OBORRC

OHIO BOARD OF REVISION RESOURCE CENTER

Below, you will find questions and answers about procedures and practice before both the Board of Revision and the Board of Tax Appeals (BTA). Following each bold faced topic or question you will typically find (1) an excerpt from a written opinion of the BTA answering the question and (2) a hyperlink to the opinion as it appears at the BTA or other website.

WHO MAY FILE COMPLAINT AT THE BOR

REVISED CODE SECTION 5715.19(A)(1):

… Any person owning taxable real property in the county or in a taxing district with territory in the county; such a person's spouse; an individual who is retained by such a person and who holds a designation from a professional assessment organization, such as the institute for professionals in taxation, the national council of property taxation, or the international association of assessing officers; a public accountant who holds a permit under section 4701.10 of the Revised Code, a general or residential real estate appraiser licensed or certified under Chapter 4763. of the Revised Code, or a real estate broker licensed under Chapter 4735. of the Revised Code, who is retained by such a person; if the person is a firm, company, association, partnership, limited liability company, or corporation, an officer, a salaried employee, a partner, or a member of that person; if the person is a trust, a trustee of the trust; the board of county commissioners; the prosecuting attorney or treasurer of the county; the board of township trustees of any township with territory within the county; the board of education of any school district with any territory in the county; or the mayor or legislative authority of any municipal corporation with any territory in the county may file such a complaint regarding any such determination affecting any real property in the county…

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QUESTION CATEGORY HEADINGS

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Q: CAN THE OWNER'S SON, WHO HAS A POA, FILE A COMPLAINT ON BEHALF OF AN OWNER?

Q: MAY THE BROTHER OF THE OWNER, SOLELY BY VIRTUE OF HIS RELATIONSHIP TO THE OWNER, FILE A COMPLAINT ON BEHALF OF THE OWNER?

Q: WHETHER, WHERE A FORMER OWNER OF PROPERTY TIMELY FILES A BOR COMPLAINT AND THEN SELLS THE PROPERTY BEFORE THE MARCH 31 BOR FILING DEADLINE, SUCH OWNER HAS STANDING TO BRING A BOR COMPLAINT FOR THAT PROPERTY?

Q: WHETHER, WHERE A FORMER OWNER OF PROPERTY FILES A BOR COMPLAINT AFTER HE SOLD THE PROPERTY BUT CONTINUES TO OWN OTHER UNRELATED PROPERTY IN THE COUNTY, SUCH OWNER HAS STANDING TO BRING A BOR COMPLAINT FOR THE PROPERTY THAT WAS SOLD PRIOR TO THE FILING?

Q: WHETHER, WHERE A COMPLAINT IS FILED BY AN LLC WHICH DOES NOT OWN THE PROPERTY BUT LISTS ITSELF ON THE COMPLAINT AS "COMPLAINANT'S AGENT" AND WHICH LLC ALSO OWNS PROPERTY IN THE COUNTY, THE MANAGING MEMBER OF SUCH NON-OWNER LLC CAN APPEAR AND REPRESENT THE OWNER AT THE BOR?

FILING WITH THE BOR - COMPLETION OF COMPLAINT FORM

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Q: WHETHER, WHERE A PROPERTY OWNER IN THE SAME THREE YEAR "INTERIM PERIOD" FILES A SECOND COMPLAINT A YEAR AFTER HE FILED THE FIRST COMPLAINT AND WHERE HE DOES NOT ALLEGE ANY OF THE FACTORS SET FORTH ON LINE 14 OF THE COMPLAINT, SUCH SECOND COMPLAINT MUST BE DISMISSED?

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Q: MAY THE OWNER REBUT THAT PRESUMPTION WITH OTHER EVIDENCE?

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FILING WITH THE BOR - WHO MAY FILE COMPLAINT AT THE BOR

Q: CAN A PROPERTY MANAGER, WHO IS NOT AN EMPLOYEE OF THE OWNER, FILE A COMPLAINT ON BEHALF OF THE OWNER AT THE BOARD OF REVISION?

A: NO

See *Greenway Ohio, Inc. v. Cuyahoga County BOR* – Decided 2/2/17 – BTA 2016-2531

Under R.C. 5715.19(A), certain individuals, in addition to the property owner itself, are entitled to file valuation complaints. ..Notably absent from the list of authorized filers in R.C. 5715.19(A) are property managers. Accordingly, this board [the BTA] has previously found that such relationship does not meet the requirements of the statute and, therefore, such complaints did not properly vest jurisdiction in the BOR...

See also *Madeline, LLC v. Cuyahoga County BOR* – Decided 1/31/17 – BTA 2016-1458, 1459

Q: CAN A "REALTOR", AS OPPOSED TO A "REAL ESTATE BROKER", FILE A COMPLAINT ON BEHALF OF AN OWNER?

A: NO

See *Francis J. Owens Sr M.D. Trustee v. Cuyahoga County BOR* – Decided 2/7/17 – BTA 2016-2404

R.C. 5715.19(A) governs who may file a complaint against the valuation of real property. The Supreme Court has held that those specified in the statute may file on behalf of another, without the assistance of an attorney, without such actions constituting the unauthorized practice of law…While Ms. Weinstein is a realtor, R.C. 5715.19(A) specifies that only real estate brokers may file complaints on behalf of another. [The BTA] has previously construed such brokers language to include only real estate brokers, to the exclusion of other real estate salespersons. … Accordingly, we find that, to the extent Ms. Weinstein filed the complaint, it did not properly invoke the jurisdiction of the BOR.

Q: CAN THE OWNER'S SON, WHO HAS A POA, FILE A COMPLAINT ON BEHALF OF AN OWNER?

A: NO

See *Fravel v. Stark County BOR* – 88 Ohio St.3d 574 (2000)

In *Sharon Village*…we held that "[t]he preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law." We now hold that a non-attorney operating under a power of attorney engages in the unauthorized practice law when he prepares and files a complaint with a board of revision on behalf of a taxpayer…Recently…we ruled that obtaining a power of attorney from a principal does not insulate a non-attorney from violating the unauthorized practice of law statutes when the non-attorney performs a legal act in representing the principal.

Q: MAY THE BROTHER OF THE OWNER, SOLELY BY VIRTUE OF HIS RELATIONSHIP TO THE OWNER, FILE A COMPLAINT ON BEHALF OF THE OWNER?

A: NO

See *JPBK Properties #2, LLC v. Cuyahoga County BOR* – Decided 3/24/17 – BTA 2016-2527

The record shows that the underlying complaint identified the owner as "JPBK Properties #2, L.L.C." on line 1, and the complainant's agent on line 3 as "Keith Karakul." At the BOR hearing, Mr. Karakul appeared and testified that the property is owned by his brother, that he does not have ownership interest in the property, and that he filed the complaint of behalf of his brother…he also stated that he is not a member or officer of the L.L.C.; that he is not an attorney, broker, or an appraiser; and that he does not own any property in Cuyahoga County. … The Supreme Court has held that those specified in the statute [R.C. 5715.19(a)] may file on behalf of another, without the assistance of an attorney, and without such actions constituting the unauthorized practice of law…The only familial relationship listed in the statute is a spouse; siblings are not listed as individuals authorized to file on behalf of another. This board has previously found that non-attorney family members are not authorized to file a complaint with a board of revision on behalf of other family members…

Q: WHETHER, WHERE A FORMER OWNER OF PROPERTY TIMELY FILES A BOR COMPLAINT AND THEN SELLS THE PROPERTY BEFORE THE MARCH 31 BOR FILING DEADLINE, SUCH OWNER HAS STANDING TO BRING A BOR COMPLAINT FOR THAT PROPERTY?

A: YES

Battery Park Development LLC v. Cuyahoga County Board of Revision (May 17, 2017), BTA No. 2016-1871, 1872, 2057

The record reveals that parcel number 002-06-002 transferred from [former owner] to Battery Park on or about February 16, 2016…However, [former owner] filed the complaint *prior* to the transfer, on January 7, 2016…We conclude, therefore, that [former owner] had standing to file the complaint, and the notice of appeal in BTA No. 2016-2057, as the owner of the subject property on the relevant tax lien date and at the time the complaint was filed. See R.C. 5717.01; *Columbus Apartments Assoc. v. Bd. of Revision*, 67 Ohio St.2d 85 (1981).

Q: WHETHER, WHERE A FORMER OWNER OF PROPERTY FILES A BOR COMPLAINT AFTER HE SOLD THE PROPERTY BUT CONTINUES TO OWN OTHER UNRELATED PROPERTY IN THE COUNTY, SUCH OWNER HAS STANDING TO BRING A BOR COMPLAINT FOR THE PROPERTY THAT WAS SOLD PRIOR TO THE FILING?

A: YES

Battery Park Development LLC v. Cuyahoga County Board of Revision (May 17, 2017), BTA No. 2016-1871, 1872, 2057

As to parcel 002-07-043, we acknowledge that [former owner] had sold the parcel to Battery Park in December 2015, *before* he filed the complaint on January 7, 2016…However, on the basis of his ownership of parcel 002-07-002, we also conclude that Virsis had standing to file the complaint and the notice of appeal…as the owner of other property in Cuyahoga County. See R.C. 5717.01.

Q: WHETHER, WHERE A COMPLAINT IS FILED BY AN LLC WHICH DOES NOT OWN THE PROPERTY BUT LISTS ITSELF ON THE COMPLAINT AS "COMPLAINANT'S AGENT" AND WHICH LLC ALSO OWNS PROPERTY IN THE COUNTY, THE MANAGING MEMBER OF SUCH NON-OWNER LLC CAN APPEAR AND REPRESENT THE OWNER AT THE BOR?

A: NO

Maya Real Estate Investments LLC v. Cuyahoga County Board of Revision (May 31, 2017), BTA No. 2016-691

At the BOR's hearing, Mr. Wayne Brooks, apparently the managing member of Leeway [the "complainant's agent"], appeared. Mr. Brooks admitted that he had no ownership interest or relationship with [the owner]; however, he stated that he was appearing as a witness on behalf of [the owner]… The jurisdictional validity of a complaint is determined at the time the complaint is filed. R.C. 5715.19(A) governs who may file valuation complaints with the BOR…Mr. Brooks' testimony did not establish that he had a proper relationship with the owner to enable him to act on behalf of Maya. Moreover, the record contains no allegation that an attorney was

involved in the preparation and filing of the underlying complaint…a complaint filed by a non-attorney agent, not expressly identified in the statute as a person authorized to institute such filing, "constitutes the unauthorized practice of law, necessitating the dismissal of the complaint."… In addition, we find Leeway's ownership of three taxable real properties in the county to be irrelevant to the jurisdictional issue raised herein.

FILING WITH THE BOR - COMPLETION OF COMPLAINT FORM

See DTE FORM 1

Q: WHETHER THE BOR COMPLAINT MUST BE DISMISSED WHERE THERE IS A DISCREPANCY BETWEEN THE PARCEL NUMBER LISTED ON LINE 6 AND THE PARCEL NUMBER LISTED ON LINE 8?

A: NO, IF THE PROPERTY IS OTHERWISE SUFFICIENTLY IDENTIFIED FROM OTHER INFORMATION ON THE COMPLAINT.

See:

2012 WL 6033797
Court of Appeals of Ohio,
Tenth District, Franklin County.
The HILLTOP COMMONS, LLC, Appellant–Appellant,
v.
Clarence MINGO, II, Auditor of Franklin County, et al.
Decided Dec. 4, 2012.

The Board of Tax Appeals…has found inconsistencies in parcel numbers listed in lines 6 and 8 to be non-jurisdictional even when the error results in the auditor sending notice to the wrong school district…The Board of Tax Appeals observed that, although "[p]erfecting an appeal, pursuant to R.C. 5715.19, requires the use of the specified form * * * and the compliance with the rules, orders and instructions applicable thereto, * * * absolute perfection, in terms of perfecting every element specified on such a prescribed form is not necessarily a jurisdictional prerequisite."…The complaint must contain enough information to sufficiently identify the property at issue so the auditor can fulfill the statutory notice obligations...

Q: WHERE LINE 8 ON THE COMPLAINT FORM IS NON-RESPONSIVE OR PROVIDES NO INFORMATION, CAN THE BOR NONETHELESS ACQUIRE JURISDICTION TO HEAR THE COMPLAINT?

A: NO

See:

The HILLTOP COMMONS, LLC, Appellant–Appellant,
v.
Clarence MINGO, II, Auditor of Franklin County, et al.
Decided Dec. 4, 2012.

Hilltop nonetheless claims the BOR could exercise jurisdiction regardless of the errors in its

complaint since the BOE received notice of the complaint, filed a timely counter-complaint, and appeared at the hearing. Even if we assume Hilltop is correct that its mistakes did not prejudice the Columbus City School District BOE, the BOR nonetheless lacked jurisdiction to proceed with a merit hearing since Hilltop's non-responsive answer to 8(D) failed to provide statutorily required overvaluation information regarding the West Broad Street property. Because of this error, the BOR never acquired subject-matter jurisdiction over Hilltop's claim…Because Hilltop's complaint failed to invoke the BOR's subject-matter jurisdiction, the BOR did not possess the power to determine the claim on its merits, and any question of prejudice is not dispositive.

Q: DOES THE FILING OF A COUNTERCOMPLAINT CREATE INDEPENDENT JURISDICTION IN THE BOR WHERE THE INFORMATION ON THE ORIGINAL COMPLAINT'S LINE 8 IS INSUFFICIENT TO INVOKE THE BOR'S JURISDICTION?

A: NO

See:

The HILLTOP COMMONS, LLC, Appellant–Appellant,
v.
Clarence MINGO, II, Auditor of Franklin County, et al.
Decided Dec. 4, 2012.

Lastly, the BOE's counter-complaint filed pursuant to R.C. 5715.19(B) did not create independent jurisdiction in the BOR because Hilltop's original complaint is jurisdictionally defective…Where a complaint is determined to be jurisdictionally defective and is thereby dismissed, the subject matter that prompted the complaint is no longer subject to review by a Board of Revision and, as a result, "there is no controversy to be addressed by the counter-complaint."

Q: SHOULD THE BOR DISMISS THE COMPLAINT FOR LACK OF JURISDICTION IF THE COMPLAINANT FAILS TO LIST THE TAX YEAR FOR WHICH THE COMPLAINT IS FILED?

A: NO

See *Richards v. Ottawa County BOR* – Decided 12/13/11 – BTA 2009-676

…there is no clear requirement that the tax year in question be listed on a DTE Form 1…In fact, every valid complaint filed pursuant to such provisions necessarily pertains to the current tax year. The statutory provisions do not require the complainant to declare that the complaint pertains to the current tax year or what the current tax year in fact is. Such a declaration is not essential or statutorily jurisdictional. As such, we find that inclusion of the tax year on the complaint form does not run to the core of procedural efficiency and, therefore, its omission does not dictate the dismissal of the complaint in question.

Q: MUST THE COMPLAINANT FILE THE COMPLAINT ON THE DTE FORM 1 IN ORDER FOR THE BOR TO GET JURISDICTION TO HEAR THE COMPLAINT?

A: NO

See *Wright v. Summit County BOR* – Decided 4/4/16 – BTA 2015-971

Here, the BOR's dismissal is based upon an "improper filing," which presumably questions the validity of the property owner's letter complaint…we find that there must be a specific statutory basis for any dismissal effected by a county board of revision. In this instance, however, the BOR has failed to identify a statutory requirement that a complaint must be filed on a specific form or application with the BOR, and we find no such requirement in the relevant statutory scheme. Accordingly, the BOR erred in concluding that the appellant's letter complaint (in lieu of a DTE Form 1) divested it of jurisdiction.

FILING WITH THE BOR – TIMELINESS OF COMPLAINT

Q: WHETHER, WHERE THE COMPLAINANT ASSERTS THAT HE FILED A TIMELY COMPLAINT BUT THE BOR HAS NO RECORD OF SUCH FILING, THE COMPLAINANT'S MERE ASSERTION OF TIMELY FILING IS SUFFICIENT TO INVOKE THE BOR'S JURISDICTION?

A: NO

Rohloff Bros Inc. v. Ottaway County Board of Revision (June 8, 2017), BTA No. 2016-885

In this matter, although the appellant has asserted that it filed a timely complaint with the BOR, there is no evidence in the record to support such assertion. The burden is on the appellant to demonstrate that a timely filed complaint was made with the BOR.

Q: WHETHER, WHERE A PROPERTY OWNER IN THE SAME THREE YEAR "INTERIM PERIOD" FILES A SECOND COMPLAINT A YEAR AFTER HE FILED THE FIRST COMPLAINT AND WHERE HE DOES NOT ALLEGE ANY OF THE FACTORS SET FORTH ON LINE 14 OF THE COMPLAINT, SUCH SECOND COMPLAINT MUST BE DISMISSED?

A: YES

Greg Wearsch v. Cuyahoga County Board of Revision (January 19, 2018), BTA No. 2017-932

"Under R.C. 5715.19(A)(2), a party dissatisfied with the valuation of property may file only one complaint in the [interim period]," based on the "schedule in which a reappraisal is conducted by a county every six years, with an update of valuation performed in the third year[,]" unless an exception applies…A second complaint within an interim period "must allege and establish one of the four circumstances set forth in R.C. 5715.19(A)(2)."…[the owner] argues that it was a permitted refiling because the prior complaint resulted in a dismissal from this board for lack of jurisdiction. We disagree…the ultimate outcome or the first complaint does not affect a board of revision's jurisdiction to consider a second complaint filed for a later year in the same triennium. R.C. 5715.19(A)(2) prohibits filing a second complaint in the same interim period, even if a property owner files a *defective* complaint challenging value for an earlier year.

OWNER'S OPINION OF VALUE

Q: MUST THE BOR ACCEPT AS ACCURATE AN OWNER'S OPINION OF VALUE?

A: NO

See: *Overstreet v. Hamilton County BOR* – Decided 12/14/07 – BTA 2006-K-871

We recognize that an owner of property is permitted to express an opinion regarding the value of his or her property even though not formally qualified as an expert…However, it is equally clear that 'while an owner may testify as to the value of his or her property, there is no requirement that the finder of fact accept that value as the true value of the property…In reviewing the information upon which appellant [owner] relied to form his opinions, we find it insufficient in several aspects. In large measure, it does not appear appellant was personally familiar with the properties to which comparisons were made, that he made any effort to adjust the raw sale data in order to account for differences in his 'comparables' and the subject properties, or that he took the steps necessary to confirm the accuracy of the information garnered from the Internet, including whether the sales were arm's length…

Q: IS THE BOR REQUIRED TO ACCEPT THE OWNER'S OPINION OF VALUE IF IT IS SUPPORTED BY AN APPRAISAL FROM AN APPRAISER WHO DOES NOT APPEAR AS A WITNESS AT THE BOR?

A: NO

See *Speca v. Montgomery County BOR* – Decided 3/25/08 – BTA 2006-K-2144

Appellant seeks to bolster his own opinion by submitting the written appraisal of an individual who did not appear before this board. While this appraisal indicates that it is retrospective in nature, estimating the subject's value as of the tax lien date, and that it was prepared 'for consideration of a tax appeal,' we find it neither competent nor probative evidence upon which we may rely…the author of the appraisal did not appear and testify before this board. He therefore was unavailable to testify regarding his professional credentials, authenticate or identify the written appraisal submitted, describer the efforts he undertook in estimating value in this instance, and be cross-examined by the opposing party or respond to questions of this board.

Q: WHETHER THE VALUE OPINION OF AN OWNER, WHO HAS TWENTY YEARS OF EXPERIENCE INVESTING IN THE AREA, IMPROVED AND LIVED IN THE SUBJECT PROPERTY, AND PREPARED A COMPARATIVE MARKET ANALYSIS ("CMA") FOR THE SUBJECT PROPERTY, IS CONSIDERED TO BE THAT OF AN EXPERT?

A: NO

Mark and Teresa Ouellette v. Cuyahoga County Board of Revision (June 13, 2017), Case No. 2016-872

The property owners did not offer an appraisal report for the subject, and instead relied on Mr. Ouellette's expertise as an owner and unadjusted sales data. When a party relies on an opinion of value to support its claim, such opinion must be both competent and probative. … Generally, only an expert may express an opinion of value…However, as an exception to this rule, "an owner is permitted to testify concerning the value of his property without being qualified as an expert, because he is presumed to be familiar with it from having purchased or dealt with it."…Nevertheless, "[w]hile an owner may testify as to the value of his or her property, there is no requirement that the finder of fact accept that value as the true value of the property."… while we acknowledge that [the owner] is competent to testify regarding his property, he has failed to exhibit the necessary expertise of appraisal practice and the market in which the subject property is located to provide a reliable opinion of value. Despite [the owner's] history of participation in local the market, the knowledge gained through the buying and selling of property alone does not reflect the knowledge gained through the education, training, and practice of a certified appraiser... As a group, real estate salespeople evaluate specific properties, but they typically do not consider all the factors that professional appraisers do.").

ARM'S LENGTH SALE

Q: WHETHER THE OWNER'S ADMISSION THAT ITS PURCHASE OF THE PROPERTY WAS NOT AN ARM'S LENGTH SALE IS DISPOSITIVE AS TO WHETHER THE SALE WAS ARM'S LENGTH?

A: NO

Columbus City Schools Board of Education v. Franklin County Board of Revision (May 31, 2017), BTA No. 2016-687

In this case, [the owner] presented uncontroverted testimony to the BOR regarding the circumstances of the sale, including that it was marketed and that multiple bidders had participated. We find that [the owner] has met its burden and successfully shown that the December 2015 sale was an arm's-length transaction. We note that whether [the owner] characterized this particular sale as arm's-length is not relevant because such a finding is a conclusion to be made by this board based on the facts of the case and relevant law.

Q: WHETHER, WHERE THE CURRENT OWNER WHOSE HOME IS ADJACENT TO THE SUBJECT PROPERTY APPROACHES THE THEN-OWNER TO NEGOTIATE A PRICE FOR THE SALE OF THE ABANDONED AND OVERGROWN SUBJECT PROPERTY, SUCH NEGOTIATED PRICE MAY BE CONSIDERED AN ARM'S LENGTH TRANSACTION EVEN THOUGH THE SUBJECT PROPERTY WAS NOT MARKETED ON THE OPEN MARKET?

A: YES

Jon and Anne Davis v. Franklin County Board of Revision (June 7, 2017), BTA No. 2016-787

Once the existence of a sale is established…the affirmative burden clearly rests with the opponent of using a reported sale price to demonstrate why it does not reflect the property's value…Absent an affirmative demonstration such sale is not a qualifying sale for tax valuation purposes, we find the existing record demonstrates that the transaction was recent, arm's-length, and constitutes the best indication of the subject's value as of tax lien date. We further note that we find the BOR's addition of demolition costs was improper, noting that any such costs were incurred well after the tax lien date and that there is no evidence the subject was in a different condition on the tax lien date as compared to the date of the sale.

APPRAISALS AND APPRAISERS

Q: MAY AN APPRAISER DOES NOT APPEAR TO TESTIFY BEFORE THE BOR?APPRAISER'S OPINION OF VALUE BE DISREGARDED IF THE

A: YES

See *Columbus Board of Education, et al. v. Franklin County BOR* – Decided 1/10/17 – BTA 2016-468, 469, 470

Additionally, the appraiser did not appear before the BOR or [the BTA] to authenticate the appraisal that was submitted, testify regarding his professional credentials and the methodologies utilized in deriving the valuation conclusions, or be cross-examined/questioned by the opposing party or members of the BOR or this board's examiner. "An expert's opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion." *Freshwater*, supra at 30. See, also, *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. Accordingly, we find the appraisal report submitted by the owner does not constitute competent, probative evidence upon which we can rely.

Q: WHAT FACTORS ARE TO BE CONSIDERED IN DETERMINING THE WEIGHT AND CREDIBILITY TO BE GIVEN TO AN APPRAISAL?

A: SEE BELOW

Pierson v. Summit County BOR – Decided 8/2/02 – BTA 2000-S-1876

In determining the weight and credibility to be given to a person who offers an opinion of value as an expert appraiser, we must consider several factors, including (1) whether the person is an appraiser by trade, (2) the amount of formal training, if any, the witness may have had, (3) whether the person holds a professional designation or its affiliated with an accredited appraisal organization, (4) whether the person demonstrates a familiarity with appraisal practice and terminology, and (5) whether the person demonstrates a sufficient knowledge of the property being appraised and the marketplace.

Q: IS THE TESTIMONY OF A LICENSED REAL ESTATE BROKER ON VALUATION CONSIDERED AN EXPERT'S APPRAISAL LIKE THAT OF A LICENSED APPRAISER?

A: NO

See *Friedman v. Cuyahoga County BOR* – Decided 1/19/17 – BTA 2016-483

At the outset, we acknowledge the owner's status as a licensed real estate broker; however, we are also mindful that Ms. Freidman is not a licensed real estate appraiser, trained to opine real

property values…As noted in *The Appraisal of Real Estate* (13th Ed.2008), while a variety of individuals and professionals may be familiar with valuation concepts, they are not appraisers… while we acknowledge her many years of experience in the real estate industry (as testified to before the BOR), we nevertheless find that an insufficient foundation was laid with regard to Ms. Friedman's knowledge and experience in appraisal methods and the derivation of true value for a particular piece of real property; consequently, we assign no probative weight to her opinion of value.

Q: WHETHER, WHERE A "SUMMARY OF AN APPRAISAL" INDICATES THAT A PROPERTY'S VALUE SHOULD BE REDUCED BECAUSE OF ITS UNFAVORABLE TOPOGRAPHY, SUCH "SUMMARY OF APPRAISAL" MAY BE USED AS A BASIS TO VALUE THE PROPERTY?

A: NO

Timothy C. Rexroad & Darrell et al., v. Erie County Board of Revision (May 17, 2017), BTA No., 2016-669

…the summary of the appraisal report is not a sufficient basis to revalue the subject property. We find the overall accuracy of the valuation conclusion questionable, at best, due to the lack of underlying analysis. The summary provides very little information and fails to provide the level of detail and information of a full appraisal report. For example, there is no information about the data and methodologies used to derive the conclusion of value of $4,600 and no indication that the opinion of value was relevant to the tax lien date of January 1, 2015. Moreover, the appraiser did not testify before the BOR or this board…because the appellants failed to submit a proper appraisal report, accompanied by appraiser testimony, they failed to quantify the diminution in value from the subject property's lack of road frontage.

Q: WHETHER AN APPRAISAL BY A LICENSED APPRAISER MUST CONFORM TO A PARTICULAR SET OF STANDARDS BEFORE IT CAN BE ADMITTED INTO EVIDENCE AND CONSIDERED BY THE BOR?

A: NO

Groveport Madison Local Schools Board of Education v. Franklin County Board of Revision (June 7, 2017), BTA No. 2016-542

…the [Supreme] court has rejected the argument that an appraisal must necessarily conform to any particular standards, as a lack of any particular portion of a report is an issue of credibility or reliability and not admissibility…Thus, the format of [the appraiser's] report does not require this board to ignore the data contained therein if we find it to be probative evidence of value.

VALUATION EVIDENCE

Q; IN DETERMINING VALUE, IS THE COUNTY AUDITOR'S APPRAISAL PRESUMED TO BE VALID AT THE BOR?

A: YES, IF THE AUDITOR ACTS WITHIN THE LIMITS OF HIS/HER JURISDICTION

2013-Ohio-3310
Court of Appeals of Ohio,
Twelfth District, Butler County.
Roger P. DAVIS, et al., Plaintiffs–Appellants,
v.
BOARD OF REVISION, BUTLER COUNTY, Ohio, et al., Defendants–Appellees.

It is well-settled principle that "when a county auditor acts within the limits of the jurisdiction conferred by law, the auditor's action is presumed, in the absence of proof to the contrary, to be valid and to have been done in good faith and in the exercise of sound judgment.

Q: IN DETERMINING VALUE MAY THE BOR REJECT AN OWNER'S LISTING OF "COMPARABLE SALES" AS VALID EVIDENCE OF VALUE?

A: YES

See *Scaglione v. Cuyahoga County BOR* – Decided 1/19/17 – BTA 2016-532, 533, 536, 1331, 1335

Appellant…relied on unadjusted sales data and the fiscal officer's values for other properties, along with testimony regarding negative conditions experienced by the subject properties and local market. In the absence of an appraisal which analyzes such data, the submission of raw sales information is normally considered insufficient to demonstrate value since the trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination.

For similar holding, see *Macikenas v. Cuyahoga County BOR* – Decided 1/19/17 – BTA 2016-1071.

Q: IN DETERMINING VALUE, MAY THE BOR REJECT EVIDENCE OF THE TAXABLE VALUE ASSIGNED TO NEIGHBORING PROPERTIES?

A: YES

[Owner] also refers to taxable values assigned to other properties as well as sales data obtained from the auditor's website for a large number of properties over a multiyear period. We have previously found unpersuasive a party's reliance upon taxable values assigned to other properties…The appellant has submitted a comparative analysis of the tax valuation of certain neighboring land. However, we have often stated that such information is not particularly helpful. 'Tax valuations are not sales, and a comparative analysis thereof is always subject to the objection that the tax valuations of the compared properties are not themselves market value.'

Q: IN DETERMINING VALUE, MAY THE BOR REJECT EVIDENCE OF COMPARABLE SALES, EVEN ON THE SAME STREET, WHERE NO ADJUSTMENTS ARE MADE FOR DIFFERENCES BETWEEN THE COMPS AND THE SUBJECT PROPERTY?

A: YES, IN MOST CASES.

See *Carr v. Cuyahoga Ct. Fiscal Officer*, 2017-Ohio-1050 (8th Dist.)

The mere listing of sales prices of other properties provides no guidance in determining the subject property's market value for any given tax year. *Kaiser v. Franklin Cty. Aud*., 10th Dist. Franklin No. 10AP-909, 2012-Ohio-820 …"The purpose of the sales comparison approach…is to derive an estimate of value by comparing the property under consideration to similar properties recently sold within the market place."…This approach is only viable if the comparable sales are adjusted for all "other meaningful differences between properties."…The sales price of alleged other properties, even those located on the same street, is not evidence of the subject property's market value in isolation. All homes are unique. Not all properties have identical structures or outbuildings, the same number of bedrooms or bathrooms, or the same level of interior design or amenities. As a result, there must be some common denominator to equate other properties to the homeowner's property…Carr cannot cherry-pick lower-valued nearby homes and use those predictably lower sales prices to justify a valuation of her property. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning…The comparable sales must be adjusted for all "other meaningful differences between properties.

Q: DO UNACCEPTED OFFERS TO PURCHASE CONSTITUTE EVIDENCE OF VALUE?

A: NO

2016 WL 4728115
Court of Appeals of Ohio,
Fifth District, Delaware County.
7991 COLUMBUS PIKE, LLC, Appellant
v.
DELAWARE COUNTY BOARD OF REVISION, et al., Appellee.
Decided Sept. 7, 2016.

Columbus Pike presented evidence of terminated purchase contracts to demonstrate the value of the Property. "Unaccepted offers for purchase do not constitute a 'sale price' and do not establish a presumption of lesser value for the property." ...The trial court and BOR may consider the listing price and offered price in assessing the value of the property, but they are not conclusive evidence of value.

Q: DOES EVIDENCE OF THE PROPERTY'S DISREPAIR CONSTITUTE EVIDENCE OF REDUCED VALUE?

A: NO

See: *Freeder v. Cuyahoga County Board of Revision* – Decided 7/17/12 – BTA. 2010-2392

… [the BTA] has held that although a property's condition and neighborhood are significant factors in determining value, evidence of negative conditions is insufficient to support a change in value where an appellant does not quantify how the negative conditions affect value…the Supreme Court addressed the burden attendant to advancing claims similar to those now made by the appellant, emphasizing that a party must demonstrate more than the mere existence of adverse factors, but also the impact they have upon the property's value.

Q: IN DETERMINING VALUE MAY THE BOR DISREGARD "EPPRAISALS" FOUND ON ZILLOW.COM?

A: YES

See: *Gambert v. Fairfield County Board of Revision* – Decided 10/2/13 – BTA 2012-2185

This board has previously found the use of "eppraisals" from "Zillow.com," or other similar sites, to be unreliable, and therefore, such a report is not a relevant consideration in establishing the true value of subject as of the tax lien date at issue…[The BTA] has previously considered

the utility of appraisal analyses garnered from Internet-based services lacking sufficient foundation and determined that we could accord them no weight in our determination of value.

Q: IN DETERMINING VALUE MAY THE BOR DISREGARD NEWSPAPER ARTICLES WHICH ARE INTRODUCED AS EVIDENCE TO SHOW CHANGES IN PROPERTY VALUE?

A: YES

See: *Gambert v. Fairfield County Board of Revision* – Decided 10/2/13 – BTA 2012-2185

… newspaper articles of the nature submitted, which are offered to prove the value claimed by the appellant, are clearly unreliable hearsay.

Q: IN DETERMINING VALUE, MAY THE BOR REJECT AS NONPROBATIVE EVIDENCE OF THE GENERAL ECONOMIC DECLINE IN THE SUBJECT PROPERTY'S NEIGHBORHOOD?

A: YES

See *Traska v. Medina County Board of Revision* - Decided 3/28/13 – 2012-L-3211

Mrs. Traska also testified regarding her opinion of "the economy." However, she again offered no concrete basis upon which this board [BTA] may ascribe a particular value to the subject. We find Mrs. Traska's argument to be little different from those instances in which a party posits general economic conditions, such as inflationary/deflationary trends, must necessarily dictate the valuation of a particular property…Real property values, even within a small geographic area, may vary greatly due to a number of factors and we [the BTA] are unwilling to conclude that a general economic situation must necessarily impact the values of all real property equally.

Q: CAN GENERAL INFLATION TRENDS, WITHOUT MORE, BE USED TO VALUE PROPERTY?

A: NO

Ondrejka v. Clark County Board of Revision – Decoded 4/4/97 – 1996-B-821

The purpose of this Board [BTA] is to find value. Aside from the fact that the cost of living index utilized by the appellants appears to be a national standard of sorts rather than one which is focused on real estate values in the subject property's local area, we would point out that this Board has previously rejected general "inflation methods" as an approach to valuing real property for tax purposes.

Q: IN DETERMINING VALUE IN THE CURRENT YEAR UNDER CONSIDERATION, IS THE BOR BOUND BY A STIPULATED VALUE FROM A PRIOR YEAR ABSENT OTHER EVIDENCE OF THE PROPERTY'S VALUE?

A: NO

See *Columbus Board of Education, et al. v. Franklin County BOR* – Decided 1/10/17 – BTA 2016-468, 469, 470

In this instance, there exists no evidence the subject property recently transferred through a qualifying sale, nor did the owner provide the BOR with a competent appraisal of the subject property… Instead, the owner offered an opinion of value based upon a stipulation of value for the subject property entered into by the parties for tax years 2011-2013, an appraisal of the subject for tax year 2011, and evidence of a recent sale of a neighboring parcel.

The BOR…indicated that it reduced the auditor's valuation of the subject based solely upon the values set forth in the prior years' stipulated valuation agreement between the parties. The Supreme Court, however, has held that each tax year stands alone, and the fact that value has been modified in another year, either through an agreement among the affected parties or a finding by a tribunal, is not competent and probative evidence that a different year's value should be changed…In disregarding a stipulation of value between parties for a prior tax year as a basis for valuation of a subsequent year, we have also specifically held that "we will not rely upon a prior valuation of a particular parcel, as each tax year presents a new valuation question."

Q: WHETHER, WHEN APPRAISING THE VALUE OF SHOPPING CENTER, GREATER WEIGHT SHOULD BE PLACED ON THE INCOME APPROACH AS OPPOSED TO THE SALES COMPARISON APPROACH?

A: YES

Kettering City Schools Board of Education v. Montgomery County Board of Education (May 1, 2017), BTA No. 2015-2394

… we find the income approach to value to be the most appropriate and reliable methodology to utilize when valuing a property such as the subject, considering it is an income-producing property. While support for the resulting value of the income approach may be drawn from the sales comparison approach, as stated in R.C. 5715.01, "in determining the true value of lands or improvements thereon for tax purposes *** the income capacity of the property, if any *** shall be used." Accordingly, our analysis herein will focus on the income approach in determining the value of the subject property.

Q: IN DETERMINING THE VALUE FOR A PROPERTY ENCUMBERED BY A LEASE, CAN THE VALUE OF THE LEASE BE CONSIDERED IN CALCULATING THE PROPERTY'S FEE SIMPLE VALUE?

A: YES

GC Net Lease @ (3) (Westerville) Investors, LLC., et al v. Franklin County Board of Revision (May 17, 2017), BTA No. 2016-540

…the property owners argued that the subject sale cannot be used to value the subject property because the purchase price reflected the value of the lease in place at the time of the transfer…This board has repeatedly rejected such arguments…to the extent that the property owners asserted that the price paid for real property, subject to a lease, cannot be indicative of value, we reject this argument as well. "The total range of private ownership interests in real property is called the bundle of rights," which includes "the right to sell an interest[;] the right to lease an interest[;] the right to occupy the property[;] the right to mortgage an interest[; and] the right to give an interest away[.]"…Fee simple ownership of real property includes the entire bundle of rights. The record is void of any evidence that the subject sale transferred anything less than fee simple ownership to the buyer…The court has recognized "'[a] fee simple' may be absolute, conditional, or subject to defeasance, but the mere existence of encumbrances does not affect its status as fee simple…

Q: WHERE THERE IS A RECENT ARM'S LENGTH SALE, BUT THE OWNER OFFERS AN APPRAISAL TO REBUT THE PRICE OF THE SALE, THEAPPRAISAL MAY BE USED INSTEAD OF THE SALE PRICE TO ESTABLISH VALUE?

A: NO

GC Net Lease @ (3) (Westerville) Investors, LLC., et al v. Franklin County Board of Revision (May 17, 2017), BTA No. 2016-540

… we find that the property owners failed to rebut the presumptions accorded to the subject sale. Absent an affirmative demonstration that such sale was not a qualifying sale for tax valuation purposes, we find that it was a recent, arm's-length sale upon which we rely to determine the subject property's value for tax year 2014. Because we have concluded that the subject sale is the best indication of the subject property's value as of January 1, 2014, we will not consider [the appraiser's] appraisal report. "It is only when the purchase price does not reflect the true value that a review of independent appraisals based upon other factors is appropriate…" Additionally, "the mere fact that an expert has opined a different value should not be deemed sufficient to undermine the validity of the sale price as the property value."

Q: WHETHER A PROPERTY SALE CAN BE CONSIDERED TO BE MADE UNDER "DURESS" WHERE A DEVELOPER IS ASSEMBLING PROPERTIES ON A CITY BLOCK FOR A FUTURE DEVELOPMENT AND PURCHASES ONE OF THE "HOLDOUT" PARCELS ON THAT BLOCK AND PAYS A HIGHER PRICE THAN NORMAL FOR THAT "HOLDOUT" PARCEL?

A: NO

Columbus City Schools Board of Education v. Franklin County Board of Revision (May 23, 2017), BTA No. 2016-436

In *Lakeside Avenue Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 540 (1996), the court described economic duress as requiring "compelling business circumstances" as follows: "Lakeside never had any real choice but to purchase the property in question. The choice between Triton's survival on the one hand and swift and sure corporate death (bankruptcy) on the other hand presented Lakeside with no true alternative but to pay the price demanded by the seller." …it is only when it is proven that one party is vested with such disparate bargaining power as to essentially hold the other party "hostage" to a particular price that a sale may be deemed to fall within the circumstances contemplated by the court in *Lakeside*... here, unlike *Lakeside*…the purchase price was negotiated and there is no indication that the assembling entity would face bankruptcy if it were unable to acquire the subject…here, the record evidences that the owner "invested time, effort," and ultimately, money to acquire this location…here, the record is devoid of evidence to indicate that the owner made any efforts to determine the cost of relocating the garage and units to another parcel in the assemblage and there has been no assertion that failure to acquire the subject would cause the assembling entity to file bankruptcy…In the present appeal, we find the owner's testimony and evidence merely demonstrates its desire to accumulate property for future development in a particular area and challenges it faced in negotiating an acceptable purchase price with one particular property owner at the end of the assemblage - such circumstances do not equate to economic duress sufficient to negate the validity of the underlying transaction.

Q: WHETHER IN HEARING A VALUATION CASE FOR THE CURRENT TAX YEAR, THE BTA IS BOUND BY ITS VALUATION DETERMINATION FOR THE SAME PROPERTY IN A PRIOR YEAR?

A: NO

Daniel Lancry v. Cuyahoga County Board of Revision, et al. (June 5, 2017), BTA No. 2016-2248

We likewise note that to the extent appellant relies on the [BTA's prior year] decision itself as evidence of the subject property's value, our decision for another year is not relevant to the value for the tax year at issue. See *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 29 (1997) ("When the BTA makes a determination of true value for a given year, such determination is to be based on the evidence presented to it in that case, uncontrolled by the value assessed for prior years.").

Q: WHETHER, WHERE THE OWNER IS A GENERAL CONTRACTOR AND PROVIDES DETAILED EVIDENCE OF THE COST OF CONSTRUCTION, SUCH EVIDENCE MAY BE USED TO DETERMINE THE VALUE OF THE BUILDING?

A: YES

Daniel Stein and Ellen D. Stein v. Hamilton County Board of Revision (June 13, 2017), BTA No. 2016-2172

At the BOR hearing, owner … appeared to testify and … explained that he is a general contractor and indicated that construction on the home had recently been completed for a total cost far less than the auditor's value….At this board, the owners offered more specific evidence regarding the cost to build the subject house…The owners provided a detailed list of costs incurred constructing the dwelling located on the subject property… We find that in this case, the record as a whole serves to negate the value assessed by the auditor and that the data provided by the owners, with Stein working as a contractor in this field, provides a basis upon which this board may independently determine value…

Q: WHERE THE OWNER ASSERTS THAT IT OVERPAID IN THE PURCHASE OF A RENTAL PROPERTY IN A RECENT ARM'S LENGTH SALE BECAUSE THE FORMER OWNER (SELLER) FRAUDULENTLY MISREPRESENTED THE OCCUPANCY AND RENTAL RATES RECEIVED FOR THAT PROPERTY, MAY THE BOR DISREGARD THE SALES PRICE IN DETERMINING THE PROPERTY'S VALUE?

A: NO

Columbus City Schools Board of Education v. Franklin County Board of Revision (June 12, 2017), BTA No. 2016-947

…the property owners argued that the subject sale should be disregarded because they may have been fraudulently induced to overpay for the subject property. While we sympathize with the property owners, such allegation is an insufficient basis to reject the subject sale. … this board has consistently rejected the argument that a sale should not be considered arm's-length simply because the buyer arguably paid too much for a property due to a lack of understanding about the property, including, e.g., its condition, its viability, its history. …"[a] negotiated purchase price is not invalidated merely because a purchaser later believes he made a bad deal." …The property owners requested that this board reduce the subject property's value out of a sense of "fairness." This board is an administrative agency and only has the statutory authority granted to it by the General Assembly and, as such, we do not have equitable jurisdiction.

Q: WHETHER A LAND INSTALLMENT CONTRACT IS PRESUMED TO ESTABLISH THE VALUE OF THE PROPERTY AT THE TIME IT IS INITIALLY EXECUTED?

A: NO

Marysville Exempted Village Schools Board of Education v. Union County Board of Revision (June 12, 2017), BTA No. 2016-945

The execution of a land installment contract merely constitutes the commencement of an agreement to transfer the property upon the satisfaction of terms and conditions set forth therein; as a result, the contract does not enjoy a presumption that the agreed upon price is the best evidence of value until such time as the sale is actually completed, i.e., the property transfers at an arm's length, recent to the tax lien date at issue.

Q: WHETHER, WHERE A PROPERTY OWNER SEEKS TO ALLOCATE A PORTION OF THE TOTAL "DEAL" PRICE TO REAL PROPERTY, THE OWNER BEARS THE BURDEN OF PROVING SUCH ALLOCATION?

A: YES

North Canton City Schools Board of Education v. Stark County Board of Revision (June 27, 2017), BTA No. 2016-1284

To the extent that the property owner argued before the BOR that the purchase price included something other than realty, i.e., "buy-outs" of prior tenants, we find no probative, tangible documentary evidence upon which this board may rely to allocate of a portion of the reported purchase price to another source. When an owner seeks to reduce the valuation of real property below the full sale price, it is the owner who bears the burden of showing the propriety of allocating some portion of the reported price to another source.

"FORCED" SALES

Q: IS A HUD FORECLOSURE SALE PRESUMED TO BE A FORCED SALE?
A: YES

Q: MAY THE OWNER REBUT THAT PRESUMPTION WITH OTHER EVIDENCE?
A: YES

See *Macikenas v. Cuyahoga County BOR* – Decided 1/19/17 – BTA 2016-1071

Second, we likewise find that appellant's purchase of parcel number 641-09-016 is not useful evidence of value. Although appellant purchased this parcel in November 2015, the seller was HUD. Where a property transfers as a foreclosure sale under the auspices of HUD, it is considered a forced, involuntary transfer, which is not representative of market value. ... This presumption that such a sale is a forced sale and not indicative of value, however, may be rebutted by the party relying upon the sale…Upon review of the record, we find that there is not sufficient evidence to rebut this presumption. Appellant relied solely on the settlement statement and his testimony regarding the circumstances of the sale, failing to offer evidence to corroborate his testimony or provide additional confirmation that the sale was arm's-length. Accordingly, we find that the sale was not arm's-length and is not reliable evidence of value.

Q; IS A SALE FROM A RECEIVER PRESUMED TO BE A FORCED SALE?
A: YES

Q: MAY THE OWNER REBUT THAT PRESUMPTION WITH OTHER EVIDENCE?
A: YES

Worthington City Schools Board of Education v. Franklin County BOR – Decided 1/30/17 – BTA 2016-151

In the present matter, it is undisputed that … the relevant transfer was effected by a receiver under the supervision of a court…[The BTA] has previously found that a sale conducted through a receiver presumably proceeds at the direction and under the supervision of a court order, bringing such transaction within the scope of a forced sale which is not indicative of true value….[However] The court has held that R.C. 5713.04, which provides that "[t]he price for which such real property would sell at auction or forced sale shall not be taken as the criterion of its value," is not an absolute bar, but rather the codification of a rebuttable presumption that forced sales and auctions are not at arm's length… In the present appeal, although the September 2013 receiver sale clearly falls within the category of a "forced sale" set forth in R.C. 5713.04, CWH has rebutted the associated presumption and has proven that the sale was an arm's-length transaction. It is undisputed that the property was extensively marketed by CBRE, who directly contacted and provided information to prospective buyers. CWH has offered unrefuted testimony that there were several interested buyers because Franklin County has a competitive buyer's market for this type of property, and that its offer was chosen after three rounds of bidding…Based on the information provided and the circumstances of this sale, we find that

CWH has shown that both the buyer and seller, through the receiver, acted as typically-motivated parties to the transaction. As such, we find that in this case, the record supports a conclusion that the subject recently sold in an arm's-length transaction that constitutes a reliable indication of value.

Q: **WHETHER, WHERE A PROPERTY IS PURCHASED AT AUCTION WHERE THE PROPERTY WAS PUBLICLY ADVERTISED, THERE WERE AT LEAST FIVE BIDDERS, AND THE SELLER APPROVED THE SALE PRICE, SUCH SALE OVERCOMES THE PRESUMPTION THAT THE AUCTION IS A FORCED SALE AND MAY BE CONSIDERED AN ARM'S LENGTH SALE?**

A: **YES**

Columbus City Schools Board of Education v. Franklin County Board of Revision (June 7, 2017), BTA No. 2016-754

…the subject sales appear to have been forced sales within the meaning of R.C. 5713.04, which provides, in relevant part, that "the price for which such real property would sell at auction or forced sale shall not be taken as a criterion of its value." However, the Supreme Court has held that R.C. 5713.04 is not an absolute bar to establish a property's value…[and] the court held that "R.C. 5713.04 establishes a presumption that a sale price from an auction [or forced sale] is not evidence of a property's value. However, that presumption may be rebutted by evidence showing that the sale occurred at arm's length between typically motivated parties…the property owner testified that the auction was publicly advertised, and that there were at least five other bidders bidding on the subject properties before he became the winning bidder. Most important, he testified that auctioneer contacted the sellers to confirm whether the high bids were acceptable, which demonstrated the sellers' right to reject the highest bids. Taken together, we find that both the property owner, as the buyer, and the various sellers acted in their own self-interests.

Q: **WHETHER, WHERE IT IS UNDISPUTED THAT A SALE WAS A "SHORT SALE", THE PROPONENT OF THE SHORT SALE ALSO HAS THE INITIAL BURDEN TO SHOW THAT THE SALE WAS VOLUNTARY ?**

A: **YES**

Melissa Nagel v. Lake County Board of Revision (June 20, 2017), BTA No. 2016-895

In this matter, it is undisputed that the subject sale was a short sale…In *Columbus City School Dist. Bd. of Edn.*, supra, the court stated that: "[a] sale price from a short sale raises suspicion about the voluntary character of the sale because a short sale is a transaction in which the sale generates less than the amount owed on the mortgage note…A short sale often occurs in the context of a mortgage-loan default, which is a distressed situation. "*** Moreover, a mortgage default raises the specter of imminent foreclosure, which is evidence the seller is not typically motivated participant."… Based upon the record before us, we conclude that the subject sale "raises the inference of distress and duress[]" and, as such, as the proponent of the sale, the appellant bore "an initial burden to offer evidence that the sale [was] voluntary."… we find that

the subject sale was a short sale, which required the appellant to demonstrate whether the parties to the sale acted as typically motivated parties.

APPEALING TO THE BTA

Q: WHEN APPEALING A DECISION OF THE BOR TO THE BTA, WHERE MUST THE APPELLANT FILE THE NOTICE OF APPEAL?

A: THE NOTICE OF APPEAL TO THE BTA MUST BE FILED AT BOTH THE BOARD OF TAX APPEALS AND AT THE BOR FROM WHICH THE APPEAL IS TAKEN.

See *White v. Cuyahoga BOR* – Decided 1/9/17 – BTA 2016-2541

"R.C. 5717.01 allows for an appeal to be taken to [the BTA] from a decision of a county board of revision ("BOR") provided such appeal is filed with [the BTA] *and* the BOR within *and thirty days* after notice of the decision of the county BOR is mailed…R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal."

Q: DOES THE APPELLANT PROPERLY INVOKE JURISDICTION OF THE BTA WHERE THE NOTICE OF APPEAL IS TIMELY FILED WITH THE BTA BUT NOT FILED WITH THE BOR?

A: NO

See *Albert Lambert v. Cuyahoga County BOR* – Decided 1/30/17 – BTA 2016-725

R.C. 5717.01 allows for an appeal to be taken to [the BTA] from a decision of a county board of revision ("BOR") provided such appeal is filed with this board and the BOR within thirty days after notice of the decision of the county BOR is mailed….The record in this matter indicates that while appellant timely filed the appeal with [the BTA] by certified mail, notice of the appeal was mailed to the BOR by ordinary mail and not filed with the BOR until thirty-five days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, this matter must be, and hereby is, dismissed.

Q: WHAT DATE TRIGGERS THE START OF THE 30 DAY APPEAL PERIOD TO THE BTA?

A: THE DATE OF THE BOR'S MAILING OF ITS DECISION BY CERTIFIED MAIL.

See *Danielle & Richard Pyun v. Franklin County BOR* – Decided 2/1/17 – BTA 2016-2362

R.C. 5717.01 allows for an appeal to be taken to [the BTA] from a decision of a county board of revision ("BOR") provided such appeal is filed with this board within *and the BOR* within *thirty days* after notice of the decision of the BOR *is mailed.*

Q: **DOES THE 30 DAY APPEAL PERIOD TO THE BTA RUN FROM THE DATE OF CERTIFIED MAIL MAILING IF THE LETTER GOES UNCLAIMED BY THE RECIPIENT?**

A: **YES**

See *Danielle & Richard Pyun v. Franklin County BOR* – Decided 2/1/17 – BTA 2016-2362

…the date of the board of revision's proper mailing of its decision, by certified mail, constitutes the start of a thirty day requirement for the filing of notices of appeal to the Board of Tax Appeals and board of revision,' even when the decision was properly mailed by certified mail to the correct address, but went unclaimed.

See also *Linda T. Hardwick v. Lake County BOR* – Decided 12/7/07 – BTA 2007-T-882 and *Rafizadeh v. Franklin County BOR* – Decided 6/18/11 – BTA 2010-1257

Q: **IS THE BTA BOUND BY THE FACTUAL FINDINGS OF THE BOR?**

A: **NO**

See:

147 Ohio St.3d 129 (2016)
CANNATA, TRUSTEE, APPELLEE,
v.
CUYAHOGA COUNTY BOARD OF REVISION ET AL., APPELLANTS
Supreme Court of Ohio
March 22, 2016

Pursuant to R.C. 5717.01, the BTA may "order the hearing of additional evidence" and may "make such investigation concerning the appeal as it deems proper." Moreover, we have held that the BTA's standard of review is de novo when determining the factual issues before it.

Q: **IS THE BOR'S DECISION PRESUMED TO BE VALID AT THE BTA?**

A: **NO**

2016-Ohio3166
Court of Appeals of Ohio,
Eighth District, Cuyahoga County.
BRECKSVILLE–BROADVIEW HEIGHTS BOARD OF EDUCATION, et al., Appellees
v.
CUYAHOGA COUNTY BOARD OF REVISION, et al., Appellees.
May 26, 2016

Decisions of boards of revision are " 'not * * * accorded a presumption of validity.' " … (" '[A] determination of the true value of real property by a board of revision * * * is not presumptively valid.' ")…Where, as here, the statutory transcript is the only evidence before the BTA, the BTA must "make its own independent judgment based on its weighing of the evidence contained in the transcript."

Q: **WHEN AN APPEAL FROM THE BOR IS FILED WITH THE COMMON PLEAS COURT, IS THE COURT REQUIRED TO PRESUME THAT THE BOR'S VALUATION WAS CORRECT?**

A: **NO**

2017 WL 422340
Court of Appeals of Ohio,
Ninth District, Lorain County.
Valley of the Eagles, LLC, Appellant
v.
Lorain County Board of Revision, et al., Appellees
Dated: January 31, 2017

Valley of the Eagles appealed the board of revision decision to the common pleas court pursuant to R.C. 5717.05. The statute provides, in pertinent part: "The court may hear the appeal on the record and the evidence thus submitted, or it may hear and consider additional evidence." The common pleas court has a "duty on appeal to independently weigh and evaluate all evidence properly before it [and] * * * to make an independent determination concerning the valuation of the property at issue."

Q: **WHERE THE ONLY EVIDENCE AT THE BTA IS THE STATUTORY TRANSCRIPT, HOW DOES THE BTA ASSESS THE EVIDENCE?**

A: **SEE BELOW.**

See:

Court of Appeals of Ohio,
Eighth District, Cuyahoga County.
BRECKSVILLE–BROADVIEW HEIGHTS BOARD OF EDUCATION, et al., Appellees
v.
CUYAHOGA COUNTY BOARD OF REVISION, et al., Appellees.
May 26, 2016

Where, as here, the statutory transcript is the only evidence before the BTA, the BTA must "make its own independent judgment based on its weighing of the evidence contained in the transcript."…Thus, the issue before this court is whether the BTA acted reasonably and lawfully

when it concluded that there was insufficient evidence that the May 2012 auction sale was an arm's-length transaction…

Q: WHETHER THE BTA HAS JURSIDCITION TO HEAR A "CASE" WHERE THE APPELLANT NEVER FILED THAT CASE WITH THE BOR?

A: YES

V3 Seville Real Estate LLC v. Medina County Board of Revision (May 16, 2017), BTA No. 2017-368

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred."…Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board… we find that the appellant has not appealed from a BOR decision and thus this board lacks jurisdiction over this matter. Accordingly, this matter must be, and hereby is, dismissed.

Q: WHETHER, WHERE AN APPELLANT TO THE BTA FILES AN UNTIMELY NOTICE OF APPEAL WITH THE BOR BUT THE BOR'S RECORDS SHOW "NOTICE OF APPEAL FILED", SUCH "NOTICE OF APPEAL FILED" NOTATION IS SUFFICIENT TO OVERCOME THE UNTIMELY FILING OF THE NOTICE OF APPEAL?

A: NO

St. Clair Place Cleveland, Ltd. V. Cuyahoga County Board of Revision (May 23, 2017), BTA No. 2016-2420

Appellant responded to the motion [to dismiss] and argued that the BOR was notified of the appeal as evidenced by the Notice of Appeal Filed notification issued by the BOR, a copy of which was attached. However, appellant did not attach documentation to demonstrate that its notice of the appeal was timely filed with the BOR…Appellant appears to rely on this board's [the BTA's] notification to the BOR of the filing of the appeal. The Supreme Court has previously held this board's [the BTA's] sending such notification does "not replace appellants' duty to file their notices of appeal with the board…Upon consideration of the existing record, and for the reasons stated in the motion, this matter is determined to be jurisdictionally deficient and therefore is dismissed.