cost.
And it's important to understand, as an appraiser, you know, we're valuing the real estate. This appraisal values the real estate. It determines that the lease that's in place that encumbers the property is at market. It provides a capitalization rate to that rent, that market rent that was discussed, to determine a value.
A bank or a financing institution, utilizes this value conclusion with the collateral being the real state.
Now, yes, sir, there's an encumbrance on that real estate, but if there was anything different in this report that suggested that the rent that was encumbering the property was anything but market, there would have been an adjustment.
Therefore, since there wasn't, the lease

Page 102

fee interest in this case is akin to fee simple, because it's at market rent.
Q. And specifically, what did they determine the market rent to be in the Cushman appraisal report?
A. They did two analyses. So in the direct capitalization of the -- they indicated $10.50 per square foot.
Q. And the contract rent was in fact $10.50, right?
MR. BERNERT: Your Honor, he can say what he thinks, he can't say what they think. And I mean, what he's doing is, without getting the author, he's testifying what the appraiser said, and that can't be right.
Now, a review is one thing, but to go in and say well, here are the terms of this report and I'm going to recite them on the stand, is improper.
HEARING EXAMINER: Okay.
MS. ALLISON: I'm going to ask him if the market rent was contract in the analysis in that report, and he said yes.
I'm just verifying that they were in fact the same numbers. I'm not asking him a value, I'm not asking him --

Page 103

MR. BERNERT: He is testifying what the author of that report said.
HEARING EXAMINER: Can I ask you -- could I ask you, Mr. Bernert -- and I apologize, because I want to make sure I have the right case to ask you about.
So, let's see. The court issued a decision in Emerson versus Erie County some months ago -- One moment. I apologize, I don't want to lose my spot -- in March 2017.
And in that case the court said we could consider an appraisal report done -- performed contemporaneous with the sale without there being a hearsay authentication issue.
You may be unprepared to have a discussion about that, but I would ask you if your brief could discuss it.
MR. BERNERT: Be glad to.
HEARING EXAMINER: I think that would be very helpful to the Board to decide on this particular issue. I'm going to defer ruling and allow Mr. Sprout to continue his testimony on this issue.
MR. BERNERT: Your Honor, if I could just make one quick point.

Page 104

I think that the Supreme Court has never determined that this kind of review process that we're seeing today is appropriate, and so whatever decisions have been made about allowing someone to come in and testify, I don't think that it's over yet.
MS. ALLISON: I disagree with that wholeheartedly.
MR. BERNERT: I understand. And that's for the brief, as you suggested.
HEARING EXAMINER: Clearly this case probably will take a next step, at least one step, and I want to create the best record possible, not only for the Board, but also for reviewing board courts.
I want you to object as many times as you want, Mr. Bernert, and not worry about interrupting. Again, I want to make sure we create the best record possible.
MR. BERNERT: It's just hard because it's a narrative.
HEARING EXAMINER: No, you feel free to interject when you feel.
MR. BERNERT: Okay.
HEARING EXAMINER: So again, I'm going

Page 105

to defer ruling on your objection and allow Mr. Sprout to continue.

By Ms. Allison:

Q. Do you remember the question?

A. Well, right. And I just want to kind of -- since this record is -- as a review appraiser, I review a lot of reports for banks for testimony, and a lot -- and there are times where the appraiser is not available because a report has been assigned.

So it's my task as a review appraiser to provide information to the bank, or to the lending institution, or to a School Board or to a property owner, as to the credibility of that document.

Q. Thank you. So -- and I guess in your professional opinion, should a value set forth in a financing appraisal be the same as the value set forth in an ad valorem appraisal report prepared --

MR. BERNERT: Object to the extent it's asking for a legal opinion.

MS. ALLISON: I'm asking him if the value set forth in an appraisal report prepared for financing purposes should be the same -- are you appraising the same interest as you are in an ad valorem tax appraisal. I mean, that's in his professional wheelhouse.

Page 106

MR. BERNERT: As long as it's not the legal issue of ad valorem, because I'm afraid counsel and I don't agree on that.

HEARING EXAMINER: I had the sneaking suspicion. I believe there's no objection once Ms. Allison clarified the question in your opinion as an appraiser.

MS. ALLISON: Thank you. Yes.

THE WITNESS: There should not be a material difference between an appraisal done for ad valorem tax purposes and an appraisal done for market value.

There could be some differences if there's above or below market rent, or if -- there are other factors that could come into play, but from a material standpoint from -- they should be relatively the same.

There are not -- there's not two ways to appraise a property. A market value is a market value. There could be investment value or some other types of value, but -- but by the definition of market value, unless there's a hypothetical condition in the report, then no, there should be -- there should be minimal difference between the two.

By Ms. Allison:

Page 107

Q. Okay. And just one more question, then.

Based on your professional opinion, and after reviewing the analysis in the Cushman reports, understanding that you're not providing --you have not appraised the property on your own, but does the analysis in that report support the price that was paid for the sale of this property?

A. Well, the analysis in the report does support the data -- or the data in the report does support the conclusions that are within this report.

You know, once again, we're getting into a situation where there are single tenant leases out there, or offerings, that would support an income approach to value.

MS. ALLISON: Okay. I think that's all I have for right now. Thank you.

HEARING EXAMINER: And I don't need to take my 11:30 break, but, Mr. Bernert, if you'd like to take a few minutes to articulate, get your thoughts together before you proceed with your cross-examination, I don't mind.

MR. BERNERT: That would be great. Thank you.

(Recess taken.)

HEARING EXAMINER: We're back on the

Page 108

record, and, Mr. Bernert, I believe you are about to start your cross-examination.

MR. BERNERT: Yes, your Honor.

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CROSS-EXAMINATION

By Mr. Bernert:

Q. Good morning, Mr. Sprout.

A. Good morning.

Q. So what precisely were you asked to do by counsel in this case?

A. To provide an appraisal review of the Pickering appraisals and the Cushman Wakefield appraisal for mortgage purposes.

Q. So you've not done a written report of value?

A. I have not done a written report of value. I didn't do any valuation in this case, other than benchmarking market rent and determining credibility of the appraisal documents.

Q. So if we were to think about a written appraisal, you don't have the various elements you would have if you were here testifying with respect to an opinion of value; isn't that correct?

A. If I was doing -- that's a totally different assignment from a written appraisal.

Page 109

Q. So my question, sir, is if you were doing a written -- if you were doing an appraisal to present to the Board of Tax Appeals, there would be a number of requirements that you would have to go through in order to do that report; isn't that correct?
A. Yes.
Q. And this assignment did not have you do those elements that you would have to do if you had done an opinion of value; isn't that correct?
A. Yes.
Q. So you haven't met the minimum requirements for an appraisal of the property, correct?
A. I didn't do an appraisal.
Q. Okay. And this is not an oral report of value either, correct?
A. This is an oral appraisal review.
Q. But it's not an oral report of value? In contrast to a written report, just to be clear, you're not doing an evaluation of the property?
A. I'm providing oral testimony at which time once the testimony is completed -- I'm expounding on this because I want to make sure it's on the record properly.

Page 110

Once this is over, I will be completing my work file with testimony from today's hearing, as well as information that has occurred and that I testified to, which basically that document does.
I did provide benchmark information, benchmark appraisal information regarding market rent in discussing Cushman and Wakefield's report.
Q. You're not sharing your report file with us this morning, are you?
A. I am not.
Q. And in fact, when I asked you for it you denied that you would give us that report, correct?
A. You requested that off the record.
Q. Yes. Now I'm doing it on the record. Would you provide us your report, sir?
A. My work file?
Q. Your work file.
A. No, I would not.
Q. And is it my understanding you engaged counsel to assist you in answering that question?
MS. ALLISON: Objection. This has been dealing with prior litigation, it's completely irrelevant in this case.
MR. BERNERT: I don't think --
HEARING EXAMINER: Val, could you repeat

Page 111

the question just to make sure I understand?
By Mr. Bernert:
Q. Isn't it true that you have engaged counsel to advise you about whether you have to turn over your files or not to the Board of Tax Appeals?
HEARING EXAMINER: Okay. Stop there. To make sure I understand, when you say "counsel", you mean his own counsel, and not Ms. Allison?
MR. BERNERT: For clarification, I mean his own counsel.
MS. ALLISON: And if we could clarify to say for another case, I don't think we have an objection to that. Do you, Tom?
THE WITNESS: No.
MR. BERNERT: Any case, I don't care.
HEARING EXAMINER: Your clarification?
MS. ALLISON: Is that he has engaged counsel in the past on a previous case when a work file was requested, and his professional obligation to turn over that report.
HEARING EXAMINER: And you are disagreeing with the --
MR. BERNERT: No, ma'am. My question to the witness is we want to confirm that he engaged counsel.

Page 112

HEARING EXAMINER: In this case or another case?
MR. BERNERT: In any case, to determine whether he needs to turn over his file when he does whatever it is he's doing for the Board of Tax Appeals in these cases.
MS. ALLISON: And my relevancy objection still stands. It has nothing to do with what's happening today.
MR. BERNERT: I think it does. It goes to credibility, your Honor.
HEARING EXAMINER: I'm going to overrule your objection, but I want to make the record clear, because I have to admit, the discussion was a little confusing to me.
And, Mr. Bernert, your question is has he, on any case, retained counsel to determine whether or not he has to turn over his work file?
MR. BERNERT: In these kinds of proceedings, meaning similar Board of Tax Appeals proceedings, yes.
HEARING EXAMINER: Okay. Mr. Sprout?
THE WITNESS: We have engaged counsel -- Brian W. Barnes & Company and Thomas C. Sprout, CPA, have engaged counsel to go over what our rights are

Page 113

as a witness in all realms of BTA, bankruptcy, whatever types of court we're dealing with, or hearings that we're dealing with.

HEARING EXAMINER: Mr. Bernert.

By Mr. Bernert:

Q. So you were engaged to do a formal appraisal review?

A. I was engaged to provide an appraisal review of these three documents.

Q. Is it not customary for you to do a report when you do an appraisal review?

A. Yes.

Q. And you did not do a report in this case?

A. I'm providing an oral report.

Q. Okay. And you don't think it's important, when you are providing testimony, that the Board of Tax Appeals should get a written appraisal review? You don't think that's important?

A. I don't think it's necessary in this case, no.

Q. So you -- you testified the highest and best use is the -- for a single tenant use of the property, correct?

A. I testified that I agree with the

Page 114

assessment in the appraisal.

HEARING EXAMINER: And could we just clarify which appraisal.

THE WITNESS: In the Pickering appraisal. I agree with the highest and best use analysis which indicated a single user owner/occupied building.

By Mr. Bernert:

Q. Did you come up with any comparables that you decided not to include in your testimony today?

A. I have comparable information, absolutely.

Q. And you're not sharing that with us today, correct?

A. I haven't been asked to talk about it.

Q. So when you analyze sales, you typically will contact either one of the participants in the sale, or the broker for a sale, to confirm that comparable sale; isn't that correct?

A. As part of our due diligence we do try to contact the buyer, seller, or broker, or knowledgeable participants in a transaction in order to understand the transaction better than just what a deed would.

Page 115

Q. Did you contact Mr. O'Malley in this case?

A. I did not.

Q. Did you contact Mr. Templet in this case?

A. I did not.

Q. Did you contact anyone with respect to either of these transactions to confirm the status or the circumstances for the two sales? And that's the sale from State Farm to Lone Star, and from Lone Star to JDM.

MS. ALLISON: I'm going to object. These questions that he's asking are outside the scope of what he was prepared to do. He was not prepared to determine whether this sale was an arm's length transaction. He was specifically asked to review the information contained in the appraisal reports.

MR. BERNERT: Your Honor, in my brief to you I'm going to suggest that we can't have this kind of half baked approach.

You either prepare a written report to submit to the Board of Tax Appeals to review, or you don't. What we have got here is this new hybrid approach, and even if it's been accepted indirectly

Page 116

as part of a larger case, we are going to address it.

And so what we're saying is, we want you to understand -- I think you do, but we want you to understand that this is not an appraisal, and I'm not exactly sure what he's doing on the stand today.

MS. ALLISON: It's permitted under USPAP, so he should be permitted to testify for what he was scoped to do and not be asked for conclusions for things that were outside the scope of what he was asked to do what he was scoped to do.

HEARING EXAMINER: Let me ask, Mr. Sprout, you were scoped to do an appraisal review. In an appraisal review -- or in undertaking your assignment did you review the same documents or make any determinations about the sale.

THE WITNESS: I reviewed the sale documents. However, the -- when I'm doing an appraisal review, the information that's in the appraisals, unless there's a reason to otherwise -- I have some knowledge that it's not true, I can take it as being accurate through that process.

HEARING EXAMINER: Okay. Does that answer your question? No? Because I do agree with Ms. Allison, I don't believe that she asked him about the sale on direct?

Page 117

MR. BERNERT: This goes to the scope. I mean, the witness is talking about the credibility of another witness. And we're allowed to ask about what he did in this case, and the minimum standards that he's meeting before he presents testimony to you.

So it is customary, and -- it's customary to contact the participants or the brokers or a knowledgeable person with respect to sales that are being examined as part of testimony.

MS. ALLISON: In an appraisal review it's not customary. He is entitled to rely upon the information contained in the reports. It's in USPAP.

MR. BERNERT: I'm getting to the question that despite what counsel says, there is no place for a review of this nature at the Board of Tax Appeals. And I ought to be able to -- I'm not going that far, I just need to -- some of the basic things were not being done here.

MS. ALLISON: That goes to the probative nature, not the admissibility.

MR. BERNERT: It's admissible.

HEARING EXAMINER: And you're asking him these questions -- the question that you asked goes to your argument that he should have performed a written report partly? Maybe I don't get it.

Page 118

MR. BERNERT: Well, written -- it could be an oral if he has everything that's in there. It's just I want to clarify the nature of this review process.

HEARING EXAMINER: Okay. I'm going to overrule your objection. You can continue. And I'm sure this will be completely briefed, but go ahead, Mr. Bernert.

By Mr. Bernert:

Q. So just very simply, you did not contact any of the participants in the two sales of the subject property as part of your appraisal review process; isn't that correct?

A. I did not talk to either one.

Q. With respect to the comparables that are in the two reports for this assignment, did you contact -- or prior assignments, did you contact participants in those sales, meaning that the comparables that are in the two exhibits which are the appraisals?

A. So basically we have got three exhibits. We have got three appraisals here. So the information that is from a verification of these sales, and the comments that are made to these sales, as a review appraiser I can assume that those

Page 119

discussions were made with those individuals, and that the data that -- and the comments that are made about that information is accurate within the appraisal.

And just to give you an idea, one of the -- the Sale No. 2 in the Pickering report discusses the sale that occurred when the property was almost vacant when Molina bought it. It doesn't discuss the subsequent sale of that property about a year later.

I have knowledge of that sale through doing work in the City of Columbus, therefore I can make a comment about it because I have knowledge, or I would let whoever the user know, who my client knows, that there's another sale here that wasn't discussed. Why? I don't know. That would be something that counsel would have to ask.

Q. So in your opinion, is a sale/leaseback normally an indicator of the value of property that's subject to that sale/leaseback, in your opinion?

A. That's not -- well, sometimes it is and sometimes it's not.

Q. Okay.

A. And that's as honest of an answer that I can give you.

Page 120

Q. The second sale that you're focusing on, sir, that was a sale/leaseback, was it not?

A. It was.

Q. Thank you. With respect to Comparable No. 2, your observation, whatever, is that it is distressed because it's only 13 percent occupied; is that correct?

A. No, it is not. I have knowledge, and it was confirmed in the Cushman appraisal who actually uses that second sale in their report, it is -- let's see. Since you asked that question, I'm just going to provide what page that's on.

It would be sale 4 in the Cushman report. It's in the addendum so there's no -- there is no page number, but that's only about 12 pages from the end.

And I'll just -- you know, it just confirms the building was multi-tenanted, but Molina is master leasing the entire building.

They had acquired the building in December 2012 for only 8.5 million, which is discussed in the Pickering report, but the building had a distressed occupancy at the time as its largest existing tenant was known to be vacating the building and leaving only approximately 13 percent leased.

Page 121

Q. So if I understand your opinion that it's distressed is based on the fact that that report said it was distressed, correct?
A. And I have knowledge of that sale.
Q. And so what you're doing today is taking one report and playing it against the other report; isn't that correct?
MS. ALLISON: Objection. He just said it was also based upon his own personal knowledge.
HEARING EXAMINER: Do you have a response?
MR. BERNERT: I just want to hear his answer, your Honor. That's all.
HEARING EXAMINER: I'm going to sustain her objection. Please ask your next question.
By Mr. Bernert:
Q. So in this case you are reviewing these appraisals, each appraisal individually, correct?
A. Yes.
Q. And then what you're doing is you're accumulating that information together, synthesizing the different reports, and then telling the Board your conclusion as to how we should put together all these reports; isn't that correct?
A. No.

Page 122

Q. Okay. Then what is it that you're doing exactly?
A. I did an independent appraisal review of each of the three documents. I discussed my opinion of each of those appraisals. My opinion on the Pickering reports, being two, was virtually the same. There was no income approach. In my opinion that's a credibility issue and a severe flaw with the report.
I concluded that the Cushman report for mortgage purposes -- I indicated that the data in the report supported their conclusion of value. As a review appraiser, that was my task independent of each appraisal was independently reviewed.
Q. Would you please give us your understanding of what a leased fee is?
A. Yeah, it's -- basically it's an encumbrance on property.
Q. And would you give us your understanding of what a fee simple unencumbered standard is?
A. You just gave me the definition; unencumbered.
Q. Disregarding the lease, correct?
A. No, there is no lease on the property.
Q. I'm sorry?
A. Unencumbered means there is no lease on

Page 123

the property. You're saying disregarding the lease. Well, there is no lease as a fee simple unencumbered value. There is no lease on the property.
Q. So you can't do a fee simple unencumbered valuation of leased property?
A. For ad valorem tax purposes you can.
MR. BERNERT: Nothing further.
HEARING EXAMINER: Okay. Ms. Allison.
MS. ALLISON: Just a few.
HEARING EXAMINER: I just had some questions that I was going to interject. But I'll wait.

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EXAMINATION

By the Hearing Examiner:
Q. Could you explain for the benefit of the Board -- and Ms. Allison may have asked you this on direct, and I apologize, but I want to make sure the record is clear, since it's the crux of the disagreement at this point, could you explain what an appraisal review is, and what that requires of the appraiser under USPAP?
A. As a -- on reviewing the appraisal for credibility, I'm reviewing the appraisal for accuracy, I'm reviewing -- and what I mean by that,

Page 124

that there aren't so many typos that it goes to the credibility of the report, the addition, substraction, multiplication, those types of things.
Just -- and so effectively, the overall, does the -- do the -- does the data in the report support its overall conclusions. And that's wrapped up with highest and best use, and the data used to form the opinion of value.
And in this case, an income approach not being provided in the Pickering report is a severe flaw in my opinion, because there is adequate data in the market place for single tenant leased properties, or offered properties, and it goes to the highest and best use in the Pickering report that indicates a single user, owner/user property.
Q. Under -- when an appraiser has been scoped to review an appraisal --
A. Okay.
Q. Make sure I'm understanding.
-- is the appraiser -- and tell me which verb I want -- supposed to, required, not supposed to, not required, express an opinion of value?
A. Only at the point where additional scoping -- if I would have a conversation with my client and say the data does not support the

Page 125

conclusion of value because of, in this case, the Pickering report doesn't have an income approach, at which point in time I would let my client know that, and if they wanted me to expand upon my scope and provide a benchmark or my own opinion of value, that can be done at that time. That was not in this case.

HEARING EXAMINER: That's all that I have. Ms. Allison, you can do your direct, and, Mr. Bernert, I'll bring it back to you if you have some further questions.

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REDIRECT EXAMINATION

By Ms. Allison:

Q. Just as a followup to that benchmark, though, you were in fact asked to provide an opinion of whether the Cushman appraisal report supported the sale price?

A. If the data supported it. And in this case the value was $26 million, and yeah, by default, yes, it does support.

But -- and I was also tasked to determine if the market -- if the rent that was being paid by State Farm was consistent with market rent for a property like this, which I did that as well.

Q. Thank you.

Page 126

So you were asked by counsel whether you performed any outside analysis regarding the availability of single tenant users for leases in the market, correct?

A. Yes.

Q. Okay. And you said that you did consider outside information?

A. I did.

Q. Do you have that information with you today?

A. I do.

Q. May I see a copy of it?

MR. BERNERT: Is that what your counsel told you was --

MS. ALLISON: You asked about it. I wasn't going to submit it, but since you opened the door --

THE WITNESS: I mean, it is in my work file.

MS. ALLISON: I've never seen it.

THE WITNESS: I can present it verbally instead of as an exhibit, so I'm happy to do that.

MR. BERNERT: I would object to that.

HEARING EXAMINER: Wait a minute. What are you objecting to?

Page 127

MR. BERNERT: If in fact there's going to be now -- so the testimony -- and this goes to a cross-examination I guess, but let me just frame it.

We were told this was a review appraisal. Now we're told he's going beyond the review appraisal, that he was asked to do more than a review appraisal.

HEARING EXAMINER: Wait just one second. Mr. Sprout -- and I just want to make sure our words are precise.

Is there a different between an appraisal review and a review appraisal?

THE WITNESS: Yes.

HEARING EXAMINER: Okay. Just one second. You were scoped to do an appraisal review or review appraisal?

THE WITNESS: I was scoped to do an appraisal review.

HEARING EXAMINER: Okay.

THE WITNESS: With -- can I continue or not?

HEARING EXAMINER: Yes.

THE WITNESS: Because there wasn't an income approach to value.

HEARING EXAMINER: Okay.

Page 128

THE WITNESS: I was additionally scoped to provide my support as to why an income approach would be necessary, or there's a reason why there should be an income approach done.

HEARING EXAMINER: Okay. And the only reason I keep hitting at this point is because it was my understanding -- it seems like I might have been right on this -- is appraisal review and review appraisal are two different things.

And I just want to make sure we're all using the same terms, noting that they are basically the same terms just in reverse order, but I just want to make sure we're on the same page about what was scoped. So could you restate your objection, or I can ask Val to do this.

MR. BERNERT: Why doesn't she ask a question at this point?

By Ms. Allison:

Q. As part of performing your appraisal review, you made the determination that an income approach should have been performed in the Pickering appraisal, Eberly appraisal?

A. Yes.

Q. In order to make this determination did you have to review outside sources to determine there

Page 129

were adequate comparables to perform an income approach?

A. Yes.

Q. Do you have those comparables that you considered as part of your appraisal review with you today?

A. Yes.

Q. May I see a copy of those, please?

A. You may.

MS. ALLISON: He's asked for his work file. If he's going to review it, I want it in the record.

MR. BERNERT: I do note that I asked for it earlier. They refused to give it, and now they are doing it.

HEARING EXAMINER: Ms. Allison, you stated that you hadn't seen this information.

MS. ALLISON: I have not.

MR. BERNERT: Mr. Bernert, clearly you haven't seen this information.

MR. BERNERT: I haven't.

MS. ALLISON: Just like the new lease we had this morning.

HEARING EXAMINER: Ten minutes off the record enough to review this information?

Page 130

MS. ALLISON: I haven't seen it yet, so I don't know.

MR. BERNERT: Can we -- I'm not clear what's going on. So my question was did he go beyond an appraisal review. That was my question. Now we're getting into this. I don't know how we got into this.

HEARING EXAMINER: Well, you did -- on cross-examination you were asking him what sort of information he looked at, and you did ask about market information. And I apologize if I'm paraphrasing that.

MR. BERNERT: That's fine.

HEARING EXAMINER: So I do believe it's fair. You opened the door to allow Ms. Allison to -- to ask this question. Are you objecting to the document, or are you objecting -- which she has not moved into --

MR. BERNERT: I can't respond to that, your Honor, without looking at what it is.

HEARING EXAMINER: Okay. So we're going to take five, ten minutes.

MS. ALLISON: You gave me only have one copy. Do you have more?

THE WITNESS: Uh-huh.

Page 131

HEARING EXAMINER: Five, ten minutes, everybody can look at the document. I won't look at it until you decide how you want to do it, that way you can be prepared to raise whatever issues you may or may not have.

Okay. So let's take ten minutes off the record.

(Recess taken.)

(EXHIBIT MARKED FOR IDENTIFICATION.)

HEARING EXAMINER: On the record. Go ahead, Mr. Bernert.

MR. BERNERT: First thing is we'd like his entire file, because I think he's waived any objection by being selective in now handing out part of his work file.

But I'd like to be very clear about what my objection was, and what I've opened the door to. So we had been told, and I hope I'm using the word correctly, that the witness was engaged to do an appraisal review.

We were objecting because he was communicating to the Board information outside the appraisals, which is going beyond, I believe, an appraisal review.

Now, earlier we had been rebuked for

Page 132

questioning what the scope of the presentation was, so I have objected that if he's representing that it's an appraisal review, and he's going through additional information, I was objecting to that.

The response was, well, let's start selectively pulling out his file. I haven't opened the door to that. If he's going to be doing -- and this is a summary document we have, which Appellant's Exhibit 4.

HEARING EXAMINER: That is correct.

MR. BERNERT: I haven't opened the door to going beyond the appraisal review being very selective in what information we're presenting in this proceeding.

So I object if -- if it's been represented to us it's an appraisal review and now we're going into additional elements. We are sneaking in appraisal valuation information where there hasn't -- and saying he did not do an appraisal. So that's my objection.

HEARING EXAMINER: Okay.

MR. BERNERT: To open it up to all this different testimony, we strongly object to that.

HEARING EXAMINER: Ms. Allison, do you have a response?

Page 133

MS. ALLISON: I do. Mr. Sprout specifically testified as part of his appraisal review he compiled this list. So we're not going beyond the appraisal review.

Counsel asked him -- and we can read it back if you'd like. He specifically asked him did you look at market data to make your determination. And I forget the exact wording, I apologize, it's been a while ago, but he asked him if he looked at market data in making his determination that there were single tenant lessees available.

MR. BERNERT: Before this evidence comes in we need to have an explanation whether this is within the appraisal review process --

MS. ALLISON: That's fair.

HEARING EXAMINER: Okay.

MR. BERNERT: -- to go this route. Is this an appropriate --

HEARING EXAMINER: Mr. Sprout, when you are scoped to do an appraisal review -- and I believe one of the -- one of the attorneys asked you what you're required to do, or maybe I asked as far as looking outside the appraisal reports that you are actually reviewing, is it customary for you to look at market data when you are scoped to do an appraisal

Page 134

review?

THE WITNESS: In order to support my conclusions, yes. And my conclusion was the income approach was not utilized in the Pickering appraisal report leading to its lack of credibility, I have to support that conclusion.

I am supporting that conclusion in my work file with single tenanted -- or I think there's one that's mostly tenanted buildings, and all this information has been testified to prior in other cases that I've been involved in.

So it's all -- it's all in the public domain. I don't know what the case numbers are or anything. This is just information that -- that's just supporting my conclusion, that's why it's in my work file.

HEARING EXAMINER: Mr. Bernert, you had something to say?

MR. BERNERT: I mean, the idea that we should have gone through every case he's ever testified to to get the evidence -- I mean, this wasn't disclosed.

This is evidence. If we go here, we're going down the rabbit hole, because this is a summary document. We need to go behind each and every one of

Page 135

these. None of this has been disclosed. This is beyond the scope of what this witness is being asked to do. This is highly improper.

HEARING EXAMINER: Okay. It's rebuttal, so -- Ms. Allison, the BOE, doesn't have to provide -- doesn't have to disclose this given that this is their rebuttal.

MS. ALLISON: May I just make a statement that they did open the door by asking Mr. Sprout what he considered in determining that the income approach should have been done.

MR. BERNERT: It was in the context of whether he's exceeded his -- the scope of what he said he was doing.

HEARING EXAMINER: I'm going to defer ruling, and Mr. Sprout can testify about this document.

And, Mr. Bernert, you indicated that you wanted the work file. That's an issue that you need to get in front of the Board, so it needs to be made in writing. You'll have to put that in writing. So go ahead.

By Ms. Allison:

Q. Mr. Sprout, you have just produced what has been marked as Appellant's Exhibit 4. Can you

Page 136

summarize for me what this document is?

A. Effectively, it is nine properties, eight of which are in the central Ohio market area, of leases or offerings of single tenant buildings, with the exception of 7400 West Campus Road which is in the New Albany market area. Aetna Life Insurance occupies most of that building, and those are their lease rates that are in place.

There are three listings; the former Verizon building at Emerald Parkway, and the Civic Center Drive building, that was a listing --

Q. Before we get specifically into the --

A. Sure.

Q. I just want to make perfectly clear for the record, this document was prepared as part of your appraisal review process, correct?

A. Absolutely.

Q. And it is contained in your work file?

A. It is.

Q. Could you have made the determination that it was improper for the Pickering appraisal report not to perform an income approach without looking at this data?

A. Well, I knew about the data, I just produced it on paper for my work file.

Page 137

Q. So without considering market data, could you have made that conclusion?
A. No.
MR. BERNERT: Your Honor, may I ask, is this being presented for the truth and the valuation that's in there, or to support what he said? Those are two different things.
Is this being submitted for the limited purpose of what, you know, he used to form his opinion, or is it being presented as evidence in this case?
MS. ALLISON: It's being presented to show what he relied upon to make his conclusion that it was err for Mr. Pickering not to perform the income approach to value.
MR. BERNERT: So as I understand, it's not being presented as evidence.
MS. ALLISON: Well, it speaks for itself. It is still evidence.
MR. BERNERT: I'm sorry, it's one way or the other.
HEARING EXAMINER: I think what Mr. Bernert is asking is, the BOE is not asking us to take BOE's Exhibit 4 and determine that's the market rent, right?

Page 138

MR. BERNERT: Correct.
HEARING EXAMINER: That's --
MS. ALLISON: We're asking you to take this document, along with his testimony. This is what he relied upon when he made the conclusion that there were significant single user tenants in order to -- that would have enabled him to perform an income approach.
HEARING EXAMINER: So it's being offered to bolster his testimony.
MS. ALLISON: No, it's not being offered to proof that 800 Brooks Edge was rented for $8.12.
MR. BERNERT: So just that I understand, it's not being presented for the truth of what's in that document, just that he relied on it, correct?
MS. ALLISON: I'm not sure what the difference is.
MR. BERNERT: It's a big difference, your Honor. We keep -- we have got this very narrow scope, and then we keep expanding it.
The issue is if it's a document that he relied on in forming his opinion, that's one thing. If he's presenting it to this Board as accurate and something you should take in your valuation, then he's got to lay a foundation for it. I've got to

Page 139

have the backup. You can't just use a summary.
HEARING EXAMINER: And I do see the distinction that Mr. Bernert is making.
MS. ALLISON: We're submitting this as proof that there were adequate single tenant users to enable Mr. Sprout to determine that an appraisal -- I'm sorry, an income approach should have been performed.
MR. BERNERT: I'm sorry, that's not going to the distinction. It's nudging over to the Board of Tax Appeals, you can use these as value. If it's just what he relied on, I don't have an objection. But when we say that you use it, I've got to get behind those numbers.
HEARING EXAMINER: No, this is --
MS. ALLISON: If these numbers aren't correct, his conclusion is incorrect. That's where I'm having -- go ahead.
HEARING EXAMINER: This is not a full appraisal report.
MS. ALLISON: Correct.
HEARING EXAMINER: The Board will not consider this as a full appraisal report. We have three appraisal reports. This is not it.
And it appears to me that this document

Page 140

is being offered to bolster Mr. Sprout's testimony that there were single tenant user properties in the market.
MS. ALLISON: Correct.
HEARING EXAMINER: Okay. Let's move on. Was there a question?
THE WITNESS: Do you want me to finish my testimony about that document?
HEARING EXAMINER: Yes.
THE WITNESS: Okay. Yes, this was a -- this provided the support to my conclusion about the income approach. And if you notice, the building sizes are similar, the age of the buildings, all of which are older.
MR. BERNERT: Your Honor, we're really going outside. So now what we're doing is we're testifying -- I have to object, sir. I'm sorry.
You know, we're now getting into exactly the kind of testimony you would have in an appraisal.
MS. ALLISON: Mr. Sprout has already testified that it's appropriate for him to perform this type of analysis as an appraisal review.
I know that's not what he wants it to be, but he's permitted under USPAP to perform this type of analysis.

Page 141

MR. BERNERT: We're talking about testimony at the Ohio Board of Tax Appeals. And you don't do this kind of hybrid type thing to try to start with a review and then expand it out. It just -- we're doing exactly the thing that you would expect from an appraiser, your Honor.

MS. ALLISON: He's not relying on these to establish value. I think that's the determining factor. He's not relying on this to say yes, this proves the value of the property is $26 million.

He's relying on these to prove that the analysis in the Pickering record is flawed. These were out there, they are true, he should have done an income approach. That's all I'm saying.

HEARING EXAMINER: Well, Mr. Bernert, I disagree. I don't think it's a hybrid approach, I think this is what the Board has allowed in other cases, it's allowed appraisal review, and I think it's appropriate for Mr. Sprout to discuss what he -- what -- the analysis he engaged in to come to his conclusion that Exhibits G and H are not supported.

MR. BERNERT: So are we going to be permitted to provide this to our witness and he could go look at it and come back and testify, or not?

HEARING EXAMINER: I guess if that comes

Page 142

up, I guess we'll cross that bridge, but certainly allow you the opportunity to discuss it, and we'll see.

MR. BERNERT: Thank you.

HEARING EXAMINER: Mr. Sprout, can you continue, if you remember where you left off, otherwise I can ask Val.

THE WITNESS: All I was getting at was the information here, the data, this information here, each included size, I've included the year built, and I include the tenant and the triple net lease nature.

So all I was trying to provide here was that there is adequate data, based on the size of the building, based on its age, which I believe was built in 2001, so all this information here is either the same age or older than the subject, and in similar locations as the subject property.

That -- here is a list of what the rents are for that, or the asking rents are for that, and it just all kind of comes back to the information that's in the Cushman report.

So all I'm saying is this is my evidence, this is my support to my discussion about the Pickering report, in my professional opinion.

Page 143

MS. ALLISON: That's all I have. Thank you.

HEARING EXAMINER: Okay. Mr. Bernert?

MR. BERNERT: Well, can we have the backup data for each item here, or not?

HEARING EXAMINER: Ask your question.

\- - -

RECROSS-EXAMINATION

By Mr. Bernert:

Q. Can you just hand us your file so we can look at it, what you did to develop this summary? I mean, if you present a summary into evidence, whatever purpose, you have to provide the underlying data.

MR. BERNERT: And this is a summary document, your Honor. And we don't have the underlying data that supports the summary.

MS. ALLISON: And again, this is not an appraisal report. This is part of his appraisal review process. If he wants his work file he can submit the request in writing.

HEARING EXAMINER: Did you have a question, Mr. Bernert? You're going to the weight the Board should give this document.

MR. BERNERT: I did ask for his files,

Page 144

because we're going to have to respond to this. And, you know, as it stands now, there's a complete surprise element that we have all these elements.

I'm still a little fuzzy what this is being presented for. I understand the Board's understood and reached a conclusion on it, but I'm still a little confused.

Are we not going to look at the underlying data for this? I just asked that question. Does he have the underlying data with him today, or does he have just the summary?

HEARING EXAMINER: Do you have the underlaying data to --

MS. ALLISON: And I'm just going to object to the question. We just had a whole objection about how I can't submit this as proof of what it says, and now you're asking him to support what it says. I mean, you're asking him to support the numbers on --

MR. BERNERT: It's just a question. I'm just asking whether he's got the underlying data, for the record.

HEARING EXAMINER: And you're objecting to that question?

MS. ALLISON: You know what, no, I'll

Page 145

withdraw it. That's fine.
HEARING EXAMINER: Mr. Sprout.
THE WITNESS: What kind of data are you looking for, underlying leases, sales data? Are you looking for confirmation?
By Mr. Bernert:
Q. I'm looking for something beyond what's in a summary report that supports this. That's all I'm asking. Do you have it or not?
A. This isn't a report. It's a list of properties and their rents, or their listings. And this is what's in my work file.
MR. BERNERT: So I would just note for the record we have a summary, we don't have the backup for it, and I would just leave it at that.
HEARING EXAMINER: Okay. I believe the issue you're raising goes to the weight that the Board should accord Exhibit 4. To the extent it was a formal objection, I'm going to overrule it.
Is there any other questions of Mr. Sprout by Ms. Allison or you, Mr. Bernert?
MR. BERNERT: No, your Honor.
MS. ALLISON: No.
HEARING EXAMINER: Okay. Mr. Sprout, you can step down.

Page 146

(Witness excused.)
HEARING EXAMINER: Mr. Bernert.
MR. BERNERT: We're going to put on Skip on recross -- or redirect. Can I show him this?
MS. ALLISON: Sure.
HEARING EXAMINER: Can we go off the record just one second?
(Discussion off the record.)
HEARING EXAMINER: We're back on the record. Mr. Bernert.
MR. BERNERT: Your Honor, the Appellee recalls Mr. Eberly.
HEARING EXAMINER: Mr. Eberly.
- - -
Ronald Eberly,
being previously duly sworn, as prescribed by law, was examined and testified as follows:
REDIRECT EXAMINATION
By Mr. Bernert:
Q. Mr. Eberly, I have just a few questions. One, is it your position that you would look only at vacant buildings in evaluating a property for fee simple purposes?
A. Well, when you say vacant, it would be unencumbered, so yes, you'd have to, in order to stay

Page 147

away from looking at leases.
You only have two options; you have a vacant building or a building from one occupant to another occupant, which is what we're looking at, just like a house, or you have a tenant and you're valuing the leased fee interest.
So in order to stay away from that lease, then yes, we're looking at one occupant to move in where another occupant was.
Q. The Worthington example, was that vacant?
A. I'd have to look at my notes in my report. I'm sorry.
(Pause.)
I have down that the purchaser was an owner/occupant. The prior use was Worthington Industries, and it was leased.
Q. So was it vacant at the time of the sale?
A. It appears to be, yes.
Q. Or was it changed in occupancy?
A. It appears as though Worthington Industries actually leased the property and then became an owner/occupant of the building.
Q. So if -- can you use properties that are

Page 148

leased and then adjust them to fee simple?
A. Very difficult. You would have to know every little nuance about the lease and how the market would react to that lease, and the -- what kind of cap rates those leased, the creditworthiness of the tenant. It would be very, very difficult.
Q. I'm going to hand you something that's been marked Appellant's Exhibit 4, and it's a document that was submitted. Would you please, you know, react to it? I don't know how else to ask the question.
A. You've got -- it looks like you've got nine properties here. I'm assuming these are sales; is that correct?
Q. The representation was that they were leases.
A. Okay. But are they sales, or they are just leases?
Q. As far as we know, they are just leases.
A. And they appear to be triple net leases just like the State Farm, but I don't know any of the terms. I mean, looking at this sheet I have no idea.
Q. But would you react to it in terms of using those triple net leases in terms of valuing the property for fee simple purposes?

Page 149

A. No, because we -- again, you're trying to get away from appraising a property leased fee and get it back into an unencumbered state. So in order to appraise it fee simple, you stay away from the income approach.

That's the whole point of the highest and best use of this property being an owner/occupant, that it typically is not leased on a market basis.

These are owner/occupied buildings. Unless you have a tenant like State Farm where they are coming in and leasing the whole thing and then selling it outright in the marketplace, then you have a leased fee interest, a leased fee estate.

Q. If you went out and looked for it, you could find information that would support an income method for this property?

A. It would be very, very difficult. Large buildings of this size, 155,000 square feet, single tenant buildings, it would be very difficult. It would be almost impossible, primarily again because the highest and best use is not for lease, they are owner/occupied buildings.

MR. BERNERT: Nothing further, your Honor.

Page 150

HEARING EXAMINER: Thank you. Ms. Allison?

MS. ALLISON: Just a few. Thank you.

\- - -

RECROSS-EXAMINATION

By Ms. Allison:

Q. Mr. Eberly, so yes or no, did you make a market determination -- I'm sorry, a determination of what the market rent would be for the subject property?

A. No.

Q. Okay. And in your opinion, if the market rent equals the contract rent, aren't the fee simple and the leased fee estate the same?

A. Absolutely not.

Q. Is there a difference between a second generation and first generation tenant in your opinion?

A. It all depends on a variety of different variables.

MS. ALLISON: Okay. Thank you.

MR. BERNERT: Nothing further.

HEARING EXAMINER: Okay. All right. Mr. Bernert, we have already discussed your exhibits. And I'm jumping the gun.

Page 151

MS. ALLISON: I'll move Exhibits 1, 2, 3, and 4 into evidence, please.

HEARING EXAMINER: And we have had a discussion about Exhibit 4, and we'll get back to that. But did you have objections to 1, 2, and 3, 1 being the Conveyance Fee Statement and Deed, 2 being the lease agreement between --

MS. ALLISON: Which is also an exhibit of Mr. Bernert.

MR. BERNERT: Yeah.

HEARING EXAMINER: And Exhibit 3 is the Cushman & Wakefield appraisal report performed contemporaneous with the sale.

MR. BERNERT: So with respect to Conveyance Fee Statement, no objection, it would speak to weight. The lease, there's no objection to that, which is 2.

Exhibit 3, it's just we have got this appraisal without the appraiser, and that's objectionable. It depends on the limited purpose for which it's present, and it's not clear to me what it's being presented for.

If it's being presented for the truth of what's in there, then it's objectionable. And then the fourth one is this document, and we object to its

Page 152

admission.

HEARING EXAMINER: I am going to reserve ruling on Exhibit No. 4, and I will accept Exhibits -- noting your critique of Exhibit No. 3, I will accept Exhibits 1, 2, and 3 into the record, and Exhibit 4 will be proffered pending Board review.

(EXHIBITS ADMITTED INTO EVIDENCE.)

MS. ALLISON: May I just make one more note for the record? We did submit certified copies of the Deeds and Conveyance Fee Statements at the Board of Revision, but for whatever reason the certified copies did not make it into the record. I would just note for the record we did submit certified copies.

MR. BERNERT: I would agree.

HEARING EXAMINER: Briefing schedule. First brief due on or before January 5th, 2018. Second brief due -- I think I'm going to change that. I initially had it due January 19th, but I think I'm going to push it back an additional week, so January 26th. I believe it's the Friday after the tax conference. So we can go back to the 19th. I know you'll be busy that week.

MR. BERNERT: No.

HEARING EXAMINER: Well, as will you.

Page 153

MS. ALLISON: As will I.
HEARING EXAMINER: I did see your name on there. And of course, we understand life happens, so if there's a need to adjust the deadline, just work with each other to come up with a reasonable date, and it will be fine. Just make sure it's reasonable.
MR. BERNERT: We off the record?
HEARING EXAMINER: Not just yet. So we have our briefing schedule. I've accepted the exhibits, noting the one which I have deferred ruling on an objection.
Is there anything also that we need to take care of before we go off the record?
MR. BERNERT: No.
MS. ALLISON: No.
HEARING EXAMINER: Thank you very much. There being nothing further, this concludes the hearing.
(Thereupon, the hearing was adjourned at 12:53 p.m.)
- - -

Page 154

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Wednesday, November 15th, 2017, and carefully compared with my original stenographic notes.

Valerie J. Grubaugh, Registered Merit Reporter and Notary Public in and for the State of Ohio.

TRANSCRIPT 8

The subject property discussed in this transcript is an apartment complex.

Page 1

BEFORE THE STATE OF OHIO BOARD OF TAX APPEALS

\- - -

Columbus City Schools :
Board of Education, :
:
Appellant, :
:
vs. : Case No. 2015-2427
:
Franklin County Board of :
Revision, et al., :
:
Appellees. :

\- - -

PROCEEDINGS

before Temeka M. Higgins, Attorney Examiner, at the State of Ohio Board of Tax Appeals, 30 East Broad Street, 24th Floor, Hearing Room B, Columbus, Ohio, called at 9:19 a.m. on Tuesday, September 27, 2016.

\- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-5201
(614) 224-9481 - (800) 223-9481
FAX - (614) 224-5724

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Page 2

APPEARANCES:

Rich & Gillis Law Group, LLC
By Kimberly G. Allison, Esq.
6400 Riverside Drive, Suite D
Dublin, Ohio 43017

On behalf of the Appellant.

Law Office of Stephen Swaim
By Stephen Swaim, Esq.
370 South Fifth Street, Suite G-7
Columbus, Ohio 43215

On behalf of the Appellee/property owner.

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Page 3

INDEX

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Page 4

Tuesday Morning Session,
September 27, 2016.

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(EXHIBIT A MARKED FOR IDENTIFICATION.)

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ATTORNEY EXAMINER HIGGINS: This is a hearing before the Board of Tax Appeals, State of Ohio, relative to an appeal styled Columbus City Schools Board of Education, Appellant, versus the Franklin County Board of Revision, et al., Appellees, having been assigned Board of Tax Appeals Case No. 2015-2427.

This hearing is being convened in the offices of the Board of Tax Appeals before Attorney Examiner Temeka M. Higgins at approximately 9:19 a.m. on September 27th, 2016.

Will the Board of Education's counsel please enter her appearance by name, mailing address, and telephone number.

MS. ALLISON: Yes. Thank you. Kim Allison with Rich & Gillis Law Group, 6400 Riverside Drive, Suite D, Dublin, Ohio 43017, telephone 614-228-5822, and we are here this morning on behalf of the Board of Education of the Columbus City School District. Thank you.

ATTORNEY EXAMINER HIGGINS: And will the property owner's counsel please enter his appearance by name, mailing address, and telephone number.

MR. SWAIM: Stephen Swaim, 370 South Fifth Street, Suite G-7, Columbus, Ohio 43215. Telephone number is 614-469-1963.

ATTORNEY EXAMINER HIGGINS: Thank you very much, Mr. Swaim.

Miss Allison, would you like to start with a brief opening before calling your witness?

MS. ALLISON: We will waive opening and closing. We will request a briefing schedule.

ATTORNEY EXAMINER HIGGINS: Okay. What about you, Mr. Swaim?

MR. SWAIM: We will have a short opening, but at the beginning of our reply.

ATTORNEY EXAMINER HIGGINS: Okay. That's fine.

Well, Mr. Koon, if you would raise your right hand, I would like to swear you in.

(Mr. Koon was sworn.)

ATTORNEY EXAMINER HIGGINS: Thank you very much.

Miss Allison.

MS. ALLISON: Thank you.

\- - -

SAMUEL D. KOON, MAI,
being first duly sworn, as prescribed by law, was examined and testified as follows:

DIRECT EXAMINATION

BY MS. ALLISON:

Q. Good morning, Mr. Koon. Were you engaged to appraise the property that we're discussing today located at 5811 Spring Run Drive?

A. I was.

Q. And have you reduced your conclusions to writing in what has been marked as Appellant's Exhibit A?

A. I have.

Q. And are your qualifications contained in this report?

A. They are.

MS. ALLISON: I would ask counsel if he would be willing to stipulate to Mr. Koon's qualifications.

MR. SWAIM: We will stipulate to Mr. Koon's qualifications as stated in the report.

MS. ALLISON: Thank you.

BY MS. ALLISON:

Q. And just for purposes of the record, is your fee for today's testimony in any way tied to the outcome of this case?

A. No.

Q. Thank you. If you could just briefly walk us through your report.

A. The property which is the subject of this complaint is commonly referred to as the Spring Creek Apartments. This is a 288 unit project located on the north side of Columbus. The site contains 18.5915 acres. The project was built in 1984. It consists of four unit types. There are two sizes of one bedroom, one bath gardens. There is a one bedroom, one bath garden with den, and then a two bedroom, two bath garden units.

So that you might understand the location of the property, we have included a neighborhood map on Page 13 of Section B. Generally speaking, the property is located on the north side of East Dublin-Granville Road, east of Karl Road. There is a site plan on Page 14 of Section B showing the location of the buildings on the site. There's an aerial photograph on Page 15. The improvements are described beginning on Page 18 of Section B.

We have utilized two of the three traditional approaches to value, the income approach and the sales comparison approach. The income approach is contained within Section D of the report. Beginning on Page 2 of that section you can see that we have listed information in a grid regarding the subject and six comparables. On Page 3 there is a map showing the location of the comparables relative to the subject property.

Beginning then on Page 4 of Section D we have provided detailed information regarding these rent comparables as well as the subject property. You will note that on Pages 4 and 5 the rental status of the subject property as of the tax lien date is shown. The project was 95 percent occupied as of the date of value. Each of these rent comparables has been analyzed. We have made adjustments for the similarities as discussed on Pages 18 through 20 of Section D. We have concluded that the rents which were in place were reflective of market, and a total annual rental income has been calculated based on those rents as shown on the top of Page 21 of Section D. You'll notice that is $2,098,848.

Vacancy and collection loss has been considered by looking at the competitive set, which

Page 9

is shown on Page 21 of Section D. There's further discussion about the ARA survey shown on the top of Page 22. We've utilized a five percent vacancy and collection loss. Expenses have been estimated by looking at rent comparables and IREM as shown on the next page, Page 23.

ATTORNEY EXAMINER HIGGINS: Mr. Koon, would you mind, for the benefit of the court reporter, telling her what IREM is? I'm sorry.

THE WITNESS: Sure, Institute of Real Estate Management.

ATTORNEY EXAMINER HIGGINS: Thank you.

THE WITNESS: Uh-huh.

BY MS. ALLISON:

Q. And while we're stopped briefly there, can I just ask you a quick question about applying your vacancy rate to your potential income. I notice that you applied the vacancy rates to potential gross income and then added back the reimbursement. Can you explain why you added the reimbursements back after you applied the vacancy rate?

A. The reimbursements are estimated after vacancy.

Q. Okay.

A. Because they're based on actual

Page 10

collections at projects as well as the subject, you don't estimate -- you're double dipping --

Q. Okay. Thank you.

A. -- if you do that.

The subject's historical operating statements for calendar years 2010 through 2014 are shown on Page D-25, which is a sideways chart, and this really is the essence of this appraisal. You can see that the property had been performing rather consistently.

Our effective gross income is less than actual in 2014. Our expenses are greater than actual in 2014. The capital expenditure in 2014 is greater than the reserve for replacement, so we have a cash flow that is greater than actual. You will note that that net operating income or cash flow after reserve for replacement is $1,099,775. We have capitalized this number into an indication of overall property value by selecting a capitalization rate. That capitalization rate has been selected by looking at the sale comparables on Page 29 of Section D. You will note that three of the sale comparables sold between 7.18 and -- I'm sorry, 7.09 on the low end and 7.73 on the high end, and there was one comparable at 9.52 percent.

Page 11

We also looked at the PwC Real Estate Investor Survey, the results of which are shown on Page 30 of Section D. Based on this information, we have selected a capitalization rate of nine percent, to which we have added a real estate tax additur of 2.83 percent, so a total overall capitalization rate of 11.83 percent. We divided that number into the cash flow after the reserve of $1,099,775, and a value indication of $9,300,000 emerges.

The sales comparison approach is contained within Section E of the report. Beginning on Page 1 of that section we provided a chart showing the four sales from which we are gathering information. The location of those four sales is shown on Page 2 of Section E in a map, and then beginning on Page 3 and continuing through Page 10 we've provided information on each of these comparables complete with a photograph. Each comparable has been provided a page of detail with a photograph following. We've looked at each of these sales. We've made adjustments for the similarities --

ATTORNEY EXAMINER HIGGINS: Let's go off the record.

(Discussion off the record.)

Page 12

ATTORNEY EXAMINER HIGGINS: Let's go back on the record. Sorry, Mr. Koon.

THE WITNESS: It's not a problem.

The adjustment process has been reduced to the adjustment grid on Page 13 of Section E where you can see we adjusted the sales for the similarities between them and the subject. We have concluded to a value of $32,500 per unit.

We've also looked at the effective gross income, multipliers provided by the sales, and we have chosen an effective gross income multiplier of 4.25 as shown on Page 14. A value of $9,200,000 emerges, and then we have performed a cash flow per rental unit variance analysis as shown on Pages 15 and 16 of Section E. That approach results in a value of $10,100,000 or approximately $35,000 per unit.

The three approaches utilize produced value estimates ranging from 9,200,000 to $10,100,000. We have selected a value at the low end of that range of $9,300,000 as being reflective of the subject's value.

The summation and final reconciliation is contained within Section F of the report. The approaches produced identical value estimates of

Page 13

$9,300,000. In the final analysis we felt that the income approach should be given greatest weight since it most closely replicates the thought process of a typical purchaser of a property such as the subject.
So, in summary, as of January 1, 2014, it is our opinion that the market value of the unencumbered fee simple title to the property which is the subject of this complaint was $9,300,000.
BY MS. ALLISON:
Q. Just one follow-up, Mr. Koon. In your professional opinion, would the value of a property like the subject's, would the market have improved from 2011 to 2014?
A. Absolutely.
Q. Okay. Thank you.
That's all.
ATTORNEY EXAMINER HIGGINS: Thank you, Miss Allison.
Mr. Swaim.
MR. SWAIM: Yes.
- - -
CROSS-EXAMINATION
BY MR. SWAIM:
Q. Mr. Koon, let's go to Page D-26 of your report, Maintenance and Repairs, and in that you

Page 14

conclude to an extent of $750 per unit, but prior to that, in your text, you state that the property "has experienced high levels of capital expenses." Could you please describe for us what you're talking about there?
A. Back up one page, if you would, to D-25. The next to last line is where the capital expenses have been recorded, and you can see in calendar years '11, '12, '13, and '14 they have been about double what you might expect a normal reserve for replacement to be.
Q. And that double the level of expenses for reserve and replacement, would that more closely match up to the IREM survey, the additional, extra amount that you referred to on Page 26, D-26?
A. I don't follow your question.
Q. When a property manager is doing work on a property, do they oftentimes have the ability to either capitalize the work they're doing or to expense it?
A. Typically that's an accountant who makes that decision, but a property manager could be empowered to do it I suspect.
Q. Okay. So they could put it into one column that says capital expense and another column

Page 15

that says repairs, as the expenses fall out, what they're actually writing the checks for?
A. Correct.
Q. And in this particular -- for this particular property you stated that the capital expenses are about -- and please correct me if I'm wrong, I'm just quoting back to you what you -- approximately what you said a couple of minutes ago -- double what they -- you would normally expect to see in a property of this size and age?
A. No. You either didn't listen very well or you don't remember, so let's say it again.
Q. Okay.
A. In calendar years 2012 -- I'm sorry, '11 '12, '13, and '14 there were capital expenditures at approximately twice the level of a reserve for replacement.
Q. Okay. So a lot of the money that they were spending on the property was putting -- was being put into the column of capital expenditures versus into a standard operating statement of the income statement of repairs for those years?
A. I don't have their operating statement in front of me, so I'm not sure how they did their accounting.

Page 16

Q. Okay. If you would take that difference and add it to your $750 per unit, would you not come much closer to the IREM average then you have concluded to here?
A. IREM average for what?
Q. Per unit -- on Page D-26 you say, "The IREM survey shows an average per unit expense of $1,148."
A. Are you asking me if 750 plus 400 approximates 1,148?
Q. Yes.
A. Yes, that is correct.
Q. Okay. And the higher levels of capital expense was consistent through the years that you cite on page -- I guess it would be D-25, '11, '12, '13, '14?
A. Are you asking me if 415, 871, 796, 773, and 1,054 is consistent?
Q. Well, consistently higher than you would expect on a reserve account.
A. Well, we have estimated a reserve at 450, which is at the high end of what an investor will do in this market. What is happening with this project is that there had been capital projects in calendar years '11 through '14 which have been

undertaken. I'm not sure what they are. Your owner can provide that information. An investor will not capitalize capital projects into perpetuity because they are intermittent.
Q. On your rental comparables, on the management fees, do you know what they were -- I'm sorry -- yeah, on the rent comparables on the management fees, do you know what they were for those rent comparables? It may be knowledge outside of this actual report, but maybe you've done appraisals on those -- some of those properties.
A. Let me make sure I understand what you're asking me. The rent comparables which we used --
Q. Yeah.
A. -- you're asking me if I knew how much the owner was paying the property manager?
Q. Yes.
A. No.
Q. How would you categorize the location of this property as to its overall economic vitality with the apartment complexes -- and you can use local rental comparables in the area.
A. The property is located in northeastern Columbus. It's located north of 161, south of 270.

The surrounding area is between 25 and 50 years old in terms of when the development occurred. It's a mature neighborhood.
Q. You're familiar with the fact that some of the properties, apartment complex properties in the area, went into foreclosure in the last few years, during the recession?
A. I am not familiar of any specific examples of foreclosure. I have no reason to doubt your accuracy.
Q. Okay. And how did you select the three and a half percent management fee?
A. Typically an apartment project manager will be paid five percent of collections. Three and a half is at the absolute low end of an acceptable range. As a -- as an investor and an owner, I would wonder if my manager is doing his or her job well at three and a half percent. I would want to make sure they're compensated because I'm no better than the person at the desk renting my units.
Q. Could you physically describe for me the location of your comparable sales listed on Page D-29, just so that we have a reference as to what part of the city they're in?
A. For ease of understanding, there's a map

on Page 2 of Section E which shows the location of the sale comparables. Sale Comparable No. 1 is located at 4881 Kingshill Drive. It is located in northeast Columbus. It's north of Morse Road, just east of I-71.
Comparable No. 2 is located at 1700 Bob-O-Link Bend East. It is located in northeast Columbus, north of Morse Road, east of Karl Road.
Sale No. 3 is located at 1844 Forest Village Lane. It is located in northeast Columbus, east of Karl Road in the 161 corridor.
Sale No. 4 is located in Reynoldsburg, in southeast Columbus. It is addressed as 735 Marlan, M-a-r-l-a-n, Avenue.
Q. Okay. And going back to D-29, where did you obtain your cash flow numbers for the comparable apartment sales data?
A. That information was obtained either from a buyer or seller, a broker, sometimes a lender.
Q. Do you know who you obtained the information for for Sale No. 1?
A. Sale No. 1 came from the listing agent. Sale No. 2 I do not know. Sale No. 3 I do not know. Sale No. 4 came from the broker.
Q. And did you confirm all four of those

sales?
A. They have been confirmed by my office, yes.
Q. Okay. And do you know who they were confirmed with?
A. I just --
MS. ALLISON: I believe he's confused by that question.
Q. By your office. This is separate from the cash flow question.
A. We talked to somebody and confirmed the sale, and they gave us all of the information that's on the sheet, so we didn't confirm different aspects of the comp with different people.
Q. Okay. And have any of those sales been in -- I'll withdraw that question. I'll go back. Had any of those sales been, of those properties, been in bankruptcy in the last few years or receivership?
A. On the information which I have before me, there is nothing that would indicate that any of these sales were influenced by bankruptcy or foreclosure. With respect to the operating history of the properties prior to these sales, I have no way of knowing if they had been in foreclosure or if one

Page 21

of the owners had filed bankruptcy.
Q. Okay. And what was the -- the occupancy rate of these comparable sales at the time they sold?
A. Sale 1 I'm not sure. Sale 2 is 92 percent. Sale 3 was 92 percent. Sale 4 was 97 percent.
MR. SWAIM: I have no further questions.
ATTORNEY EXAMINER HIGGINS: Thank you. Miss Allison.
MS. ALLISON: Just a few redirect. Thank you.
- - -
REDIRECT EXAMINATION
BY MS. ALLISON:
Q. Mr. Koon, are you -- in your professional opinion, are you comfortable with the choice of rent and sale comps that the location of the subject property was adequately accounted for in your opinion of value?
A. Absolutely.
Q. And you did determine that all of your sale comps were, in fact, arm's length? None of them were the direct result of a foreclosure or a bankruptcy; correct?
A. That's correct.

Page 22

Q. Okay. And just one final question because I want to make sure the record is completely clear. You discussed a little bit about the treatment of your capital expenses and not capitalizing. Can you again say why it would be inappropriate to capitalize the capital expenses?
A. It probably merits talking about the reserve for replacement and that theory in appraisal practice. There are short-lived building components which wear out prior to the bone structure. In an apartment community where you look at things such as appliances, roofs, parking lots, you don't replace them on an annual basis. A roof might have a life of 20 years. A furnace might have a life of 20 years. Appliances may have a life of 15 years, and what happens is if you take an income from a project which is inordinately depressed by an intermittent replacement of short-lived building components, you will undervalue the project. So what we do as appraisers is say let's take all of these short-lived building components and let's say what is it going to cost to replace them, and then we set aside -- and in this instance I set $450 per unit per year into a sinking fund or into an account and allow it to grow so that when the roof needs to be replaced there is

Page 23

money in that. That is the theory of the replacement reserve. Investors typically will use a replacement reserve from 150 to $450 per unit. That's the way the market works. You normalize your maintenance line item, just like we have done, and then your reserve for replacement is taken into account as a normal operating expense. You capitalize that indication -- or you capitalize that income into an indication of overall property value. If you have large expenditures which are necessary, then they become a dollar-for-dollar deduction, but what you not do is capitalize into perpetuity the replacement of short-lived building components because you will undervalue the property every time.
Q. Thank you.
That's all I have.
ATTORNEY EXAMINER HIGGINS: Okay. Thank you very much, Mr. Koon.
(Witness excused.)
ATTORNEY EXAMINER HIGGINS: We'll go off the record and take maybe a five-minute break.
(Recess taken.)
- - -
(EXHIBIT 1 MARKED FOR IDENTIFICATION.)
- - -

Page 24

ATTORNEY EXAMINER HIGGINS: We'll go ahead and go back on the record. So we have Mr. David Hatcher --
MR. HATCHER: Yes.
ATTORNEY EXAMINER HIGGINS: -- on the stand, and, Mr. Hatcher, you already have your right hand up, so I'll go ahead and swear you in.
(Mr. Hatcher was sworn.)
ATTORNEY EXAMINER HIGGINS: Thank you very much.
Mr. Swaim.
MR. SWAIM: Yes.
- - -
DAVID R. HATCHER, MAI,
being first duly sworn, as prescribed by law, was examined and testified as follows:
DIRECT EXAMINATION
BY MR. SWAIM:
Q. Mr. Hatcher, what is your name and mailing address?
A. 343 South Pearl Street, Hatcher & Associates, Columbus, Ohio 43215; 614-56 -- nope, 614-461-1946.
Q. Okay. And are the qualifications stated in the back of your report --

A. Yes, sir.
Q. -- accurate?
A. Yes, sir.
Q. Okay. And you're a state-certified general appraiser?
A. Yes, sir.
MR. SWAIM: We would ask for purposes of this hearing today that Mr. Hatcher be recognized as a qualified expert.
MS. ALLISON: We would stipulate to his qualifications as set forth in the report.
Q. Mr. Hatcher, just briefly describe for us, and I'm going to put emphasis on the word briefly, this property and its location.
A. 288 apartment units, garden units, one and two bedroom units. The one bedroom units don't have fireplaces. The two bedrooms do have fireplaces. There's two swimming pools. It's located on State Route 161 just west of Cleveland Avenue, east of Interstate 71, in an area -- it's a -- it's a very nice apartment project. It's in an area that's transit, a lot of -- there is a lot of move ins, a lot of outs. It's the nicest apartment project in the area. The rest of them are -- well, they're inferior, and it's got two swimming pools,

and I was asked to do an appraisal as of January 1st, 2014.
And I looked at the subject property, and it's -- it's -- at the time, it was in good condition. I found comparable sales within the Columbus, Ohio market, and one in Dayton. These -- these sales were all nice apartment projects. They sold -- I did not -- on the sales comparison approach -- I did not use the sales comparison approach per se. I used the sales comparison approach mainly to extract overall capitalization rates to be used in the income approach. The sales comparison approach is -- is not really applicable in a multi -- in an investment, multi-tenant investment property, especially apartments, because, like, apartment units might range in size, 1,000 to 2,000 a square foot, and that's not taken into consideration on a premium basis; so I used the -- I used the cost -- the sales comparison approach to extract the overall capitalization rates which goes into the income approach, and these sales are listed on -- or summarized on Page 28, and they -- the units are -- my project was built in 1984, and these sales are units from '63 clear up to 2001. Size range was 160 units to 464 --

(Discussion off the record.)
A. The age range is 1963 to 2001, and we were built in 1984, and the overall capitalization rates of the comparable sales range from 8.5 up to 10 percent, and the vacancy rates were 7 to 10 to 24. It's not really applicable. On all the -- and then I did not come up with a value on the sales comparison approach. I just used it to extract the overall capitalization rates.
The rent -- in the income approach, the rent comparables are in the same general area but outside of the subject neighborhood. These are all -- they're all located on -- they're all on Schrock Road except one is on Cooper Lakes right off of Cleveland Avenue. They are -- they are superior -- they are superior locations, all of them, and -- however, and the rents are slightly higher than the subject, and the subject rents -- the subject rents are higher than all the apartments within the subject neighborhood. It's the nicest project. So I applied that to -- the number to the -- the rents to the number of units, and I concluded that the subject's rent schedule was at market with a total of $2 million a year, and then the -- the gross potential was 2,098,000. Other

income included administration fees, forfeited profits --
Q. David, if I may just interject for purposes of --
Mr. Hatcher's basic income and his vacancy and credit loss is exactly the same as Mr. Koon's.
Go ahead and continue.
A. Okay. And adding other income put a -- put a gross income of 2,271,000. Vacancy and credit was five percent, with 113,000. It made it an effective gross income of $2,157,000. I took out reserves for replacements. Reserve for replacements are items that are short-lived items that are replaced every year or so, and that came up to $126,000. Deducting that from the potential gross annual income indicates -- or the expenses -- let me back up. The expenses, I used the -- the expenses came from three or four years of historical expenses from the '70s, and there they were -- they were $1,322,000, which was 61 percent or $4,593 per unit.
Q. Is there a detailed listing of those expenses, Mr. Hatcher?
A. Yes, in the pro forma.
Q. And would that be on Page 39?

Page 29

A. Yeah, it would be on Page -- it would be on Page 39 -- really is on Page 37, 38, 39, and 40. Those expense are -- are in line with the market. On Page 34 there are several apartment projects here in Columbus that -- that -- it shows the expenses there, and the subject is right in line with the market. The expenses are -- with the taxes included, and there's also an item taxes not included, and those all -- all apply. They're right at the market.

I came up with a net income of -- after deducting all expenses and replacement reserve, came up with a net operating income of $780,000. The overall capitalization rates ranged from 8.5 to 10 percent, and then I used the -- I applied a 9 1/2 percent capitalization -- overall capitalization rate to apply to the subject's net income, and that produced a value of $7,460,000. I used a tax additur of -- using 9 1/2 percent cap rate, which included the taxes. It gives the same value as $7,460,000. I used the tax additur, also, and you add that to the cap rate. That gives you a composite rate of 12.3. Applying both of those rates to the -- to the subject's income indicates a value of $7,460,000.

I did -- I did two income pro formas. On Page 37 and 38 is the income pro forma that

Page 30

includes the taxes in the -- in the pro forma, and the next pro forma on Page 39 is -- the taxes are not excluded -- are not included in the expenses. They're added to the overall capitalization rate. I did not use -- did not use the sales comparison approach. I used the income approach only, and my final value conclusion is $7,460,000 as of January 1st, 2014.

Q. Okay. I'm going to ask you some of the same questions, although you were not here, that I asked Mr. Koon, and one of those questions is the management fee, how did you determine the five percent management fee level?

A. Well, from other apartment projects in the -- in the area with, you know, with comparable sales and found that, and also the management fees were anywhere between four and five percent, and I used a five percent management fee at the top of the line because the subject property has a larger turnover than most of the units, and it takes a little more management. It takes -- they keep it looking a lot nicer, so the management will be at the higher end, which is the -- they would basically be four to five percent.

Q. Okay. And discuss for us how you

Page 31

calculated out your reserve for replacement on Page 35. What goes into your financial?

A. Okay. Reserves for replacements are short -- are short-lived, short-lived items in an apartment project, and if you look on Page 35, you'll see at the top there that we got -- that we included range, refrigerator, disposal, dishwasher, floor coverings, water heaters, washers and dryers, and these are -- these are expense -- these are items that have an economic life anywhere between seven and ten years. What I did, we got 289 units plus the -- plus we got a leasing office, which I counted as a unit, and I got from some other apartment projects and from, like, Home Depot, Lowe's and people like that that sell appliances and stuff, and I arrived at -- at what the cost of each item was, and in Marshall Valuation and in talking to, you know, various property -- apartment owners that -- took out -- deduct the average -- the economic life and divide that -- you divide the -- you take the -- like for ranges, 325 a range times 289 units would be a total cost of $93,000, and you divide that by the 10-year economic life, and it gives you $9,300, and you would set aside, you know, a reserve account to replace these items as they become due, and the same

Page 32

goes to with the refrigerators, disposals, floor coverings, and water heaters, and washers and dryers. The disposals have got, like, a seven-year life, and floor coverings and washers and dryers have a seven-year life. So all that added up to a total of $126,000 a year that should be taken out and put in a replacement account to replace the items as they -- as they need be.

Q. Okay. And does your reserve account include reserves for other real property type expenses, roofs --

A. No. These are short-lived items. Replacement is typically for a short-lived item. Okay. Like a long -- those would be a -- probably a 20, 25-year life item, and, you know, siding and structure and -- I don't know what that would be. That's probably also, you know, a lot higher than that. You normally don't set up a reserve account for -- a reserve account for long -- long items -- or long-lived items. This is mainly short-lived items that -- that -- that wear out quicker.

Q. Okay. Now moving to your pro formas and specifically -- well, 38 and 40 are the same except for the tax additur issue. There is an item under Repairs and Maintenance that you entitled,

Page 33

"Nonrecurring Replace/Replacements," for 160,000. Could you please describe for us what that is and why that actually -- you put it into the expenses as a recurring item?
A. Yeah. A nonrecurring expense is something that doesn't recur. Okay. So I got to that item, and when I was going over -- over the owner's financials that they sent me, every year they had a whole list of nonrecurring expenses, and I thought how can it be nonrecurring if they recur -- if it -- if these things happen every year, so I put that -- I put that in the expense.
Q. And are those expense reports contained within the report?
A. Yes. They are -- they are in the --
Q. So these were actually recurring every year even though it's --
A. Yes. I mean, like -- not the exact same item each year, but generally you might replace a piece of -- I don't know, some building repair and this year and next year and next year, replace maybe -- I'll give you an example. Maybe they replaced a deck, okay, or they might have replaced some soffits or some gutters or downspouts or just things like that that they didn't expense out. They

Page 34

just call it nonrecurring expenses.
Q. Okay. Now, this property, as of tax lien date, was approximately 30 years old; is that correct?
A. Built in '84. Wait a minute. Yes, it was built in 1984.
Q. And as these apartment complexes age, do the expense costs for just keeping them maintained tend to go up?
A. Oh, they would go up, because, you know, the first -- the first -- the first five or ten years you're not going to have -- well, you're not going to have as many expenses as you are -- as you are when it's ten years old, because new you're going to have hardly any expenses at all except -- then when it gets older, you're going to have more expenses, as things wear out and get broken.
Q. So in reviewing those financials, you were seeing these -- what are called nonrecurring expenses --
A. Yes.
Q. -- reappear every year in approximately the same amount?
A. I think the amounts -- they fluctuated, and I talked to the -- I forget who I talked to to go

Page 35

over all these expenses. You know, they're nonrecurring, and they just say that's -- they put them there. Don't ask me why, and I don't know why they call them nonrecurring because they recur each year.
Q. Okay. But they were showing up on the income statements versus the --
A. Yeah.
Q. -- capital --
A. They were at the tail end of the income statements.
(Discussion off the record.)
Q. Do you have any reason to, in talking with the -- in talking with the property owner, do you have any reason to believe that the -- there is an end to these nonrecurring expenses occurring?
A. Is there an end to the nonrecurring expenses? I would say yes, when they sell the property it will end for them.
Q. Okay. In other words, you would anticipate it continuing into the future?
A. Yes, I would, yes.
Q. Okay. And finally, moving to your capitalization rate again, can you please describe for us why you thought these properties were the

Page 36

applicable ones for which to derive your capitalization rate?
A. The cap rates range from 8.5 clear up to 10. I used a -- I used a 9 1/2 cap rate because it is a good -- nice property in the wrong location. It's the nicest -- everything around it is inferior, and it takes the -- it takes the -- it takes more management and more grass cutting and more trimming and all that on this project to keep it looking nice, which incurs more expense, and it also makes the risk just a tad higher than your typical apartment project at a good location; so I chose a cap rate closer to the high end at 9 1/2 percent.
You know, the overall capitalization rate is return on your money and it involves risk. Okay. So if you're an investor and you're investing in something and you don't have to do a lot of work to get your money, you'll take a lower return, but if you've got to continually maybe chase your rent or do minor repairs or something like that, you say well, I think I'd like a little more return on my money; so that's the reason I chose a 9 1/2 percent cap rate.
Q. Are you aware if several of the apartment complexes in the general geographic area went through bankruptcy or receivership over the last

Page 37

few years?

A. Well, I knew a lot of them were in bad repair. I didn't track them, but I -- I think they did, yes, because as I was looking up sales, you'd see, like, receivership or whatever, and that's improved over the -- over the -- over the last few years and -- I don't know which ones did, just in going through all my data.

MR. SWAIM: I have no further questions of Mr. Hatcher.

ATTORNEY EXAMINER HIGGINS: All right. Thank you very much.

Miss Allison.

MS. ALLISON: Just a few. Thank you.

- - -

CROSS-EXAMINATION

BY MS. ALLISON:

Q. So, Mr. Hatcher, I'm looking at your reimbursable income.

ATTORNEY EXAMINER HIGGINS: Which page, please?

MS. ALLISON: On Page 33. Thank you.

Q. Your "other income," is that based on actuals?

A. Yes.

Page 38

Q. Okay. But then you apply a vacancy rate to that. So aren't you in effect double dipping?

A. No.

Q. Why is that?

A. Because if you include it as income you got to include it in vacancy.

Q. But if you're basing it on the actual -- what was the actual vacancy rate for the subject property?

A. I think it was five percent, four or five percent.

Q. So wouldn't those numbers be what was received for the four or five percent vacancy?

A. You can -- you get your gross income for -- your apartment income and then your -- then your -- then your other income, and that's part of your income. Then you total that up. Then you take the vacancy rate from that. You don't -- that's what you do.

Q. Okay. Then we've heard a lot today about expenses. Your grid on Page 34, comparing it to market expenses, the number that you're using to compare includes taxes; correct?

A. I got them both. The first is tax are included in the expense statement, and then the

Page 39

second one is taxes not included in the expense statement.

Q. On Page 34?

A. On Page 34, yes.

Q. Okay. But you're using the subject's property -- properties including taxes at 1,322,744; correct?

A. Well, I'm doing it both ways. On page -- on Page 38 I'm using -- if there are any expenses, which is 4,593, and on Page -- on Page 40 they are not included, and the expenses are 3,868.

Q. Okay. So let's use those two numbers, then. So 4,593 on Page 34 you say is within the range of your comps; correct?

A. Yes.

Q. Okay. But if you take the taxes out and you use the 3,868, it's actually higher than all but one of your comps; correct?

A. Well, it's within -- okay. Yeah, it's higher -- it's higher than one, and it's just a tad above three of them.

Q. Okay. And then you calculated your expenses for refrigerators, dishwashers based on what someone would pay at Home Depot or Lowe's?

A. No, not really. No, not really. You

Page 40

keep in mind -- well, yes, I did, plus other apartment -- other apartment projects.

Q. Okay.

A. Sometimes they'll buy maybe six or seven refrigerators and they might get somewhat of a discount.

Q. Right. Okay. That's where I was going. Thank you.

A. Okay.

Q. And what was the actual management fee paid for the subject property in 2014?

A. What was the actual -- well, that I don't know.

Q. Okay.

A. Let me see if I can find it here. I don't have a management fee.

Q. Okay. And in determining your nonrecurring repairs and replacement on Page 40, what type of expenses are those? What exactly --

A. They're nonrecurring.

Q. I know. For what?

A. On Page -- if you look on Page -- I'll tell where I got these numbers, and I discussed it with the property owners. Starting on Page -- starting on Page 92 there's a whole list of -- a whole list of nonrecurring -- nonrecurring replacements and non -- non -- other nonoperating costs and a like amount on each page -- or on each -- for each year, and what I did, I got them all together and talked to the -- talked to -- talked to someone. I forget who I talked to there and went over them, and from that I came up with $160,000.

There's four years there, and there's -- like in 2011 there's -- one, two, three, four, five -- I don't know, there's 10 or 15 nonrecurring replacements and there's nonrecurring operating expenses, which if they're non -- if they're -- if they're nonrecurring, they wouldn't have a list of them.

Q. Are you aware that the subject property went through several capital improvement projects recently?

A. No.

Q. If you had determined those expenses were for capital projects, would you have included them?

A. If they were for capital projects, they would have stated it in the income statement. That's the way -- normally you'll get an income statement or a profit and loss statement from a management

company, and it will have capital improvements, and those I never include.

Q. Okay. But you're not aware of any capital improvements that occurred at the property in the last couple years?

A. No.

Q. Okay. And then in determining your cap rate, you relied exclusively on the sales on Page --

A. Yes.

Q. What page is that? So those sales all occurred in '11 and '12?

A. Yes.

Q. And in your opinion, did the market improve from 2011 to 2014?

A. It probably has, yes.

Q. Did you appraise the subject property for 2011, do you recall?

A. I think I did.

Q. You don't recall what your value was?

A. No.

MS. ALLISON: That's all I have. Thank you.

ATTORNEY EXAMINER HIGGINS: All right. Thank you.

Mr. Swaim, any redirect?

MR. SWAIM: No redirect.

ATTORNEY EXAMINER HIGGINS: All right. Thank you, Mr. Hatcher.

THE WITNESS: You're welcome.

ATTORNEY EXAMINER HIGGINS: You did a good job.

THE WITNESS: Thank you.

(Witness excused.)

ATTORNEY EXAMINER HIGGINS: Mr. Swaim, do you have any objection to Appellant's Exhibit A?

MR. SWAIM: I do not.

ATTORNEY EXAMINER HIGGINS: And, Miss Allison, given that I believe Exhibit 1 was previously submitted at the BOR, you have no objection?

MS. ALLISON: No objection.

ATTORNEY EXAMINER HIGGINS: Okay. Thank you very much. Miss Allison had indicated that she would like a briefing schedule.

Mr. Swaim, are you okay with that?

MR. SWAIM: I would like a briefing schedule, also.

ATTORNEY EXAMINER HIGGINS: All right.

MR. SWAIM: I'd hate for her to be the

only person writing one.

ATTORNEY EXAMINER HIGGINS: Okay. Well, as always, there will be a simultaneously briefing schedule. First brief due on or before October 27th, and reply briefs due on or before November 11th.

I will accept the exhibits into evidence, and unless there's anything else, this concludes the hearing.

(EXHIBITS ADMITTED INTO EVIDENCE.)

(Thereupon, the hearing was concluded at 10:30 a.m.)

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, September 27, 2016, and carefully compared with my original stenographic notes.

____

Valerie J. Sloas, Registered Professional Reporter and Notary Public in and for the State of Ohio.

My commission expires June 10, 2021.
(VJS-82050)

TRANSCRIPT 9

The subject property discussed in this transcript is a senior housing complex.

BEFORE THE BOARD OF TAX APPEALS
STATE OF OHIO
- - -

Frank Cook Senior Housing LP, :
Appellant, :
vs. : Case No. 2016-1043
Muskingum County Board of :
Revision, et al., :
Appellees. :

Buckeye Community Twenty One :
LP, :
Appellant, :
vs. : Case No. 2016-1047
Muskingum County Board of :
Revision, et al., :
Appellees. :

- - -

PROCEEDINGS

before Temeka M. Higgins, Hearing Examiner, at the Board of Tax Appeals, 30 East Broad Street, 24th Floor, Columbus, Ohio, called at 9:20 a.m. on Tuesday, June 26, 2018.

- - -

ARMSTRONG & OKEY, INC.
222 East Town Street, Second Floor
Columbus, Ohio 43215-4620
(614) 224-9481 - (800) 223-9481
- - -

APPEARANCES:

Vorys, Sater, Seymour & Pease
By Karen Bauernschmidt, Esq.
200 Public Square, Ste. 1400
Cleveland, Ohio 44114

On behalf of the Appellants.

Rich & Gillis Law Group
By Kelley Gorry, Esq.
6400 Riverside Drive, Ste. D
Dublin, Ohio 43017

On behalf of the Appellees.

- - -

INDEX
- - -

INDEX (CONTINUED)
- - -

- - -

Page 5

Tuesday Morning Session,
June 26, 2018.
- - -

EXAMINER HIGGINS: This is a hearing before the Board of Tax Appeals, State of Ohio, relative to an appeal styled -- or two appeals styled Frank Cook Senior Housing Limited Partnership, et al., Appellant, versus the Muskingum County Board of Revision, et al., Appellees, having been assigned Board of Tax Appeals Case Nos. 2016-1043 and 2016-1047.

This hearing is being convened in the offices of the Board of Tax Appeals, before Attorney-Examiner Temeka M. Higgins, at approximately 9:21 a.m., on June 26th, 2018.

Will the property owners' representative please enter her appearance by name, mailing address, and telephone number?

MS. BAUERNSCHMIDT: Thank you very much. If it may please the Board, my name is Karen Bauernschmidt, I'm the attorney for the property owner, my address is 200 Public Square, Suite 1400, Cleveland, Ohio 44114, and the phone number is area code (216) 479-6141.

EXAMINER HIGGINS: Thank you very much,

Page 6

Ms. Bauernschmidt.

Would the County Appellees' representative please enter their appearance by name, mailing address, and telephone number?

MS. GORRY: Yes. Thank you. May it please the Board, I'm Kelley Gorry of Rich & Gillis Law Group, business address 6400 Riverside Drive, Suite D, Dublin, Ohio, telephone (614) 228-5822. Thank you.

EXAMINER HIGGINS: Thank you very much, Ms. Gorry.

Just to clarify the record, we are consolidating these two cases just for hearing purposes only. The Board will issue separate decisions on these matters.

I believe the parties waived opening.

MS. BAUERNSCHMIDT: That is correct.

MS. GORRY: Correct.

EXAMINER HIGGINS: Ms. Bauernschmidt, would you like to call your first witness?

MS. BAUERNSCHMIDT: I think should we put on the record -- and I just thought about this -- that this is a continuation of a previous hearing that was before the Board of Tax Appeals. It was held on Wednesday, February 22nd, 2017.

Page 7

EXAMINER HIGGINS: Thank you very much, Ms. Bauernschmidt.

MS. BAUERNSCHMIDT: My first witness is Steven Randles.

EXAMINER HIGGINS: Mr. Randles, if you'd raise your right hand, I'd like to swear you in.

(Witness placed under oath.)

THE WITNESS: I do.

EXAMINER HIGGINS: Thank you very much. I just want to make clear, is my reporter okay with Mr. Randles staying in his seat testifying?

THE COURT REPORTER: Sure.

EXAMINER HIGGINS: Okay. Thank you.

- - -

STEVEN G. RANDLES,

being first duly sworn, as hereinafter certified, deposes and says as follows:

DIRECT EXAMINATION

BY MS. BAUERNSCHMIDT:

Q. Is your phone shut off?

A. It's on vibrate anyway.

Q. Thank you. Please state your name for the record.

A. Steven Randles.

Q. And what is your business address,

Page 8

Mr. Randles?

A. 407 Pershing Road, Zanesville, Ohio, the zip there is 43701.

Q. And if you could tell the Board a little bit about your educational background.

A. I'm a graduate of Zanesville High School; matriculated at Muskingum College, now Muskingum University; and after graduation there went to Case Western Reserve School of Law, graduating there in 1988.

Q. And if you could give the Board the background of your work experience.

A. After graduating from law school, I was in private practice for about five years. I then had a second career, if you will, heading bank trust and wealth management department or division, and during that time I served as an appointed member of the Zanesville Metropolitan Housing Authority Board, and through that became interested in, involved with housing issues, and ultimately was offered a position with the Housing Authority.

I took that position, became employed by the Housing Authority in 2005 as the job title was special projects coordinator, and those duties were essentially to work on development deals and other

Page 9

duties as assigned. Worked in that capacity for a year, at least with that title, was named the deputy director of the Housing Authority in 2006, and became the executive director of the Housing Authority in 2009, and serve in that capacity to this day.

Q. And what relationship do you have or the Metropolitan Housing Authority have to Frank Cook Senior Housing?

A. With these tax credit deals, they're a little complicated legally structure-wise, and historically housing authorities didn't qualify for tax credits, couldn't get tax credits. So Zanesville Metropolitan Housing Authority worked in conjunction with another local not-for-profit, Zanesville Housing Development Corporation. I was a member of Zanesville Housing Development Corporation, and now the president of Zanesville Housing Development Corporation. That was the entity that was involved in the idea behind what became Frank Cook Senior Housing.

As a result of the legal structure that gets created to do the tax credit, there's the creation of a limited partner and a general partner. The general partner, the owner of the development is Frank Cook Senior Housing GP, and I'm the president

Page 10

of that entity currently. At the time that we were developing that, I believe I was the treasurer of Frank Cook GP, and then there's obviously the limited partnership that operates the -- owns the property or operates the property.

Q. Is it fair to say that you have personal knowledge about the development of Frank Cook Senior Housing?

A. It is.

Q. Okay. And if you could state for the Board, is Frank Cook Senior Housing an affordable housing project?

A. It is.

Q. And if you could tell the Board what type of affordable housing project Frank Cook Senior Housing participates in.

A. It is one of the deals that is a Low-Income Housing Tax Credit development. Often referred to as LIHTC. That really is about the only viable way there's been for at least the last 10, maybe the last 20 years to develop affordable housing, because there's not been HUD monies for the development of what you would call traditional public housing to meet the need of lower income individuals and families.

Page 11

So, again, through ZHDC one of the missions was to identify areas of need and then try and develop that housing. We identified that as senior -- the need for senior housing, and the only viable vehicle for that was the Low-Income Housing Tax Credit program.

Q. Does the LIHTC program control the rents at the subject property?

A. Yes. They are set at -- I believe at the federal level according to -- or in accordance with Section 42 of the Internal Revenue Code, I believe.

Q. If you could answer this question: Is there any project-based Section 8 rents at all at the subject property?

A. There are none.

Q. And are you familiar with the LIHTC program?

A. Yes.

Q. And if you could kind of explain to the Board how the LIHTC program begins since you started and were involved in the development of this project.

A. I'll take a shot at it.

Again, we identified a need in Zanesville for the development of affordable senior

Page 12

housing. We worked with a consultant developer to try and put together what that deal might look like. Again, it was -- really the only viable solution was to go through the tax credit process, make that application through OHFA and all those kinds of things to be able to -- to be able to finance the construction of a three-story building that contains 60 two-bedroom apartment units.

The tradeoff, or I guess the string that is attached to that is that there is a commitment that is made when you agree to do that. And when you agree to have your investors get that tax-favored status under the credit program is that you agree that that property will be used for low-income housing for an absolute minimum of 15 years, and generally more often than not, for an additional 15-year period.

That's particularly true in this case of Frank Cook, because unlike some other LIHTCs, there is not a tenant option to purchase. So, again, it is -- it was anticipated and was set up to be in that tax credit program for the initial 15-year period and a 15-year renewal of that.

So rents have to be -- I guess the property management company has to understand rents

are set at what they're set at, and it is less than market-rate rent.
Q. By definition?
A. By definition.
Q. And are there any other restrictions on the property as part of that besides rent restrictions?
A. Well, there's, again, the restrictive covenant that I've referenced. And I know in that it specifically provides that there's a rent -- there's income limits rather, I should say, and targets for how those 60 units are rented and to whom based upon income.
Q. I'm going to show you what has been marked as Exhibit E.
A. Okay.
MS. BAUERNSCHMIDT: If you could take a look at that document. For purposes of the record, this is in the Statutory Transcript, but for ease of the brief writing, Kelley and I have decided to separately mark them just so it's a little easier.
EXAMINER HIGGINS: Okay.
BY MS. BAUERNSCHMIDT:
Q. And if you could take a look at that document, and if you could identify it for the

record, please.
A. It is the restrictive covenant that I referenced.
Q. And is your signature contained on that document?
A. It is. I signed it as the secretary of the general partner for the limited partnership when we were -- when we were doing this deal, the front end of this deal.
Q. And is this a recorded document?
A. Yes.
Q. And if you can tell the Board, are the income and rent restrictions set forth in this document?
A. Yes. Paragraph numbered 3 says that this building -- this development is to be 100 percent low income, and then in Paragraph 4 it specifies what's meant by that. So I believe 60 percent of the units, which would be 36, have to be affordable to folks who have income at 60 percent of the area median gross income; 35 percent, which I believe is 21 units, have to be available to those that have AMGI of 50 percent or less; and then 5 percent, or three of the units, are earmarked for those that have gross income of 35 percent of the

area median income.
Q. If you could turn to Paragraph 7 of the restrictive covenant, and for purposes of the record it's Page 2 of 5. What is set forth in Paragraph 7? I mean, I know you could read it, but can you just kind of summarize and tell us what it really means?
A. It's the -- it's the provision that says that this, in effect, must be housing for low-income people, and that rents are set according to the provisions of the Internal Revenue Code and the regulations related thereto. So the property owner, the property management company, nobody can raise those rents beyond what is allowed under the code and the applicable regulations.
Q. And then turning to Paragraph 15, if you could tell the Board what is provided for -- and I assume these are standard covenants that we -- you would find in those restrictive covenants.
A. I would think you would see these in most of the LIHTC deals that get -- this is what's generally referred to as a covenant that runs with the land. What that means is that even if Frank Cook Senior Housing LP and GP were not the owners of this property, if for whatever reason this property were conveyed to another party, it would still have to be

operated as a low-income development because of the restrictive covenant. Again, that's for that initial 15-year period and the additional cont- -- 15-year continuation period.
Q. And are you familiar with how LIHTC rents are established?
A. Generally.
Q. Generally?
A. Generally.
Q. And if you could tell the Board what you believe that way that LIHTC rents are established.
A. Well, I guess, yes. They're done at the federal level, and I think there's a formula that is created at that federal level that then depends on what the area median income is for where the development is located. That's what goes back to the earlier paragraph that I referenced where a certain percentage of the units in this building had to be for folks that were at 60 percent of area median gross income, and others had to be at 50 percent of area median gross income and so on. But that is prescribed, again, I think in keeping with the requirements and the structure that comes through the Internal Revenue Code.
Q. And are the rents at your property

established by the use of market rents of conventional apartments?
A. Could you repeat that question?
Q. Yeah. I'm doing one of my stupid questions, right?
A. I just didn't follow.
Q. That's okay.
When the rents are established at the subject property, are they established based upon market rents of conventional apartments in the area?
A. No, they are not. They are established based upon what's required for the LIHTC program, not conventional rent.
Q. Is that done on a countywide basis?
A. I believe so. I believe it is for Muskingum County.
Q. Now, your typical tenant pool, would they be renting at market-rate apartments?
A. Generally, no. Generally they would not be able to afford market rate units in our county. That's what makes them candidates for residency at Frank Cook and other low-income developments in our area.
Q. Now, is there a gross rent that is established for LIHTC projects?

A. I think so.
Q. Okay.
A. I think so.
Q. And is there also a utility allowance that is taken into account in determining LIHTC rents?
A. Yes.
Q. And if you could kind of explain who sets the utility allowance, and if that impacts the rent of the subject property at all.
A. The utility allowance is established by the local housing authority, in this case Zanesville Metropolitan Housing Authority, and it does impact the rent because it is essentially an offset on what the gross rent would be to get -- to then affect the net rent by accounting for that utility allowance.
Q. And how often are the utility allowance set by the local Metropolitan Housing Authority?
A. I believe that is at least assessed and reviewed annually to determine if there is the need for revision; sometimes there is and sometimes there is not.
Q. Are you permitted to charge a market conventional rent at the subject property?
A. You cannot for any of these units. 100

percent of these units are income restricted.
Q. And what would happen if you decided or chose to ignore the LIHTC rent structure and utilize rents in excess of the LIHTC rents?
A. Well, first of all, it would be a breach of the restrictive covenant we were talking about. So I'm sure there's any number of bad things that happen when that happens from a damages and litigation perspective.
From, I guess, my perspective as somebody that's involved with the local not-for-profit that works in affordable housing and the public housing authority that works in public housing, affordable housing, another consequence is -- or could be that we are prohibited from being involved in any other deals. When you violate that and you don't observe the terms of the program, you're no longer going to be able to participate in that program.
I don't know, there probably are other civil and/or criminal penalties that I don't know about and maybe don't want to know about if you violate the terms of that, but that's what I do know.
Q. Finally, would the subject property have been built if you did not receive tax credits?

A. It would not have been feasible to develop this property without the tax credits. I can't remember what the total development cost was off the top of my head in 2006 or whenever we started down this path, but it was significantly by a factor of X number what the valuation is. It just couldn't have been done if you didn't have the ability to package the deal and attract investors based upon them receiving tax credits.
MS. BAUERNSCHMIDT: I have no further questions on direct.
EXAMINER HIGGINS: Thank you very much, Ms. Bauernschmidt.
Ms. Gorry.
MS. GORRY: Just a couple.
\- - -
CROSS-EXAMINATION
BY MS. GORRY:
Q. The Frank Cook, let me get the -- I want to get it right here so I don't see it wrong -- okay. Frank Cook Senior Housing Limited Partnership, that is not a nonprofit entity?
A. It is not.
Q. Okay. And then I saw in your rent roll that it looks like probably at least 50 percent of

Page 21

the tenants do receive some sort of rent subsidy. Are those Section 8 vouchers?

A. I don't have that rent roll and I haven't reviewed what you're referencing, but I know there are any number of voucher holders that reside at Frank Cook, yes.

Q. Okay. I'm guessing that's what they are, too. There's not -- there's -- maybe another way to ask, there's not a -- there's not a project-based rental assistance contract --

A. There is not.

Q. -- associated with the property?

A. There is not. Anybody that is there that has Section 8 assistance has that assistance because they hold what is called a Tenant Choice Voucher as opposed to a project-based voucher.

Q. Okay. And those are issued by the Housing Authority?

A. They are.

Q. Okay. Great. Thank you. That's all the questions I have.

EXAMINER HIGGINS: Miss --

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REDIRECT EXAMINATION

BY MS. BAUERNSCHMIDT:

Page 22

Q. As a follow-up to that Tenant Choice Voucher, what rent structure then is utilized for a tenant that would come in with a Tenant Choice Voucher?

A. The way the Tenant Choice Voucher program works is it's essentially a three-party contract between the landlord, the tenant, and the Housing Authority. The landlord indicates what the rent will be, the tenant is capable of paying some part or all of that based upon their income. And the general rule of thumb in our world, in the public housing world is 30 percent of their income can go toward paying their rent. And if 30 percent of their income does not pay rent at Frank Cook Senior Housing or anywhere else, the voucher makes up the difference.

So if somebody -- if rent is $550 and somebody has the ability to pay only $300 because they are limited in income, the voucher pays that $250 difference every month through that Tenant Choice Voucher.

Q. Specific to Frank Cook, what rents are utilized?

A. I don't know what the rent structure is. I think it's in the neighborhood of $550 to $600.

Page 23

Q. Would it be the LIHTC rents?

A. It would be the LIHTC rents. And, again, that's set by -- in my world with my public housing authority hat on, somebody administers a Section 8 program, that's set by the landlord, or in this case set by the LIHTC rent structure.

What we know from being -- from the Section 8 administrator is that it's more than what the Tenant Choice Voucher holder makes, it's more than 30 percent of what they make; therefore, they utilize that voucher to make up the difference.

EXAMINER HIGGINS: All right.

MS. BAUERNSCHMIDT: Thank you.

EXAMINER HIGGINS: Thank you, Mr. Randles.

MS. BAUERNSCHMIDT: Do we want to do --

EXAMINER HIGGINS: Let's just hop off the record real quick.

(Discussion held off the record.)

EXAMINER HIGGINS: I believe, Ms. Bauernschmidt, you are calling your fact witness for Case No. 2016-1047, correct?

MS. BAUERNSCHMIDT: Correct. I'm calling Mr. Philip J. Lechner, L-e-c-h-n-e-r, Junior, for Buckeye Community Twenty One LP, whose common

Page 24

name is Bedford Place Homes.

EXAMINER HIGGINS: Thank you very much, Ms. Bauernschmidt.

Mr. Lechner, if you'd raise your right hand, I'd like to swear you in.

(Witness placed under oath.)

THE WITNESS: I do.

EXAMINER HIGGINS: Thank you very much.

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PHILIP J. LECHNER, JUNIOR,

being first duly sworn, as hereinafter certified, deposes and says as follows:

DIRECT EXAMINATION

BY MS. BAUERNSCHMIDT:

Q. Please state your name for the record.

A. Philip J. Lechner, Junior.

Q. And what is your business address, Mr. Lechner?

A. 3021 East Dublin-Granville Road, Columbus, Ohio 43231.

Q. And could you provide your educational background for the Board?

A. I graduated from Wittenberg University, 1979, and have been involved in the CPA -- practices of CPA since that time, 30-some years.

Page 25

Q. And could you provide your history of work experience for the Board?
A. Well, I did -- I worked for CPA firm -- several CPA firms over a 30-year period involved primarily in audits and tax returns for not-for-profits, construction companies, and low-income housing projects, HUD, rural development, and LIHTC properties that were being developed by not-for-profit developers or for-profit developers. So worked with a number of different entities that sponsored and developed these houses.
Q. And are you currently employed?
A. I am.
Q. And by whom are you employed?
A. Buckeye Community Hope Foundation.
Q. And how long have you been employed at Buckeye Community Hope Foundation?
A. It will be seven years this August.
Q. And what is Buckeye Community Hope Foundation?
A. Buckeye Community Hope Foundation is a not-for-profit developer of low-income housing. They provide housing to any -- you know, across a region all the way from Pontiac, Illinois to, you know, South Carolina. We provide typically -- you know,

Page 26

we'll either buy a used -- you know, an older project, rehab it, or we'll do a new construction development depending on the need in the area under the -- you know, they all use LIHTC because that's the only way you can get anything done.
We also do charter schools, which is -- we sponsor charter schools in the state of Ohio. We have 50 different charter schools, which is, you know, a completely separate business line.
Q. And what is your mission?
A. Our mission is -- to provide affordable housing is our primary mission and education for -- you know, within the state of Ohio, you know, as sponsored by the Ohio Legislature for Charter Schools. But for housing it's primarily to facilitate low-income residents by providing them decent, safe, sanitary housing.
Q. And what position do you hold at Buckeye Community Hope Foundation?
A. I'm the CFO.
Q. And if you could tell the Board, what is the relationship of Buckeye Community Hope Foundation to the subject property, which is held in the name of Buckeye Community Twenty One LP?
A. We sponsored that development, I don't

Page 27

remember what year it was, but it was -- we are the 100 percent owner of the general partner, which I think is Bedford Housing Partners, Inc.
Q. And what is the common name of this project, Bedford Place Homes?
A. Yeah, Bedford Place Homes, Bedford.
Q. As CFO, do you have personal knowledge of Bedford Place Homes?
A. Yes.
Q. Is Bedford Place Homes an affordable housing project?
A. Yes, it is.
Q. And if you could tell the Board, what affordable housing project does Bedford Place Homes participate in?
A. It's a straight LIHTC deal, meaning that the only subsidy is tax credits.
Q. Does the LIHTC subject control the rents at the subject property?
A. Yes, it does.
Q. Are you familiar with the LIHTC program?
A. Yeah.
Q. If you could explain in your own words --
A. Sure.

Page 28

Q. -- what -- how the LIHTC program operates and works.
A. Sure. Specifically from the rental side of things, is that what you're asking, or just in general?
Q. Well, let's just start basically an overview of what it does for purposes of development and the tax credits, kind of how far they interplay with one another.
A. Sure. It costs, you know, a certain dollar amount to develop a property. The property first goes through a process to get qualified for tax credits with OHFA and they'll be awarded a certain amount of tax credits. Those tax credits are used to -- they're sold to investors for whatever the price is at the time, market price, and they are then -- the proceeds of that are used to buy down the costs of the property to an affordable level so that the end result is your debt service on the property is very low, you know, maybe $10,000 a unit or something like that.
So what that does is makes it affordable to rent at the structure that it is, you know, with the reduced rents under the LIHTC program. So that way the property will cash flow and, you know,

Page 29

although minimally, it's not designed to make a whole -- you know, any money, it only makes -- you know, you're only allowed -- it's 1.15 percent debt coverage ratio; so there's not a lot of extra involved with these. So that's the first phase.

The second part of it would be the whole rent structure is governed by -- under HUD rules that they publish annually, the area median gross income, which dictates the rents that can be charged. They can go up, they can go down. You know, rents could actually go down if the area median income falls. In some rural areas, it could have an impact where it does fall where the, say, employment is adversely affected by a layoff or, you know, a big company pulls out. So the whole area median could drop which would then cause you to reduce the rents. So those rents are not static, but that's the maximum you can charge.

Then there's also, you know, as previously, there's a utility allowance that further reduces the rents that the tenant pays. The tenants need to qualify for the rent to live there based on their income under the LIHTC guidelines, and if they have more than that they can't -- you know, they don't qualify initially. Their incomes can rise and

Page 30

you can't get rid of them, but, you know, they can't -- initially they have to have a hearing, you know, qualify within the program standards.

Q. As part of this program, do you enter into rent and income restrictions for the subject property?

A. Well, we would sign a restrictive covenant at some point in time to, you know -- in, you know -- indicating forever, you know, what we've agreed to.

Q. I'm going to show you what has been marked as Appellant's Exhibit F. If you could take a look at that document. And, once again, this is part of the Statutory Transcript.

A. Uh-huh.

Q. But if you could take a look at this document, and if you could identify it for the record.

A. This is the restrictive covenant for Buckeye Twenty One.

Q. And are there rent and income restrictions set forth in this restrictive covenant?

A. Yes, there are.

Q. And if you could just, for purposes of the record, indicate where we would find those

Page 31

restrictions.

A. It appears that they're in paragraph -- or Section 4 of the restrictive covenant maintaining, you know, the gross rent restriction, which is 60 percent of the low income is qualified -- blah, blah, blah -- so the rents have to be maintained at 60 percent; and then there's also 35 percent of the units have to be below 50; and 5 percent of the units have to be under 35. So that adjusts your rents to the required amount.

Q. And how long is this restrictive covenant in place?

A. The initial period is always 15 years, and there's an additional 15-year period thereafter. So for 30 years these tenants are -- or the units are -- the whole project is restricted.

Q. If you could turn to Paragraph 7 of the restrictive covenant. If you could tell the Board what is set forth in Paragraph 7.

A. What it basically boils down to is you can't -- really you're restricted from doing anything; you can't change the rents, can't get rid of a tenant unless they're -- you know, for good cause. So there's no way -- basically it's just you're agreeing to those restrictions forever, you

Page 32

know.

Q. And then at Paragraph 15, if you could tell the Board what is set forth in that paragraph.

A. Paragraph 15 says that the covenants run with the land and therefore it's binding on anybody afterwards. So say the property were sold, if you could find someone to buy it -- which would be unlikely -- the property is permanently restricted essentially. So if you did sell it, they'd have to abide by the same rent restrictions so no one's going to be able to raise the rents.

Q. And if you could tell the Board, how are the LIHTC rents established at the subject property?

A. HUD would determine the rents, you know, based on the area median gross income, and there's just a chart, and it's just science based upon how many people are in the unit, you know, what they're allowed.

Q. And the rents at the subject property, are they designed to be below-market rents, that of conventional apartments?

A. Yes, they are.

Q. And --

A. The whole purpose of the code is to design people to make housing so that people can live there that, you know, can't afford to live -- or where they're paying more than 30 percent of their area median income, they want to be able to provide safe, sanitary housing to those individuals or families.

Q. And can a tenant bring a voucher to this particular property?

A. Yes, they could.

Q. And if they brought a voucher, how would the rent be established? Would it be based on a LIHTC rent or some other --

A. It would be based on LIHTC.

Q. And are you permitted to charge a market rate rent at the subject property?

A. No, very regulated. You know, OHFA's in there, you know, there's a lot of people that are looking at it, your syndicators, there's a lot of regulatory guidance in this area. So there's always people ensuring that you don't stray from what you're allowed to do.

Q. And the gross rents as established, those are then reduced by utility allowance?

A. Correct.

Q. And who sets the utility allowance for the subject property?

A. It would be the -- whatever that -- Metropolitan Housing Authority typically would set those.

Q. And you're not free to establish your own rent structure of the subject property?

A. No.

Q. And I think I may have asked, but if I didn't, how long are the -- I think I did ask you how long the restrictions are for the subject property?

A. Thirty years.

Q. What would happen if you charge rent in excess of the LIHTC rentals at the subject property?

A. You'd violate a host of agreements, you know, the least of which would be your restrictive covenant which would say you can't do it. You know, it could happen that inadvertently you make a -- you know, something changed, I don't know, and you set the rents at the wrong level for whatever reason. And at that point in time what would happen is you would be required to refund all the rents that were over -- assuming they were overcharged, you'd have to refund the tenants all that rent that was overpaid to them, you know. So you made a mistake, like a dollar a unit or something like that where you just didn't round correctly or whatever, you'd have to refund the

difference to everybody as long as you did that.

Q. And would the subject property have been built if you weren't able to receive tax credits?

A. No.

MS. BAUERNSCHMIDT: I have no further direct of this witness.

EXAMINER HIGGINS: Thank you very much. Just before Ms. Gorry gets a chance to cross-examine with Mr. Lechner, would you mind clarifying the acronym OHFA? I've heard it used.

THE WITNESS: Ohio Housing Finance Agency.

EXAMINER HIGGINS: Thank you very much. Ms. Gorry.

MS. GORRY: Yes, thank you.

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CROSS-EXAMINATION

BY MS. GORRY:

Q. Is it Buckeye -- I'm sorry, Buckeye Community Twenty One Limited Partnership, that's the owner of the subject property?

A. Correct.

Q. Is that a nonprofit entity?

A. No, it is not.

Q. Okay. Great. Thank you.

MS. GORRY: That's all the questions I have.

EXAMINER HIGGINS: Ms. Bauernschmidt.

MS. BAUERNSCHMIDT: I have nothing.

EXAMINER HIGGINS: All right. Thank you very much.

THE WITNESS: Uh-huh.

MS. BAUERNSCHMIDT: Thank you. Let me give this back to you so you have it.

EXAMINER HIGGINS: Do you need to do anything with your witnesses?

(Discussion held off the record.)

(Witness placed under oath.)

THE WITNESS: I do.

EXAMINER HIGGINS: All right. Thank you very much.

MS. BAUERNSCHMIDT: Before we go on the record --

EXAMINER HIGGINS: We're actually on the record. We can go off.

(Discussion held off the record.)

EXAMINER HIGGINS: We are back on the record.

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RICHARD G. RACEK, JUNIOR,

being first duly sworn, as hereinafter certified, deposes and says as follows:

DIRECT EXAMINATION

BY MS. BAUERNSCHMIDT:

Q. Please state your name for the record.
A. Richard Racek, Junior.
Q. And what is your vocation, Mr. Racek?
A. I am a real estate appraiser.
MS. GORRY: And the County will stipulate to his qualifications as set forth in the addendum of the appraisal.
MS. BAUERNSCHMIDT: Thank you very much.
MS. GORRY: Sure.

BY MS. BAUERNSCHMIDT:

Q. Do you have any interest either in ownership, management, of the subject property or the outcome of this case?
A. No, I do not.
Q. Were you retained to appraise the Frank Cook Senior Housing LP, a property located at 450 Baker Street in Zanesville, Ohio?
A. Yes.
Q. And pursuant to that assignment, did you prepare an appraisal report?
A. I did.

Q. Did you previously testify to another appraisal report on Frank Cook Senior Housing as of January 1st, 2015?
A. I did.
Q. And you have then provided a second appraisal?
A. I have.
Q. And I'm going to show you what has been marked as Appellant's Exhibit C. If you could take a look at that document. Are you able to identify that for the record?
A. I am, yes.
Q. And if you could identify it, please.
A. This is the appraisal report that was basically an update from the previous report that was submitted at the prior hearing.
Q. So the previous hearing, let's refer to that as your Appraisal 1 and this is Appraisal 2.
A. Okay.
Q. What is the difference, first of all, in your appraisal assignment from Report 1 to Report 2, if any?
A. Basically it was a change in the property rights appraised. The first appraisal was done on a leased-fee basis; this report is done on a

fee-simple basis.
Q. And when you changed that, did you make any other changes to the appraisal report?
A. Minor changes. Basically I -- I did a survey of the market to determine what a rental rate would be at the subject rather than relying upon the rent roll.
Q. Let's go to your appraisal. Do you have a definition of fee simple in your Appraisal No. 2?
A. Yes. It's on Page 19.
Q. And if you could, for purposes of the record -- this is probably the only time I'll ask you to actually read from your appraisal report -- can you state what the definition of fee simple is as set forth on Page 19 of your appraisal report?
A. Sure. It's listed at the bottom of the page, but the definition is "Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."
Q. Thank you very much.
So if you could kind of walk us through then the differences. You changed it from leased fee to fee simple?

A. Correct.
Q. And you used the definition of fee simple as your guideline in the second appraisal report, would that be fair to say?
A. Correct.
Q. And as you did that, did you do any surveys of any projects for your income approach?
A. Yes. On facing Page 28 is a survey of four elevator-style apartment communities that are all participating in the LIHTC program, and it's from those rentals that I reviewed to determine what a rental rate would be at the subject property.
Q. I note from looking on the facing page of 28 that you only have two projects from Muskingum County. If you could explain why there's only two from Muskingum County, and then how you went about finding additional rentals for your rental survey.
A. Well, as I stated, these were LIHTC properties, these were the ones that I think were most similar to the subject property. And since there are very few elevator-style buildings in the county, that is the reason I expanded the search. Obviously there are other LIHTC communities, such as the next report of Buckeye Community Twenty One, but I didn't feel it was appropriate to utilize the rates

Page 41

of a house in comparison to an apartment unit within an apartment building.

Q. And how did you then select what counties to choose from, if any, for your rental survey of elevator LIHTC buildings?

A. I tried to stay within counties that had similar area median gross incomes.

Q. Why did you do that?

A. Because the rental restrictions or the -- the rental incomes of the residents looking for apartments would be very similar.

Q. I note that in your survey that you also listed certain percentages. If you could explain -- maybe we should just go through each column so you can explain for purposes of the record what is set forth.

A. Well, on the rental survey I've provided, obviously I have the location and property -- name of the property.

The next unit -- or next column is unit type, and those were the units that were surveyed in each complex, whether they're two, three, or four bedroom, some one, two, three, or four-bedroom style units, and the income restrictions associated with those unit types.

Page 42

The next column would be the rental rate that applies to the rent that was being paid at those different units and the different rent restrictions, and then the occupancy of the property.

Q. And if you could tell the Board, what is the date of those rental rates?

A. January 1st, 2015.

Q. So those are rents that were physically in place for those properties as of January 1st, 2015?

A. Correct.

Q. Okay. And then you have the next column, occupancy. Did you -- were you able to also survey what the occupancy was for these four LIHTC projects?

A. Yes.

Q. And what was the occupancy rate that you indicate on facing page of 28?

A. Anywhere between 75 percent to 100 percent occupied depending on the property.

Q. So after you did this survey, then how did you project the income for the subject property?

A. I reviewed these rents, I also did review the rent roll that was in place for the units as of the tax lien date. The rents that are

Page 43

currently being generated at the property are actually at the top end of the range as established by rents in competing properties, and sometimes exceed the rent that is being paid at competing properties.

Based upon all that information is how I projected a rental rate of $505 per month for the 60 two-bedroom units that are within the subject, which equates to a total gross potential income of $363,600.

Q. If the Board put side by side your two income approaches, would -- other than potential income, would there be any other changes for vacancy and credit loss, expenses, or reserves?

A. No.

Q. And you testified before regarding how you determined vacancy and credit loss, expenses and reserves, would that be fair --

A. Yes.

Q. -- in your first appraisal?

A. Correct.

Q. Did you make any changes to your overall capitalization rate from your first appraisal to your second appraisal?

A. No.

Page 44

Q. Did you add a cost approach in Appraisal 2?

A. No.

Q. And the reason you didn't include -- with the change of the property rights that you were appraising, was there a reason that you did not include a cost approach?

A. First of all, a cost approach is not relevant. The property would not have been constructed but for the tax credits. So to develop a cost approach, assuming a LIHTC rent structure, there would be a very large amount of economic obsolescence. And I don't believe a cost approach is going to determine an accurate value estimate for a property that is subject to these government restrictions.

Q. And did you utilize a sales comparison approach to value?

A. I did not.

Q. And if you could tell the Board why you did not add a sales comparison approach to value in your second appraisal report.

A. Sure. It's for the same reason I didn't include it in the first appraisal; these LIHTC properties, if and when they do sell, are sold based upon their income-generating capabilities and not how

they compared to the other properties in the market.
Q. I note that you did not use any market rents from conventional apartments. If you could tell the Board why you didn't utilize that in your report.
A. Our tenants can't afford to live in a conventional community; so for that reason, their market is other LIHTC properties. If they were able to live in a conventional community, chances are they probably would not be classified as low income and they could then afford to live in a conventional market property, but since we have government restrictions that this property could only be leased to people with low income, I tried to survey other properties that were available to people of low income.
Q. Now, let's turn to Page 31 of your appraisal report, and this is your Appraisal Report No. 2. Could you kind of walk us through and summarize your income approach? I know you talked about how you arrived at your gross potential rent, but if you could just walk us through your vacancy and credit loss, what was that based upon at 2 percent?
A. The vacancy and collection loss is based

upon the actual performance of the subject property and also comparing it to other properties in Muskingum and the surrounding counties of Coshocton, Guernsey, Licking, Morgan, and Perry County, which is a survey I've provided in the addendum which is provided from the Ohio Housing Finance Agency, or OHFA. Based upon those sources is how I've projected a vacancy of 2 percent.
Q. And where would we find that survey in your addendum of your appraisal report, if you could just give us the page number.
A. It would be found on Page 39. What is indicated on Page 39 shows a vacancy of 1.31 percent. That would be for vacancy only without any potential credit loss.
Q. And is that 2 percent also supported by your survey that you added to this appraisal report on the facing page of 28?
A. It is, yes.
Q. After you utilized a 2 percent vacancy and credit loss, what was the next step in your income approach?
A. Well, I added some additional income, or what I classify as other income of $7,500. That number is based upon a review of historical

collections at the subject property, which has basically been in a range from about $6,357 to $9,459 between the years of 2013 and 2015. So I added that after making an adjustment for vacancy since it's based upon historical collections, which already takes into consideration the fact that there was some vacancy at the property.
Q. And then did you determine the effective gross income for the subject property?
A. I did, yes.
Q. And for purposes of the record, could you state what that is?
A. $363,828.
Q. And the operating expenses that you utilized, how did you arrive at the $222,000?
A. I reviewed the actual performance of the subject property for the years 2013 through 2015. I also compared that to nine examples of other similar style apartment communities that are in the LIHTC program. On Page 29 are the actual 2015 expenses excluding real estate taxes for those properties.
In addition to that, I also reviewed a IREM -- Institute of Real Estate Management -- publication, which indicated that 197 apartment complexes located in a multi-state region had

expenses of about $3,041 excluding real estate taxes. Based upon all that information is how I projected an expense before tax of $3,700 per unit, or approximately $222,000 per year.
Q. The IREM survey that you reference, were those for LIHTC projects?
A. Yes.
Q. And your expenses on Page 29, are those elevator buildings?
A. They are.
Q. Is there a different expense review when you have an elevator building compared to a nonelevator building?
A. There usually is. Obviously it costs money to maintain an elevator. Elevator buildings generally have more common area amenities. A lot of the units are generally accessed off of an interior hallway as compared to possibly an exterior entrance apartment; so that elevator buildings will have on average more common areas to maintain and more of the building area will be common space as compared to rentable space that would be leased to an apartment dweller.
Q. And one other comment regarding your expenses on Page 29. You said that they don't

include real estate taxes. Are reserves included in those expenses?
A. No. Those are strictly expenses.
Q. And these were actual 2015 expenses?
A. Correct.
Q. What did you determine as the reserve for replacement?
A. Estimated reserve for replacement is $400 per unit.
Q. And is that the same as in Appraisal No. 1 that you prepared?
A. Yes.
Q. And if you could then tell the Board, did you opine to a net operating income for your second appraisal?
A. Yes.
Q. And did that differ slightly from your first appraisal?
A. It did.
Q. And did you utilize the same capitalization rate in capitalizing your net operating income?
A. I did.
Q. And what was your final value conclusion before a deduction for personal property when you

capitalized the net income by your overall capitalization rate of 10.67 percent?
A. $1,104,292.
Q. And that's fairly similar to your first appraisal. If you could explain why the numbers are so close together.
A. Because the rent that was projected is very similar to the actual rent that was being collected based upon revenue.
Q. And then did you make a deduction for personal property?
A. I did.
Q. What was your final value conclusion via the income approach?
A. $1,090,000.
Q. And when you determined the overall capitalization rate to utilize, what kind of data did you utilize to support that overall capitalization rate?
A. Sales of properties that were in the LIHTC program that were purchased after the initial compliance period, but still remained in the program after acquisition.
Q. Did the nature of the location of the subject property impact your conclusion as to

utilizing a 9 percent capitalization rate before real estate tax additur?
A. Yes. Muskingum County is basically more of a rural county than, say, some of these other properties that were located in Warren County or, you know, closer to more populated areas. So I think over capitalization rate, one that's well within this range but not at the low end of the range is reasonable.
MS. BAUERNSCHMIDT: I have no further direct.
EXAMINER HIGGINS: Okay. We'll go ahead and take our first break now. We'll take 15 minutes, and then Ms. Gorry will start her -- we're off the record.
(Discussion held off the record.)
EXAMINER HIGGINS: We're back on the record. Ms. Gorry.
MS. GORRY: Yes. Thank you very much.
\- - -
CROSS-EXAMINATION
BY MS. GORRY:
Q. Okay. So let's start first with the highest and best use. Just to clarify, your highest and best use is as encumbered by the restrictive

covenant, right?
A. Yes.
Q. Okay. And then let's go ahead and go to the income approach. Let's start with the LIHTC rent comps on Page 28 -- I'm sorry, the chart in front of Page 28.
Okay. So when I was looking at these, Rick, you know, if we note on I think every single one -- yeah, every single one -- for example, the 50 percent and the 60 percent rents in every single one of these is the same. So I take that to mean that these are not generating their maximum permissible rents?
A. Correct.
Q. Okay. And so these are -- these are self-restricted by each of these owners?
A. Well, self-restricted to be what they think they can generate below maximum allowable. The owners have the ability and flexibility to charge a rent as long as it's less than or up to maximum allowable.
Q. Right. Okay. And do you know what -- just out of curiosity, did you look what the max allowable rents were for these comps?
A. I didn't look specifically. Some of

Page 53

them I'm familiar with, but for every single one, I don't know the maximum allowable.
Q. Okay. And then I'm assuming that location of these comps isn't important except to the extent that the County has the same AGMI levels.
A. Yes.
Q. Okay. So age of the property, also not important?
A. It's not important to the government when they're setting the rent.
Q. Okay. Condition of the property, not important?
A. No. They do it by bedroom size.
Q. Okay.
A. Or bedroom type; one bedroom, two bedroom, three bedroom.
Q. Okay.
A. It's not -- it's not contingent on the size of the unit or how many bathrooms it has, it's all done by bedroom.
Q. Quality of construction, not important?
A. Not when they're setting the rent, no.
Q. Okay. Great. And then -- okay. Then out of curiosity, do you know, did all of these comps also accept portable vouchers or were there any

Page 54

project-based rental assistance contracts associated with any of these comps?
A. None of them were project based.
Q. Okay.
A. But generally you will find voucher-based tenants living in a LIHTC property.
Q. Sure. Yeah. Absolutely.
Okay. And then your selection of rent here, that's essentially the average of the actual rents?
A. It's close.
Q. Okay. And same thing on expenses, your selection of the per-unit expenses is essentially the average of the actual expenses?
A. I didn't look at it that carefully, but it's close, yes.
Q. Okay. And then cap rate sales are all -- I'm sorry, I know I ask you this all the time, for each one of these have you confirmed that they were LIHTCs before and after they traded?
A. Yes.
Q. Okay. And so OHFA approved each one of these transfers to the new buyers?
A. That's a requirement, that OHFA has to approve the transactions.

Page 55

Q. Okay. And then your cap rate here, 9 percent, that was the same cap rate that was used in we'll call it Appraisal 1?
A. Yes.
Q. Okay. And then also your value for the real estate at $1,090,000, that is not only similar to the prior appraisal, that is the exact same value, right?
A. Correct.
Q. Okay.
A. It's a rounded number.
Q. Okay.
A. So if you go above it, the number will be slightly different, but, again, it's a rounded number at $1,090,000.
Q. But in the prior appraisal, you also rounded to a million-ninety.
A. Correct.
Q. Okay. I don't have any further questions. Thank you.
EXAMINER HIGGINS: Any redirect?
MS. BAUERNSCHMIDT: Yes. Yes.
- - -
REDIRECT EXAMINATION
BY MS. BAUERNSCHMIDT:

Page 56

Q. You were just asked some questions regarding the rents you utilized and the expenses were averaged. Did you calculate the rents and the expenses based on an average?
A. No.
MS. BAUERNSCHMIDT: I have nothing further.
EXAMINER HIGGINS: Thank you very much.
I believe, Ms. Bauernschmidt, please correct me if I'm wrong, we are going to go to the direct examination of Mr. Racek on the appraisal in 2016-1047 --
MS. BAUERNSCHMIDT: Correct.
EXAMINER HIGGINS: -- with the Buckeye Community Twenty One LP?
- - -
DIRECT EXAMINATION
BY MS. BAUERNSCHMIDT:
Q. Mr. Racek, were you retained to do a second appraisal on Buckeye Community Twenty One LP, known as Bedford Homes?
A. Yes.
Q. And you testified on a previous occasion to an appraisal which is known as Appraisal 1.
A. Yes.

Q. And you have then prepared a second appraisal?
A. I have.
Q. Okay. I'm going to show you what has been marked as Appellant's Exhibit D. If you could take a look at that document. And after looking at it, if you're able to identify it for the record, please do so.
A. Yes. This is the appraisal, the rewrite of the first report that was submitted for the prior hearing.
MS. BAUERNSCHMIDT: At this point in time, I'm going to ask the County if they'd be willing to stipulate to Mr. Racek's qualifications as you did in the previous appraisal report?
MS. GORRY: We will indeed.
MS. BAUERNSCHMIDT: Thank you very much.
MS. GORRY: Sure.
BY MS. BAUERNSCHMIDT:
Q. But your qualifications are, in fact, set forth in this appraisal report and the previous one?
A. Yes. In this report, they're provided on Page 49.
Q. So if you could tell the Board, what is

the main difference between Appraisal 1 and your Appraisal No. 2 on -- I think let's just call it Bedford Homes since it's easier.
A. Basically Appraisal 2 was a slight change in the -- in the property rights appraised. In Appraisal 2 I've assumed a fee-simple property right, and in the Appraisal 1 was a leased-fee analysis.
Q. And how did those differ, because you did that on the previous appraisal you just testified to in Frank Cook.
A. Yes. Basically the difference is in a leased-fee analysis, I assumed the rent that was being paid based upon the rent roll was what was utilized to project a value; and in a fee-simple analysis I looked at the actual rents, but I also then surveyed the market to determine a rent based upon market support rather than relying solely upon rent roll.
Q. And when you say you did a market survey, what did you do a market survey of?
A. I surveyed the market to find other examples of rental housing that were in the LIHTC program, which would be the same as the program that the subject property is currently following.

Q. So you used different rental comps in Bedford Homes than what you used for Frank Cook?
A. Yes.
Q. And has that change of property rights caused to have your value changed between the two appraisals?
A. It did.
Q. All the other data other than the rental survey is the same as before, the information for your cap rate, expenses, that's all the same from your first appraisal report?
A. It is.
Q. But different than what you utilized for Frank Cook?
A. Correct.
Q. Okay. So let's turn to your rental survey, which is at the facing page of 28. Kind of explain what is set forth on your rental survey.
A. The rental survey, I have five examples of other housing communities that are located either in Muskingum, Licking, or Coshocton Counties, which would be either the county the subject is located, Muskingum, or adjacent counties, which would be Licking or Coshocton County.
What I've indicated is the unit style or

unit type, either a three or four-bedroom unit in those communities, the income restrictions that are applicable to the unit type, the rental rates generated at those unit types, and the occupancies at the communities.
Q. Having done this survey -- is it fair to say these are all single-family rental units that are subject to LIHTC?
A. Yes, it is.
Q. Okay. None of these have any project-based Section 8?
A. Correct.
Q. So having done this survey, what was the next step that you utilized?
A. Well, from this survey is how I projected a gross potential income by the -- for the various unit types at the subject property.
Q. And did you utilize any other data other than the survey in opining to the rental rates for the subject property?
A. I reviewed the rent roll, but also relied upon market evidence to project a rental rate.
Q. And when you use the term "market," you're referring to the LIHTC market?
A. Correct.

Q. And did you then project the rental rates for the various unit types somewhere in your appraisal report?
A. I did, on the top of Page 29.
Q. And if you could, kind of tell us, how did this information compare to your original Appraisal No. 1 on Bedford Place, did the rents go up or did they go down?
A. To the best of my recollection, the rents increased.
Q. Okay. And your overall determination of gross potential rental income, is that higher than what you utilized in your Appraisal No. 1?
A. I believe it is.
Q. Kind of walk through how you determine these rental rates, and then give us what your projection was for the annual rental income.
A. Well, the rental rates that I've provided on facing Page 28 indicate obviously a fairly large range. They -- the properties that I surveyed are all freestanding houses similar to what we have at the subject property, whether they're in a neighborhood setting or in a scattered site setting, meaning multiple houses throughout a city rather than a specific continuous neighborhood.

The rents that you see are the rents that would be paid to the owner of the property, and then the tenant would then be responsible for paying the utilities on the home. So when we talk about maximum allowable rent that is determined by government, that would be a rent including the utilities, but that -- the rent that's paid to the owner is something less than maximum allowable because you have to take into consideration the utility allowance. So what you're seeing here are the rents as paid to the owner before any payment of utilities.
Q. And the reason for that is that the tenant is responsible for paying their own utility expense?
A. Correct. So that's what is shown on that survey, rental rates only. From that -- again, looking at the rent roll is how I projected at the top of Page 29 the various rental rate only for each of the various three and four-bedroom units of the subject property.
Q. And how does that compare and did you set forth in your appraisal what the actual rents that the property was receiving as of January 1st, 2015?

A. Well, the actual rents that the property was receiving were between $499 and $560 for a three-bedroom unit, and $549 to $660 per unit for a four-bedroom unit. So they're close to what was actually being collected at the subject.
Q. And after you projected the annual income and your monthly rental rates, what was the next step in your analysis?
A. I added in some additional income that the property is able to generate from late charges, application fees, things of that nature. It's been very minimal. Between the years of 2014 and 2015, they've collected about $688 to about $1,818. I ultimately used $1,250.
Q. Is that the same miscellaneous income that you utilized in your first appraisal?
A. Yes.
Q. Okay. And then if you could continue on, how did you determine the vacancy and credit loss?
A. I reviewed the historical performance of the subject property. I also reviewed information obtained from the Ohio Housing Finance Agency and also looked to the survey of properties that I presented in my rental survey. Based upon that

information is how I projected a 5 percent vacancy and credit loss for the subject.
Historically for the years of 2014 and 2015, the subject has had a vacancy and credit loss, which is in a range from about 7.1 percent to 7.52 percent.
Q. And that 5 percent vacancy and credit loss that you used in your second appraisal report, is that the same vacancy and credit loss that you used in your first appraisal report?
A. Yes.
Q. How did you go about then determining expenses?
A. Multiple ways. First, looked at the actual performance of the subject property. I also reviewed information obtained from the Ohio Housing Finance Agency that indicates operating expenses in Muskingum and the seven counties, and that survey is provided on Page 42.
What is indicated on Page 42 are 23 properties, all single-family detached units, located in the surrounding counties. Now, I included Franklin County in order to get an adequate number of examples. Without Franklin County included, there were only three examples of housing communities in

Page 65

the surrounding counties; so including Franklin gives me a bigger sampling. But based upon that sampling, you can see that the total cost, which includes real estate taxes, is $5,158.
I've also surveyed other similar housing communities throughout the state. And on Page 30 are the actual 2015 operating expenses, excluding real estate taxes and reserves, in seven other housing communities around the state, and these properties indicate expenses of approximately $3,125 to $3,841, again, during 2015 excluding taxes and reserves.
I also looked to the Institute of Real Estate Management, their Section 42 program, which is the LIHTC program, but that would indicate total expenses of about $3,041, and that includes apartment communities in addition to possibly housing communities similar to the subject. So based upon that information is how I projected expenses before real estate taxes and reserves of $3,100 per unit, or $108,500 per unit.
Q. And how did you go about determining a reserve for replacement?
A. I've estimated a reserve at $400 per unit. I think that's a fairly optimistic figure given the fact that we have freestanding houses with

Page 66

a lot of roofs, siding, windows, appliances to replace. But that's how I've projected reserve for $400 per unit, or about $14,000 per year.
Q. Having determined the gross potential income, vacancy and credit loss, miscellaneous income, operating expenses and reserves for replacement, were you able to determine or make a net operating income?
A. Yes.
Q. And what was the net operating income that is set forth on Page 32 of your appraisal report?
A. $112,108.
Q. How did you determine a capitalization rate for the subject property?
A. On Page 31 are eight examples of capitalization rates of LIHTC properties that sold between 2013 and 2015. These properties are LIHTC properties that are still operating as such even after the sale.
Q. And what was the overall capitalization rate you determined before real estate tax additur?
A. Nine percent.
Q. And how did you go about determining a 9 percent cap rate for this, because you utilize a 9

Page 67

percent capitalization rate in Frank Cook as well?
A. I looked at it more in terms of location, in terms of being more of a rural location than an urban location. The 9 percent I think falls well within the range. It's obviously not at the low end of the range, but generally the ones at the lower end of the range were in more urban locations; so I think our rural location would have an impact on the capitalization rate.
Q. And when you capitalize the net operating income by your 10.57 percent capitalization rate, what was your value indication before a deduction for personal and property?
A. $1,060,624.
Q. And what did you deduct for the value of the personal property?
A. $250 per unit, or roughly $8,750.
Q. And when you deducted that from the overall value, what was your value indication for the subject property as of January 1st, 2015?
A. A rounded $1,050,000.
Q. And that's in excess of the value that you testified to for your Appraisal No. 1 at $960,000?
A. Yes.

Page 68

Q. And if you could explain to the Board why you had that change in value from $960,000 to $1,050,000.
A. Basically it's a change in income, I've projected more gross potential income. And since my vacancy and expenses have remained unchanged, the result is having a greater net operating income.
Q. If you could tell the Board why you didn't use rental income from conventional rental homes or conventional apartments.
A. Basically our tenants are low income, they are generally unable to afford conventional either housing or apartments. Since our tenants, I believe, are searching for options, I tried to show what options are available and included those in my survey, and those I think represent what the market is for a tenant looking for a unit either in our building or our houses or in the competition.
Q. If you -- did you utilize any operating expenses or reserves or cap rate based on any market data from either conventional rental homes or conventional apartments?
A. No.
Q. And is that the same reason as you stated for not using it for the rental information?

Page 69

A. Yes.
MS. BAUERNSCHMIDT: I have nothing further.
EXAMINER HIGGINS: Thank you, Ms. Bauernschmidt.
Ms. Gorry.
MS. GORRY: Yes. Thank you.
- - -
CROSS-EXAMINATION
BY MS. GORRY:
Q. Okay. I'm going to ask the virtually identical questions I asked in the other one. Let's go to the highest and best use analysis on page -- let's see, I'll get there, bear with me -- okay, Page 25. So, again, the -- when you refer to fee simple, you're referring to fee simple as encumbered by the restrictive covenant?
A. Correct.
Q. Okay. And then let's go to the rent comps on Page 27, okay. Same question here, and I do appreciate the qualification on the utilities because I know those are included, too, but -- so I'll qualify my question a little bit better.
So on some of these here, like on No. 1, for example, No. 2, No. 3, and No. 4, when we get

Page 70

into the bigger units -- well, they might not be bigger, let's just say the more bedroom units, the four-bedroom units, interestingly some of the lower AGMI categories have potentially higher rents than the higher AGMI categories.
A. It's possible.
Q. Okay.
A. Because of the utility allowance.
Q. Okay. Well, utility allowance would be the same per person, though, right?
A. The utility allowance is based on the number of bedrooms in the apartment, not based upon how many people live there.
Q. Oh, okay. I did not know that. So the utility allowance is based upon bedrooms, not number of occupants in each bedroom?
A. Correct.
Q. Okay. And then just out of curiosity, on these did you take a look at what the maximum allowable rents were after deducting the utility allowance?
A. For several of them I have that, yes.
Q. Okay. And were any of these achieving the maximum allowable rents after deducting the utility allowance?

Page 71

A. No.
Q. Okay. And so, again, these were the owners what I call self-restricting the rents to keep them affordable to the tenants?
A. And to keep occupancy.
Q. Okay.
A. I mean, you could try to keep maximum allowable rent, but if you're running a property at 75 percent occupancy and you're losing money, it tells me that there's not enough tenants in the market that can afford to pay you rent.
Q. Right.
A. So you have to reduce the rent in order to keep your occupancy up.
Q. Okay. And then on these rent comps -- again, I'm going to ask the exact same questions -- the location of these is not important except to the extent that you felt the county in which they were located had similar AGMI levels?
A. Yes. I tried to find some that had as close to the same area median gross incomes. Obviously the two -- the first two that are in Muskingum County have the same.
Q. Sure.
A. Licking County is obviously closer to

Page 72

Columbus, has a higher area median gross income; so their rents generally are going to be higher, and Coshocton County has actually the same area median gross income as Muskingum County.
Q. Okay.
A. In terms of the communities themselves, most of them are located in rural areas. East Newark Homes is scattered throughout Newark, which is more of an urban area.
Q. Okay. And then the -- the age that these properties were built is not important?
A. Again, the government doesn't look at age when determining a rent.
Q. Okay.
A. Now, these properties are very similar in age. I would say that they're all built within 10 years of one another in terms of comparing them to the subject.
Q. Okay. And then same thing with quality of construction, condition of the property, those aren't important in determining the rent?
A. Well, actually they're all very similar to ours.
Q. Okay.
A. The houses, whether in these communities

Page 73

I've surveyed or the subject property, they're nice houses, but they're no frills. I mean, they -- they don't -- they're not putting granite countertops and stainless steel appliances in these things.
Q. Sure. Now, do these come with washer and drier or do the tenants have to bring those in?
A. Washers and driers are usually the hookups, and the tenants usually bring their own washer and drier.
Q. Okay. Then out of curiosity, do you know what the max allowable rents -- and I'll qualify minus utility allowance -- would be for the subject units?
A. I do not know that.
Q. Okay. And then do you know, does this specific property have a waiting list, did it as of 1-1-15?
A. I do not know.
Q. Okay. And these were just complete in late 2013, right?
A. Sounds about right.
Q. Okay. And then let's go to the expenses on Page 29 and 30. Your pro forma of 3,100 per unit, that would essentially be the average or very close to the average of the actual expenses for 2014 and

Page 74

2015, right?
A. I didn't do it on an average basis, but it appears to fall within that range.
Q. Okay. And then the -- the expense comps on Page 30, for the first three, are those scattered site or are those more of an apartment-type deal?
A. No. Those are all houses.
Q. Okay.
A. But they're all within what I'll call is a contiguous housing community.
Q. Okay.
A. Like ours, it's all one neighborhood if you will.
Q. Sure.
A. And the other four would be more scattered site houses.
Q. Oh, okay.
A. So you might not have one after another, you might have one on this street and two on the other street, but they're generally within a fairly confined area.
Q. Okay.
A. But not contiguous and would have other intervening property owners.
Q. I'm with you. Sometimes we use

Page 75

scattered site interchangeably for those that are in the same community and those that are not, but these -- but I think what you're saying is every single one is a freestanding single-family home?
A. Correct.
Q. Okay.
A. Freestanding single-home community.
Q. Sure.
A. Meaning -- I mean, I indicate how many total units there are representing those communities.
Q. Right.
A. So while the first one, Defiance Crossing, which I would call is a similar neighborhood community --
Q. Sure.
A. -- like ours has 32 units, but if you go to Greenwood Homes, which is scattered sites, there's 23 houses scattered throughout a larger neighborhood.
Q. Different areas, sure. Okay.
And then the cap rate sales, same question, are all of these single-family homes?
A. No. These would be LIHTC apartment communities.
Q. Okay. Because many of these single-family homes end up being tenant purchased if

Page 76

the owner has gotten OHFA to agree to that option, right?
A. Actually I've never seen a tenant buy their own house even though it's written in the conveyance -- sorry, the restrictive covenant that the tenants have the option of doing that.
Q. Yeah.
A. I've never actually seen a tenant buy a house.
Q. Okay.
A. I'm not sure, and I think it's something that is going to come up, because a lot of these housing communities were built within the past 15 years.
Q. Yeah. Yep.
A. I think it's going to be very difficult to find tenants or owners that can qualify to buy these.
Q. Okay.
A. Because now you're going to take on not only your expense when you were only paying rent, now you're going to pay a mortgage payment, real estate taxes, maintenance and repairs, which they don't do now. So it's -- I think it's going to be an interesting thing to watch over the next few years to

see if anybody actually does it.
Q. Now, this one is a -- this particular one, this could -- this is a lease purchase, right? So in other words, at the end of the first 15-year period, the owner could sell these homes to tenants?
A. That is -- on Page 46 of my report, I believe you're looking at about the middle of the page --
Q. Exactly.
A. -- where the owner is proposing a lease purchase.
Q. Yep.
A. Right.
Q. But they can't be done until the end -- at least the end of the first compliance period, right?
A. Correct.
Q. Okay. And then -- I think that's actually all the questions I have. Oh, no, I'm sorry. One final question. Your rounded real estate value in the first appraisal was $960,000, right?
A. Okay.
Q. Does that sound right?
A. Sounds close. I couldn't tell you exactly.

Q. Okay. So you would be a little bit higher in the second report?
A. Looks like about $90,000 higher.
Q. Okay. And that is because of the slight change in the rents you used?
A. Correct.
Q. Okay. Thank you. That's all the questions I have.
EXAMINER HIGGINS: Ms. Bauernschmidt.
- - -
REDIRECT EXAMINATION
BY MS. BAUERNSCHMIDT:
Q. You were asked a question on cross-examination regarding fee simple -- that you valued the subject property fee simple encumbered by the restrictive covenant. Is the restrictive covenant a governmental restriction?
A. Yes.
Q. I have nothing further.
EXAMINER HIGGINS: Okay. Thank you very much, Mr. Racek.
Ms. Bauernschmidt, I just want to clarify -- and I'm sure you said it and I missed it -- even though the property owner in this case is Buckeye Twenty One LP, you have referred to it as

Bedford Place Homes because that's the community name, correct?
MS. BAUERNSCHMIDT: That is correct.
EXAMINER HIGGINS: Okay. Thank you. I was a little confused, but I see it's on Page 24 and I just want to clarify --
MS. BAUERNSCHMIDT: I appreciate that.
EXAMINER HIGGINS: -- for anyone else reading the transcript.
MS. BAUERNSCHMIDT: Thank you.
THE WITNESS: If you drive to the property, you'll see Bedford Place Homes as a welcoming sign.
EXAMINER HIGGINS: All right. Thank you very much, Mr. Racek.
THE WITNESS: Shall I send Tom in?
MS. GORRY: Yes, please.
EXAMINER HIGGINS: We can go off the record for a second.
(Discussion held off the record.)
EXAMINER HIGGINS: We're back on the record.
Mr. Tom Sprout has joined us. And, Mr. Sprout, if you'd raise your right hand.
(Witness placed under oath.)

THE WITNESS: I do.
EXAMINER HIGGINS: Thank you very much, Mr. Sprout.
MS. GORRY: Thank you. The County Appellees call Thomas D. Sprout, MAI to the stand.
- - -
THOMAS D. SPROUT,
being first duly sworn, as hereinafter certified, deposes and says as follows:
DIRECT EXAMINATION
BY MS. GORRY:
Q. Tom, if you could state your name for the record, please.
A. Thomas D. Sprout.
Q. And are you a state-certified general appraiser?
MS. BAUERNSCHMIDT: Once again, we'll stipulate to his qualifications as they're set forth in his appraisal report.
MS. GORRY: Great. Thank you so much.
BY MS. GORRY:
Q. Were you hired by the County to appraise the property which is called the Frank Cook Senior Housing property?
A. Yes.

Page 81

Q. And is a copy of the appraisal report that you prepared in this matter which I have as being dated January 4th of 2018, is that a true and accurate copy of your appraisal report?
A. Yes.
Q. Okay. Great. Thank you.
In connection with us appraising this property one of the two times, did you have an opportunity to conduct a physical inspection of the property?
A. I did view the property, yes.
Q. Okay. Great. Thank you. Let's go ahead and jump right into the appraisal report.
Tell us of the three approaches to value here, which approaches did you use?
A. I used the sales and the income approaches to the value. I placed very little weight on the sales approach. The income approach is the predominant indication of value for this particular property.
Q. Okay. Let's go ahead and start -- I forget which one. Yeah, I don't know if we even really want to spend any time on the sales comparison approach at all. It's up to you. I mean, I -- obviously income -- let's go ahead and go to the

Page 82

income now first and then we'll think about the sales comparison approach later, but let's start with the income approach, Tom, on page -- let's see here, if I can get there --
A. Can I make a couple statements --
Q. Sure.
A. -- regarding -- kind of leading up to the income approach about the property?
Q. Absolutely.
A. Great. We appraised this thing as of January 1st, 2015.
MS. BAUERNSCHMIDT: Objection. I think we should not let him go rogue. I think it's better for you to ask questions and have an answer.
BY MS. GORRY:
Q. Okay. Well, let's go ahead, and I think I know where you're going. Tell us -- tell us the difference between your first appraisal report and the second appraisal report.
A. You read my mind.
This is an appraisal that's a revision from our original report that was dated November 30, 2016, which was due to a recent Supreme Court decision. The property that is appraised is being appraised assuming market rent and market expenses.

Page 83

That is a hypothetical condition that is within my report, and the appraisal was completed -- in this hypothetical -- is necessary for credible assignment results under the market rent and expense premise.
Q. Okay.
A. So that being said, and on the record, I can jump right into my valuation section upon your cue.
Q. Great. Let's go ahead and go into the income approach.
MS. GORRY: I would ask the Board that Tom be permitted to testify in the narrative regarding the income approach, and then I may follow up with some specifics after that if that would be acceptable to the Board.
EXAMINER HIGGINS: Ms. Bauernschmidt.
MS. BAUERNSCHMIDT: I'd prefer questions and answer, to be perfectly honest, it's just easier for me to follow.
EXAMINER HIGGINS: Okay. I'm going to allow Mr. Sprout, as Mr. Racek is as well, very good at getting through the appraisal report very efficiently; so I'll let him --
MS. BAUERNSCHMIDT: Thank you.
EXAMINER HIGGINS: -- go ahead and

Page 84

testify in the narrative form as long as he can avoid reading from the appraisal report.
THE WITNESS: No worries on that.
BY MS. GORRY:
Q. Go ahead, Tom.
A. Starting with the income approach to value on Page 33, I've provided a grid indicating four what I would consider functionally similar units in order to determine a market rent for the subject property. These four apartment projects are located in the greater Zanesville market area. I have appraised an apartment facility in the greater Zanesville area for mortgage purposes within the past several years. I'm familiar with the market. I'm familiar with the rentals. There aren't a lot of rental properties in this market area.
Of the four, if you make note of the dates that they were built, the subject was built in 2007, the Kensington Village property was built in 2009; so it's a similar age. The other three apartment facilities were built prior to 2007, which was the age of the subject.
The subject property's building size is 850 -- or unit size is 855 square feet, that does not include any common area. So I have not included the

Page 85

common area in my calculation for a market rent, just as these four comparables do not have any common area. Those are the actual size of their two-bedroom units.

As you can see by the subject's size versus the competition, very similar. I concluded to a market rent of $700, or 82 cents per square foot. This is above the Comparables 2, 3, and 4, which are older, but it's below Comparable No. 1, which is newer and I believe a superior product than the subject.

So by concluding the $700 per unit, per month, I take that information over to Page 34, which is the stabilized profit and loss statement I put together based on market rents, historical information that was provided to me, and I assume to be accurate from the property owner for 2013, '14, and '15 I've included next to for comparative purposes.

The income side is going to differ because of the tax credit and the subsidized rents. However, the expenses that have been included basically mirror the historical expenses from the subject property, the only inclusion was reserves for replacement at $250 per unit. You see total expenses

Page 86

on a stabilized basis at $236,000.

You look at the operating expenses for this property 2014 to '15 at $221,000, that's the difference, the $15,000. Obviously the income side, as I previously discussed, would be different because it's based on market rents. Market vacancy in the area has been determined at 6 percent or right around that area based on a survey that's in my highest and best use section. That concludes to a net operating income of $245,000.

As I indicated before, the expenses are based on historical expenses for this property and subsequently corroborated with other projects that I have verified, either through appraisal or through other means. The expense per unit, net of taxes at $3,936 is near the middle to upper end of the range of the comparables that I've included. This would be not unusual since the property does have common areas that would require additional utility costs, as well as potential additional insurance costs as well.

Page 37 is a list of apartment projects that have sold in the Central Ohio market area. Some are in the Dayton market area with appropriate cap rates, they are all market-based apartment units. I've also included the Pricewaterhouse survey on

Page 87

Page 38 along with the Realty Rates survey for the first quarter of 2015.

Because of the durability and consistency of the income stream, because of the lack of apartments in the marketplace, because of the age of the subject property, I concluded to a capitalization rate near the lower to middle of the range of 7.25 percent on a retrospective basis as of the tax lien date. A lower cap rate, in my opinion, would be optimistic considering the size of the property, meaning a smaller size.

Tax additur on Page 39 increases the capitalization rate to 8.92 percent, applying that to my net operating income of $245,000 indicates a value conclusion of 2,750,000 by the income approach to value. As we've previously discussed, the sales approach to value is a secondary indication, it's provided limit weight in valuing the subject property.

Q. Okay. Great. Thank you.

Just a couple of follow-up questions. The -- when you were arriving at your market rent, what type of utility structure are you considering, Tom?

A. The utility structure that I'm

Page 88

considering is that the tenants are paying for the utilities.

Q. Okay. And is that market based?

A. Typically, yes. The only thing that will sometimes be different is that the rent will be inclusive of water and sewer, and a lot of times that will be a reimbursement back to the landlord, not a direct pay to the utility company.

Q. Okay. But in each of the market rent comparables that you've located -- that you've utilized on Page 33, those all have the same utility structure as what you're utilizing for the subject?

A. Yes.

Q. Okay.

A. And because of the higher utility costs, because of all the common areas in the subject property, you're going to see a higher per-unit basis for utility costs at $625 per unit.

Q. Okay. And then on the expenses you noted that you did rely upon the actual expenses to a certain extent, but I just -- but on Page 36, those are market or conventional apartment expense comparables?

A. Yes, that is correct. That's correct.

Q. And your concluded expenses at 3,936 a unit, and that would obviously include reserves, are those in line with the market based upon your market comparables on Page 36?

A. In my opinion, yes, they are. They are in line with market expectations and market expenses. And the information that was provided to me is -- those are the historical numbers, and in this case with the exception of maybe some higher-than-market management fees or professional fees, which in this case I didn't believe those were the case, I felt that they were right in line with what a market operator would have in expenses.

Q. Okay. Great. And then, let's see, yes, your vacancy and credit loss of 6 percent, did you consider the subject's actual occupancy in arriving at that?

A. I just used the straight market approach of a five-mile radius for the area. On Page 24, as of 1-1-15, it was between 4-1/2 and 5 percent, I went to 6 percent to include some credit loss potential within the project.

Q. Great. Thank you. And then your capitalization rate, that is also a market-based cap rate?

A. Yes.

Q. Okay. And then finally in looking at the market rent for the subject property, what essentially are you valuing when we're using market rent?

A. Effectively valuing the unencumbered fee-simple interest in the subject property with market rent and market expenses. So -- since that was your -- I think your last question, the one thing I didn't do was conclude to a value as of the tax lien date, January 1st, 2015, of 2,750,000.

Q. Oh, I'm sorry.

A. Which was allocated between the real estate of $2,705,000, and the furniture, fixtures, and equipment of $45,000.

Q. Great. Thank you. I don't think I have any further questions. Appreciate it.

EXAMINER HIGGINS: Ms. Bauernschmidt, do you want to ask questions for five minutes?

MS. BAUERNSCHMIDT: No. I think it's easier to start unless I repeat myself.

EXAMINER HIGGINS: That's okay. So we are going to adjourn for lunch and come back at 12:40.

(Luncheon recess taken.)

\- - -

Tuesday Afternoon Session,
June 26 2018.

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EXAMINER HIGGINS: Let's go on the record.

Ms. Bauernschmidt, I'll turn it over to you.

MS. BAUERNSCHMIDT: Thank you very much.

\- - -

THOMAS D. SPROUT,

being first duly sworn, as hereinafter certified, deposes and says as follows:

CROSS-EXAMINATION

BY MS. BAUERNSCHMIDT:

Q. Mr. Sprout, is the subject property a LIHTC apartment property project?

A. Yes.

Q. And you testified previously to your first appraisal for the 2015 tax year, correct?

A. Did I testify for it? I -- I can't remember if we had a hearing for that or not, to be honest with you. If I did, I did.

Q. Okay. I'll help you out. You did testify.

A. Okay. That's fine.

Q. And in your first appraisal report, you used the restricted LIHTC rents in an income approach; is that correct?

A. That sounds about right, yes.

Q. And in this second appraisal, you're utilizing market rents from conventional apartment projects?

A. Yes.

Q. Okay. And were you given any specific instructions in how to do your second appraisal?

A. Yes. The instructions were based on a hypothetical condition to use market rent and market expenses.

Q. And you state that hypothetical in your appraisal report, correct?

A. Page 10.

Q. So kind of walk us through this. So in your first report, you did a survey, and that survey that was in your first appraisal report in the income approach is the very same data that you utilized in your second report?

A. Yes.

Q. Now, in your income approach, did you do any further analysis of rental information, vacancy information, expenses or cap rate information other

Page 93

than what you did in your first appraisal?
A. Yes, I did additional work in the second appraisal.
Q. Okay. So when I look at the rental rates -- excuse me -- the rental information, that appears to be the same rental information that you utilized in your first report.
A. That is correct.
Q. When I look at your vacancy and credit loss, you did change your vacancy and credit loss from 2 percent to 6 percent?
A. To reflect market vacancy.
Q. I'm not asking -- I'm just asking you changed it from 2 percent to 6 percent; is that correct?
A. Yes.
Q. It appears, though, that you utilized the same miscellaneous income in your first report and your second report of $7,500; is that correct?
A. Yes.
Q. And basically your expenses are the same, the only reason the numbers change is that 6 percent for management fee changes because your income changed?
A. Yes.

Page 94

Q. Other than that, you utilized the same expenses from the first case to the second -- I'm sorry, first appraisal to the second appraisal?
A. Yes.
Q. Okay. And your reserves, you use the same reserves in the first appraisal that you've utilized in the second appraisal, which is $15,000?
A. Yes.
Q. And it also appears that your capitalization rate that you utilized in your first appraisal at 7.25 percent plus the additur is the same as you utilized in your first report. I'm saying -- maybe I should rephrase that, because I don't even think that question really was right.
You utilized the same cap rate of 7.25 percent in both your Appraisal 1 and your second appraisal?
A. Yes.
Q. Okay. And the tax additur didn't change?
A. It did not change.
Q. So the real change, as I look in your income approach, is the fact that the -- the gross potential rental income change from Appraisal 1 to Appraisal 2?

Page 95

A. Yes.
Q. And is it fair to say that in having conducted your survey and opining to a market rent based on conventional apartments, that you believe that the LIHTC rents are below market rents?
A. I believe that's what I stated in my first appraisal.
Q. And are you stating that again today?
A. Yes.
Q. Did you review the restrictive covenant as part of your analysis?
A. I reviewed it, but made no opinion of it since I'm not an attorney.
Q. Okay. But in -- but you did note that there's both income and rent restrictions in the restrictive covenant?
A. I believe so, yes.
Q. I'm going to show you what has been marked as Appellant's Exhibit -- Appellant's Exhibit E.
A. Okay.
Q. And it's already been identified earlier in this hearing today as the restrictive covenant for Frank Cook. Does that appear to be the same restrictive covenant that you reviewed as part of

Page 96

your analysis both in the first and second appraisal report?
A. Well, I didn't review it as part of my analysis in the second appraisal report; so I've not reviewed this document for a while so I can't really comment on this.
Q. But you did review it for your first appraisal report?
A. Yes, I would have.
Q. Okay. And if you could turn to Paragraph 7 of the restrictive covenant. Do you know what is set forth at Paragraph 7?
A. Can you give me some context here? What is set forth? Give me some context as to what you're asking me to do.
Q. Why don't you kind of just read then what is set forth at Paragraph 7 of the restrictive covenant.
MS. GORRY: Just the first part or the whole thing?
MS. BAUERNSCHMIDT: It's a short paragraph, the whole thing.
MS. GORRY: I mean, I would object. Can he read it and then you ask the question on it, because Temeka has a copy, too, so she can also read

Page 97

it.

THE WITNESS: I've read the first paragraph of No. 7.

BY MS. BAUERNSCHMIDT:

Q. Having reviewed Paragraph 7, does it reference the fact that the gross rent can't be increased beyond the permitted code?

A. That's irrelevant to my assignment.

Q. I didn't ask if it was. I'm just -- we're just talking about the restrictive covenant, don't worry about your appraisal right now. It has nothing -- I'm just asking about the restrictive covenant.

A. Well, aren't I up here to testify of my appraisal and nothing else? I'm just asking the question.

EXAMINER HIGGINS: Woah. Woah. Woah. Woah.

THE WITNESS: I'm just asking the question.

EXAMINER HIGGINS: Please stop. All right. So, Ms. Bauernschmidt --

MS. BAUERNSCHMIDT: If he refuses to answer the question, that's fine. I'll move on to another section.

Page 98

EXAMINER HIGGINS: No. No. No. Mr. Sprout, please answer the question. And to the extent that there is an objection or something that needs to be clarified on redirect, let Ms. Gorry -- Ms. Gorry do that. So let's try not to go back and forth today. So could you -- could the court reporter read the question back, please?

(Record read back as requested.)

THE WITNESS: I don't know.

BY MS. BAUERNSCHMIDT:

Q. Okay. You can't ascertain that from your reading of this restrictive covenant?

A. It says "permitted under the Code." I don't know what code is. What code? What are we talking about?

Q. That's fine. If you don't understand, that's fine.

At page -- excuse me, Paragraph 15, if you could read that to yourself and then I'm going to ask you a question.

(Witness complies with request.)

MS. GORRY: And I have no problem conceding that the subject property while operating under the LIHTC can't charge conventional market rents. I don't think that's at issue here. I think

Page 99

that's -- I think everybody knows that.

BY MS. BAUERNSCHMIDT:

Q. Are you done reading Paragraph 15?

A. I am.

Q. And per this agreement, it states that the agreement runs with the land.

A. Yes.

Q. And when it runs with the land, what does that mean from your understanding from being an appraiser and reviewing deeds and other kinds of documents?

A. That effectively it's something that -- it's a deed restriction based on whatever the entire agreement in its whole discusses. So this particular sentence says it runs with the land, and assuming taking the whole document into context, that the -- whoever would own this property, this agreement would be binding to that, I believe.

Q. So if this property sold as of January 1st, 2015, it would -- the restrictive covenant would continue. Would that be a fair assessment considering Paragraph 15 of the restrictive covenant?

A. Well, I didn't read the agreement as a whole. I'm not trying to be difficult, but I'm not going to answer a question that I don't have the

Page 100

whole context to. But assuming that the agreement is intact and in place, then I would assume that, yes, it would run with the next person.

Q. And do you have any reason to believe from your investigation and writing two appraisal reports that the restrictive covenant was not in place as of January 1st, 2015?

A. There's no reason for me to believe that it wasn't in place as of January 1st, 2015.

Q. Did you utilize a cost approach to value the subject property?

A. I did not.

Q. And you don't believe a cost approach, it would be appropriate to value the subject property?

A. In my opinion, I don't believe a cost approach is appropriate in any instance once a property's been built unless it's special use or if there's other extenuating circumstances, like not enough data in the market.

Q. You provided a definition of fee simple in your appraisal report; is that correct?

A. I did.

Q. And that's on Page 8?

A. It is.

Q. And fee simple does reference that there's limited -- its value -- it says "Absolute ownership unencumbered by any other interest or estate," but it is subject to any governmental powers of taxation or police power or eminent domain. Is that found in the fee-simple estate, though it's unencumbered they do recognize police power?
A. Yes. That's one of the powers.
Q. Previously you testified that your survey for Frank Cook, the rental information was a 2016 survey and not a 2015 survey.
A. Okay.
Q. It appears, though, that there are no 2015 rents in your income approach. Would that still be a fair statement today, because I don't see any additional rental information?
A. That would be a fair statement.
Q. And then I believe that on direct exam -- I -- I'm a little perplexed, and let's kind of back up. So the rental information on Page 33, those do not -- your 1, 2, 3, and 4, those do not include a utility expense being paid for by the property owner?
A. That is correct. To the best of my knowledge, the tenant is responsible for the utility

costs for the four comparables.
Q. And in your analysis of determining the monthly rent at $700, does that include the tenant paying the utility expense?
A. That does include the tenant paying the utility costs, not -- the landlord is a typographical error from the last time it did the report. I just did not make the change there necessarily in my report.
Q. So when there's a typographical -- when you state on Page 34, "Therefore, we have adjusted the estimated market rent to include utility costs," that's an error?
A. No, that is not an error. You got me going back and forth here; so I apologize.
Q. Okay.
A. Let me -- I'm reading both -- I've been reading --
Q. Let's start back. I'm not trying to confuse you, I just want to make sure --
EXAMINER HIGGINS: Let's talk one at a time.
BY MS. BAUERNSCHMIDT:
Q. So the -- you utilized the 2016 survey on Page 33 to establish rent?

A. Correct.
Q. Okay. And when you established rent, that included a factor for utility costs; so $700 includes utility?
A. For Frank Cook, the $700 would include utility costs. For the rentals, for instance, Kensington Village, the $860 would be plus -- 860 plus utility costs; so...
Q. But your $700 includes the owner paying utilities?
A. Yes, that is inclusive of utility costs, yes.
Q. And your expenses, whether it's a LIHTC project in your first analysis or a conventional project, it's your testimony other -- because you used a 6 percent management fee, the expenses would be the same whether it's a LIHTC or conventional project?
A. For this property, yes. I believe the historical information that was provided to me was consistent with market.
Q. Okay. And historical, when you say that, you're referring to the actual LIHTC expenses?
A. I'm referring to the actual LIHTC expenses that I extracted from the owner's data.

Q. Correct. Okay. Then your expense comparables that are set forth on Page 36, none of those are 2015 expenses?
A. No, none of those are 2015 expenses, but 2014 would be appropriate since the tax lien date is 1-1-15.
Q. Okay. And you have one that's a 2014 -- purely a 2014 expense, and that's Project 1?
A. That is correct, purely '14, yes.
Q. Now, are any of the -- and I assume that these are the same expenses that you utilized in your first appraisal?
A. So as not to assume.
Q. No, no. Go ahead.
A. I believe that those are the -- those are the same, yes.
Q. And so all your answers from the previous analysis as to the expenses would follow through, you wouldn't change any of the responses to my questions regarding expenses?
A. I don't recall my testimony; so for me to answer that like yes to all would not necessarily be representative of what I would say now.
Q. Okay. So are all of your Projects 1 through 6 conventional apartments?

Page 105

A. Yes.
Q. So when you were doing your LIHTC analysis for Appraisal 1, you didn't have any LIHTC expenses?
A. I did not have any LIHTC apartment projects as far as confirming the expenses for the LIHTC project, which is the subject.
Q. And were any of these six projects on Page 36 from the Zanesville area?
A. No.
Q. And I know that we went through this before, can you give us a general locale, like, you know, Columbus metropolitan market, Dayton market just so we have -- I believe your testimony before is some of these were from the Dayton market.
A. One was from the Dayton market, No. 3, I believe.
Q. So 3 is from Dayton.
A. Yes. And I believe the other five projects are from the east or northeast side of Columbus.
Q. So they're all Columbus, Columbus area?
A. 6 is Reynoldsburg, 4 and 5 is Westerville, 1 I believe -- 1 and 2 I believe are in the Reynoldsburg east Columbus market area; so that's

Page 106

the side of town that's closest to Zanesville.
Q. And when it came to determining an overall capitalization rate, I know that you had a band of investment, you had some sales, and you had Realtyrates.com. Which of these did you rely most heavily on in determining a capitalization rate?
A. Well, typically I'm going to rely on the market-driven rates that I'm extracting from the sales that were throughout Ohio. I believe I used different -- some are the same, some are different from Report 1 to Report 2, but extracting from actual sales provides the highest degree of use --
Q. Okay.
A. -- as far as a capitalization rate is concerned. The band of investment is just a guide and should not be relied upon for cap rate purposes.
Q. So when it came to redoing the income approach, and I looked at your first appraisal that you did on Frank Cook, on Page 31, and you want to get to Page 31 of your first appraisal, the first set of Columbus sales that were from '11, '12, and '13, it appears those that you had on that page were excluded from Page 37 of your second appraisal report.
A. Okay.

Page 107

Q. Is that fair to say, that -- I don't see them in here; so I assume they were excluded.
EXAMINER HIGGINS: Ms. Bauernschmidt, would you mind repeating the question? I just want to make sure I'm -- I'm on Page 31 of the old appraisal report.
MS. BAUERNSCHMIDT: Correct.
EXAMINER HIGGINS: And Page 37 of the new appraisal report.
MS. BAUERNSCHMIDT: Of the second report, correct.
EXAMINER HIGGINS: Okay. Thank you.
BY MS. BAUERNSCHMIDT:
Q. And it's the first box with the Tall Oaks -- all the sales from '11, '12, and '13, I don't see that box contained in your second appraisal report.
A. I decided to exclude those because they were all built in the '50s, '60s, and '70s. The subject was built in 2007, I believe.
Q. Okay. And then as to the second set of sales on Page 31 of your first appraisal report, it appears that you just changed out a couple of the sales.
A. Yeah, it appears that way. There's no

Page 108

rhyme or reason as to why I took some out and did not keep others. I have no rhyme or reason for that. I just provided a new chart that was '12, '13, '14, and '15 sales.
Q. And I believe -- let me ask again -- are -- all of the cap rates on Page 37 are of conventional apartments?
A. Yes.
Q. Back in your previous case you stated that a lot of these were taken from Co-Star, your cap rates.
A. I don't recall my testimony from before; so I can tell you that I verified with the party to the transaction and/or did an appraisal of that property, but, yeah, Co-Star was part of that as well.
Q. Your sales comparison approach, it appears that you stated in direct that you did not rely on it.
A. That is correct.
Q. It appears that some of your sales -- well, let's go back and I'll give you a new question.
So you have one sale in Zanesville from 2016 and one from 2017; is that correct? I'm on Page 31 of your second appraisal report.

Page 109

A. That is correct.
Q. Were there any other sales of conventional apartments in '15 that you didn't utilize, I say in Zanesville that you didn't utilize?
A. If I noted them or noticed that they were there, I didn't feel they were pertinent to this appraisal. I had done an appraisal I think previously in testimony, I had appraised a property in Zanesville for mortgage purposes and surveyed the market for sales and/or rent comparables. During that period of time, determined there wasn't a whole lot of multi-family activity in Zanesville as far as sales or actual apartment projects in -- within the city limits.
Q. And when was that report done, what time period?
A. That time period would have been sometime in early '17, I believe.
Q. Okay. So early 2017, which is a time period you were doing an appraisal that would have had a '17 date?
A. Yes.
Q. Okay. And this is a '15 appraisal date?
A. It is.
Q. Okay. So basically you utilized the

Page 110

sales from that 2017 appraisal report for purposes of Page 31 in your Appraisal No. 2?
A. No.
Q. Okay. Were you aware of any sales at all that occurred in Zanesville in 2014?
A. I'm sure I was aware of that because I would have looked at sales two years on each side.
Q. Did you review the actual purchase agreements of Sales 1 through 4?
A. 1, 2, and 3.
Q. You saw the actual purchase agreements?
A. I did.
Q. Good. And were you given actual income and expenses?
A. I was.
Q. And I don't see anywhere that you have actually supplied those income and expenses in the writeup of your sales.
A. Well, there's a cap rate, isn't there?
Q. Well, we can't understand, though, for your gross rent multiplier cap rate what went into that. You just have them stated what the cap rate and gross rent multiplier might be.
A. Would you like me to walk you through the calculation?

Page 111

Q. No. I know how to calculate a cap rate.
A. Okay.
Q. I'm just saying you didn't include, though, the income and expenses in your writeup of the sales.
A. Why would that be necessary, I've got a gross rent multiplier and a capitalization rate.
Q. We can't go back and check your analysis as to your net operating income to see if, in fact, you calculated the cap rate correctly.
A. Well, are you saying that I'm not competent to calculate a capitalization rate, Counselor?
MS. GORRY: I don't think that's even a question. Let's just stop and move on to the next question.
THE WITNESS: The answer to your question is it's not necessary for that information to be provided. If I've got a gross rent multiplier and a capitalization rate, that can be easily calculated.
BY MS. BAUERNSCHMIDT:
Q. Did you physically go inside each of your four sale comps?
A. Three of the four.

Page 112

Q. And is that because you appraised three of the four properties?
A. Yes.
Q. Okay. When you say "three of the four," which ones are those?
A. The first three sales.
Q. So it was the Bellefontaine sale, Shady Lane, Muirwood Village, Zanesville, and Kensington Commons, Columbus?
A. Yes.
Q. So is Kensington Commons, your Sale No. 3 on Page 31, is that the same rental comp as Kensington Village, which is your number one rental comp?
A. No.
Q. Muirwood Village, did you utilize -- that's a Zanesville property. Did you utilize that as one of your rental comps?
A. No.
MS. BAUERNSCHMIDT: I have no further cross-examination.
EXAMINER HIGGINS: Any redirect, Ms. Gorry?
MS. GORRY: No thank you. Let's move on to the next one.

EXAMINER HIGGINS: All right. So you are about to examine Mr. Sprout about the property that is the subject of 2016-1047, correct?

MS. GORRY: Yes. Correct.

MS. BAUERNSCHMIDT: Can we give me two seconds so I can --

EXAMINER HIGGINS: Let's hop off the record real quick.

(Discussion held off the record.)

EXAMINER HIGGINS: We are back on the record. Ms. Gorry.

MS. GORRY: Yes. Thank you.

- - -

DIRECT EXAMINATION

BY MS. GORRY:

Q. Tom, were you hired by the County Appellees to appraise the property that is the community called the Bedford Place -- I'm sorry, Bedford Place?

A. Yes.

Q. And is the appraisal report dated January 4th of 2018, is that a true and accurate copy of the appraisal report?

A. Yes.

Q. Great. Thanks. Let's -- let's go on to

the three approaches to value. Which of the approaches have you utilized here?

A. I've utilized the income and sales approaches to value. Because of the nature of the assignment, I was not -- I don't want to say allowed, but permitted to use single-family dwelling sales; so I utilized other apartment type of properties. Therefore, the sales approach is utilized, but really not given any importance at all or weight in this appraisal. It's all based on the income approach to value.

Q. Okay. And that's to confirm, even though these are single-family homes, you've appraised them as an economic unit?

A. I did.

Q. Okay. Great. Let's go into the income approach. Go ahead and walk us through first the selection of the rent comps here, because these are -- these are different.

A. Yes. The rent comps that I utilized in this appraisal, because it's based on a hypothetical condition, that it is not -- that I'm valuing this property utilizing what I would determine market rents and market expenses since we're not able to include the tax credits as part of the value

conclusion for ad valorem tax purposes. This, in my opinion, provides the best indication of what the value would be for this under that hypothetical condition. So I didn't take any of the LIHTC into consideration when doing this report.

The five rent comps on Page 35 I utilized are single-family dwellings that I was able to locate in the market area. I did it on a rent-per-bedroom basis, not a rent-per-square-foot basis.

Q. Is that common in the marketplace with single-family homes?

A. Yes, a lot of times it is. You're going to get a better indication as to what they're renting per bedroom; so that's how I went ahead and went about my work. Each one of them, I believe, had garages, each one of them had hookups, utilities would be paid by the tenant in each of these instances.

Also of note is that the tenant would also be responsible for their lawn care, as well as their snow removal. Those are expenses that a project would typically encumber or include those, but in this case since that's built into the rent and the tenant is doing those things, that reduces the

amount of expenses that would go against the project.

On Page 36 in my analysis, I determined that the rent per bedroom for each of the three and four-bedroom units would be at the lower end of the range for the three bedrooms at $250 per bedroom, or $750 per month, and for the four-bedroom dwelling I was at $212.50 per bedroom, which was in between or effectively closer to No. 5.

I should note that No. 2, which is 601 Troon Crossing, I believe that was a LIHTC or subsidized type of rent. There were not a whole lot of four-bedroom rents in the marketplace. So instead of just providing one, I wanted to provide a second one, which I believe was a subsidized, and since then of course I'm above that number since that rent is subsidized. So I concluded to a rent for the four-bedroom units at $212.50 per bedroom, or $850 per month.

On Page 36 I have included a stabilized profit and loss statement, the 22 three-bedroom units and the 13 four-bedroom units, that indicated a total effective gross income of 330,600, that's about $100,000 greater than what the subsidy would be providing. I used a market vacancy at 6 percent, and I included the expenses for the subject property being similar to historical costs.

I believe that the numbers are comparable to the expenses that I utilized in the previous appraisal, the only difference would have been the income based on market which is based on the Supreme Court decision.

I should also note that the highest and best use of this as vacant would be for a subsidized project, because it would not be able to -- in my opinion, the cost greatly exceeds what this project would be worth; so it wouldn't be financially feasible without the subsidy. As improved, however, the current improvements represent the highest and best use, which is why we're here.

The expenses --

Q. Go ahead. That's what I was going to ask about.

A. The expenses of 3,111 per unit are near the lower end of the range. That would be typical since these are virtually new properties. Also, there's little landscape, little mowing, little snow removal to be done because that's all handled by the property owner.

From a capitalization rate standpoint, I concluded to a capitalization rate of 7-1/2 percent

for the income stream that is in place for the subject property. That is about I think 50 basis points higher than where I was the previous time. In my opinion, we're looking at a product that is in great demand. There is no inventory that's in place, and I believe there's a waiting list for this project. However, those things wouldn't be necessarily taken into consideration because I'm valuing this on a market-rent basis. I used an additur to adjust my capitalization rate to 9.23 percent, and applied that to my net operating income of $203,638 to provide a value indication of $2,205,000.

In conclusion, as of January 1st, 2015, which is the tax lien date, my value conclusion utilizing the income approach pretty much exclusively of $2,205,000, allocated between real estate of $2,170,000 and furniture, fixtures, and equipment of $35,000, or effectively $1,000 per unit since the project is virtually newer.

Q. Very good. And one follow-up question: You have included expense comparables on Page 38. While you relied -- or while you looked to the actual expenses, were those in line with the market?

A. They would be in line with the lower end

of the market. I mean, because this is such a unique project being all single-family dwellings that are a part of the economic unit, it's going to be a little bit different, but from a functional standpoint being at the lower end of the range because the renter is paying for snow removal, their driveway, they're paying -- they're doing their own mowing, those types of things aren't -- and it is, I believe, on a public right-of-way; so those things, those expenses are not part of the project that they're actually going to be saving.

Q. Okay. So it wouldn't surprise you that the expenses were at the lower end of the market?

A. Absolutely, correct.

Q. Okay. And then, I'm sorry, I think you indicated that you -- there was a change in the cap rate between the first and the second appraisal. Can you tell me what that was again?

A. Well, the 50 basis points adjustment upward, with the subsidy that was in place, I -- I believe that because of the demand for this type of a product would have -- would constitute a lower capitalization rate, because you do have a waiting list that's in place for this type of product. Even though this type of product is still in great demand,

I believe that if these units were vacant they would easily be able to get $750 or $850 per month from a single mother with a child or a family for that matter. That's still a relatively inexpensive way to be in a detached dwelling of an age of these units. So the income stream would be a little more durable, this type of product under the subsidy, but 50 basis points, I mean, we're cutting hairs kind of, sort of.

Q. Okay. Essentially slightly less risk when -- if you're including -- if you are valuing it as subsidized?

A. Yes.

Q. Okay.

A. In my opinion.

Q. Okay.

A. In this case. The last case was different because you got a different type of property.

Q. Right. I'm with you. Okay. Then when one is valuing -- I guess this is slightly different, because we're looking at these as an economic unit, but when utilizing market rents to value property, what essentially are you valuing?

A. I'm valuing the unencumbered fee-simple interest at market rent and market expenses.

Page 121

Q. Okay. And then that is qualified as an economic unit in this case?
A. Yes.
Q. Okay. Perfect. Thank you. That's all the questions I have.
EXAMINER HIGGINS: Thank you very much, Ms. Gorry.
Ms. Bauernschmidt.
MS. BAUERNSCHMIDT: Thank you very much.
- - -
CROSS-EXAMINATION
BY MS. BAUERNSCHMIDT:
Q. Let's start with your income approach on Page 35 of your second appraisal report. These appear to be the same rentals that you utilized in your first appraisal report. I'm turning to Page 28 of your first appraisal report.
A. Yes. They appear to be the same.
Q. Okay. And kind of explain this to me. Now, I know that you testified last time that Troon Crossing was a LIHTC or had some kind of subsidy on it. Now, is that part of a larger complex of single-family rental homes, No. 2?
A. As I indicated in my discussion, I believe No. 2 was a LIHTC project or a subsidy -- subsidized project.

Page 122

Q. But is it part of a -- a project of other rental homes by Troon Crossing?
A. I believe it is. I'm not 100 percent certain, but I believe it is.
Q. Now, 1, 3, 4, and 5, are they part of a rental home community or are these just single-family -- different single-family rentals that may be owned by individuals that may not be a group of them together?
A. They're in subdivisions.
Q. These are in subdivisions?
A. I believe they're in subdivisions.
Q. Okay.
A. Or they're in other areas of other single-family dwellings.
Q. Okay. And, once again, these were -- you testified before that these were all 2016 rentals.
A. If that's what I testified the first time around, that wouldn't surprise me that that would be 2016.
Q. And then turning to your expenses on Page 38 of your appraisal report, No. 2, it's easier, those appear to be the same expense comparables that you utilized in Frank Cook, which is the previous case you just testified to.

Page 123

A. Yes.
Q. And is it also fair to say that the cap rates on Page 39 of your second appraisal report, those are the very same cap rates that you set forth in Frank Cook's property as well?
A. Yes.
Q. I was writing something down, and I -- when you first started your direct exam on this property, and it was something, and I don't know what it was reference to, it says you stated you weren't permitted to use single-family rental units. And I --
A. No.
Q. That's not what you testified to?
A. No.
Q. Okay. I misunderstood then your testimony. Then you went on to say you appraised it as an economic unit.
A. I can either repeat what I said or we can go back to the record, but if you would like I would like to help you out with what I said.
Q. No. I just want to know what it was in reference to, was it reference to a highest and best use or what was it referencing?

Page 124

A. It was referencing sales that I utilized in my report.
Q. Ah.
A. I didn't use sales of single-family dwellings that were sold to owner users.
Q. Okay. And you stated you were not legally permitted to do so. Did somebody give you some guidelines to say you couldn't use single-family rental homes?
A. I don't think I used the word "legally." We can go back and check, but I don't think I used the word legally, but --
Q. Well, if you weren't -- if you state you weren't permitted to use; so somehow you had to come to the conclusion that you were not permitted to do so.
A. My instruction was not -- I asked if I could use those, because the value conclusions would have been probably twice or three times higher than what is in my report right now. But since the properties are not able to be sold to owner users at this point in time, it would not have been appropriate based on the instructions from the Supreme Court.

Page 125

Q. And those instructions were given to you by your counsel?
A. Yes.
Q. Okay. And in this case you changed your hypothetical con- -- hypothetical in the second appraisal to include the fact that you were using market rents, market expenses, market-driven cap rate even though the property was encumbered, quote, as a LIHTC project?
A. Once again, we had a Supreme Court decision that changed the scope of my assignment.
Q. And that's a pretty important case. Was it a case given to you to read or did your counsel give you direction as to the Supreme Court case?
A. Just like if I was working for a property owner on a high tech case before with a WODA and now with this particular one, counsel told me that a recent Supreme Court decision, we want to appraise -- we want you to appraise this property utilizing market rent and market expenses. So in this instance I have no problem taking instruction regarding how I would go about appraising a property under this hypothetical condition, as I have done LIHTC properties for property owners in the past with a different ruling that was in place at that point in

Page 126

time.
Q. And were you given a name of a case or some other kind of guideline, given a copy of the case to read?
A. No. Why would I? I'm not an attorney.
Q. Okay. So you don't know if that reference to market was in reference to a case involving a project-based Section 8 property?
A. I can't tell you what case, I'm not an attorney.
Q. Okay. Now, you set forth on Page 35 on that rental grid some rents for the subject, 750 and 850. Those are the rentals that you determined for those properties, those aren't the actual rental rates?
A. No. They're not the actual rental rates.
Q. And in your previous appraisal, your first appraisal on Page 28, you did list, in fact, what the -- the restricted rents in place were for the three-bedroom and four-bedroom units?
A. Which was based on my hypothetical condition on Page 12 of that previous report.
Q. I know. You don't have to keep adding that in. I'm just asking you simple questions,

Page 127

really.
So based on your assumption of rents for 750 and 850, would the same rental pool that is eligible to rent at the subject property, would they be able to afford the rents at 750 and 850?
A. I don't know.
Q. And I asked you in the previous case on Frank Cook, we talked about fee simple and the definition of fee simple. If I asked you those questions, your response isn't going to change from the previous discussion on Frank Cook?
A. No.
Q. It doesn't appear that there's any additional information in your income approach as to rental information, expense, vacancy, or cap rate. It looks like basically the same information that you had in your Appraisal No. 1.
A. The same data, the historical numbers for the profit and loss statement would be the same, the cap rate chart.
Q. We already discussed that change just because you excluded the older sales.
A. So the rate went -- my capitalization rate was 50 basis points higher than --
Q. I'm just talking about underlying data.

Page 128

I'm not looking to --
A. Underlying data, I'm sorry.
Q. Yeah.
A. I believe the underlying data, except for the changes I had previously discussed in the previous case, I believe those would be the same.
Q. So when we analyze -- once again, you didn't really rely on the sales comparison approach in this as well.
A. This one even more so.
Q. Okay. Just because of your discussion you just had?
A. Yes.
Q. Okay. So let's go to your income approach. So when you projected market rent based on the five rentals on Page 35 of your second appraisal report, the rental income increased a little -- well, probably about 105,000 or so dollars from Appraisal 1 to Appraisal 2.
A. Say that again. I'm not clear on what you're asking.
Q. Let's make it easy for you.
A. I'm not clear what you're asking me.
Q. Let's turn to Page 29 of your appraisal report, your first appraisal report and Page 36 of

your second appraisal report.
Your gross potential rent when you utilize the restricted rents was $235,272, and your gross potential rent on Page 36 of your second appraisal report increased of $330,600. It's about a $105,000 increase.
A. That's misleading, though, but --
Q. I'm just saying based by the change of rents, the gross potential increase -- the gross potential rental increased?
A. Yes, it increased.
Q. Okay. Over $100,000?
A. No.
Q. Gross potential rent didn't increase from 230,567 to 330,600?
A. That's $95,000. You said over 100-.
Q. Oh, okay. Almost 100,000.
A. That's a 5 percent swing, that's material.
Q. 235- to -- okay, 95,000. So $5,000 is material?
A. Five percent is material.
Q. Okay. And then you change your vacancy and credit loss from 2 percent to 6 percent; is that correct?

A. Yes.
Q. And then in your pro forma on your first appraisal, you had bad debt expense of 17.50, but you didn't include any bad debt in your second appraisal report on Page 36.
A. I did include it. If you read the line item there under Bad Debt Expense, it says "Included in vacancy and credit loss."
Q. Okay. So you changed -- instead of giving it a separate line item, you included it in the 6 percent?
A. I did.
Q. Okay. And your expenses stayed the same, the only change is the fact that 6 percent over a higher net effective gross income just changed the management fee, all the other expenses appear to be the same?
A. Yes.
Q. So when you appraised it as a LIHTC project in your first appraisal and appraising it as a market rate, basically the expenses would have remained the same in your analysis?
A. Yes.
Q. And then you kept the reserves the same at $300 per unit?

A. Yes.
Q. So do you have any expenses for single-family rentals in your appraisal report?
A. No, I do not.
Q. And you already discussed that you increased your cap rate from 7 percent to 7.5 percent before the additur, that is correct?
A. Yes.
Q. And then you used the same deduction for personal property of $35,000 in both appraisal reports?
A. Yes.
Q. So the real material change is in the change in the rental stream of this property?
A. And the 50 basis points of the cap rate.
Q. Okay. Are any of -- so none of the sales that you included in your -- either appraisal report, none of them were elevator buildings and none of them were single-family units? I think we've kind of established that, but I just want to make sure that I'm clear on that.
A. That's why I didn't rely on the approach, one of the reasons.
Q. As in the first case on Frank Cook, did -- for purposes of the first appraisal, did you

review the restrictive covenant?
A. No, I did not review the restricted covenant for this updated appraisal.
Q. Did you review it for your first appraisal report?
A. I'm sure I did review it.
Q. And did you include it in the back of your first appraisal report?
A. I don't know. I don't think I have the addendum of my first report, but if there's one in the record I'm sure that we can find that out pretty quick.
Q. We'll do a shortcut, it was included in your first appraisal report. So is there a restrictive -- or to the best of your knowledge, was there a restrictive covenant in place on the subject property as of January 1st, 2015?
A. To the best of my knowledge, yes, there was.
Q. And does the restrictive covenant control the property both as to income levels and rent restrictions?
A. I'm sure those are part of it, yes.
Q. And depending on the hypothetical, whether you use tax credit rents or do market rate

rents, there's going to be a significant change in the value of the property, all other things being equal?

A. Yes, there is going to be a material change.

Q. And do you have any knowledge whether or not the owners of the subject property could have charged market rents at the subject property as of January 1st, 2015?

A. I don't have any knowledge of that, but if the restricted covenant was in place I'm assuming the restricted covenant would encumber the property.

Q. And as of January 1st, 2015, is it your opinion that the LIHTC rents were below-market rents?

A. The LIHTC rents were below-market rents as of the tax lien date.

MS. BAUERNSCHMIDT: I have no further cross-examination.

EXAMINER HIGGINS: Thank you very much, Ms. Bauernschmidt.

MS. GORRY: No thank you.

EXAMINER HIGGINS: All right. Thank you very much, Ms. Gorry.

Ms. Gorry, do you have any objections to the two property owners' exhibits?

MS. GORRY: No, none.

EXAMINER HIGGINS: Okay. C, D, E, and F?

MS. GORRY: No, none.

EXAMINER HIGGINS: Okay. And, Ms. Bauernschmidt, do you have any objections to the County Appellees' 3 and 4?

MS. BAUERNSCHMIDT: My objection is for the record only because we're all aware that this most likely will be appealed, and for purposes of the record we want to object because of the methodology. We believe under the case law that the appraiser has used the incorrect methodology in valuing both properties.

EXAMINER HIGGINS: I'm going to overrule your objection, and the Board will make that determination and will give Mr. Sprout's appraisal reports their due weight.

Before we went on the record, if I recall correctly, the parties had indicated -- just to clarify, for the record, I have accepted all of the exhibits into evidence.

(EXHIBITS ADMITTED INTO EVIDENCE.)

EXAMINER HIGGINS: To clarify for myself when I go back and read the record and wonder why we

started with Exhibit C and Exhibit 3, this is a reconvened hearing. I believe the first hearing was held in February 2017, and at that time the parties submitted Exhibits A and B and Exhibits 1 and 2; so there's that. But just I'm accepting all of the exhibits into evidence having overruled Ms. Bauernschmidt's objection to Appellees' Exhibits 3 and 4.

I believe the parties had requested a briefing schedule in lieu of closing arguments.

MS. GORRY: Yes, please.

EXAMINER HIGGINS: Okay. Are there any vacations that I need to be cognizant of?

MS. GORRY: Not for me unfortunately.

MS. BAUERNSCHMIDT: Not that would impact this at this point in time.

EXAMINER HIGGINS: Okay.

MS. BAUERNSCHMIDT: I'm going to be gone three weeks in September.

EXAMINER HIGGINS: Okay. Great. So first brief due on or before July 26th, and the second brief due on or before August 26th. Let me confirm that that is a good date. Nope, that is not, that's a Sunday. August 27th.

MS. GORRY: Sounds good. Thank you.

MS. BAUERNSCHMIDT: Thank you.

EXAMINER HIGGINS: Is there anything else that we need to take care of before we get off the record?

MS. GORRY: Not on my end.

EXAMINER HIGGINS: No. All right.

MS. BAUERNSCHMIDT: Oh, there is one thing.

EXAMINER HIGGINS: Okay.

MS. BAUERNSCHMIDT: I believe in the first case -- and I believe it's the understanding of opposing counsel that the entire record is included in the appeal. So the first BTA hearing and today's BTA hearing, all of the testimony is combined and to be utilized for rendering a decision for both cases. Is that kind of your understanding? Because I know we did that in the first case so that we wouldn't repeat our -- a lot of the common --

MS. GORRY: Yeah.

MS. BAUERNSCHMIDT: -- direct and cross-examination questions.

MS. GORRY: Yes. I have no problem with the prior hearing being incorporated into the record for this case. I mean, certainly we're not relying upon our first appraisal report.

Page 137

MS. BAUERNSCHMIDT: No. No. No. No. No, I know.
MS. GORRY: But the record, yeah, I have no problem.
EXAMINER HIGGINS: Okay.
MS. BAUERNSCHMIDT: I just think for purposes of any appeal, that they're going to have all these appraisal reports, and it's only going to make sense if we have this combined --
MS. GORRY: I totally agree, yeah.
EXAMINER HIGGINS: Okay.
MS. GORRY: And the preliminary stuff about both of the -- I mean, the physical stuff, all that's in the first one, yeah.
EXAMINER HIGGINS: I don't believe -- I mean, there was no motion from the parties about striking the prior hearing, and so just from my perspective that would be a proper consideration.
MS. BAUERNSCHMIDT: Good.
EXAMINER HIGGINS: So does that address your concerns, Ms. Bauernschmidt?
MS. BAUERNSCHMIDT: It does. Thank you so much.
EXAMINER HIGGINS: All right. Thank you so much. So we have our briefing schedule, we have

Page 138

our exhibits into evidence. And anything else?
MS. GORRY: No thank you.
EXAMINER HIGGINS: All right. There being nothing further, this concludes the hearing.
MS. GORRY: Thanks.
(Thereupon, the hearing was concluded at 1:48 p.m.)
- - -

Page 139

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Tuesday, June 26, 2018, and carefully compared with my original stenographic notes.

____
Carolyn D. Ross,
Registered Professional
Reporter and Notary
Public in and for the
State of Ohio.

My commission expires April 3, 2019.
(CDR-87084)

R.C. 323.73(G) - COMPLAINT

IN THE BOARD OF REVISION
CUYAHOGA COUNTY, OHIO

TREASURER OF
CUYAHOGA COUNTY, OHIO
c/o Justice Center – 9th Floor
1200 Ontario Street
Cleveland, Ohio 44113

Plaintiff

vs.

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

Defendant(s)

Permanent Parcel No(s) [redacted]

Year Certified: 2014

CASE NO. BOR

COMPLAINT FOR COLLECTION OF DELINQUENT TAXES, ASSESSMENTS, PENALTIES AND INTEREST, FORECLOSURE AND EQUITABLE RELIEF

[redacted]

1. Now comes Plaintiff, Cuyahoga County Treasurer, and for his cause of action states:

2. That a Delinquent Land Tax Certificate (Exhibit "A"), was certified by the Office of the Fiscal Officer, filed with Cuyahoga County Treasurer, and delivered to the County Prosecutor of Cuyahoga County, Ohio;

3. That Seven Thousand Three Hundred Twelve and 03/100 Dollars ($7,312.03) is and remains a charge on the Cuyahoga County Tax Duplicate for unpaid taxes, assessments, penalties, interest and charges ("Impositions") originating from said Delinquent Certificate which charge, is due and unpaid, and a good and valid first lien against said property described in the Preliminary Judicial Report (Exhibit "B"), which is hereby incorporated and made a part of this Complaint.

4. That said taxes, assessments, penalties and interest as certified by the Office of the Fiscal Officer have not been paid for one year after certification as delinquent.

5. That this action in foreclosure proceedings is convened under provisions of Section 323.25 and/or Section 5721.18(a) and/or 323.65- 323.79 of the Ohio Revised Code.

6. Plaintiff further states that the following named defendants, to wit:

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted] [redacted]

have a claim to have some interest in or lien upon said premises which interest or lien, if any, is inferior and subsequent to the Plaintiff's lien and prays that said defendants be required to set up their lien or claims or forever be barred from asserting same against the within-described premises.

7. Plaintiff further states that there is and will also be due and payable and thereby a good and valid first lien, for all taxes, assessments, penalties and interest accruing subsequent to the delivery to the Prosecuting Attorney of the Delinquent Land Tax Certificate by the Office of the Fiscal Officer and prior to the date of the entry of the Confirmation of Sale or Conveyance, or the expiration of the alternative right of redemption if ordered by the Board of Revision, as prescribed in Sections 323.65(K) and 323.78 of the Revised Code; that there is also due the sum of Four Hundred Twenty-Five and 00/100 Dollars ($425.00), to be taxed as costs for a Preliminary Judicial Report and, that there is and will also be due the costs, including but not limited to the cost of the Final Judicial Report, incurred in this proceeding as are deemed proper by the Board.

WHEREFORE, Plaintiff demands judgment in the amount appearing due for impositions as appears in the Delinquent Certificate and for impositions accruing subsequent to the delivery of the Delinquent Certificate and prior to the Confirmation of Sale or Conveyance, or the expiration of the alternative right of redemption if ordered by the Board of Revision, as prescribed in Sections 323.65(K) and 323.78 of the Revised Code;

that all such impositions be declared to be a good and valid first lien against the premises and that such lien be hereby foreclosed:

[redacted]

that the Board of Revision make such order for payment of costs incurred herein together with Four Hundred Twenty-Five and 00/100 Dollars ($425.00) for the Preliminary Judicial Report:

that unless the amount found due the Plaintiff together with all costs of this proceeding be tendered to the Plaintiff prior to the Confirmation of sale or conveyance, or the expiration of the alternative right of redemption if ordered by the Board of Revision, as prescribed in Sections 323.65(K) and 323.78 of the Revised Code; then the equity of redemption of said parties shall be foreclosed;

that any person owning or claiming any right, title or interest in or lien upon any parcel set forth in this Complaint be required to respond, setting up their interest, if any, on said property or forever be barred from asserting same;

that the Board of Revision order said property to be sold according to law, or directly conveyed to an eligible township, municipality, county, school district, land reutilization corporation or community development group pursuant to ORC 323.65 through 323.79;

that an Order of Sale or Order of Conveyance be issued to the Sheriff directing him to either:

> 1) advertise and sell the property at public sale in the manner provided by law; or
>
> 2) to convey directly the property to an eligible township, municipality, county, school district or land reutilization corporation or community development group pursuant to ORC 323.65 through 323.79;

that thereafter a report of such sale or conveyance be made by the Sheriff to the Board of

[redacted]

Revision for further proceedings, if any, under law; and for such other relief as in law or equity this Plaintiff may be entitled.

Respectfully submitted,
TIMOTHY J. McGINTY(0024626)
Prosecuting Attorney
of Cuyahoga County, Ohio

M. H. Grabenstein

BY: Matthew Grabenstein (0085967)
Assistant Prosecuting Attorney – Tax Foreclosure
Courthouse Square
310 W. Lakeside Ave., Ste. 300
Cleveland, Ohio 44113
(216) 443-7797
mgrabenstein@prosecutor.cuyahogacounty.us

[redacted]

IN THE BOARD OF REVISION
CUYAHOGA COUNTY, OHIO

Treasurer of Cuyahoga County, Ohio,

Plaintiff,

-vs-

[redacted]

Defendant(s).

CASE NO. [redacted]

P. P. No. [redacted]

ADJUDICATION OF FORECLOSURE
(Direct Transfer)

This matter was heard on **28 March 2018** by the Cuyahoga County Board of Revision ("BOR") upon the Complaint of Plaintiff, Cuyahoga County Treasurer, for certified unpaid delinquent taxes, assessments, penalties, interest and/or costs ("Impositions") against abandoned and/or vacant land which is the subject of this case, and the evidence. The BOR finds that all necessary parties to this action having an interest in Permanent Parcel No. [redacted] which is further described in Exhibit A attached hereto and incorporated herein, have been duly served with summons according to law and are properly before the BOR. The BOR further finds that the parcel which is the subject of this proceeding constitutes abandoned land and/or vacant land as defined in R.C. 323.65.

The BOR further finds that there is due on the aforesaid parcel:

1. All impositions which are due and unpaid, as of the date the County Fiscal Officer certifies a delinquent lands tax list or delinquent vacant lands tax list, pursuant to 5721.011;

2. All impositions payable subsequent to the date the County Fiscal Officer certifies a delinquent lands tax list or delinquent vacant lands tax list, and prior to the entry of the Confirmation of Sale; and,

3. All costs incurred in this proceeding, including the cost of the Preliminary and Final Judicial Reports and, all the fees and costs of the Sheriff and Clerk all of which the BOR finds are necessary costs in this proceeding.

The BOR finds that for all such impositions the Plaintiff has a good and valid first lien on said parcel and that the same are hereby foreclosed due to non-payment thereof. The BOR further finds that the proceedings have complied with R.C 323.65-323.79.

The BOR finds that the Impositions as defined in R.C. 323.65 (E) exceed the reputably presumed fair market value of the parcel as currently shown by the latest valuation by the Fiscal Officer and that such presumption of fair market value has not been rebutted by a good faith appraisal as prescribed in R.C. 323.71; therefore the BOR finds that the subject parcel qualifies to be transferred without appraisal or public auction to a certificate holder under R.C. 323.69 or directly to a community development organization, municipal corporation, county land

[redacted]

reutilization corporation, county or township as provided in R.C. 323.76(G) and 323.74 as authorized by any Order of Transfer of this BOR pursuant to this Adjudication of Foreclosure.

The BOR further finds that a county, township, municipality school district, land reutilization corporation or community development group has provided the BOR with a statement or other indicia of interest, (or authority in the case of a community development group) in acquiring the parcel such that the parcel may be so directly transferred to such county, township, municipality, school district, land reutilization corporation or community development organization as may be prescribed in any order of transfer of this BOR.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the within action shall proceed according to R.C. 323.65-323.79.

It is further ORDERED, ADJUDGED AND DECREED pursuant to R.C. 323.65-79, that unless prior to the journalization of both this adjudication of foreclosure of the land and the BOR's order to the Sheriff to transfer by deed the land directly to a certificate holder or to any municipality, township county, school district, land reutilization corporation or community development organization (as prescribed in R.C. 323.65-323.79), any person entitled to redeem said parcel does within said time in fact so redeem said parcel with the County Treasurer according to law for the payment of the taxes assessments, penalties, interest and other charges, if any, found herein to be due and unpaid on said parcel, together with all costs incurred in this proceeding; there shall be no further equity of redemption; that said lien and said equity of redemption in and to said parcel shall be foreclosed; and the equity of redemption forever extinguished and the title to said parcel shall be incontestable in the transferee, free and clear of all liens and encumbrances, except such easements and covenants of record running with the land as were prior to the time the taxes or assessments, for the non-payment of which said parcel is sold at foreclosure, became due and payable.

It is further ORDERED that such taxes and special assessments, or installments of special assessments, and any other assessments, which are not yet legally due and payable according to law up to the time of the Confirmation of conveyance, shall, unless otherwise provided by law, not be abated or removed from the tax duplicates and records in the Offices of the Fiscal Officer and Treasurer of Cuyahoga County, Ohio, but shall be and remain a first and best lien on said parcel, and that the transferee of the parcel shall take said parcel subject to all such taxes and assessments unless otherwise provided in R.C. 323.65-323.79 or as prescribed for electing subdivisions in R.C. 5722.01 et seq. for the abatement of taxes of certain nonproductive lands as defined therein.

The transferee, county, municipality, school district, land reutilization corporation, township or community development organization shall pay all costs as may be payable by law or otherwise negotiated between the Treasurer and said transferee as prescribed in R.C. 323.75.

It is further ORDERED that unless said parcel is previously redeemed as prescribed hereinabove, upon the journalization of this Order and the Order to Transfer confirming the transfer, the title to said parcel shall be incontestable in the transferee, free and clear of all liens and encumbrances, except such easements and covenants of record running with the land as were created prior to the time the taxes or assessments, for the nonpayment of which said parcel is sold at foreclosure, became due and payable, and except for Federal Tax Liens.

[redacted]

It is further ORDERED that, except as otherwise hereinabove provided, any defendant parties owning or claiming any right, title or interest in (including dower rights), or lien upon said parcel shall be and they are hereby forever barred from asserting any right, title or interest in said parcel.

IT IS SO ORDERED.

BOARD OF REVISION
Date: 3.28.18

BOARD OF REVISION
Date: 3/28/18

BOARD OF REVISION
Date: 3/28/18

[redacted]

IN THE BOARD OF REVISION
CUYAHOGA COUNTY, OHIO

Treasurer of Cuyahoga County, Ohio,

Plaintiff,

-vs-

[redacted] et al.,

Defendant(s).

CASE NO. [redacted]

P. P. No. [redacted]

Order to Sheriff:
ORDER OF DIRECT TRANSFER TO CITY OF CLEVELAND PURSUANT TO R.C. 323.73(G)

Whereas the Board of Revision on the **28 March 2018**, made certain findings wherein a judgment of foreclosure was entered in favor of plaintiff, said judgment being attached and made a part hereof as Exhibit A (the "Decree"); that said findings and Decree included that the parcel(s) of land described therein were delinquent in taxes, assessments and penalties; that for said delinquency, Plaintiff has a good and first lien against said parcel(s) ordered foreclosed; and;

that the City of **CLEVELAND** ("Transferee") has petitioned to acquire said parcel pursuant to R.C. 323.65 through 323.79 whereby the Sheriff is hereby ordered, without appraisal or public auction to execute and to transfer directly, unless previously redeemed according to law, the parcel to said Transferee by Sheriff's Deed. This order is based upon the previous Board finding that the impositions as defined in R.C. 323.65 exceed the fair market value of said parcel(s) as prescribed in R.C. 323.73(G) thereby authorizing the Sheriff forthwith, to transfer directly without appraisal or public auction by Sheriff's deed the parcel to said Transferee; and further, pursuant to R.C. 323.73(G), the filing of this Order with the Clerk shall terminate any statutory or common law right of redemption.

The Clerk is hereby commanded to file and forthwith deliver to the Sheriff this Order; and the Sheriff is hereby commanded to proceed to carry said Order and Decree into execution, and to dispose of said parcel(s) by direct delivery of the deed to the Transferee after first confirming payment or settlement of all applicable costs in accordance with R.C. 323.74 and 323.75.

Writ of Possession against all party defendants ordered issued to the transferee of the parcel(s).

IT IS SO ORDERED:

Tim Diller

Date: 3.28.18

Mike Farrow

Date: 3/28/18

[signature]

Date: 3/28/18

[redacted]

R.C. 323.78 - ALTERNATIVE REDEMPTION PERIOD COMPLAINT

FILED
LUCAS COUNTY

[redacted]

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

ORIGINAL

IN THE BOARD OF REVISION, LUCAS COUNTY, OHIO

Lindsay M. Webb, Treasurer of Lucas County, Ohio,

Plaintiff

vs.

[redacted]

and

[redacted]

and

[redacted]

and

[redacted]

and

[redacted]

Case No. ______________
Year Certified: [redacted]
Permanent Parcel No [redacted]

COMPLAINT

Julia R. Bates
Prosecuting Attorney
By: Jennifer Bainbridge
One Government Center
Suite 500
Toledo, Ohio 43604
Phone: (419) 213-2635
Fax: (419) 213-4070
Registration #0011858
Email: jbainbridge@co.lucas.oh.us

[redacted]

and

[redacted]

and

[redacted]

and

[redacted]

and

[redacted]

and

[redacted]

and

[redacted]

and

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and

[redacted]

and

[redacted]

and

[redacted]

and

[redacted]

and

[redacted]

and

[redacted]

and

[redacted]

Defendant(s)

1. Plaintiff says that he is the duly elected and qualified Treasurer of Lucas County, Ohio. On the [redacted] day of September, [redacted] the Lucas County Auditor duly filed with the Lucas County Prosecuting Attorney an original master list of delinquent tracts, the relevant tract of which is more particularly described as follows:

> Lot Number [redacted] Toledo, Lucas County, Ohio, in accordance with Volume [redacted] of Plats, page [redacted]

The taxes, assessments, penalties, interest and charges upon said property have not been paid for more than one year after said lands were duly certified delinquent.

2. Plaintiff further states that there is now due and owing the below sum which amount represents the taxes, assessments, penalties and interest against said property:

T.D. Parcel	Delinquency
[redacted]	$7,605.90

That said taxes continue to accrue on the real estate. That said delinquent tax certificate is unredeemed and the amount of money appearing to be due and unpaid thereon is due and unpaid and is a lien against the property herein described. That there is also due the sum of Three Hundred Twenty-Five and 00/100 Dollars ($325.00), to be taxed as costs for a Preliminary Judicial Report and, that there is and will also be due the costs, including but not limited to the cost of the Final Judicial Report, incurred in this proceeding as are deemed proper by the Board.

3. Plaintiff states that this action in foreclosure proceedings is convened under provisions of Sections 323.25 and/or 5721.18 and/or 323.65 to 323.79 of the Ohio Revised Code; that the parcel(s) constitutes abandoned lands pursuant to R.C. 323.65 to 323.79 or are non-productive land as defined in R.C. 5722.01(F).

4. Defendant City of Toledo, Department of Development may claim to have an interest in the subject real property under the provisions of Chapter 5722 of the Ohio Revised Code. Defendant City of Toledo, Department of Development is being joined as a party defendant as notice by the Prosecuting

Attorney of Lucas County, Ohio to said defendant that this foreclosure has been commenced as to the parcel described hereinabove as required by Section (B) of Section 5722.03 of the Ohio Revised Code. Failure of defendant to notify the Prosecuting Attorney by timely answer certified to the Prosecuting Attorney, of any election after receipt of notice shall be an election not to acquire the parcel described hereinabove.

5. If the owner of the property that is the subject of this foreclosure complaint is not the occupier of the property, notice that a foreclosure complaint is being filed was sent by regular U.S. Mail to the occupier(s)/tenant(s) of the property pursuant to Local Rule 8.02(A)(2).

6. Defendants [redacted] have or claim to have some interest as set forth in the title work attached hereto. That said interest or lien, if any, is inferior and subsequent to the Plaintiff's lien and prays that said defendants be required to set up their lien or claims or forever be barred from asserting same against the within-described premises.

7. [redacted] were and are the survivors of [redacted] who died on or about [redacted] in [redacted] County, Ohio. No record of probate or administration for the estate of [redacted] was found in [redacted] County, Ohio.

8. Defendants [redacted] are the survivors of [redacted] who died on or about [redacted] in [redacted] County, Ohio. No record of probate or administration for the estate of [redacted] was found in [redacted] County, Ohio.

9. Defendants [redacted] are each single and not married.

10. Defendants [redacted] are the spouses of [redacted] respectively.

11. Defendants [redacted] are each widowed and not remarried.

WHEREFORE, Plaintiff prays that the defendants be notified of the pendency and prayer of the complaint; that the Board of Revision upon hearing determine the amount of Impositions as appears in the delinquent certificate and for the impositions accruing subsequent to the delivery of the delinquent certificate and prior to the conveyance or confirmation of sale, or the expiration of the alternative right of redemption if ordered by the Board of Revision as prescribed in Sections 323.65(J) and 323.78 of the Revised Code; that all such Impositions be declared to be a good and valid first lien against the premises and that such lien be foreclosed; that the Board of Revision make such order for payment of costs incurred herein together with Three Hundred Twenty-Five and 00/100 dollars ($325.00) for the Preliminary Judicial Report; that unless the amount found due the Plaintiff together with all costs of this proceeding be tendered to the Plaintiff prior to the conveyance or confirmation of sale, or the expiration of the alternative right of redemption if ordered by the Board of Revision, as prescribed in Sections 323.65(J) and 323.78 of the Revised Code, then the equity of redemption of said parties shall be foreclosed; that the defendants be required to set up what, if any, interest they may have in said property, or be forever barred from asserting the same; that the Board of Revision order said property to be directly conveyed to an eligible township, municipality, county, school district, land reutilization corporation or community development group pursuant to Revised Code Sections 323.65 through 323.79, or sold according to law; that an Order of Conveyance or Order of Sale be issued to the Sheriff of Lucas County directing him to either (1) convey directly the property to an eligible township, municipality, county, school district or land reutilization corporation or community development group pursuant to Revised Code Section 323.65 through 323.79; or (2) advertise and sell the property at public sale in accord with the statutes of the State of Ohio, and for such other and further relief to which he may be entitled.

Respectfully submitted,
Treasurer of Lucas County, Ohio

Julia R. Bates, Prosecuting Attorney Lucas County, Ohio

By: Jennifer Bainbridge
Jennifer Bainbridge
Assistant Prosecuting Attorney

ABANDONED DELINQUENT PARCEL(S)

Treasurer Certification Regarding Abandonment, RC 323.65(G)
[redacted]

Certification: This is to certify that certain steps were taken to determine the occupancy status of the delinquent property referenced above. Property location [redacted]

City of Toledo, or
Township (Name):

Contacts/Name

Owner states no occupants: X – heirs [redacted]
Neighbors state no occupants:
Mail returned and marked vacant
Land bank photos and/or requestor verification of structure as abandoned: **X**

For the reasons stated in R.C. 323.65(A) and (G), the undersigned states on further information and belief that the parcels listed below may constitute Abandoned Lands.

Indicia of Abandonment and parcels applicable:

Nuisance Conditions Exist per City of Toledo Inspection: **X**
Vacant ground (no structure):
Overgrown weeds:
Dumping or noticeable accumulation of trash/debris:
Absence of utility services or hook ups:
Building/environmental code violations:
Boarded up structure:
Open and/or vandalized structure:
Nuisance condemnation by political subdivision:
Other:

Property found to be unoccupied or vacant delinquent land.

Dated: [redacted]

Signed: Terri Rumpf
Deputy Treasurer
Lucas County, Ohio

FILED
LUCAS COUNTY

[redacted]

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

R.C. 323.78 - ALTERNATIVE REDEMPTION PERIOD
ADJUDICATION OF FORECLOSURE

IN THE BOARD OF REVISION, LUCAS COUNTY, OHIO

Lindsay M. Webb, Treasurer of Lucas County, Ohio, Plaintiff vs. [redacted] Defendants	CASE NO. [redacted] PARCEL NO. [redacted] YEAR CERTIFIED: [redacted] **ADJUDICATION OF FORECLOSURE** (Direct Transfer) BOARD OF REVISION

This matter came on to be heard on June 27, 2019 by the Lucas County Board of Revision ("Board") upon the Complaint of Plaintiff for unpaid delinquent taxes, assessments, penalties, interest and costs ("Impositions"), the answers of defendants State of Ohio, Department of Taxation and City of Toledo against abandoned and/or vacant land which is the subject of this case and the evidence described as:

Lot Number [redacted] Lucas County, Ohio, in accordance with Volume [redacted] of Plats, page [redacted]

Upon due consideration, the Board finds that service of process was made upon all necessary parties according to law, that said parties are properly before this Board, and that service of process is hereby approved.

The Board finds that defendants [redacted]

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[redacted] are in default of answer or other pleadings and have by reason thereof confessed the allegations of Plaintiff complaint to be true. Therefore the defendants [redacted] are forever barred from asserting any interest in and to the real estate described in Plaintiff's complaint.

The Board finds that the parcel(s) which is the subject of this proceeding constitutes abandoned land and/or vacant land as defined in R.C. 323.65; that Plaintiff is the duly elected and qualified Treasurer of Lucas County, Ohio; that by virtue of Chapters 323 and 5721 of the Revised Code of Ohio, is authorized to bring this action; and that the title to the real estate described in Plaintiff's Complaint is in [redacted] now deceased.

The Board further finds that defendant City of Toledo ______ the City of Toledo has filed no Answer and is therefore barred from asserting any interest in the subject real estate in Plaintiff's Complaint; ✓ the Department of Public Utilities has a valid and subsisting lien as shown in its Answer; ✓ the Department of Development either disclaimed an interest in the subject property or did not specifically claim an interest and is barred from asserting any interest in the subject real estate in Plaintiff's Complaint, or ______ did not file an Answer and is therefore barred from asserting any interest in the subject real estate in Plaintiff's Complaint; ______ the Department of Taxation or Division of Accounts or other department has a valid and subsisting lien as show in its Answer.

The Board also finds that defendant State of Ohio, Department of Taxation has a valid and subsisting lien as shown in its answer.

The Board further finds that [redacted] were and are the survivors of [redacted] who died on or about [redacted] No record of probate or administration for the estate of [redacted] was found in [redacted]

The Board also finds that defendants [redacted] are the survivors of [redacted] who died on or about [redacted] No record of probate or administration for the estate of [redacted] was found in [redacted]

The Board also finds that defendants [redacted] are each single and not married.

The Board also finds that defendants [redacted] are the spouses of [redacted] respectively.

The Board also finds that defendants [redacted] are each widowed and not remarried.

The Board further finds: that pursuant to 323.71 (B), and it is rebuttably presumed, that the Auditor's value is the fair market value of the parcel(s); that based upon the latest duplicate, the Auditor's combined valuation(s) for the subject parcel(s) is:

Auditor's Value $ 9600
Total Impositions $ 8,411.08 plus costs;

based on the preponderance of the available evidence, the Board finds that the fair market value of the parcel(s) is $ 9,600 ; that there is due the Plaintiff the following sums for delinquent taxes, special assessments, penalties, and interest (Impositions) as set forth in the Complaint in the amount of $7,605.90; that said special assessments and taxes have been validly levied, and duly placed upon the tax list by the Auditor of Lucas County, Ohio; that said taxes and special assessments were duly certified delinquent in 2010 and are the first and best lien against said real estate; that all matters necessary to the collection of said Impositions have been done and said Impositions are unpaid, past due and delinquent in the amounts set forth in Plaintiff's Complaint and as hereafter described:

1. All Impositions which are due and unpaid, as of the date the County Auditor compiled a delinquent lands tax list or delinquent vacant lands tax list, pursuant to 5721.011;

2. All Impositions payable subsequent to the date the County Auditor compiled a delinquent lands tax list or delinquent vacant lands tax list, and prior to the entry of the Confirmation of Sale or transfer of the property; and,

3. All costs incurred in this proceeding, including the cost of the Preliminary and Final Judicial Reports ($375.00), and all the fees and costs of the Sheriff and Clerk all of which the Board finds are necessary costs in this proceeding.

The Board further finds that for all such Impositions the Plaintiff has a valid first and best lien on said parcel(s)and that the same are hereby Foreclosed due to non-payment; and that the proceedings are in compliance with R.C. 323.65-323.79.

_____ The Board finds that the Impositions as defined in R.C. 323.65(E) exceed the presumed fair market value of the parcel(s) as currently shown by the latest valuation by the Auditor and that such presumption of fair market value has not been rebutted by a good faith appraisal as prescribed in R.C. 323.71; therefore the Board finds that the subject parcel(s) qualifies to be transferred without appraisal or public auction to an eligible township, municipality, county, school district, land reutilization corporation, or community development organization, as provided in R.C. 323.73(G) and 323.74 as authorized by any Order of Transfer of this Board pursuant to this Adjudication of Foreclosure.

- or -

_____ The Board finds that defendants have waived their statutory alternative right of redemption. Accordingly, the parcel shall be transferred without appraisal or public auction to an eligible township, municipality, county, school district, land reutilization corporation, or community development organization as authorized by any Order of Transfer of this Board pursuant to this Adjudication of

Foreclosure.

- or -

✓ The Board finds that the Plaintiff has petitioned the Board to apply the alternative right of redemption to this case as prescribed in R.C. Sections 323.65(J) and 323.78; the Board finds that the subject parcel(s) therefore qualifies to be transferred without appraisal or public auction to an eligible township, municipality, county, school district, land reutilization corporation, or community development organization as provided in R.C. 323.73 (G), 323.74, and/or 323.65(J) and 323.78 as directed by any Order of Transfer of this Board pursuant to this Adjudication of Foreclosure; and upon hearing and due consideration, **the Board hereby grants the Plaintiff's petition to invoke the alternative right of redemption under R.C.323.65(J) and 323.78, and the same shall apply in this case.**

The Board finds that an eligible township, municipality, county, school district, land reutilization corporation, or community development organization ✓ **has/**____ **has not** provided the Plaintiff with a statement or other indicia of interest, (or authority in the case of a community development organization) in acquiring the parcel(s)such that the parcel(s) may be so directly transferred to such eligible township, municipality, county, school district, land reutilization corporation, or community development organization as may be prescribed in any Order of Transfer of this Board.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that this action shall proceed as foreclosed according to R.C. 323.65-323.79.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED pursuant to R.C. 323.76, that unless:

(a) prior to the journalization of this Adjudication of Foreclosure of the land, any person entitled to redeem said parcel(s), does so redeem the parcel(s) within said time by payment of the taxes, assessments, penalties, interest and other charges to the County Treasurer according to law, together with all costs incurred in this proceeding;

or,

(b) prior to the expiration of the twenty-eight (28) day alternative right of redemption as prescribed in Sections 323.65(J) and 323.78 of the Revised Code, any person entitled to redeem said parcel(s) does in fact redeem the parcel(s) within said time by payment of the taxes, assessments, penalties, interest and other charges to the County Treasurer according to law found herein to be due and unpaid together with all costs incurred in this proceeding;

there shall be no further equity of redemption; that the lien and equity of redemption in and to the parcel(s) are hereby foreclosed; in the case of the expiration of the twenty-eight (28) day alternative right of redemption, no further action of confirmation of this Board shall be required and the transfer to any Transferee indicated in the Board's Order to Sheriff, Order of Transfer shall be deemed automatically confirmed and the equity of redemption forever extinguished and the title to said parcel(s) shall be incontestable in the Transferee pursuant to R.C. Sections 5722.01 et seq. free and clear of all liens and encumbrances, including municipal nuisance liens and assessments, except such easements and covenants of record running with the land as were prior to the time the taxes or assessments, for the non-payment of which such parcel(s) is deemed sold at foreclosure became due and payable; title shall not be invalid because of any irregularity, informality, or omission of any proceedings under Chapters 323 and 5721 of the Ohio Revised Code, or any processes of taxation except such irregularity, informality, or omission as abrogates the provision for notice to holders of title, lien, or mortgage to such foreclosed lands, prescribed in Chapters 323 and 5721 of the Ohio Revised Code.

IT IS FURTHER ORDERED that such taxes and special assessments, or installments of special assessments, and any other assessments, which are not yet legally due and payable according to law up to the time of the Confirmation or conveyance or expiration of the alternative right of redemption under R.C. Sections 323.65(J) and 323.78, shall, unless otherwise provided by law, not be abated or removed from the tax duplicates and records in the Offices of the Auditor and Lindsay M. Webb, Treasurer of Lucas County, Ohio, but shall be and remain a first and best lien on said parcel(s), and that the Transferee of the parcel(s) shall take said parcel(s) subject to all such taxes and assessments, unless otherwise provided in R.C. 323.65-323.79 or as prescribed for electing subdivisions in R.C. 5722.01 et seq., for the abatement of taxes of certain nonproductive lands as defined therein.

The alternative right of redemption under R.C. 323.65(J) and 323.78 ✓ **does/_____does not** apply in this case.

The Transferee, township, municipality, county, school district, land reutilization corporation, or community development organization shall pay all costs as may be payable by law or otherwise negotiated between the Treasurer and said Transferee as prescribed in R.C. 323.75 or 5722.03(E).

IT IS FURTHER ORDERED that unless said parcel(s) is previously redeemed as prescribed by the Revised Code and as herein, upon the journalization of this Order, the title to the parcel(s) shall be incontestable in the transferee free and clear of all liens and encumbrances, including municipal nuisance liens and assessments, except such easements and covenants of record running with the land as were created prior to the time of the taxes and assessments, for the nonpayment of which said parcel(s) is deemed sold at foreclosure, became due and payable. Alternatively, if the Plaintiff has petitioned the Board to invoke the alternative right of redemption pursuant to R.C. 323.65(J) and 323.78 then, unless the parcel(s) is redeemed prior to the expiration of such period, transfer of title in the manner and to the party indicated in the Order to Transfer shall be deemed confirmed consistent therewith, and the title to the parcel(s) shall be incontestable in the transferee free and clear of all liens and encumbrances, including municipal nuisance liens and assessments, except such easements and covenants of record running with the land as were created prior to the time of the taxes and assessments, for the nonpayment of which said parcel(s) is deemed sold at foreclosure, became due and payable; title shall not be invalid because of any irregularity, informality, or omission of any proceedings under Chapters 323 and 5721 of the Ohio Revised Code, or any processes of taxation except such irregularity, informality, or omission as abrogates the provision for notice to holders of title, lien, or mortgage to such foreclosed lands, prescribed in Chapters 323 and 5721 of the Ohio Revised Code; any such taxes remaining unpaid are hereby abated and discharged and the County Lindsay M. Webb, Treasurer of Lucas County, Ohio, and the County Auditor of Lucas County, Ohio, are hereby ordered and directed to abate said amount on their records and they or their successors in office are hereby forever permanently enjoined from collecting or attempting to collect same. [If applicable: The right of the United States of America to redeem pursuant to 28 U.S.C. Section 2410(c) is hereby preserved.]

IT IS FURTHER ORDERED that, except as otherwise provided herein, any defendant parties owning or claiming any right, title or interest in (including dower rights), or lien upon said parcel(s) shall be and they are hereby forever barred from asserting any right, title or interest in said parcel(s).

There is no just reason for delay.

IT IS SO ORDERED.

County Treasurer
[redacted]

County Auditor
[redacted]

County Commissioner
[redacted]

APPROVED:

Jennifer Bainbridge
Assistant Prosecuting Attorney

04/02/2018 **Property location:** [redacted]

ORDER # [redacted]

INSPECTION # [redacted]

During the inspection of referenced structure and premises the City of Toledo Code Enforcement inspector found the following violations of the Toledo Municipal Code:

Siding	**Repair/Replace**
Occupancy	**Vacant**
Exposed Wood Preservation-Scrape and paint exposed wood on	**House**

Inspector's comments:

ONE GOVERNMENT CENTER • SUITE 1800 • TOLEDO, OHIO 43604 U.S.A. • PHONE 419-245-1400 • FAX 419-245-1413

ENGAGE TOLEDO 419-936-2020 • E-MAIL: TOLEDO.NEIGHBORHOODS@TOLEDO.OH.GOV • WEB SITE: WWW.TOLEDO.OH.GOV

ABANDONED DELINQUENT PARCEL(S)

Treasurer Certification Regarding Abandonment, RC 323.65(G)
[redacted]

Certification: This is to certify that certain steps were taken to determine the occupancy status of the delinquent property referenced above. Property location: [redacted]

City of Toledo, or
Township (Name):

Contacts/Name

Owner states no occupants: **X** – [redacted]
Neighbors state no occupants:
Mail returned and marked vacant
Land bank photos and/or requestor verification of structure as abandoned: **X**

For the reasons stated in R.C. 323.65(A) and (G), the undersigned states on further information and belief that the parcels listed below may constitute Abandoned Lands.

Indicia of Abandonment and parcels applicable:

Nuisance Conditions Exist per City of Toledo Inspection: **X**
Vacant ground (no structure):
Overgrown weeds:
Dumping or noticeable accumulation of trash/debris:
Absence of utility services or hook ups:
Building/environmental code violations:
Boarded up structure:
Open and/or vandalized structure:
Nuisance condemnation by political subdivision:
Other:

Property found to be unoccupied or vacant delinquent land.

Dated: [redacted]

Signed: Terri Rumpf
Deputy Treasurer
Lucas County, Ohio

FILED
LUCAS COUNTY

[redacted]

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURT

R.C. 323.78 - ALTERNATIVE REDEMPTION PERIOD ORDER OF DIRECT TRANSFER

IN THE BOARD OF REVISION, LUCAS COUNTY, OHIO

Lindsay M. Webb, Treasurer of
Lucas County, Ohio,

Plaintiff,

vs.

[redacted]

Defendants

CASE NO. [redacted]
PARCEL NO. [redacted]
YEAR CERTIFIED: [redacted]

ORDER TO SHERIFF
ORDER OF:

_____ **DIRECT TRANSFER**
R.C. 323.73(G) or Waiver of Alternative Right of Redemption

✓ **DIRECT TRANSFER - ALTERNATIVE RIGHT OF REDEMPTION**
R.C. 323.65(J);323.78

_____ **SALE WITH MUNICIPAL INTEREST**

_____ **SALE**

WITH WRIT OF POSSESSION

BOARD OF REVISION

Whereas the Board of Revision on [redacted] made certain findings wherein an adjudication of foreclosure was entered and journalized in favor of plaintiff; that said findings and Adjudication included that the parcel(s) of land described therein were delinquent in taxes, assessments and penalties; that for said delinquency, Plaintiff has a good and first lien against said parcel(s) ordered foreclosed; and;

✓ **(No Sale)**

E-JOURNALIZED

JUL - 1 2019

DIRECT TRANSFER

1.) ✓ that the Transferee, township, municipality, county, school district, land reutilization corporation, or community development organization has petitioned to acquire said parcel pursuant to R.C. 323.65 through 323.79 whereby the Sheriff is hereby ordered, without appraisal or public auction to execute and to transfer directly, unless previously redeemed according to law, the parcel to said Transferee by Sheriff's Deed. This Order is given pursuant to the previous Board finding that:

a.) ____ the Impositions as defined in R.C. 323.65 exceed the fair market value of said parcel(s) as prescribed in R.C. 323.73(G) thereby authorizing the Sheriff forthwith, to transfer directly without appraisal or public auction by Sheriff's deed the parcel to said Transferee; and further, pursuant to R.C. 323.73(G), the filing of the Adjudication with the Clerk terminated any statutory or common law right of redemption; **or** _____ the defendants having waived their right of redemption, thereby authorizes the Sheriff forthwith, to transfer directly without appraisal or public auction by Sheriff's deed the parcel to said Transferee; and further pursuant to R.C. 323.78 and 323.74;

or,

DIRECT TRANSFER - ALTERNATE RIGHT OF REDEMPTION

b.) ✓ the Board has Ordered that the alternative redemption period applies to this parcel pursuant to R.C. 323.65(J) and 323.78 thereby authorizing the Sheriff, and he is hereby so Ordered, to transfer directly without appraisal or public auction by Sheriff's deed the parcel to Transferee, township, municipality, county, school district, land reutilization corporation, or community development organization upon the expiration of twenty-eight (28) days from the journalization of the Adjudication; and further, pursuant to R.C. 323.65(J) and 323.78, upon the expiration of twenty-eight (28) days from the journalization of the Adjudication, any statutory or common law right of redemption shall be forever terminated and extinguished as against all parties.

The Clerk is hereby Ordered to file and forthwith deliver to the Sheriff this Order; and the Sheriff is hereby Ordered to execute said Order and Decree, after presentment of such deed by Plaintiff, upon the expiration of twenty-eight (28) days from the journalization of the Adjudication, and to dispose of said parcel(s) by direct delivery of the deed to the Transferee after first confirming payment or settlement of all applicable costs in accordance with R.C. 323.74 and 323.75.

WRIT OF POSSESSION against all parties defendant ORDERED issued to the Transferee of the parcel(s).

_____(Sale with Municipal Interest)

2.) _____ therefore, the Sheriff is ordered, without appraisal to advertise and sell said parcel(s) at public sale as provided by law for the sale of real property on execution according to R.C. 323.65 to 323.79, 5721.19 and 5722.03, where applicable, for not less than the total amount of the findings of the Board of Revision, which shall constitute the "Minimum Bid," and make due return to the Board for further proceedings under law. If no bid is made, _____ the Sheriff is Ordered pursuant to R.C. 323.74 and R.C. 5722, without appraisal or further public auction to execute and deliver forthwith the Sheriff's deed to the parcel directly to the Transferee; or _____ the parcel shall be forfeited to the State of Ohio.

The Clerk is hereby Ordered to file and forthwith deliver to the Sheriff this Order; and the Sheriff is hereby Ordered to execute said Order and Decree and to dispose of said parcel as provided by law for either the sale, or conveyance without sale (pursuant to R.C. 323.74) of real property on execution according to R.C. 323.65 to 323.79 or R.C. 5721.19 and 5722.03, as the case may be; and that you apply the proceeds of any such sale for said parcel(s) according to the Decree of the Board of Revision after first confirming payment or settlement of all applicable costs in accordance with R.C. 323.74 and 323.75.

Upon the filing of an Order of Confirmation of Sale, Transfer or Forfeiture after exposure of the parcel to public sale, the filing of such Order with the Clerk upon journalization shall forever terminate and extinguish any statutory or common law right of redemption.

WRIT OF POSSESSION against all parties defendant ORDERED issued to the Transferee of the parcel(s).

____(Sale)

3.) _____ therefore, the Sheriff is Ordered, without appraisal to advertise and sell said parcel(s) at public sale as provided by law for the sale of real property on execution according to R.C. 323.65 to 323.79, 5721.19 and 5722.03, where applicable, for not less than the total amount of the findings of the Board of Revision, which shall constitute the "Minimum Bid," and make due return to the Board for further proceedings under law. If no bid is made, _____ the Sheriff is Ordered pursuant to R.C. 323.74 and R.C.5722, without appraisal or further public auction to execute and deliver forthwith the Sheriff's deed to the parcel directly to the Lucas County Land Reutilization Corporation, or other Transferee; or _____ the parcel shall be forfeited to the State of Ohio.

The Clerk is hereby Ordered to file and forthwith deliver to the Sheriff this Order; and the Sheriff is hereby Ordered to execute said Order and Decree; and that the Sheriff dispose of said parcel as provided by law for the sale of real property on execution according to R.C. 323.65 to 323.79 or R.C. 5721.19 and 5722.03, as the case may be; and apply the proceeds of any such sale for said parcel(s) according to the terms of the Confirmation of Sale, Transfer or Forfeiture of the Board of Revision after first confirming payment or settlement of all applicable costs in accordance with R.C. 323.74 and 323.75.

Upon the filing of an Order of Confirmation of Sale, Transfer or Forfeiture after exposure of the parcel to public sale, the filing of same with the Clerk upon journalization shall, except as may otherwise be provided in R.C. 5723.01 et seq., forever terminate and extinguish any statutory or common law right of redemption.

WRIT OF POSSESSION against all parties defendant ORDERED issued to the Transferee of the parcel(s).

IT IS SO ORDERED:

Wade Kapszukiewicz
County Treasurer
June 27, 2019

Matthew Zhal
County Auditor
June 27, 2019

Bryan K. Miller
County Commissioner
June 27, 2019

ATTEMPTED SALE AND FORFEITURE TO STATE - COMPLAINT

FILED
LUCAS COUNTY
[redacted]
COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE BOARD OF REVISION, LUCAS COUNTY, OHIO

Treasurer of Lucas County, Ohio,

Plaintiff

vs.

[redacted]

and

[redacted]

and

[redacted]

and

[redacted]

and

Case No. ____________________
Year Certified: [redacted]
Permanent Parcel No.: [redacted]

COMPLAINT

Julia R. Bates
Prosecuting Attorney
By: Suzanne Cotner Mandros
One Government Center
Suite 500
Toledo, Ohio 43604
Phone: (419) 213-2145
Fax: (419) 213-4070
Registration #0002157
Email: Smandro@co.lucas.oh.us

[redacted]

[redacted]

and

[redacted]

and

[redacted]

Defendant(s)

1. Plaintiff says that she is the duly appointed and qualified Treasurer of Lucas County, Ohio. On the 14th day of September, 2017, the Lucas County Auditor duly filed with the Lucas County Prosecuting Attorney an original master list of delinquent tracts, the relevant tract of which is more particularly described as follows:

> Lot number [redacted] in Block [redacted] Subdivision in the City of Toledo, Lucas County, Ohio, in accordance with Volume [redacted] of Plats, [redacted]

The taxes, assessments, penalties, interest and charges upon said property have not been paid for more than one year after said lands were duly certified delinquent.

2. Plaintiff further states that there is now due and owing the below sum which amount represents the taxes, assessments, penalties and interest against said property:

T.D. Parcel	Delinquency
[redacted]	$3,619.48

That said taxes continue to accrue on the real estate. That said delinquent tax certificate is unredeemed and the amount of money appearing to be due and unpaid thereon is due and unpaid and is a lien against the property herein described. That there is also due the sum of Three Hundred Twenty-Five and 00/100 Dollars ($325.00), to be taxed as costs for a Preliminary Judicial Report and, that there is and will also be due the costs, including but not limited to the cost of the Final Judicial Report, incurred in this proceeding as are deemed proper by the Board.

3. Plaintiff states that this action in foreclosure proceedings is convened under provisions of Sections 323.25 and/or 5721.18 and/or 323.65 to 323.79 of the Ohio Revised Code; that the parcel(s) constitutes abandoned lands pursuant to R.C. 323.65 to 323.79 or are non-productive land as defined in R.C. 5722.01(F).

4. Defendant City of Toledo, Department of Development may claim to have an interest in the subject real property under the provisions of Chapter 5722 of the Ohio Revised Code. Defendant City of Toledo, Department of Development is being joined as a party defendant as notice by the Prosecuting Attorney of Lucas County, Ohio to said defendant that this foreclosure has been commenced as to the parcel described hereinabove as required by Section (B) of Section 5722.03 of the Ohio Revised Code. Failure of defendant to notify the Prosecuting Attorney by timely answer certified to the Prosecuting Attorney, of any election after receipt of notice shall be an election not to acquire the parcel described hereinabove.

5. If the owner of the property that is the subject of this foreclosure complaint is not the occupier of the property, notice that a foreclosure complaint is being filed was sent by regular U.S. Mail to the

occupier(s)/tenant(s) of the property pursuant to Local Rule 8.02(A)(2).

6. Defendants [redacted]

7. Defendant State of Ohio, Department of Taxation, Estate Tax Division, may have or claim to have a lien for Ohio Estate Tax by virtue [redacted]

8. Defendants [redacted]

[redacted]

9. Defendants [redacted]

WHEREFORE, Plaintiff prays that the defendants be notified of the pendency and prayer of the complaint; that the Board of Revision upon hearing determine the amount of Impositions as appears in the delinquent certificate and for the impositions accruing subsequent to the delivery of the delinquent certificate and prior to the conveyance or confirmation of sale, or the expiration of the alternative right of redemption if ordered by the Board of Revision as prescribed in Sections 323.65(J) and 323.78 of the Revised Code; that all such Impositions be declared to be a good and valid first lien against the premises and that such lien be foreclosed; that the Board of Revision make such order for payment of costs incurred herein together with Three Hundred Twenty-Five and 00/100 dollars ($325.00) for the Preliminary Judicial Report; that unless the amount found due the Plaintiff together with all costs of this proceeding be tendered to the Plaintiff prior to the conveyance or confirmation of sale, or the expiration of the alternative right of redemption if ordered by the Board of Revision, as prescribed in Sections 323.65(J) and 323.78 of the Revised Code, then the equity of redemption of said parties shall be foreclosed; that the defendants be required to set up what, if any, interest they may have in said property, or be forever barred from asserting the same; that the Board of Revision order said property to be directly conveyed to an eligible township, municipality, county, school district, land reutilization corporation or community development group pursuant to Revised Code Sections 323.65 through 323.79, or sold according to law; that an Order of Conveyance or Order of Sale be issued to the Sheriff of Lucas County directing him to either (1) convey directly the property to an eligible township, municipality, county, school district or land reutilization corporation or community development group pursuant to Revised Code Section 323.65 through 323.79; or (2) advertise and sell the property at public sale in accord with the statutes of the State of Ohio, and for such other and further relief to which he may be entitled.

Respectfully submitted,
Treasurer of Lucas County, Ohio,

Julia R. Bates, Prosecuting Attorney Lucas County, Ohio

By: ______________________________
Suzanne Cotner Mandros
Assistant Prosecuting Attorney

ATTEMPTED SALE AND FORFEITURE TO STATE - ADJUDICATION OF FORECLOSURE

FILED
LUCAS COUNTY

2019 FEB -4 AM 10: 52

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

IN THE BOARD OF REVISION, LUCAS COUNTY, OHIO

Lindsay M. Webb, Treasurer of Lucas County, Ohio, Plaintiff vs. [redacted] Defendants.	CASE NO. [redacted] PARCEL NO. [redacted] YEAR CERTIFIED: [redacted] **ADJUDICATION OF FORECLOSURE** (Sheriff Sale) BOARD OF REVISION

This matter came on to be heard on January 31, 2019 by the Lucas County Board of Revision ("Board") upon the Complaint of Plaintiff for unpaid delinquent taxes, assessments, penalties, interest and costs ("Impositions"), the answers of defendants [redacted] and City of Toledo against abandoned and/or vacant land which is the subject of this case and the evidence described as:

Lot number [redacted] in Block [redacted] a Subdivision in the City of Toledo, Lucas County, Ohio, in accordance [redacted]

Upon due consideration, the Board finds that service of process was made upon all necessary parties according to law, that said parties are properly before this Board, and that service of process is hereby approved.

The Board finds that defendants [redacted]

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FEB - 5 2019

16

[redacted]

The Board hereby finds that the parcel(s) which is the subject of this proceeding constitutes abandoned land and/or vacant land as defined in R.C. 323.65; that Plaintiff is the duly elected and qualified Treasurer of Lucas County, Ohio; that by virtue of chapters 323 and 5721 of the Revised Code of Ohio, is authorized to bring this action; that the title to the real estate described in Plaintiff's Complaint is in [redacted]

The Board further finds that defendant City of Toledo ______ the City of Toledo has filed no Answer and is therefore barred from asserting any interest in the subject real estate in Plaintiff's Complaint; __X__ the Department of Public Utilities has a valid and subsisting lien as shown in its Answer; __X__ the Department of Development either disclaimed an interest in the subject property or did not specifically claim an interest and is barred from asserting any interest in the subject real estate in Plaintiff's Complaint, or ______ did not file an Answer and is therefore barred from asserting any interest in the subject real estate in Plaintiff's Complaint; ______ the Department of Taxation or Division of Accounts or other department has a valid and subsisting lien as show in its Answer.

The Board further finds that defendants [redacted]

The Board further finds that defendants [redacted]

The Board further finds that State of Ohio, Department of Taxation did not file an answer, but may claim an interest in the subject property. This interest shall be extinguished only as to the property that is the subject property of this foreclosure case either upon the filing of a confirmation entry subsequent to a sheriff's sale or upon the transfer of the property to the Lucas County Land Reutilization Corporation.

The Board further finds that defendan [redacted] disclaims any interest in the subject real estate and, therefore, is forever barred from asserting any interest in and to the real property described in Plaintiff's complaint.

The Board further finds that there is due the Plaintiff the following sums for delinquent taxes, special assessments, penalties, interest and charges (Impositions) as set forth in the Complaint in the amount of $3,619.48; that said special assessments and taxes have been validly levied, and duly placed upon the tax list by the Auditor of Lucas County, Ohio; that said taxes and special assessments were duly certified delinquent in 2015 and are first and best lien against said real estate; that all matters necessary to the collection of said Impositions have been done and said Impositions are unpaid, past due and delinquent in the amounts set forth in Plaintiff's Complaint and as hereafter described:

1. All Impositions which are due and unpaid, as of the date the County Auditor compiled a delinquent lands tax list or delinquent vacant lands tax list, pursuant to 5721.011;

2. All Impositions payable subsequent to the date the County Auditor compiled a delinquent lands tax list or delinquent vacant lands tax list, and prior to the entry of the Confirmation of Sale; and,

3. All costs incurred in this proceeding, including the cost of the Preliminary and Final Judicial Reports and, all the fees and costs of the Sheriff and Clerk all of which the Board finds are necessary costs in this proceeding.

All such amounts will be ascertained at the time of the sale, and the total shall constitute both the total amount of the Board Findings and the "Minimum Bid" for the parcel(s) as provided by law.

The Board finds that for all such Impositions the Plaintiff has a valid first and best lien on said parcel(s) and that the same are hereby Foreclosed due to nonpayment; and that the proceedings are in compliance with R.C. Sections 323.65 through 323.79.

The Board finds that an eligible township, municipality, county, school district, land reutilization corporation, or community development organization _____has/ X has not provided the Plaintiff with a statement or other indicia of interest, (or authority in the case of a community development organization) in acquiring the parcel(s) in the event no bidder comes forth at the Sheriff's sale of the parcel; and further if no such statement or indicia has been provided to the Plaintiff, then the parcel shall be sold at Sheriff's sale according to law; but if no bidder is forthcoming at the first sale, and such statement of indicia has been provided to the Plaintiff, then the parcel(s) shall be directly transferred to such eligible township, municipality, county, school district, land reutilization corporation, or community development organization as may be prescribed in any order of sale of this Board.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that the within action shall proceed according to R.C. Sections 323.65 through 323.79.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED pursuant to R.C. 323.76, that unless

(A) prior to the journalization of the Confirmation of Sale or Transfer with the Clerk of Court there is tendered to the County Treasurer an amount sufficient to pay the full amount of all taxes, assessments, penalties, interest and other charges, if any, found to be due and unpaid on said parcel(s) together with all costs incurred in this proceeding;

or,

(B) prior to the time the parcel(s) is offered for sale, any person entitled to redeem the parcel(s) does in fact redeem the parcel(s) by payment to the County Treasurer an amount sufficient to pay the full amount of all taxes, assessments, penalties, interest and other charges, if any, found to be due and unpaid on the parcel(s) together with all costs incurred in this proceeding;

there shall be no further equity of redemption; that said lien and the equity of redemption in and to the parcel(s) shall be foreclosed; that an Order of Sale or Transfer shall be issued to the Sheriff directing him, without appraisal, to advertise according to R.C 323.73 (A) and separately sell said parcel(s) at public sale in the manner provided in such Order of Sale by law for the sale of real property on execution and according to R.C. Sections [redacted] 5721.19, and/or 5722.03 and any applicable Rules of the Board, for not less than Minimum Bid as prescribed in R.C. 323.73 (B) and that the Sheriff make due return to this Board for further proceedings under law; or alternatively in the event of no bidder after exposing the parcel to public sale, then the parcel shall _____be deemed sold to an eligible township, municipality, county, school district, land reutilization corporation, or community development organization as ordered in the Order of Sale or Transfer pursuant to R.C. Sections 5722.01 et seq., or X the parcel shall be forfeited to the State of Ohio.

IT IS FURTHER ORDERED that such taxes and special assessments, or installments of special assessments, and any other assessments, including municipal liens and assessments, which are not yet legally due and payable according to law up to the time of the Confirmation of Sale or Transfer shall, unless otherwise provided by law, not be abated or removed from the tax duplicates and records in the Offices of the Auditor and Treasurer of Lucas County, Ohio but shall be and remain a first and best lien on said parcel, and that the purchaser shall take said parcel(s) subject to such taxes and assessments, except that the impositions shall be abated if the parcel is deemed sold to an electing subdivision pursuant to R.C. 5722.03.

IT IS FURTHER ORDERED that the Board shall reject the sale of abandoned lands/vacant lands to any person who is delinquent in the payment of property taxes on any parcel in the County, or to a member of the class of parties connected to that person as defined in R.C. Section 323.73(E).

IT IS FURTHER ORDERED that upon the confirmation of sale or transfer, the proceeds, if any, shall be applied by the Sheriff as follows:

1. The costs incurred in this proceeding;

2. The taxes, assessments, penalties, interest and other charges, if any due and unpaid on said parcel to the date of the confirmation of sale;

3. The part of the proceeds that is equal to twenty per cent (20%) of all certified delinquent taxes and assessments on said parcel(s) shall be deposited in the delinquent real estate tax and collection fund created pursuant to R.C. 321.261; and

4. The balance if any, to the Clerk of Courts, pending further order of the Board.

IT IS FURTHER ORDERED that unless said parcel(s) is previously redeemed, upon the journalization of the Board Order confirming the sale or transfer, the title to said parcel(s) shall be incontestable in the purchaser, free and clear of all liens and encumbrances, including municipal liens and assessments, except such easements and covenants of record running with the land as were created prior to the time the taxes or assessments, for the nonpayment of which said parcel(s) is sold at foreclosure, became due and payable; title shall not be invalid because of any irregularity, informality, or omission of any proceedings under Chapters 323 and 5721 of the Ohio Revised Code, or any processes of taxation except such irregularity, informality, or omission as abrogates the provision for notice to holders of title, lien, or mortgage to such foreclosed lands, prescribed in Chapters 323 and 5721 of the Ohio Revised Code; any such taxes remaining unpaid are hereby abated and discharged and the County Treasurer of Lucas County, Ohio, and the County Auditor of Lucas County, Ohio, are hereby ordered and directed to abate said amount on their records and they or their successors in office are hereby forever permanently enjoined from collecting or attempting to collect same.
[If applicable: The right of the United States of America to redeem pursuant to 28 U.S.C. Section 2410 (c) is hereby preserved.]

IT IS FURTHER ORDERED that except as otherwise provided herein, any defendant parties owning or claiming any right, title, or interest in (including dower rights) or lien upon said parcel shall be and there are hereby forever barred from asserting any right, title, or interest in said parcel(s).

There is no just reason for delay.

IT IS SO ORDERED.

BOARD OF REVISION
Date: January 31, 2019

BOARD OF REVISION
Date: January 31, 2019

BOARD OF REVISION
Date: January 31, 2019

APPROVED:

Suzanne Cotner Mandros
Assistant Prosecuting Attorney

ATTEMPTED SALE AND FORFEITURE
TO STATE - ORDER OF SALE

FILED
LUCAS COUNTY

2019 FEB 13 AM 11:45

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

THE STATE OF OHIO LUCAS COUNTY

G-4801-TF-02018-1184

Jennifer Bainbridge, Attorney for Plaintiff

ORDER OF SALE

WHEREAS, at a term of the Board of Revision, Lucas County, Ohio, held at Toledo, in and for said County, on the 30th day of March, A.D., 2018 in the cause of Plaintiff, and The Unknown Spouse, Heirs, Devisees, Legatees, Executors, Administrators & Assigns of [redacted] et al., Defendants, it was ordered, adjudged and decreed as follows, to wit:

that unless the defendants pay or cause to be paid to the Plaintiff prior to the filing of an entry of confirmation of sale pursuant to such proceedings, the same sums of money due him on the real estate described in Plaintiff's complaint and to the Clerk of Courts the costs of this action, the taxes, special assessments, penalties and interest be foreclosed and the equities of redemption of the defendant be cut off; that there shall be taxed as costs of this action the cost of the title work in this action; that said premises may be sold and the proceeds thereof be applied in satisfaction of plaintiff's claim as herein before set forth, any amount received in excess of the sale price above plaintiff's claim to be held subject to the further order of the Court in these proceedings; that an order of sale issue to the Sheriff of Lucas County, Ohio directing him to sell the real estate described in the complaint **without appraisement** for not less than the total amount of delinquencies herein found due in the sum set forth in the complaint and the costs of this action, in the manner provided by Chapters 323 and 5721 of the Ohio Revised Code which sale will convey upon confirmation by this Board title to such land or lots which shall be incontestable in the purchaser and free and clear of all liens and encumbrances, except such easements and covenants of record running with the land, as were created prior to the time of taxes, or assessments, for the nonpayment of which the land is sold at foreclosure, became due and payable and which title shall not be invalid because of any irregularity, informality, or omission of any proceedings under Chapters 323 and 5721 of the Ohio Revised Code, or any processes of taxation except such irregularity, informality, or omission as abrogates the provision for notice to holders of title, lien, or mortgage to such foreclosed lands, prescribed in Chapters 323 and 5721

†*

of the Ohio Revised Code; that if no bidder is forthcoming in the first sale, then the parcel shall be either be transferred directly to an eligible township, municipality, county, school district, land reutilization corporation or community development organization or shall be forfeited to the State of Ohio as specified in the Adjudication. That notice of the time and place of sale be published in The Toledo Blade.

****

Lot number [redacted] in Block [redacted] a Subdivision in the City of Toledo, Lucas County, Ohio, in accordance with [redacted]

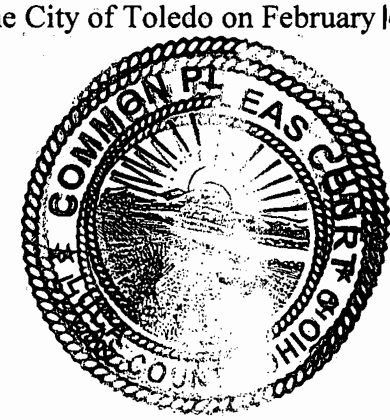
[redacted]

DESCRIPTION APPROVED
BY ___ DATE 2/11/19
LUCAS CO TAX MAP DEPT.

[redacted]

WE THEREFORE COMMAND YOU, that you proceed to carry said order and Judgment into execution, agreeably to the tenor thereof, and that you **not appraise** and advertise in The Toledo Blade and expose to sale the above described real property under the statute regulating sales on execution, and that you apply the proceeds of said sale in the manner specified in said order and decree; and that you make report of your proceedings herein to our Court of Common Pleas, within sixty days from the date hereof, and bring this order with you.

Witness, BERNIE QUILTER, Clerk of our said Court of Common Pleas, and the seal of said court, at the City of Toledo on February 14, 2019.



BERNIE QUILTER, Clerk

By C. Kramer
Deputy Clerk

LUCAS COUNTY SHERIFF JOHN THARP
Property Description Approval Form

RECEIVED
FEB 13 2019
BERNIE QUILTER
LUCAS COUNTY CLERK OF COURTS

Court Case No. [redacted]

Property Address: [redacted]

Plaintiff: Lindsay M. Webb, Lucas County Treasurer

Defendant: [redacted]

Submitted By: Suzanne Cotner Mandros

Attorney & I.D. #: Suzanne Cotner Mandros

Attorney's Phone #: [redacted]

Contact Person: Suzanne Cotner Mandros

Contact Phone: [redacted]

The attached legal description has been reviewed by the County Auditor's Office, Tax Map Dept. The property address, parcel number(s) and deed reference number(s) must be listed under the legal description (no exceptions). You may use a copy of the prior deed which will contain all of this information.

This document along with the "stamped approved" original legal description must be attached to the Order of Sale when filed with the Lucas County Clerk of Court. So you will be submitting the Order of Sale, this Property Description Approval Form and the "red stamped approved" legal description.

Hand lettered documents may be rejected if the document is not legible or will not reproduce to department standards. Machine printed or drafted documents are preferred.

*****Internal Use Only*****

The following information has been reviewed and verified by the County Auditor's Office, Tax Map Dept.

Disapproved for the following reason(s):

_____ Legal description does not match information as submitted
_____ Parcel number does not match legal description information as submitted
_____ Legal Name does not match information as submitted
_____ Property address does not match information as submitted

_____ Other: ______________________________

The document information must be corrected and resubmitted for approval

Court Case No.: [redacted]

Legal Description

Lot number [redacted] in Block [redacted] Subdivision in the City of Toledo, Lucas County, Ohio, in accordance with [redacted]

DESCRIPTION APPROVED
BY ________ DATE 2/11/19
LUCAS CO. TAX MAP DEPT.

Property Address: [redacted]
Parcel No: [redacted]
Prior Deed Reference: Volume [redacted] of Deeds, page [redacted]

ATTEMPTED SALE AND FORFEITURE TO STATE - SHERIFF'S RETURN

Lucas County Sheriff's Office
Delinquent Tax Sheriff's Return

CASE # [redacted]
JUDGE BOARD OF REVISION
DELINQUENT TAX
NO BID

Defendant: [redacted]
Property Address:
Parcel#: [redacted]

Buyer Info: **NO BID**

03/21/2019 - SALE SHEET PRINTED
03/08/2019 - BLADE PRINTING FEES......$95.76
03/04/2019 - NOTICE TO PRINTER FEE......$3.00
02/14/2019 - ORDER OF SALE 11-13044......$50.00

Total Cost: $148.76
Total Payment: $0.00

FILED
LUCAS COUNTY
2019 APR 11 AM 11:46
COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

I received this order of sale on **02/14/2019** and on **03/13/2019**, I caused to be advertised in the **TOLEDO BLADE** (a newspaper printed and published and of general circulation in LUCAS COUNTY) said land and tenements to be sold at public sale AT THE DOOR OF THE COURTHOUSE, on **Thursday the 11th day of April A.D. 2019** and **Thursday The 25th Day Of April A.D. 2019** at 10:00 O'clock A.M. of said day. And having advertised the said lands and tenements for more than thirty days previous to the day of sale, to wit: three consecutive weeks, on the same day of the week in each week, and in pursuance of said notice I did on the said **Thursday the 11th day of April A.D. 2019 and Thursday The 25th Day Of April A.D. 2019**, at the time and place above mentioned, proceed to offer said lands and tenements at public sale AT THE DOOR OF THE COURT HOUSE and then and there came **NO BID**, who bid for the within described real estate [redacted] **0000**the same the sum of **N/A**; and said **NO** [redacted] being the highest and best bidder therefore, I then and there publicly sold and struck off said lands and tenements to **NO BID** for said sum of $ Dollars.

JOHN THARP
SHERIFF

L.N.
DEPUTY SHERIFF

SHFN117

ATTEMPTED SALE AND FORFEITURE TO STATE - NOTICE OF FORFEITURE TO STATE OF OHIO

FILED
LUCAS COUNTY

2019 MAY -6 AM 10:46

COMMON PLEAS COURT
BERNIE QUILTER
CLERK OF COURTS

ORIGINAL

IN THE BOARD OF REVISION, LUCAS COUNTY, OHIO

Lindsay M. Webb, Treasurer of Lucas County, Ohio

Plaintiff

vs.

[redacted]

Defendants

Case No. [redacted]

NOTICE OF FORFEITURE TO STATE OF OHIO

Julia R. Bates
Prosecuting Attorney
By: Suzanne Cotner Mandros
Assistant Prosecuting Attorney
One Government Center
Suite 500
Toledo, Ohio 43604
Telephone: (419) 213-2145
Fax: (419) 213-4070
Registration #0002157
Email: smandro@co.lucas.oh.us

Now comes the Lucas County Prosecuting Attorney, counsel for plaintiff, who hereby certifies that the real property, which was the subject of this action, to wit:

Lot number [redacted] in Block [redacted] a Subdivision [redacted]o, Lucas County, Ohio, in accordance with Volume [redacted]

has been offered for sale at public auction by the Sheriff of Lucas County on [redacted] at which time the minimum acceptable bid was $9,021.42, and that such property was not sold for want of bidders.

It is further ordered that a copy of this Notice be certified to the Lucas County Auditor by the

Clerk of Court.

WHEREFORE, said Prosecuting Attorney gives Notice to the Board of the forfeiture of said real property to the State of Ohio pursuant to Ohio Revised Code Chapters 323.65 to 323.79 and 5721 and 5723.

Suzanne Cotner Mandros
Assistant Prosecuting Attorney