TOPIC INDEX AND BTA CASES
VOLUME 1
BTA OPINIONS ISSUED FROM
AUGUST 2, 2017 – JULY 31, 2018

The decisions of Ohio's Board of Tax Appeals ("BTA") in this **Volume 1** were issued commencing on **August 2, 2017 and continue chronologically through July 31, 2018**. The first part of this **Volume 1** contains a topic index numbered in Roman numerals. It alphabetically categorizes, by legal topic, decisions of the BTA issued from **August 2, 2017 through July 31, 2018.** Starting on August 2, 2017, BTA decisions for other periods not covered in this **Volume 1** can be found in the other volumes of this series under the RESOURCES tab of the OBORRC website. Each of those other volumes is structured in the same manner as this one. The second part of this **Volume 1** contains the actual text of BTA decisions issued during the above period. Those decisions are in pdf format and can be searched with your search tool using the topic index, as described below, or by using individual words or word strings.

A FEW TIPS BEFORE BEGINNING YOUR SEARCH

If you are looking for a decision that addresses a specific legal topic, you may find it helpful to first go to the topic index. Using the topic index you can identify BTA decisions that address that topic (issued during the time period covered by this volume) and find the page within this volume where the decision can be located, as well as the paragraph number (in most instances) within each decision where the law addressing the specific topic can be found. It should be noted that not all volumes contain cases for all legal topics listed in the topic index.

After you find the page of the applicable decision, you can navigate to it quickly by putting the page number into your search tool. Once you locate the decision, you can either read it as it appears in this volume or use the hyperlink to read it as it appears on the BTA's website. This volume contains finding aids, however, that are not contained in the BTA's website.

For example, if you were looking to see whether a Sheriff's Sale is considered an arm's length sale for purposes of establishing a property's value, you would search under "Sheriff's Sales" in the Valuation section of topic index. There, for example, you would see a case entitled ***Robert J. Yanega v. Cuyahoga County Board of Revision*** **(August 24, 2017), BTA No. 2016-1585 (Vol. 1/0073 ‖ 5).** The information highlighted in yellow shows that the law in that decision addressing sheriff's sales can specifically be found in this volume on **page 0073** and in **paragraph [5]** on that page.

The BTA decisions in these volumes relate only to county boards of revision and do not include BTA decisions relating to decisions of the Ohio Tax Commissioner. In addition, they do not include the following: decisions relating to settlement stipulations, voluntary dismissals, small claims, as well as BTA scheduling, discovery, or other procedural matters.

Finally, please be aware that the optical process of converting these decisions from the format in which they are issued by the BTA to the Word format you see below sometimes results in misspellings, missing or scrambled words or lines, and occasional inconsistent spacing and formatting. Accordingly, we make no representations of any kind regarding the completeness of the decisions below, the accuracy of the conversion or formatting process, or the accuracy or completeness of the text of the opinions reproduced below. **The decisions below should not be used as a substitute for the official versions of these BTA decisions and any individuals intending to use the decisions below for any purpose should rely solely on the official versions of these decisions as they appear on the website of the Ohio Board of Tax Appeals at** http://bta.ohio.gov/

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VOLUME 1
BTA DECISIONS

OHIO BOARD OF TAX APPEALS

GREEN LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1605
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - GREEN LOCAL SCHOOLS BOARD OF EDUCATION
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Represented by:
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CAK BUILDING 39, LLC
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Entered Wednesday, August 2, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 28-09413, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

[2] The subject property, improved with an aircraft hangar subject to a ground lease, was initially assessed at $144,640. The BOE filed a complaint with the BOR, which requested that the subject property's value be increased to reflect the $235,000 price at which it transferred in October 2014. The property owner filed a counter-complaint, which requested that the subject property's value be valued at $160,000. Although the counter-complaint acknowledged the $235,000 sale in October 2014, the property owner asserted that an appraisal report performed contemporaneous with the subject sale opined to a value of $200,000.

[3] At the hearing before the BOR, both parties appeared to submit argument or evidence in support of their- respective positions. The BOE submitted a conveyance fee statement and bill of sale, which demonstrated that the subject property transferred for $235,000 from William A. Brothers and Ann M. Brothers to CAK Building 39 LLC in October 2014. Relying upon its presentation, the BOE requested that the subject property's value be increased to $235,000. Michael Grossman, a member of the property owner, appeared in support of the counter-complaint. Grossman testified that the subject sale included items other than realty and that the appraisal report performed in contemplation of the sale, which opined the subject property's value to be $200,000 as of August 2014, demonstrated that the subject property was not worth $235,000. However, on cross-examination, Grossman conceded that the parties negotiated the sale down to $235,000 and that they did not separately allocate any portion of the $235,000 to items other than the subject real property. The BOE objected to any consideration of the appraisal report because the appraiser failed to testify and because the appraisal report failed to opine value as of January 1, 2015. The BOR subsequently voted to accept the appraisal report as the best indication of value and issued a written decision consistent with the oral vote. The BOE then appealed to this board.

[4] On appeal, none of the parties availed themselves of the option to submit additional evidence at a hearing before this board. However, the BOE submitted written argument that asserted that the property owner had failed to rebut the presumption that the subject sale was the best indication of the subject property's value. Neither the property owner nor the county appellees filed written argument.

[5] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,50* Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, 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. *Cincinnati Bd of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997).

[6] In this matter, it is undisputed that the property owner purchased the subject property for $235,000 in October 2014. Although the property owner does not dispute that the subject sale occurred recent to the tax lien date between parties acting in their own self-interest, it asserts that the subject sale included items other than realty, as demonstrated by an appraisal report that opined the value of the subject property to be $200,000. For the reasons that follow, we do not find this argument persuasive.

[7] It is well established that the party advocating for a reduction below the full sale price due to an allocation of other assets bears the burden of showing the propriety of such action. See *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd of Revision,* 128 Ohio St.3d 565, 2011-Ohio-2258. In this instance, there is nothing in the record to demonstrate that the purchase price of $235,000 for the real property, as reported on the conveyance fee statement, fails to include anything other than the value of the real property. See *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 124 Ohio St.3d 481, 2010-Ohio-687. The property owner's appraisal report also fails to allocate any portion of the sale price to non-realty items. In fact, Grossman conceded that the parties did not allocate any portion of the purchase price to other items and, therefore, failed to provide support for allocating a portion of the reported sale price to non-realty items. See *NHI-REIT of Ohio, LLC v. Union Cty. Bd. of Revision* (July 14, 2016), BTA No. 2015-1519, unreported, settled on appeal, S.Ct. No. 2016-1205. Not only are we troubled by the lack of evidence of any allocation to non-realty items, we are concerned that there was no specificity in the non-realty items that allegedly transferred. For example, Grossman testified that the subject sale included fuel and furniture. But how much fuel and what furniture were transferred and how were they valued? Accordingly, we find the

record devoid of any "corroborating indicia" or other evidence in support of allocating any portion of the sale price to items other than realty that may have been transferred. *Hillard City Schools Board of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 1, 2014-Ohio-853. See, also, *Sapina v. Cuyahoga Cty. Bd. of Revision,* 136 Ohio St.3d 188, 2013-Ohio-3028, at ¶18 (quoting *St. Bernard Self-Storage LLC v. Hamilton Cty. Bd. of Revision,* 115 Ohio St.3d 365, 2007-Ohio-5249, at ¶17).

[8] We also do not find the property owner's appraisal report to be particularly helpful. As an initial matter, we note that the appraisal report does not value the fee-simple interest but, instead, values the leasehold interest. See, R.C. 5713.03. In *Bd. of Edn. of the Hilliard City Schools v. Franklin Cty. Bd. of Revision* (Apr. 10, 2014), BTA No. 2010-2356, unreported, at 2, we held "[i]n *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision* (1988), 37 Ohio St. 3d 16, paragraph one of its syllabus, the Supreme Court expressly held that `[f]or real property tax purposes, the fee simple estate is to be valued as if it were unencumbered.' See, also, R.C. 5701.02, R.C. 5715.19(A)(1)(d), R.C. 5713.03(B), and *Muirfield Assoc. Inc. v. Franklin Cty. Bd. of Revision* (1995), 73 Ohio St.3d 710." Here, the appraisal report fails to opine value as of the tax lien date at issue and there was no testimony of the author presented either before the BOR, or this board, regarding the contents of the report, adjustments made or the opinion of value. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported; *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 30 (1997); *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision,* 75 Ohio St.3d 552 (1996). Compare *Emerson v. Erie Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-865 (concluding that a financing appraisal report performed contemporaneous with a sale may corroborate the sale price). As such, we do not find the report probative in valuing the subject property for tax purposes as of tax lien date.

[9] To the extent that the property owner now believes that it overpaid for the subject property, "[a] negotiated purchase price is not invalidated merely because a purchaser later believes he made a bad deal." *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported, at 11.

[10] We are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to rebut the presumptions accorded to the $235,000 transfer in October 2014 and that the BOR erred when it disregarded the subject sale and accepted the property owner's appraisal evidence. "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." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 146 Ohio St.3d 470, 2016-Ohio-757, at ¶20. 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.

[11] It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

TRUE VALUE

$235,000

TAXABLE VALUE

$82,250

OHIO BOARD OF TAX APPEALS

MARK SHIPLEY, (et. al.),

Appellant(s),

vs.

PICKAWAY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-905, 2016-907

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARK SHIPLEY
OWNER
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For the Appellee(s) - PICKAWAY COUNTY BOARD OF REVISION
Represented by:
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PICKAWAY COUNTY
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Entered Wednesday, August 2, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals decisions of the board of revision ("BOR") which determined the value of the subject real property, parcel numbers: G17-0-001-00-347-02, G17-0-001-00-347-12, and 120-0-001-00-174-01, for tax year 2015. While not previously consolidated, these appeals are appropriately consolidated for the purpose of this decision and order in accordance with this board's rule of practice and procedure, 5717-1-09. Accordingly, these consolidated appeals are now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, transcript supplements ("S.T.S."), and any written argument submitted by the parties.

[2] The subject's total true aggregate value was initially assessed at $266,920. The property owner filed a tax year 2015 complaint with the BOR, apparently seeking the subject's inclusion into the current agricultural use value ("CAUV") program, based upon an assertion that the prior owner "was not aware of keeping land use in program." S.T., Ex A. No counter complaint was filed.

[3] For context, when land is devoted exclusively to agricultural use and meets certain requirements, a property owner may submit an application to the county auditor requesting to participate in the CAUV program to avoid a real property tax assessment based on the true value. Based upon the application, the county auditor determines a property's participation eligibility and the auditor's determination of eligibility may be reviewed by the BOR. R.C. 5713.31, 5713.38, 5715.19.

[4] In this instance, the property owner elected not to appear at the BOR's hearing. Additionally, the property owner did not submit any evidence supporting the complaint, or suggesting that the subject was being farmed. S.T., Ex. J. We also note, the record does not contain a 2015 CAUV application relating to the subject property. S.T. Based upon the information available to it, the BOR issued a decision maintaining the subject's initially assessed aggregate valuation. S.T., Ex. G. Dissatisfied with the result, the property owner appealed to this board.

[5] "When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). See also *Shinkle. v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379. Where, as here, the parties elect to present no additional evidence on appeal, this board independently reviews the record as developed before the BOR. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996), quoting *Black v. Cuyahoga Cty. Bd. of Revision,* 16 Ohio St.3d 11, 14 (1985).

[6] On appeal, no hearing was requested before this board and the property owner did not submit any written argument advancing his position. Pursuant to this board's request, however, the county supplemented the transcript with a prior owner's 2014 CAUV application, two tax bills relating to the first half of 2014, and the present owner's 2016 CAUV application. S.T.S. Further, the county contends, the property owner did not submit a 2015 CAUV application for the subject property. S.T.S.; S.T., Ex. J.

[7] R.C. 5713.31 provides, in relevant part, "any time after the first Monday in January and prior to the first Monday in March of any year, *an owner* of agricultural land *may file an application* with the county auditor of the county in which such land is located, requesting the auditor to value the land for agricultural use ***. An owner's first application with respect to his land shall be in the form of an initial application."

[8] In the present matter, the record contains two CAUV applications: one relating to tax year 2014 and the other, tax year 2016. It appears, based upon the 2014 application, the auditor found the property ineligible for CAUV, and, for tax year 2015, it was removed from the program. S.T., Ex. J; S.T.S., 2014 Initial Application for the Valuation of Land at its Current Agricultural Use. On June 23, 2014, the subject property transferred to the appellant property owner, Mark A. Shipley. S.T., Ex. C. As indicated above, no 2015 CAUV application is contained in the record, and, we note with importance, the property owner makes no assertion that he filed a 2015 CAUV application with the county auditor. While we acknowledge Mr. Shipley's 2016 CAUV application, tax year 2016 is not at issue before this board. S.T.S., 2016 Initial Application for the Valuation of Land at its Current Agricultural Use.

[9] Based upon the foregoing, we conclude, Mr. Shipley was required, but failed, to file an application for the subject's inclusion into the CAUV program with the county auditor "any time after the first Monday in January and prior to the first Monday in March of 2015, i.e., the tax year in question. R.C. 5713.31. In so finding, we acknowledge, "no statutory provision allows the BTA to overlook an owner's failure to file the CAUV application[,]" and, as such, we question whether the issue of the property's inclusion in the CAUV program is properly before this board. *Valigor v. Cuyahoga Cty. Bd. of Revision* 105 Ohio St.3d 302, 2005-Ohio-1733, at ¶8. See also R.C. 5713.31, 5715.19; *Hardy et al. v. Delaware County Bd. of Revision,* 106 Ohio St.3d 359; 2005-Ohio-5319.

[10] To be sure, the requirements of R.C. 5713.31 are specific and mandatory in nature. When a statute confers a right, as in this instance, to apply for inclusion in a tax reduction program (i.e., the CAUV program), adherence to the terms and conditions set forth in therein is essential to the enjoyment of the right conferred. See *American Restaurant and Lunch Co. v. Glander,* 147 Ohio St. 147 (1946). As such, in the absence of a 2015 CAUV application being filed with the county auditor, we conclude this board does not have the authority to value the subject property consistent with an agricultural use for tax year 2015. *Seeger v. Franklin Cty. Bd. of Revision* (Sept. 6, 2016), BTA Case No. 2015-1948, unreported.

[11] Accordingly, based upon the foregoing, we hereby affirm the decision of the BOR. It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER G17-0-001-00-347.-02

TRUE VALUE

$68,380

TAXABLE VALUE

$23,930

PARCEL NUMBER G17-0-001-00-347-12

TRUE VALUE

$195,630

TAXABLE VALUE

$68,470

PARCEL NUMBER 120-0-001-00-174-01

TRUE VALUE

$2,910

TAXABLE VALUE

$1,020

OHIO BOARD OF TAX APPEALS

HUNTERS GLEN SUBDIVISION, LLC, (et. al.),

Appellant(s),

vs.

MEDINA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-834

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HUNTERS GLEN SUBDIVISION, LLC
Represented by:
TODD BAUGHMAN
OWNER
10350 QUAIL LAKE CR
DOYLESTOWN, OH 44230

For the Appellee(s) - MEDINA COUNTY BOARD OF REVISION
Represented by:
DENNIS E. PAUL
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MEDINA COUNTY
72 PUBLIC SQUARE
MEDINA, OH 44256

Entered Wednesday, August 2, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The county appellees attached to their motion the affidavit of the secretary to the BOR, asserting that appellant's notice of appeal was not filed with the Medina County Board of Revision. While appellant

argues in response that the county was notified of the filing of the appeal by this board, the Supreme Court has held that this board's notifications of filing, i.e., docketing letters, do not satisfy the requirement of R.C. 5717.01 that an appealing party file notice of an appeal with a county board of revision. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d 192 (1989). See, also, *Rumora v. Ashtabula Cty. Bd. of Revision*, BTA No. 2000-G-970 (Mar. 30, 2001), unreported.

The record does not demonstrate that appellant filed the requisite notice of this appeal with the Medina County Board of Revision. Upon consideration of the existing record, this matter is determined to be jurisdictionally deficient and therefore is dismissed.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of

OHIO BOARD OF TAX APPEALS

JUDY KAY SNEARY, (et. al.),

Appellant(s),

vs.

ALLEN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1449

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JUDY KAY SNEARY
OWNER
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LIMA, OH 45801

For the Appellee(s) - ALLEN COUNTY BOARD OF REVISION
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Entered Friday, August 4, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The above-named appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel number 36-2409-02.001.000, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the record developed at this board's hearing.

[2] The subject property was initially assessed at $69,300. The appellant filed a complaint with the BOR, which requested a reduction to the subject property's value to $32,000 based upon the price at which she purchased it. The BOR held a hearing on the matter, at which time the appellant and Kenneth Sneary testified about the condition of the subject property. (We note that approximately two minutes of the BOR hearing audio and the entire BOR decision audio were inaudible.) The BOR subsequently issued a decision, which reduced the subject property's value to $50,400, based upon physical obsolescence, and this appeal ensued.

[3] Both the appellant and county appellees appeared at this board's hearing. The appellant and Kenneth Sneary reiterated and expanded upon the testimony previously provided to the BOR. The county appellees argued that the appellant's $32,000 purchase price in 2012 was too remote to the tax lien date and, therefore, not indicative of the subject property's value. However, the county appellees requested that we affirm the BOR's decision to reduce the subject property's value to $50,400 based upon the condition of the subject property, i.e., physical obsolescence.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sate an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

[5] As an initial matter, we note that the property record card has two entries that note a $16,000 transfer of the subject property on September 14, 2012. However, based upon the discussion held at the BOR, we glean that these entries were erroneous and that the appellant actually purchased the subject property for $32,000 on this date.

[6] We begin our analysis with the appellant's $32,000 purchase of the subject property in 2012, which is the basis for her requested valuation. We do not find the transaction to be a reliable indicator of the subject property's value because the transaction was too remote to the tax lien date. Ohio courts have refrained from setting forth a "bright line" test to establish whether a sale of property is sufficiently close to a tax lien date to be presumed to accurately reflect its value. See, generally, *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision,* 80 Ohio St.3d 36, 44 (1997), overruled in part on other grounds *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision, .117* Ohio St.3d 516, 2008-Ohio-1473 ("The question of how long after a sale the sale price is to be considered the best evidence of true value will vary from case to case."). Such restraint results from the recognition that whether a sale is "recent" to or "remote" from a tax lien date is not decided exclusively upon temporal proximity, but may necessarily involve a multitude of other impacts/considerations. See, e.g., *Cummins Property Servs.*, supra, at ¶35 (recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property"); *New Winchester Gardens,* supra (recency factors include "changes that have occurred in the market"). As for assertions regarding adjusting market changes, general claims are typically insufficient, and instead a party advocating for the existence of intervening events must demonstrate their actual existence. Nevertheless, as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property have not changed between the sale date and the lien date." *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588. Because the appellant did not come forward with evidence to demonstrate that market conditions remained the same between the sale and tax lien dates, we find the subject sale was too remote to the tax lien date.

[7] We also find the purported defects associated with the subject property, i.e., the problems with the basement of the home, to be equally unavailing. There was•no evidence how the alleged defect impacted the value of the subject property. In *Gides v. Cuyahoga Cty. Bd. of Revision,* 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, the court noted "[t]here was no evidence or testimony submitted that established how those defects might have impacted the property value such that it warranted a *** reduction. Without such evidence, the list of defects are simply variables in search of an equation. See *Throckmorton v. Hamilton Cty. Bd. of Rev.*, 75 Ohio St.3d 227, 228, *** (1996) (stating `[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.')." (Parallel citation omitted.) Id. at ¶7. Likewise, this board has repeatedly rejected the argument that defects, unquantified by a proper appraisal, are insufficient evidence to determine real property value. See e.g., *Bardshar Apts., Inc. v. Erie Cty. Bd. of Revision* (Mar. 15, 2016), BTA No. 2015-1451, unreported.

[8] To the extent that the appellant argued that the disparity between the subject property's assessed value and neighboring properties' assessed values necessitates a reduction to the subject property's value, we must reject such argument. Initially, the fallacy of reliance upon other properties' assessed values must be acknowledged, since the fundamental basis of this challenge is the erroneous nature of the subject property's value. Indeed, "[m]erely showing that two parcels of property have different

values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 31 (1996). See, also, *Meyer v. Bd. of Revision,* 58 Ohio St.2d 328, 335 (1979).

[9] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). Based upon our review of the record, we find that the sale, upon which the appellant relies, was too remote from the tax lien date of January 1, 2015. In the absence of a qualifying sale of the subject property, the appellant was required to provide a competent appraisal report attested to by a qualified expert for the tax lien date in issue. Because the appellant failed to submit such appraisal report, we find that she failed to satisfy the evidentiary burden before the BOR and before this board. See, also *LTC Props., Inc. v. Licking Cty. Bd. of Revision,* 133 Ohio St. 3d 111, 2012-Ohio-3930, at ¶28 (Pfeifer, J., concurring) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** Finally, the best way to challenge a valuation is with a proper appraisal, which was not submitted in this case. Little wonder that the property owner was unable to establish that the board of revision abused its discretion.").

[10] It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, are as follows:

TRUE VALUE

$50,400

TAXABLE VALUE

$17,640

OHIO BOARD OF TAX APPEALS

MIDDLETOWN CITY SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

BUTLER COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1122

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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LILP ENTERPRISES, LLC
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Entered Friday, August 4, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOk") which determined the value of the subject real property, parcel numbers Q6532-040-000-036 and Q6532-040-000-003, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01 ("S.T."), and any written argument submitted by the parties.

The subject's total true aggregate value was initially assessed at $583,350. The Middletown City School District Board of Education ("BOE") filed a complaint with the BOR, seeking an aggregate increase in value to $800,000, based upon a recent transfer. S.T., Ex. A. No counter complaint was filed, and, although notified, the property owner elected not to participate in the BOR's proceedings. S.T., Ex. D.

At the BOR's hearing, counsel for the BOE appeared, and, in support of the increase sought, submitted a

copy of a conveyance fee statement reflecting a 2015 transfer of the subject from Gregory A. Nenni, to LILP Enterprises, LLC, for $800,000. S.T., Ex. F. A BOR member noted the transfer's apparent seller financing and on such basis, questioned the utility of the sale. Ultimately, the BOR issued a decision maintaining the subject's initially assessed aggregate valuation, which led to the present appeal.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). The initial burden on a party presenting evidence of a sale "is not a heavy one, where the sale on its face appeals to be recent and at arm's length." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at 1141.

The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104. Then, typically, "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14 (Emphasis sic.). See also *Cummins Property Servs., L.L.C.,* supra, at ¶13. Here, the uncontroverted conveyance fee statement, submitted to the BOR, evidences a facially qualifying sale. Consequently, the opponents of utilizing such purchase price have the burden to rebut the sales' presumption of validity and demonstrate why such transfer may not reflect the property's true value for the tax year at issue. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* 78 Ohio St.3d 325, 327 (1997).

On appeal, no new evidence of value was submitted to this board. As before the BOR, the BOE argues that the subject's 2015 purchase price is the best evidence of the subject's value. Where, as here, the parties elect to present no additional evidence on appeal, this board independently reviews the record as developed before the BOR. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996), quoting *Black v. Cuyahoga Cty. Bd. of Revision,* 16 Ohio St.3d 11, 14 (1985).

Upon review, we find the subject's uncontested property record card corroborates the 2015 transfer as reflected on the conveyance fee statement. S.T., Exs. C, F. Specifically, the property record card reflects a transfer of the subject to the appellee property owner, on December 1, 2015, for $800,000. S.T., Ex. C; see also *Bd. of Edn. of the Westerville City Schools v. Delaware Cty. Bd. of Revision* (June 13, 2013), BTA No. 2011-A-155, unreported, at ¶8 ("evidence of a sale contained on a property record card, if undisputed, may serve as a sufficient basis upon which to rely in determining the value of a property.").

While we acknowledge the BOR's concern over seller-financing in relation to the subject transfer, this board has previously considered and rejected similar arguments and finds no reason to deviate in this case. See *Maple Heights City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Jan. 15, 2013), BTA No. 2009-Q-1572, unreported; *Anglin v. Franklin Cty. Bd. of Revision* (May 19, 2009), BTA No. 2007-A-848, unreported; *Bd. of Edn. of the Dublin City School Dist. v. Franklin Cty. Bd. of Revision* (July 23, 1999), BTA No. 1996-S-1793, unreported. Moreover, the county appellees have presented no evidence that would call into question either the recency or the arm's length nature of the subject transfer. See *Berea City School Dist. Bd. of Edn. v. Cuyahoga County Bd. of Revision,* 106 Ohio St.3d 269, 2005-Ohio-4979, at ¶9; HIN, *L.L.C.,* supra, at ¶14.

Based upon the foregoing, we find the county appellees were required, but failed, to rebut the presumption of validity accorded the subject's 2015 transfer. Id. Accordingly, absent an affirmative demonstration that the subject's December 2015 sale is not a qualifying sale for tax valuation purposes, this board will not

engage in conjecture, as 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 at issue. See generally *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶26 ("Mere speculation is not evidence.").

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER Q6532-040-000-036

TRUE VALUE

$785,190

TAXABLE VALUE

$274,820

PARCEL NUMBER Q6532-040-000-003

TRUE VALUE

$14,810

TAXABLE VALUE

$5,180

OHIO BOARD OF TAX APPEALS

ENGLEFIELD, F. W. IV & BENJAMIN B., (et. al.),	CASE NO(S). 2016-254
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Friday, August 4, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 025-000214, for tax years 2014 and 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, the record of hearing ("H.R.") before this board, and any written argument submitted by the parties.

[2] For context, the "interim period" relevant to this appeal involves tax years 2014, 2015, and 2016; the first of these years having been the one in which a triennial update was completed by the auditor in Franklin County. See, generally, R.C. 5713.01(B), 5715.33, and 5715.34. On November 26, 2014, the BOR issued a decision,

emanating from a tax year 2011 complaint, which, pursuant to the parties' agreed stipulation of value, reduced the subject's value from its initially assessed 2011 value of $950,000 to $235,200, for tax years 2011, 2012, and 2013. Motion to Supplement, Exhibit ("Ex.") F-2. Thereafter, pursuant to a county-wide 2014 triennial update, the auditor assessed the subject's value at $950,000 on the tax year 2014 tax list and duplicate.

[3] On March 30, 2015, the property owner filed a tax year 2014 decrease complaint with the BOR, requesting the BOR to reduce the subject's value to $235,500 by carrying "the valuation decision on the prior tax year complaint" forward to tax year 2014. S.T., Ex. A. The Board of Education of the Columbus City Schools ("BOE") filed a counter complaint requesting to maintain the auditor's initially assessed value of the subject, i.e., $950,000. S.T., Ex. B.

[4] At the BOR's hearing, both the owner and the BOE appeared through counsel and legal argument was presented; however, no party submitted any evidence of value, be that in support of the auditor's value or some other value. S.T., Ex. E. Instead, owner's counsel argued that the BOR's redetermined value for 2011, 2012, and 2013 should carry forward, by operation of law, and establish the subject's value for tax year 2014. In addition, counsel argued that inconsistencies exist in the county's treatment of 2014 values. S.T. Ex. E. BOE's counsel, on the other hand, argued that the parties entered into a stipulation of value for tax years 2011, 2012, and 2013, *only*, and that any carry forward of such value (to tax year 2014) was unwarranted. Id. BOE's counsel also pointed out that the owner submitted no evidence of value for the tax lien date at issue.

[5] Thereafter, on the BOR's decision audio recording, the BOR's auditor representative acknowledged that the parcel at issue was the subject of a tax year 2011 complaint and that such complaint was ultimately resolved through the parties' agreed stipulation of value for tax years 2011, 2012, and 2013. S.T., BOR decision audio recording. Further, the BOR auditor representative also recognized that tax year 2014 was an update year for the county and stated that the auditor's appraisers had an opportunity to review the parties' prior stipulated value, but, nevertheless, elected to assess the subject's value at $950,000. Id. The BOR's auditor representative then recommended no change in value and the BOR unanimously issued a decision valuing the subject at $950,000, for tax years 2014 and 2015. Id.; S.T., Ex. G. Dissatisfied with the result, the property owner timely file a notice of appeal with this board.

[6] Before proceeding to the merits of this appeal, however, we must first address two preliminary issues. As one issue relates to jurisdiction, we consider it first. Specifically, we turn to the BOR's issuance of a decision, on January 8, 2016, purportedly finding value for tax year 2015. As we have advised the Franklin County Board of Revision on a multitude of occasions, it is improper to exercise jurisdiction over an "open tax year," i.e., a year for which a complaint could still be filed, since such a filing would render the earlier decision null and void. See, e.g., *Big Walnut Apartments, LLC v. Franklin Cty. Bd. of Revision* (Nov. 6, 2012), BTA No. 2012-K-767, unreported; *GnA Properties, LLC v. Franklin Cry. Bd. of Revision* (May 29, 2012) BTA No. 2012-K-688, unreported. Consequently, we must remand tax year 2015, i.e., an open tax year at the time the decision was issued, with instruction that the BOR vacate its January 8, 2016 decision for tax year 2015.

[7] We now turn to the second preliminary issue, appellant's uncontested motion to supplement the statutory transcript with information that was provided to the BOR, but is not contained in the record certified to this board. Upon consideration of the arguments advanced, we hereby grant the owner's motion to supplement. Accordingly, the following exhibits are received into the record: Exhibit F-1, the owner's case summary and request; Exhibit F-2, BOR decision dated November 26, 2014; and Exhibit F-3, a stipulation of value for BOR case number 11-4759. We also take this opportunity, once again, to remind the Franklin County Board of Revision of its statutory obligations to create, preserve, and certify complete records of its proceedings to this board. See R.C. 5715.19(C), R.C. 5715.08, R.C. 5717.01; Ohio Adm. Code 5717-1-10(A).

[8] We now proceed to the merits of this appeal for tax year 2014. At this board's hearing, both counsel for the property owner and counsel for the BOE appeared and, as before the BOR, presented legal argument; no evidence of value was submitted on appeal. H.R.

[9] Through written argument, the owner contends, the underlying complaint that it filed, marked as "original complaint," and initiated the matter that is now before this board, does not constitute the filing of a "fresh complaint." In addition, while the owner does not dispute that the auditor had authority to perform an upward adjustment to the subject as part of the county triennial update, counsel asserts the county-wide update percentage was zero, and, essentially, argues that the subject's stipulated valuation for tax years 2011, 2012, and 2013 must be carried forward until another value is established through the county's next sexennial reappraisal. In contrast, the BOE seeks affirmance of the BOR's decision and contends that the BOR's redetermined value for tax years 2011-2013 may not carry forward into a new triennial period. Further, the BOE argues, any continuing complaint and/or carry forward provisions of R.C. 5715.19(D) was terminated both by the auditor's duty to perform a county-wide property valuation update and the owner's filing of a tax year 2014 complaint.

[10] At the outset, we reject the owner's argument that the 2014 decrease complaint it filed with the BOR does not constitute a properly filed "fresh" complaint. R.C. 5715.19. Instead, we find the court's recent reaffirmance of "[t]he *Cincinnati [School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 74 Ohio St.3d 639 (1996)] case [which] makes clear that a complaint properly filed in a new triennium supersedes the carryover from the earlier complaint" to be instructive. *Cannata v. Cuyahoga Cty. Bd. of Edn.,* 147 Ohio St.3d 129, 2016-Ohio-1094, at ¶30. Thus, based upon the foregoing, we find the owner's filing of the underlying complaint "'halted the automatic carryover of the value determined' in the 2011 complaint, "even if a factual basis otherwise existed for viewing the [2011] complaint as continuing into tax year" 2014. *Fogg-Akron Assoc. L.P. v. Summit Cty. Bd. of Revision* 124 Ohio St.3d 112, 2009-Ohio-6412, at ¶10, citing *Cincinnati School Dist. Bd. of Edn.,* supra ("the filing of a 'fresh complaint' *** terminates the continuation of an earlier complaint, as long as the new complaint is procedurally valid.").

[11] Accordingly, we now proceed to determine the value of the subject property. In the present matter, it bears noting that the county auditor, as the county's tax assessor, is required to value and assess property tax against the taxable property in the county, and, as part of those duties, must reappraise property values once every six years and update the values at the interim three-year point. *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision,* 127 Ohio St.3d 44, 2010-Ohio-4468, ¶19; R.C. 5713.01, 5713.03, 5715.33, and 5715.24; Ohio Admin. Code 5703-25-16(B). In addition to the aforementioned duties, however, we note with importance that the auditor is also under a standing duty to revalue and assess *at any time* all or any part of the real estate in such county where the auditor finds that the true or taxable values thereof have changed. R.C. 5713.01(B).

[12] Typically, there is no question that a value certified by the auditor on the tax list and duplicate is the property's value for that year. R.C. 5713.01, 5713.03, 5715.01. Yet, in the present matter, the owner submits that it is appropriate, without any evidence of value, for this board to displace the auditor's tax year 2014 assessed value of the subject with a different value; specifically, the parties' previously stipulated value for 2011, 2012, and 2013, i.e., $235,200. However, the owner cites to no authority that would allow this board to rely upon a board of revision's prior valuation determination, which is not supported by any evidence, not determined by auditor, and not agreed to by the parties to determine value for the tax lien date at issue. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572, 574 (1994) (a determination of true value of real property by a board of revision is not presumptively valid). Moreover, the record does not support the assertions made by owner's counsel that a zero percent county-wide increase was employed by the auditor or that inconsistencies exist in the county's treatment of 2014 real property values; to be sure, statements of counsel are not evidence. *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision,* 82 Ohio St.3d 297, 299 (1998). In addition, we find the owner's reliance on *Columbus Rd of Edn. v. Franklin Cty. Bd. of Revision,* 87 Ohio St.3d 305 (1999) *("Inner City"),* to be misplaced, as that case is factually distinguishable from the instant appeal. Specifically, unlike the owner in the present appeal, the property owner in *Inner City,*

supra, did not file a fresh complaint. In fact, the court in *Inner City* specifically distinguished this aspect of the case by acknowledging that "a fresh complaint filed by Inner City or the BOE would have halted the automatic carryover of the [previously determined] value *** " and such is the case herein. Id.

[13] In the absence of any evidence from which this board may determine value for tax year 2014, we are mindful that the auditor is "presumed to have properly performed [his] duties and not to have acted illegally but regularly and in a lawful manner." *State ex rel. Shafer v. Ohio Turnpike Commission,* 159 Ohio St. 581, 590 (1953). Moreover, here, as indicated above, the BOR's auditor representative stated that the subject's previously stipulated value was considered, and rejected, by the county's appraisal staff as the subject's true value, and, absent any evidence to the contrary, we will presume that the required update in valuation took place in Franklin County and resulted in the lawful increase of the value assigned to the owner's property for tax year 2014. See generally *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶26 ("Mere speculation is not evidence."). Compare *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision (May 11,* 2017), BTA No. 2016-37, unreported; *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (May 11, 2017), BTA No. 2016-584, unreported.

[14] It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2014, were as follows:

PARCEL NUMBER 025-000214

TRUE VALUE

$950,000

TAXABLE VALUE

$332,500

OHIO BOARD OF TAX APPEALS

PARKER JAX LEGACY, LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-406

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, August 8, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The above-captioned appeal is now considered upon the county appellees' motions to dismiss, the property owner's response, and the statutory transcript ("S.T.") certified to this board by the BOR pursuant to R.C. 5717.01. Through its motion, the county asserts the appellant failed to file a copy of the notice of appeal with the Cuyahoga County Board of Revision ("BOR"). See also S.T., DTE Form 3. In response, the owner contends, a copy of the notice of appeal was sent to the BOR by regular, ordinary mail and by two emails. In support, the owner submits a copy of two emails, both of which were sent to individuals at the Cuyahoga County Prosecutor's Office, dated March 16, 2017 and July 31, 2017.

Initially, we acknowledge, the burden to prove that a copy of the notice of appeal was filed with the BOR, falls squarely upon the appellant who commenced these proceedings. Turning to R.C. 5717.01, within thirty days of the BOR's issuance of a decision, an appeal may "be taken by the *filing* of a notice of appeal, in person or by certified mail, express mail, facsimile transmission, electronic transmission, or by authorized delivery service, with the board of tax appeals ***and with the county board of revision.*** If notice of the appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing." (Emphasis added.) Id.

In this instance, however, the owner admits the notice of appeal was sent to the BOR by ordinary mail. "The general rule is that the date of actual receipt of ordinary mail shall constitute the date of filing." *Wolpert v. Butler Cty. Bd. of Revision* (Dec. 27, 1993), BTA No. 1992-R-898, unreported. See also *Thomas H. Hoffman v. Marion Cty. Bd. of Revision* (July 17, 1992), BTA No. 1991-J-669, unreported; *Animal Kingdom Pet Cemetery, Inc. v. Cuyahoga Cty. Bd. of Revision* (Dec. 6, 1991), BTA No. 1990-H-1688, unreported; *Hasman v. Cuyahoga Cty. Bd of Revision* (June 30, 1988), BTA No. 1987-G-268, unreported. Consequently, appellant's notice of appeal is deemed filed only when it is received and stamped by the BOR, and, as a result, appellant's assertion that he mailed a copy of the notice of appeal fails to prove that a copy of the notice of appeal was, in fact, filed with the BOR.

Turning to appellant's emails, we find such evidence to be unavailing as both emails were sent to the prosecutor's office; specifically, to an assistant prosecutor and a legal secretary. To be sure, service of a notice of appeal (filed with this board) on a county prosecqting attorney or secretary does not satisfy the requirements set forth by of the statute. *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd of Revision,* 80 Ohio St.3d 621, 623 (1998) ("neither R.C. 5715.44 or R.C. 5717.01 authorizes an appealing party to serve, or the prosecuting attorney to accept, a copy of a notice of appeal in lieu of filing with the board of revision."). Appellant's emails therefore not satsify the statutory requirement to file notice of the appeal with the BOR.

It is well established, the requirements of R.C. 5717.01 are specific and mandatory in nature. When, as here, a statute confers the right of appeal, adherence to the terms and conditions set forth therein is essential to the enjoyment of the right conferred. *American Restaurant and Lunch Co. v. Glander,* 147 Ohio St. 147 (1946). In this instance, the record demonstrates that the BOR did not receive a copy of appellant's notice of appeal, and, thus, we find the appellant was required, but failed, to file this appeal in compliance with R.C. 5717.01. As strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board, we must conclude that we do not have jurisdiction to consider the merits of the instant matter. See *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990) ("Failure to comply with the applicable statute is fatal to the appeal.").

Accordingly, the county appellees' motions to dismiss are. well taken and the present appeal is hereby dismissed.

OHIO BOARD OF TAX APPEALS

WESTERN RESERVE VENTURES, LTD., (et. al.),	CASE NO(S). 2016-1351, 2016-1360
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:
For the Appellant(s) - WESTERN RESERVE VENTURES, LTD. AND CASTLE MANAGEMENT, INC.
Represented by:
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11210 FALMOUTH CIRCLE
NORTH ROYALTON, OH 44133

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, August 10, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellants appeal three decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 481-21-030, 449-16-Q46, and 372-02-219, for tax year 2015. This matter is now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subjects' total true values were initially assessed at $321,900, $69,500, and $104,500, respectively. Decrease complaints were filed with the BOR seeking reductions in value to $280,000, $50,000, and $87,600. At the hearings before the BOR, the respective owners relied on testimony from managing partner David Wishnosky, who described the condition of the properties and negative aspects of the subject's neighborhoods. Wishnosky also challenged the value change for each property resulting from the triennial update performed for tax year 2015, asserting that it resulted in values that were too high for the subjects. Wishnosky also provided unadjusted sales data to support the requested reductions. After considering the owners' evidence and sales data resulting from its own research, the BOR issued decisions maintaining the initially assessed valuations, which led to the present appeals. At this board's hearing, Wishnosky again appeared and relied on similar evidence and arguments that were offered to the BOR.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in

value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). An appellant must present competent and probative evidence in support of the requested reduction, and an owner is not entitled to a reduction merely because no evidence is presented against the claim. Id. See, also, *Valigore v. Cuyahoga Cty. Bd. of Revision,* 105 Ohio St.3d 302, 2005-Ohio-1733. The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

In lieu of appraisals of the subject properties, appellants offered information that is typically utilized by appraisers, specifically raw sales data, in addition to information regarding the condition of the properties and their neighborhoods. In the absence of an appraisal which analyzes such data, however, 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. See, generally, The Appraisal of Real Estate (14th Ed.2013). Although Wishnosky indicated that the properties are comparable to the subjects, it is unclear as to the specific search parameters he utilized and whether there was a ceiling on the purchase price for those included in the materials. Thus, this raw sales data alone provides little value to establish the value of the subject properties. See, e.g., *Carr v. Cuyahoga Cty. Fiscal Officer,* 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, ¶11, appeal pending, S.Ct. No. 2017-0587 ("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.").

Wishnosky also testified extensively about negative conditions experienced by the subject properties and their neighborhoods, offering information about the school districts in which the properties are located. In *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996), the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value. See, also, *Gupta v. Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397 (1997).

Appellants also argued that the values for 2015 following the triennial update were too high when compared to the values for the prior interim period and a map issued by the Cuyahoga County Fiscal Office regarding the impact the update would have on area home values. The Ohio Supreme Court has consistently rejected the argument that a property's valuation from one tax year, resulting from either an agreement among the affected parties or a finding by a tribunal, is competent and probative evidence of value for another tax year. *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 29 (1997); *TBC Westlake, Inc. v. Hamilton Cty. Bd. of Revision,* 81 Ohio St.3d 58 (1998); *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 122 Ohio St.3d 134, 2009-Ohio-2461, ¶20-21. Indeed, the court stated in *Fogg-Akron Assoc., L.P. v. Summit Cty. Bd. of Revision,* 1;4 Ohio St.3d 112, 2009-Ohio-6412, ¶15, that "when determining the true value of real property for the current tax year, the assessor should not accord presumptive or prima facie validity to an earlier year's valuation." Thus, the properties' historical value history and the map are not sufficient to support a change in value. Moreover, the Supreme Court has affirmed this board's rejection of an owner's evidence that consisted solely of an owner's testimony, a list of purportedly comparable sales, the assessed value of a neighbor, and information of the "rundown condition" of the owner's property. See *Valigore,* supra. Thus, in the present appeals, we find appellant's evidence unpersuasive and insufficient to support further adjustment to the subjects' value.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision,* 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not

credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 481-21-030

TRUE VALUE

$321,900

TAXABLE VALUE

$112,670

PARCEL NUMBER 449-16-046

TRUE VALUE

$69,500

TAXABLE VALUE

$24,330

PARCEL NUMBER 372-02-219

TRUE VALUE

$104,500

TAXABLE VALUE

$36,580

OHIO BOARD OF TAX APPEALS

GROVEPORT MADISON LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1624

(REAL PROPERTY TAX)

ORDER

APPEARANCES:

For the Appellant(s) - GROVEPORT MADISON LOCAL SCHOOLS BOARD OF EDUCATION
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MAJOR CONTRACTING CO.
Represented by:
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ESQUIRE
CLARK & LOWE LLC
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Entered Thursday, August 10, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcels 264-000006-00 and 264-000044-00, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the BOE's motion to remand with instructions to dismiss and related response.

[2] The subject property, one economic unit; was initially collectively assessed at $315,800..:A complaint was filed with the BOR,' which requested a reduction to the subject property's value to $65,296, purportedly based upon the recent transfer and condition of the subject property. The complaint identified the owner as "Major

Contracting Co." and the complainant, "James Cotugno,"s the "lessee' of the subject property. The BOE filed a counter-complaint, which objected to the request. Tlie BOR held a hearing on the matter, at which time both parties appeared, through counsel, to submit argument and/or evidence in support of their respective positions. (We note that the BOR hearing also involved another parcel, which is not the subject of this appeal.) After cross-examining Cotugno, the BOE moved to dismiss the complaint, for lack of jurisdiction, because Cotugno admittedly filed the complaint as a lessee of the subject property and because he did not own other property in the county. Cotugno asserted that he had standing to file as the winning bidder at a sheriff sale in December 2015, even though title did not transfer until July 2016, and as the party obligated to pay the property taxes. Although the BOR never acknowledged the BOE's motion, apparent from the record, the BOR denied the motion to dismiss and proceeded to issue a decision, which reduced the subject property's value to $65,296, and this appeal ensued.

[3] At this board's hearing, both parties appeared, again through counsel, to submit additional argument and/or evidence into the record. As the hearing commenced, the BOE reasserted that the BOR lacked jurisdiction to decide the merits of the underlying complaint because Cotugno lacked standing to file such complaint as a lessee of the subject property and as the winning bidder at an auction held in December 2015, when the subject property was not transferred to Cotugno until July 2016. Cotugno countered that, as the winning bidder at a sheriff's auction, he was the "owner" of the subject property within the meaning of R.C. 5715.19 and, therefore, had standing to file the complaint. Subsequent to the hearing, the BOE filed a written motion to remand with instructions to dismiss, to which Cotugno responded.

[4] R.C. 5715.19(A) governs who may file a complaint, and, in relevant part, authorizes "[a]ny person owning taxable real property in the county or in a taxing district with territory in the county" to file complaints against the valuation of real property with boards of revision. See *Soc. Natl. Bank v. Wood Cry. Bd. of Revision,* 81 Ohio St.3d 401 (1998). Moreover, "[a]s used in R.C. 5715.19, the term 'owner' refers to the owner on the date when a valuation complaint was filed." *Public Square Tower One v. Cuyahoga Cty. Bd. of Revision,* 34 Ohio App.3d 49 (8th Dist.1986), syllabus. Here, it is undisputed that Cotugno did not own taxable real property in the county as of the date the underlying complaint was filed. We proceed, therefore, to consider whether he had standing to file the underlying complaint as the "owner" of the subject property.

[5] The court, in *Bloom v. Wides,* 164 Ohio St. 138, 141 (1955), stated "[w]here the term 'owner' is employed with reference to land or buildings, it is commonly understood to mean the person who holds the legal title." "Consequently, to be the owner of real property, the person must hold legal title to the property, not simply an equitable interest in the property." *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision,* 86 Ohio St.3d 181, 183 (1999), citing *State ex rel. Multiplex, Inc. v. S. Euclid,* 36 Ohio St. 2d 167, 169-170 (1973). While the holder of legal title of real property has standing to file a complaint, the owner of an equitable interest does not. *Victoria Plaza,* supra; *Performing Arts School of Metro. Toledo, Inc. v. Wilkins,* 104 Ohio St.3d 284, 2004-Ohio-6389. The Supreme Court reiterated these holdings in its decision in *Diley Ridge Med. Ctr. v. Fairfield Cty. Bd. of Revision,* 141 Ohio St.3d 149, 2014-Ohio-5030. Thus, we must determine, through the sheriffs sale process, when legal title passes to a purchaser.

[6] In *Ohio Savings Bank v. Ambrose,* 56 Ohio St.3d 53, 55 (1990), the court held that "purchasers at a foreclosure sale have no vested interest in the property prior to confirmation of the sale by the trial court." In *Jashenosky v. Volrath,* 59 Ohio St. 540, 545 (1899), the court held that "[t]he general doctrine relating to the effect of the confirmation of a judicial sale is that it relates back to the day of sale and passes a title as of that day. The deed executed pursuant to the order of confirmation by relation takes effect as of the day of sale. This is the established doctrine in Ohio."

[7] This board has considered the effect of a sheriff's sale on the transfer of title in *Overstreet v. Hamilton Cty. Bd. of Revision* (Feb. 22, 2002), BTA No. 2001-V-635, unreported, at 6, where we stated that "Mr. Overstreet acquired a vested right in the property, which merges with the legal title upon the sheriff's transfer of legal title by delivery of the deed. Mr. Overstreet was the equitable owner of the property from

the date of the judicial sale. See generally, 64 0. Jur3d Judicial Sales, Sections 114, 115." See, also, *Central Natl. Bank of Cleveland v. Ely,* 37 Ohio Law Abs. 18 (1942) ("It was the duty, therefore, of the court to confirm the sale and when the confirmation had taken place the purchaser was vested with an equitable title in the property which merged into legal title insofar as it was within the power of the sheriff to transfer legal title upon delivery of the deed."); *Bd. of Erin. v. Delaware Cty. Bd. of Revision* (Sept. 15, 2009), BTA No. 2008-M-1744, unreported, at 5, ("As a purchaser under a sheriffs sale, Mr. Budden's relationship to the property was the same as a purchaser under a real property purchase contract. Until title transferred, Mr. Budden held an equitable interest in the property.")

[8] Based upon the foregoing, we find that although Cotugno had equitable title, he did not have legal title to the subject property at the time of the filing of the subject complaint on March 31, 2016, because the deed for such property was not executed until July 20, 2016. Compare *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 124 Ohio St.3d 481, 2010-Ohio-687. While we acknowledge that the deed did not have to be recorded in order for Cotugno to be considered the legal titleholder, it had to be executed and delivered to transfer legal title. *See Bd. of Edn. of the South-Western City Schools v. Franklin County Bd. of Revision* (Mar. 15, 2011), BTA No. 2008-M-1995, unreported.

[9] We also find that Cotugno lacked standing to file a complaint as the lessee of the subject property or as the party obligated to pay property taxes. R.C. 5715.19 does not specifically enumerate lessees or parties obligated to pay property taxes in the exclusive list of people who may file complaints against real property value. Furthermore, the Supreme Court has determined that a lessee does not have standing to file a complaint when the lessee does not own the subject property or other property in the county. See *Victoria Plaza,* supra; *Performing Arts,* supra. "Moreover, [R.C. 5715.19] furnishes no basis for concluding that the existence of a contractual obligation to pay property taxes confers standing on a party who is not the owner." *Diley Ridge,* supra, at ¶13. See, also, *Milford Exempted Village Schools Bd. of Edn. v. Clermont Cty. Bd. of Revision* (Jan. 26, 2016), BTA No. 2015-1552, unreported; *Lorain Sailing and Yacht Club v. Lorain Cty. Bd. of Revision* (Feb. 28, 2014), BTA No. 2013-5023, unreported; *Top Spin LLC v. Lucas Cty. Bd. of Revision* (Mar. 28, 2013), BTA No. 2011-Q-3879, unreported. We note that Cotugno relies upon a prior version of R.C. 5715.19, and the case law interpreting said statute, to support his arguments. A prior version of R.C. 5715.19 provided that "a person thereby affected" could file complaints against the value of real property. However, the statute was amended in 1999 to specifically enumerate those who may file complaints against the valuation of real property.

[10] Based upon our review of the record, we find that Cotugno lacked standing to file the underlying complaint and that the BOR erred by ignoring this jurisdictional issue when raised by the BOE. See *State ex rel. Tubbs Jones v. Suster,* 84 Ohio St.3d 70, 77, fn.4 (1998) ("We have held standing to be jurisdictional only in limited cases involving administrative appeals, where parties must meet strict standing requirements in order to satisfy the threshold requirement for the administrative tribunal to obtain jurisdiction."). As such, we are constrained to conclude that the BOR lacked jurisdiction to issue a decision on the subject property's value and remand this matter to the BOR with instructions to dismiss the underlying complaint and counter-complaint.

OHIO BOARD OF TAX APPEALS

COSHOCTON NATIONAL BANK/JP MORGAN CHASE BANK NA & JP MORGAN CHASE NA, (et. al.),

Appellant(s),

vs.

COSHOCTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1371

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COSHOCTON NATIONAL BANK/JP MORGAN CHASE BANK NA & JP MORGAN CHASE NA
Represented by:
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SLEGGS, DANZINGER & GILL, CO., LPA
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For the Appellee(s) - COSHOCTON COUNTY BOARD OF REVISION
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COSHOCTON COUNTY
318 CHESTNUT ST.
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Entered Thursday, August 10, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellants appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 043-00000897-00 and 043-00000898-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and appellants' written argument.

The subject property operates as a bank branch with some second-level office space. The subject's total true value was initially assessed at $1,690,260. Appellants filed a decrease complaint with the BOR seeking a reduction in value to $1,312,720. At the BOR hearing, appellants relied on the testimony and written report of appraiser Christian M. Smith, amending their requested reduction consistent with his opinion that the value of the property was $1,150,000 as 'of January 1, 2015. Smith gave the income approach primary emphasis in his analysis, utilizing local properties to establish a market rental rate of $10.00 per square foot on a triple net basis, with a 4.5% deduction for vacancy and credit loss, for a net rental income of $136,565. Smith reduced this amount to account for operating expenses, calculating a net operating income of $9.15

per square foot, or $130,903. Smith then capitalized this value at 10.5% plus a 0.10% vacancy-weighted tax additur, concluding to an indicated value of $1,250,000 (rounded). Smith also

performed the sales comparison approach, giving it secondpry emphasis in his overall reconciliation. In doing so, Smith determined that the adjusted values of four sales indicated a value range of $65 to $75 per square foot, concluding to an overall indicated value of $1,000,000, or roughly $69.93 per square foot. Smith indicated that he did not utilize the cost approach due to the difficulty quantifying the amount of depreciation present in the subject property, which was built in 1967. The BOR members questioned Smith, but no additional affirmative evidence was presented in support of the auditor's value. The BOR issued a decision maintaining the initially assessed valuation pointing to perceived weaknesses in Smith's appraisal, which led to the present appeal. On appeal, appellants contend that the subject's value should be reduced consistent with Smith's conclusions.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964).

Such is the case in this matter, as the record does not indicate that the subject property "recently" transferred through a qualifying sale. Upon review of Smith's appraisal, which provides an opinion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find the appraisal to be competent and probative and the value conclusions reasonable and well-supported. We recognize that the BOR disagreed with Smith's appraisal, specifically challenging the limited weight given to a comparable property at the high end of his adjusted range, failure to perform the cost approach, and his purported disregard for affirmative value attributed by lower level space utilized for offices, lockboxes, and a vault.

Initially, we have often acknowledged that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported. Such is the case in the instant appeal, and we find that Smith adequately responded to the first two challenges. Specifically, Smith explained that the sale price of the property referred to by the BOR in his sales comparison analysis was impacted by a favorable lease in place at the time of the transfer. Smith further explained that due to difficulties finding comparable sales, he relied more heavily on the income analysis. Additionally, Smith explained that the lower level space could not be rented at the same rent as the rest of the subject property, further noting that access to this space was included in the rental rate utilized for the above-ground space. Thus, it is clear that the contributory value of the space was included in Smith's overall opinion of value. Furthermore, we find no error in Smith's decision not to perform the cost approach for the subject property based on its age. Finally, though there is some indication from the decision letter that an appraiser and the BOR conducted an onsite viewing of the property, we note that the county appellees have not provided any additional evidence to rebut the appraisal.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 043-00000897-00

TRUE VALUE

$1,081,830

TAXABLE VALUE $378,640

PARCEL NUMBER 043-00000898-00

TRUE VALUE

$68,170

TAXABLE VALUE

$23,860

OHIO BOARD OF TAX APPEALS

PARKPLACE ON GRAND CONDOMINIUM ASSOCIATION, (et. al.),	CASE NO(S). 2016-910
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - PARKPLACE ON GRAND CONDOMINIUM ASSOCIATION
Represented by:
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For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
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DAYTON, OH 45422

Entered Thursday, August 10, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number R72-50824-0011, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and the record of hearing ("H.R.") before this board.

The subject's total true value was initially assessed at $18,700. A decrease complaint was filed with the BOR, on behalf of the property owner, Park Place on Grand Condominium Association ("Condo Association"), seeking a reduction in the subject's value to $5,533, based upon a transfer. S.T., Ex. A. No counter complaint was filed.

At the BOR's hearing, attorney James P. Kennedy appeared on behalf of the ownership entity and identified himself as both a trustee and vice president of the condo association. S.T., Ex. E. In support of the decrease requested, Mr. Kennedy offered a deed, purchase agreement (collectively, the "sale documents"), and related email correspondence. The sale documents reflect a transfer of the subject from Deena L. Kent-Hummel, to Parkplace on Grand Condominium Association, on September 30, 2015, for $5,533.00. S.T., Ex. F.

Mr. Kennedy explained the circumstances surrounding the sale as follows. In January 2015, the condo

association, i.e., the present owner, placed a lien on the subject property for delinquent condominium assessments and then sent a letter to the former property owner requesting she bring her account current. S.T., Exs. E, F. Apparently, after receiving the condo association's letter, the former owner sought to sell the condominium unit to the condo association in exchange for clearing her lien. Mr. Kennedy described the former owner as "not keen on selling," but "tired of owning" the subject property. S.T., Ex. E. Mr. Kennedy also indicated, subsequent to the purchase, repairs for electrical, plumbing, and plaster were performed; however, he did not know the total amount spent on such repairs. Id. A BOR member questioned whether the subject was exposed to the open market and if an appraisal was prepared in conjunction with the transfer; Mr. Kennedy responded in the negative to both questions. Id.

Thereafter, on the BOR decision audio recording, a BOR member referenced the delinquent condominium assessments and the subject's lack of exposure to the open market and found the sale was not arm's-length in nature, and the BOR unanimously issued a decision maintaining the subject's initially assessed value, which led to the present appeal.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379. It is well established that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd of Revision,* 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992). Ultimately, the weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record and found to be both competent and probative. *Strongsville Rd of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997).

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd of Revision,* 50 Ohio St.2d 129 (1977). In *Walters v. Knox Cty. Bd. of Revision,* 47 Ohio St.3d 23, 25 (1989), the Supreme Court explained that a qualifying sale for tax purposes is conducted at arm's length, between unrelated parties, and is "characterized by these elements: it is voluntary, i.e. without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest."

However, several factors may render a sale, by itself, an unreliable indicator of value. For example, R.C. 5713.04 provides that "[t]he price for which *** real property would sell at auction or forced sale shall not be taken as the criterion of its value." As such, unlike a typical sale of the property which enjoys a rebuttable presumption of validity, forced sales, such as transfers of property through bankruptcy proceedings, sheriffs sales, and sales by the Secretary of Housing and Urban Development ("HUD"), are not considered reliable value indicators and a rebuttable presumption of *invalidity* arises. R.C. 5713.04; *Dublin Senior Community L.P. v. Franklin Cty. Bd of Revision,* 80 Ohio St.3d 455 (1997). See, generally, *Cincinnati School Dist. Bd of Edn. v. Hamilton Cty. Bd of Revision,* 127 Ohio St.3d 63, 2010-Ohio-4907. See, also, *Olentangy Local Schools Rd of Edn. v. Delaware Cty. Rd of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723. The Supreme Court, however, has determined that R.C. 5713.04 is not an absolute bar to the utilization of a forced sale, but rather, constitutes a codification of a rebuttal presumption of invalidity. See *Olentangy Local Schools Rd of Edn.,* supra. See also *Warrensville Hts. City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd of Revision,* 145 Ohio St.3d 115, 2016-Ohio-78; *Brecksville-Broadview Heights Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 8th Dist. Cuyahoga No. 103015, 2016-Ohio-3166. Further, the court has indicated, the proponent of utilizing such a sale "bears the burden to prove that[, although forced,]

the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value." *Olentangy*, supra, at ¶43.

On appeal, Mr. Kennedy appeared at the hearing before this board, and, as before the BOR, argues that the subject's September 2015 purchase price is the best evidence of the subject's value; no new tangible evidence of value was offered. H.R.

At the outset, although it is undisputed that the subject transferred in September 2015 for $5,533, we find the sale, by itself, to be an unreliable indication of value, as the face of sale documents contain the indicia of a forced transfer, i.e., "a hurried sale by a debtor because of financial hardship or a creditor's action." Black's Law Dictionary 1338 (7th Ed.1999). R.C. 5713.04. Specifically, the real estate purchase contract states in relevant part, "[t]he [p]urchase [p]rice shall be $5533.00, WHICH "* THE PARTIES AGREE IS THE TOTAL SUM OF CONDOMINIUM ASSESSEMENTS, BOTH PAST DUE AND CURRENTLY DUE THROUGH THE DATE OF CLOSING[.]" H.R., Appellant's Ex. 1, at 1. The purchase contract also states, "BOTH PARTIES ARE AWARE OF OUTSTANIDNG LEGAL ORDERS ISSUED IN JANUARY 2015 BY THE CITY OF DAYTON FOR ZONING CODE VIOLATIONS." H.R., Appellant's Ex. 1, at 3. Turning to the deed, attached is a certification, dated January 8, 2015, of a lien placed on the property (by the present owner) for unpaid condominium assessments. S.T., Ex. F.

Based upon the foregoing, it is clear that the property was transferred to satisfy a lien and other delinquent assessment amounts, which resulted in a purchase price that is $13,167 *less* than the initially assessed value. Accordingly, we agree with the BOR, and find that the 'terms [of sale] would likely be unacceptable to a typically motivated seller,' *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 134 Ohio St.3d 529, 2012-Ohio-5680, *** ¶31, and[, further, serve to] demonstrate an 'atypical pressure to sell *** that negates the arm's-length character of the transaction,' id. at ¶30." (Parallel citation omitted.) *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶21.

In this instance, the property owner, as the proponent of utilizing the sale may rebut the presumption of invalidity by demonstrating that, although forced, the sale was nevertheless an arm's-length transaction between typically motivated parties. *Olentangy*, supra, at ¶43. The property owner, however, presented nothing more to support its claim than the sale documents and email correspondence submitted to the BOR, and those documents do not prove the sale was arm's-length in nature. *Lunn*, supra, at ¶22. While we acknowledge Mr. Kennedy's testimony, both before the BOR and this board, the record lacks corroborating evidence in support of assertions he made, for example, relating to the subjective intent of the former owner in relation to the subject transfer. In the absence of any corroborating evidence, we find Mr. Kennedy's testimony, alone, is insufficient to rebut the presumption of invalidity accorded the subject transfer. There is no other evidence contained in the record from which this board may determine value.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER R72-50824-0011

TRUE VALUE

$18,700

TAXABLE VALUE

$6,550

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1444
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

SALAH RASHID
4094 LEAP ROAD
HILLIARD, OH 43026

Entered Thursday, August 17, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 010-059558-00 and 010-059458-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject's total true value was initially assessed at $115,000. The BOE filed an original complaint with the BOR seeking an increase in value to $182,500. At the BOR hearing, the BOE provided evidence of an October 2015 sale of the subject property for $182,500, and argued that the purchase price provides the best evidence of the subject's value as of the tax lien date. The appellee property owner also appeared with his accountant, who also acted as his interpreter. The owner indicated that prior to the sale, the owner was renting the subject property from the seller, and approached his landlord about purchasing the property.

Although the seller purportedly did not initially want to sell the property because of the lease in place, the two parties to the sale negotiated the purchase price. The testimony reflects that at the time of the sale, two appraisals were performed: one for the lender and another to determine the sale price. The BOR issued a decision maintaining the initially assessed valuation, indicating that it determined the sale was not arm's-length based on the relationship between the parties and the property was not listed on the open market. From this decision, the BOE filed the present appeal. The BOE appeared before this board to argue in support of the sale, but neither the property owner nor the county appellees appeared at the hearing.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision.* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "Mlle *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, 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. *Cincinnati Rd of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997). Additionally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Rd of Edn. v. Franklin Cty. Bd of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present matter, it is undisputed that the subject property transferred from Simeon Enterprises, Inc. to Salah Rashid on October 9, 2015 for $182,500. It is likewise undisputed that the property was not listed on the multiple listing service prior to the sale because Rashid approached his landlord seeking to purchase the subject. This alone, however, does not disqualify the sale because sales between landlord and tenant have previously been found to be arm's-length. See, e.g., *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 129 Ohio St.3d 172, 2011-Ohio-3092, ¶32-34. The court held also that "Nile case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers." Id. at ¶29. To the contrary, the evidence shows that the parties negotiated the transaction based on their subjective goals to reach a sale price acceptable to both. Furthermore, the supporting appraisals discussed at the BOR, though on their own not sufficiently probative to independently furnish a value for the property, serve to support the purchase price. See *Emerson v. Erie Cty. Bd of Revision,* 149 Ohio St.3d 148, 2017-Ohio-865. Thus, we find that the owner's argument that the purchase price is not a reliable indication of value is without merit. 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.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 010-059558-00

TRUE VALUE

$140,760

TAXABLE VALUE

$49,270

PARCEL NUMBER 010-059458-00

TRUE VALUE

$41,740

TAXABLE VALUE

$14,610

OHIO BOARD OF TAX APPEALS

DAF INVESTMENTS, LLC, (et. al.),

Appellant(s),

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1442

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DAF INVESTMENTS, LLC '
Represented by:
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50 E. BUSINESS WAY, SUITE 410
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For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
P.O. BOX 972
DAYTON, OH 45422

KETTERING CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, August 21, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number N64 03411 0021, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the parties' written argument. We note that appellant and the appellee board of education ("BOB") have both attached evidence to their written argument submitted on appeal. Because these documents were not submitted at a hearing before this board or the BOR, we hereby grant the pending motion to strike, will not consider any of the attached documents in our analysis, and restrict our consideration to only that evidence offered at the BOR hearing. See *Columbus Bd. of Edn. v. Franklin Cty. B*d *of Revision*, 76 Ohio St.3d 13 (1996).

[2] The subject's total true value was initially assessed at $105,840. Appellant filed a decrease complaint with the BOR seeking a reduction in value to $45,000. The BOE filed a countercomplaint in support of the auditor's value. At the BOR hearing, appellant provided a settlement statement as evidence of a December 2015 sale of the subject property. No testimony was offered from an individual with knowledge of the sale, but appellant's attorney made statements indicating that he believed it was an arm's-length transaction though he had no personal knowledge of the transaction. The settlement statement presented by appellant reflects that a 5% auction fee was paid to Auction.com LLC, thus raising the inference that the property was sold in an auction, which is consistent with counsel's statements. The BOE questioned owner's counsel, but did not offer any independent evidence of value. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. On appeal, appellant argues that this board should reduce the value of the property based on the sale. The BOE, on the other hand, argues that the sale was not an arm's-length transaction and cannot provide a reliable basis to adjust the subject's value.

[3] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). The court has recently explained that a taxpayer seeking to reduce the value of property based on sale can satisfy its initial burden through the presentation of undisputed evidence of a sale, and that testimony from an individual with knowledge of the sale is not required. *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075. Once an owner triggers this rebuttable presumption that a sale met all the requirements that characterize true value by presenting unchallenged evidence of sale, however, an opposing party may rebut the utility of the sale by showing that it was not an arm's-length transaction. Id. Once this is done, the burden again shifts to the owner to satisfy a "'heavier burden' to show that "'the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value.' *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723, *" ¶43." Id. at ¶22.

[4] In the present appeal, it is undisputed that appellant purchased the subject property at an auction. As noted, the court has held that "R.C. 5713.04 establishes a rebuttable presumption that a sale price from an auction 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. See *Fenco [Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision],* 127 Ohio St.3d 63, 2010-Ohio-4907, *** at ¶34." *Olentangy Local Schools,* supra, at ¶40. Thus, where a property sells via auction, the burden is on the proponent of the sale to show that the transfer was an arm's-length transaction. In this case, appellant did not properly offer any evidence regarding the circumstances of the sale that would allow this board to determine that the auction sale met the characteristics of an arm's-length transaction. Instead, appellant relied only on statements of counsel. It is well established that "statements of counsel are not evidence." *Corporate Exchange Bldgs. JV & V, L. P. v. Franklin Cty. Bd. of Revision,* 82 Ohio St.3d 297, 299 (1998). See, also, *Hardy v. Delaware Cty. Bd. of Revision,* 106 Ohio St.3d 359, 2005-Ohio-5319, ¶14 (discussing adverse consequences which may result from a party's failurc to present witness testimony before the board and electing instead to rely upon documentary exhibits discussed by counsel). Accordingly, we find that the record lacks sufficient evidence to show that the sale was arm's-length and cannot utilize the transfer as a basis to reduce the subject's value.

[5] Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision,* 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

[6] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$105,840

TAXABLE VALUE

$37,040

OHIO BOARD OF TAX APPEALS

ITALIAN GREEK INVESTMENTS, LLC, (et. al.),

Appellant(s),

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1441

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ITALIAN GREEK INVESTMENTS, LLC
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For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
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ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
P.O. BOX 972
DAYTON, OH 45422

KETTERING CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, August 21, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number N64 01204 0005, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR purstlant to R.C. 5717.01, and the parties' written argument. We note that appellant and the appellee board of education ("BOE") have both attached evidence to their written argument submitted on appeal. Because these documents were not submitted at a hearing before this board or the BOR, we hereby grant the pending motion to strike, will not consider any of the attached documents in our analysis, and restrict our consideration to only that evidence offered at the BOR hearing. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13 (1996).

[2] The subject's total true value was initially assessed at $104,370. Appellant filed a decrease complaint with the BOR seeking a reduction in value to $46,505. The BOE filed a countercomplaint in support of the auditor's value. At the BOR hearing, appellant provided a settlement statement as evidence of a June 2015 sale of the subject property. No testimony was offered from an individual with knowledge of the sale, but appellant's attorney made statements indicating that he believed it was an arm's-length transaction, though he had no personal knowledge of the transaction. The settlement statement presented by appellant reflects that a buyer premium was paid to Auction.com LLC, thus raising the inference that the property was sold in an auction, which is not inconsistent with counsel's statements. The BOE questioned owner's counsel, but did not offer any independent evidence of value. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. On appeal, appellant argues that this board should reduce the value of the property based on the sale. The BOE, on the other hand, argues that the sale was not an arm's-length transaction and cannot provide a reliable basis to adjust the subject's value.

[3] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). The court has recently explained that a taxpayer seeking to reduce the value of property based on sale can satisfy its initial burden through the presentation of undisputed evidence of a sale, and that testimony from an individual with knowledge of the sale is not required. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Once an owner triggers this rebuttable presumption that a sale met all the requirements that characterize true value by presenting unchallenged evidence of sale, however, an opposing party may rebut the utility of the sale by showing that it was not an arm's-length transaction. Id. Once this is done, the burden again shifts to the owner to satisfy a "'heavier burden' to show that "'the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value.' *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, *** ¶43." Id. at ¶22.

[4] In the present appeal, it is undisputed that appellant purchased the subject property at an auction. As noted, the court has held that "R.C. 5713.04 establishes a rebuttable presumption that a sale price from an auction 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. See *Fenco [Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision]*, 127 Ohio St.3d 63, 2010-Ohio-4907, *** at ¶34." *Olentangy Local Schools*, supra, at ¶40. Thus, where a property sells via auction, the burden is on the proponent of the sale to show that the transfer was an arm's-length transaction. In this case, appellant did not properly offer any evidence regarding the circumstances of the sale that would allow this board to determine that the auction sale met the characteristics of an arm's-length transaction. Instead, appellant relied only on statements of counsel. It is well established that "statements of counsel are not evidence." *Corporate Exchange Bldgs. JV & V, L. P. v. Franklin Cty. Bd. of Revision*, 82 Ohio St.3d 297, 299 (1998). See, also, *Hardy v. Delaware Cty. Bd. of Revision*, 106 Ohio St.3d 359, 2005-Ohio-5319, ¶14 (discussing adverse consequences which may result from a party's failure to present witness testimony before the board and electing instead to rely upon documentary exhibits discussed by counsel). Accordingly, we find that the record lacks sufficient evidence to show that the sale was arm's-length and cannot utilize the transfer as a basis to reduce the subject's value.

[5] Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

[6] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE
$104,370

TAXABLE VALUE

$36,530

OHIO BOARD OF TAX APPEALS

R & T GREEN REALTY, (et. al.),

Appellant(s),

vs.

COLUMBIANA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-970

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - R & T GREEN REALTY
Represented by:
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For the Appellee(s) - COLUMBIANA COUNTY BOARD OF REVISION
Represented by:
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COLUMBIANA COUNTY
105 SOUTH MARKET STREET
LISBON, OH 44432-1295

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Entered Monday, August 21, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis that it was not filed in compliance with R.C. 5717.01 because the appellant failed to file a copy of the notice of appeal with the board of revision ("BOR"). Appellant has not responded to the motion or submitted any documentation to dispute the affidavit of the Columbiana County Auditor that no such filing took place.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a 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. See also R.C. 5715.20. In *Hope v. Highland Cry. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the property owner both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See also *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000). ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

Upon consideration of the existing record, this matter is determined to be jurisdictionally deficient and

therefore is dismissed.

OHIO BOARD OF TAX APPEALS

LIVING CARE ALTERNATIVES OF UTICA, INC., (et. al.),

Appellant(s),

vs.

LICKING COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2699

(REAL PROPERTY TAX)

ORDER

APPEARANCES:

For the Appellant(s) - LIVING CARE ALTERNATIVES OF UTICA, INC.
Represented by:
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For the Appellee(s) - LICKING COUNTY BOARD OF REVISION
Represented by:
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NEWARK, OH 43058-0830

NORTH FORK LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
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100 SOUTH THIRD STREET
COLUMBUS, OH 43215-4214

Entered Monday, August 21, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is before the Board of Tax Appeals based upon a motion to dismiss, and supporting attachments, filed by the appellee board of education ("BOW). By way of the motion, the BOE asserts that the appellant property owner untimely filed a copy of the notice of appeal with the board of revision ("BOR"). Neither the property owner nor the county appellees has responded to the motion within the time prescribed by this board's rules. See Ohio Adm. Code 5717-1-13(B). Based upon our review of the record, the motion to dismiss is granted.

[2] The record demonstrates the following. The property owner filed an original complaint with the BOR, which requested a reduction to the value of parcel 077-359250-00.000, for tax year 2015. The BOE filed a counter-complaint, which objected to the request. After holding a hearing on the matter, the BOR issued a decision on November 30, 2016 to retain the subject parcel's initially assessed true value of $429,800. On December 30, 2016, the property owner filed its notice of appeal with this board electronically. By way of the statutory transcript, the BOR represented that the property owner also filed a copy of the notice of appeal with the BOR on December 30, 2016; however, the BOE alleges that the BOR's representation was erroneous and that the property owner did not actually file a copy of the notice of appeal with the BOR until January 5, 2017. In support of its contention, the BOE provided verified answers to its Requests for Admissions provided by Roy Van Atta, director of the BOR. Van Atta averred that the property owner's notice of appeal "was mailed to the BOR via regular U.S. mail on December 30 or 31st. The postmark on the envelope makes it unclear whether it was the 30th or 31st[]" and "was received at the BOR on January 5, 2017." See BOE Motion at Exhibit D. He further acknowledged that "[t]he BOR certified the December 30, 2016 NOA receipt on the statutory transcript based on the USPS postmark and BTA filing date." Id. A copy of the envelope purported to have contained the property owner's notice of appeal, received on January 5, 2017, was also provided. See BOE Motion at Exhibit E. As previously noted, neither the property owner nor the county appellees has come forward to dispute the assertions raised in the BOE's motion.

[3] R.C. 5717.01 sets forth the procedure by which a decision of a board of decision may be appealed to this board. In relevant part, R.C. 5717.01 provides:

> "An appeal from a decision of a county board of revision may be taken to the board of tax appeals within thirty days after notice of the decision of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code.*** Such appeal shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, facsimile transmission, electronic transmission, or by authorized delivery service, with the board of tax appeals and with the county board of revision. If notice of the appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing."

[4] As this board noted in *Wolpert v. Butler Cty. Bd. of Revision* (Dec. 27, 1993), BTA No. 1992-R-898, unreported, at 4-5:

> "While the statute makes no provision for a notice sent by ordinary mail, the use of ordinary mail is generally permitted; provided, however, that the sender anticipates and takes precautions against the normal time delays and *takes the risk of possible loss in ordinary mail delivery*. The general rule is that the date of actual receipt of ordinary mail shall constitute the date of filing. See, also, Uniwear, Inc. v. Limbach (May 13, 1988), B.T.A. Case No. 87-A-483, unreported.
>
> "Generally, when the filing of a notice of appeal by ordinary mail is permitted, a deposit of the notice in the mail is not the equivalent of filing. *** 'Therefore, simply placing the notice of appeal in the mail does not constitute a filing." Taylor v. Richland Cty. 13d. of Revision (Aug. 21, 1985), B.T.A. Case No. 82-G-555, unreported; ***. The date of the board of revision's *receipt* of its copy of a notice of appeal to the Board of Tax Appeals is *considered the date of filing where such notice of appeal is mailed by ordinary mail* instead of certified mail[, express mail, or authorized delivery service]. *** In such a case, 'filing' requires actual delivery into the official custody and control of the county board of revision." (Emphasis added.) (Internal citations omitted.)

See also *Hoffman v. Marion Cty. Bd. of Revision* (July 17, 1992), BTA No. 1991-J-699, unreported; *Animal Kingdom Pet Cemetery, Inc. v. Cuyahoga Cty. Bd. of Revision* (Dec. 6, 1991), BTA No. 1990-H-1688,unreported; *Hasman v. Cuyahoga Cty. Bd. of Revision* (June 30, 1988), BTA No. 1987-G-268, unreported.

[5] In this matter, the record demonstrates that the BOR mailed its decision by certified mail on November 30, 2016. Although the property owner filed its notice of appeal electronically with this board on December 30, 2016, it is undisputed that the BOR did not receive the property owner's notice of appeal, sent by ordinary mail, until January 5, 2017, six days beyond the statutory deadline for filing such appeals.

[6] The requirements of R.C. 5717.01 are specific and mandatory in nature. When, as here, a statute confers the right of appeal, adherence to the terms and conditions set forth is essential to the enjoyment of the right conferred. *American Restaurant and Lunch Co. v. Glander,* 147 Ohio St. 147 (1946). As strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board, we conclude that we do not have jurisdiction to consider the merits of this matter. See *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68, 564 (1990). Based upon the foregoing, we find the property owner failed to file this appeal in accordance with R.C. 5717.01. Accordingly, we grant the BOE's motion and, therefore, this matter is dismissed.

OHIO BOARD OF TAX APPEALS

ALLIANCE CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1916
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s),	

APPEARANCES:

For the Appellant(s) - ALLIANCE CITY SCHOOLS BOARD OF EDUCATION
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CREPD, LLC
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EQUITY FORCE VENTURES LLC
Represented by:
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Entered Monday, August 21, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 110050, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

[2] The subject property, a 35-unit apartment building, was initially assessed at $1,463,000. The property owner filed a complaint with the BOR, which requested that the subject property's value be reduced to $1,250,000, based upon the condition of the subject property and the market. The BOE filed a counter-complaint, which objected to the request.

[3] At the hearing before the BOR, both parties appeared through counsel to submit argument and/or evidence into the record. In support of the property owner's request, counsel for the property owner submitted an appraisal report that valued the subject property at $1,250,000 as of April 2015. In response, counsel for the BOE noted that the appraisal report valued the subject property as of the wrong date, for an unknown purpose, and that the appraiser was not in attendance to testify. He also noted that the subject property had transferred in an exempt transfer, via deed in lieu of foreclosure, in November 2015, and asserted that the subject property had probably been appraised, and sold, under distressed circumstances. The BOR subsequently issued a decision that reduced the subject property's value to $1,206,400, based upon the recommendation of a staff appraiser in the county auditor's office, and this appeal ensued.

[4] None of the parties availed themselves of the opportunity to supplement the record with additional evidence at a hearing before this board. Instead, the BOE submitted written argument that asserted that it was inappropriate for the BOR to have considered the hearsay appraisal report, which did not value the subject property as of the tax lien date, and to have relied upon the recommendation of an unknown person on the county auditor's staff when such person did not testify at the hearing. Neither the property owner nor the county appellees filed written argument.

[5] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. Furthermore, this board must perform an independent valuation of the property. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 147 Ohio St.3d 409, 2016-Ohio-7381 (holding that this board erred by failing to justify reliance on the report relied upon by the BOR even where the auditor's value was negated). Accordingly, we provide a de novo review of the evidence in the instant appeal.

[6] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

[7] In this matter, the property record card discloses that subject property, along with two other parcels that are not the subject of this appeal, transferred for $0 from GB Alliance Realty, LLC in November 2015. However, we have no information about this transfer, beyond the information provided on the property record card and the oral representations from the BOE's counsel at the BOR hearing, and, therefore, do not find this transfer to be indicative of the subject property's value. We proceed to consider the evidentiary weight of the property owner's appraisal evidence, as well as the propriety of the BOR's decision to rely upon the recommendation of the county auditor's staff appraiser.

[8] Based upon the record, we find that the BOR properly rejected the property owner's appraisal evidence. As an initial matter, the appraisal report notes that "[t]he intended use of this report is to serve as part of the mortgage underwriting decision-making process for FirstMerit Bank." This board has generally rejected appraisal reports completed for purposes other than tax valuation purposes, finding that "they are not

necessarily a complete and thorough evaluation of the propeity." *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported at 7. Furthermore, there was no testimony of the authors presented either before the BOR, or this board, regarding the contents of the report, adjustments made or the opinions of value. For example, there is no testimony from the appraisers about the large adjustments made to the comparable properties under the sales comparison approach, which indicates that the alleged comparable properties are not, in fact, comparable to the subject property. Statutory Transcript at Appraisal Report at page 57. As such, this board cannot rely on the appraisal report as evidence of value. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported; *Freshwater v. Belmont Cry. Bd. of Revision,* 80 Ohio St.3d 26, 30, (1997) ("[a]n 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."); *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* (1996), 75 Ohio St.3d 552, 554-555 ("the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question.").

[9] Having concluded that the property owner's evidence was deficient, we now turn to the BOR's decision to reduce the subject property's value based upon the recommendation of the county auditor's appraiser. See, *Olentangy Local Schools* supra, at ¶15 ("We hold that the BTA erred in failing to evaluate the probative character of the deputy auditor's report before accepting it as a basis for the BOR's reductions."). A review of the recommendation, included in the statutory transcript, demonstrates that the appraiser relied upon "the current listing of the property [for $1,050,000], the income provided, the comparable sales and the adjusted price of the 2016 record *** ." The unknown appraiser did not testify at the BOR hearing, and was not subject to examination, and the information that she/he relied upon is not contained in the record. Furthermore, we find these bases for the reduction to be unsupported by legal precedent. See *Kaiser v. Franklin Cty. Aud.*, 10th Dist. Franklin No. 10AP-909, 2012-Ohio-820, at ¶12 ("[A] listing price, in essence an aspirational selling price, is not conclusively probative of what a willing buyer would pay for the property in an arm's-length transaction, and is therefore not conclusively probative of actual market value."); *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Dec. 6, 2016), BTA No. 2016-332, unreported at 3 ("[The appraiser] was required to determine value based upon market income and expenses and should not have relied upon the subject property's actual income and expenses *unless* such information conformed to the market"); *Thomas v. Cuyahoga Cty. Bd. of Revision* (Nov. 2, 2015), BTA No. 2013-607, unreported at 2 ("While some of the sales may clearly be relevant to and have an impact upon the subject's valuation for tax year 2011, there is nothing in the record before us to assist the board in distinguishing the relevant sales, i.e., sales of truly comparable properties, from the irrelevant ones"); *Lyndall v. Lake Cty. Bd. of Revision* (Apr. 14, 2016), BTA No. 2015-1063, unreported at 3 ("The Supreme Court has previously held that each tax year stands alone, and the fact that value has been modified in another year is not competent and probative evidence that a different year's value should be changed."). As a result of these deficiencies, we do not find the staff appraiser's recommendation to be particularly competent, probative or reliable.

[10] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that the property owner failed to satisfy its burden before the BOR and that the BOR committed error when it reduced the subject property's value based upon the recommendation of a staff appraiser in the county auditor's office who did not testify at the BOR hearing and who failed to provide the information upon which she/he relied. As a result, we must reinstate the value originally assessed by the county auditor. See *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision,* 125 Ohio St.3d 485, 2010-Ohio-1921.

[11] It is therefore the order of this board that the subject property's true and taxable values as of January 1, 2015 are as follows:

$1,463,000

TAXABLE VALUE

$512,050

OHIO BOARD OF TAX APPEALS

MILFORD EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

CLERMONT COUNTY BOARD OF REVISION, (et. al.),

Appellee(s),

CASE NO(S). 2016-1133

(REAL PROPERTY TAX)

DECISION AND ORDER

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Entered Monday, August 21, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 18-46-12F-077, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T") certified by the BOR pursuant to R.C. 5717.01, the record of hearing ("H.R.") before this board, and any written argument submitted by the parties.

[2] The subject's total true value was initially assessed at $1,052,300. The Milford Exempted Village Schools Board of Education ("BOE") filed a complaint with the BOR seeking an increase in value to $1,700,000, based upon a transfer. S.T. Ex. A. The property owner filed a counter complaint requesting to maintain the subject's

value. S.T., Ex. B. At the hearing before the BOR, counsel for the BOE appeared and offered a conveyance fee statement evidencing a recent transfer of the subject property. Specifically, the conveyance fee statement, as corroborated by the county's uncontested property record card, reflects a transfer of the subject property from CB Rentals, LLC, to Keep Safe, LLC, for $1,700,000, on June 18, 2015. S.T., Exs. C, F. There was no challenge to the recency or arm's-length nature of the sale. See *Walters v. Knox County Board of Revision,* 47 Ohio St.3d 23 (1989).

[3] Instead, owner's counsel argued that the subject's June 2015 purchase price was not the best indication of value because the property owner had overpaid; specifically, counsel referenced the present owner's inability to raise the rents, as anticipated at the time of sale, and offered the testimony of Kari Shanker, proprietor of the ownership entity, in support. Additionally, in support of an alternate valuation, the owner offered an appraisal report and the testimony of Garland Crawford, a state-certified general real estate appraiser in Ohio. S.T. Ex. E. Through direct examination, Mr. Stanker testified he believes he overpaid for the subject and explained that he is primarily in the business of "hospital billing and collections" and only recently acquired the subject and one other self-storage business. Id. at 5, 7, 8, 11. Further, with regard to the subject sale, Mr. Shanker relayed that he relied upon statements from his broker, suggesting that the subject's rents were grossly under market and could be raised by 25%; however, Mr. Stanker indicated that upon increasing rents, "people fled from the property[.]" Id. at 8, 9. A BOR member asked Mr. Stanker whether he believed the income/expense information (provided at the time of sale) was falsified; Mr. Shanker responded in the negative. In Mr. Crawford's report, he employed both the sales comparison and income approaches to value, and, upon reconciling the resulting values from each approach, opined to a value of $1,039,000, as of June 24, 2016. S.T., Ex. F. BOE's counsel conducted a brief cross examination of the owner's appraiser.

[4] In addition, a BOR member and county treasurer, Bob True, introduced and questioned Louis Caldwell, who was identified as an appraiser consultant for the county. S.T., Ex. E. Mr. Caldwell testified that he looked at Mr. Crawford's report and he criticized the report for not employing a tax additure. Mr. Caldwell then opined to a value of $1,075,000 for the subject property; however, no written report was provided in conjunction with Mr. Caldwell's valuation testimony, nor did he attest to an effective date for his valuation opinion. Id. at 23.

[5] Thereafter, the BOR disregarded the subject's recent arm's-length sale, elected to rely on the owner's appraiser's valuation, and issued a decision decreasing the subject's value to $1,039,200. S.T., Ex. G. Dissatisfied with the result, the BOE timely appealed to this board.

[6] "When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379. It has long been held by the Stipreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). The initial burden on a party presenting evidence of a sale "is not a heavy one, where the sale on its face appears to be recent and at arm's length." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶41.

[7] The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Rd of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104. Then, typically, "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14. See also *Cummins Property Servs., L.L.C.,* supra, at ¶13. The

Supreme Court has made it clear that no "bright line" test exists when establishing recency and that the mere passage of time does not, per se, render a sale unreliable. See, e.g., *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059. Compare *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588. A party opposing the utilization of a recent arm's length purchase price has the burden to rebut the sales' presumption of validity and demonstrate why such transfer may not reflect the property's true value for the tax year at issue. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* 78 Ohio St.3d 325, 327 (1997).

[8] It is well established that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992). Ultimately, the weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record and found to be both competent and probative. *Strongsville Bd of Edn. v. Cuyahoga Cty. Rd of Revision,* 77 Ohio St.3d 402, 405 (1997).

[9] Before turning to the merits of this appeal, we first address the owner's objection, made at hearing, to the BOE's submission of written legal argument not previously advanced before the BOR, for which, this board's attorney examiner reserved ruling. H.R., at 9, 10. Upon consideration of the arguments advanced, we hereby overrule the owner's objection. We now proceed to the merits. At this board's hearing, both the BOE and the property owner appeared through counsel. As before the BOR, BOE's counsel argues that the subject's June 2015 transfer is the best evidence of value and offers a conveyance fee statement and deed evidencing the sale. H.R., Appellant's Ex. 2. For its part, the property owner continues to concede the arm's-length nature of subject sale; however, counsel argues that the transfer is not the best evidence of value because it was the result of "a poor business decision by an unsophisticated buyer" and points to owner's inability to increase "the rental rates up to a level where it would produce the income necessary to support the money he paid for the business." H.R., at 11. Owner's counsel offers two appraisal reports in support of an alternate valuation. The first report was submitted to the BOR with testimony from its author, Mr. Crawford, and reflects a valuation effective date of June 15, 2015. S.T., Ex. F. The second report, offered at this board's hearing, is a revised and unattested copy of Mr. Crawford's initial report, and reflects a valuation effective date of December 31, 2015. H.R. at Appellee's Ex. A. Notably, the BOE's objection to this board's consideration of the owner's second appraisal report is addressed below.

[10] In the present matter, the BOE presented evidence of a facially qualifying sale, corroborated by the county's property record card, and, as a result, a rebuttable presumption of validity arose in favor of the subject's June 2015 purchase price. *Cummins Property Servs.*, supra, at ¶41. See also S.T., Ex., C; *Bd. of Edn. of the Westerville City Schools v. Delaware Cty. Bd. of Revision* (June 13, 2013), BTA No. 2011-A-155, unreported. The owner may rebut such presumption, however, the owner does not dispute the arm's length nature or recency of the subject transfer. See *Berea City Sch. Dist. Bd of Edn. v. Cuyahoga County Rd of Revision,* 106 Ohio St.3d 269, 2005-Ohio-4979, at ¶9; *HIN, L.L.C.*, supra, at ¶14. While we acknowledge the owner's argument that it essentially got a bad deal and over paid for the subject, the presumption accorded a recent arm's-length transaction is not overcome simply because, after the fact of the sale, the purchaser has unfulfilled rental expectations and thus, believes it overpaid for the property. See *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 97-M-262, 263, unreported. Based upon the record before this board, we find, the property owner was required, but failed, to rebut the presumption of validity accorded the subject's 2015 transfer. See *HIN, L.L.C. v. Cuyahoga Cty. Rd of Revision,* 124 Ohio St.3d 481, 2010-Ohio-687; *Cummins Property Servs., L.L.C.,* supra.

[11] Accordingly, absent an affirmative demonstration that the June 2015 sale is not a qualifying sale for tax valuation purposes, this board will not engage in conjecture, as 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 at issue. See generally *Lakota Local School Dist. Bd. of Edn.*, supra, at ¶26 ("Mere speculation is not evidence."). In addition, as we find the subject sale to be the best evidence of value, we will refrain from further addressing the merits of the owner's two appraisal reports and the county's consultant appraiser's opinion of value because "[i]t is only when the purchase price does not reflect the true value of a piece of property that a review of independent appraisals based upon other factors is appropriate." *Pingue v. Franklin Cty. Bd. of Revision*, 87 Ohio St.3d 62, 64 (1999). As such, the BOE's objection to the owner's second, revised, and unattested appraisal report (identified as.Appellee's Ex. A at Ex. F) is denied as moot.

[12] It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER 18-46-12F-077

TRUE VALUE

$1,700,000

TAXABLE VALUE

$595,000

OHIO BOARD OF TAX APPEALS

LOVEMAN STEEL CORPORATION, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-405

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, August 22, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This appeal is now considered upon a motion to dismiss filed by the appellee board of education ("BOE"), which we now construe as a motion to remand the matter to the board of revision ("BOR") with instructions to dismiss the underlying complaint. The appellant property owner, Loveman Steel Corporation ("Loveman"), responded to the motion, to which the BOE then replied. Although given the opportunity, the county appellees did not respond to the BOE's motion. Accordingly, this matter is now considered upon the

notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the respective parties' written argument and attachments.On March 25, 2016, a complaint was filed with the BOR requesting that the value of the subject real property be reduced for ad valorem tax purposes. In response to questions posed on DTE Form 1, the complainant, represented by counsel, identified the owner as "Loveman Steel Corporation," with the address "c/o Tom Dottore." The complainant, if other than owner, was listed as "same as owner." Though the complaint was prepared and signed on February 15, 2016, it was not filed until more than a month later. On the date that the complaint was filed, the owner of the subject property was "Mark E. Dottore, Trustee-Assignee of the Trust Agreement and Assignment for the Benefit of Creditors of Loveman Steel Corporation, dated February 18, 2016," following a February 24, 2016 transfer via quit-claim deed. The BOE filed a countercomplaint, and prior to the BOR hearing, a motion to dismiss the complaint for lack of standing.

[2] At the BOR hearing, the BOE reiterated its argument that Loveman lacked standing to file the complaint because it did not own the subject property or any other property in the county on the date it was filed, having transferred the property to the trust. Loveman did not contest the validity of the February 24, 2016 quit-claim deed, but argued that the transfer did not divest Loveman of its ownership interest because the transfer was merely "nominal," due to a receivership taking place under state, rather than federal, law. Loveman maintained that Loveman retained its ownership interest in the property because the trustee owed its fiduciary obligation to Loveman and its creditors, and would receive proceeds from a sale.

[3] "Standing is jurisdictional in administrative appeals 'where parties must meet strict standing requirements in order to satisfy the threshold requirement for the administrative tribunal to obtain jurisdiction." *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision,* 86 Ohio St.3d 181, 183 (1999), citing *State ex rel. Tubbs Jones v. Shuster,* 84 Ohio St.3d 70, 77 (1998), fn. 4. "When a person files a complaint against the valuation of the property of another, the burden is on that person to prove that he or she has standing." *Soc. Natl. Bank v. Wood Cty. Bd. of Revision,* 81 Ohio St.3d 401, 403 (1998). R.C. 5715.13 outlines who has standing to file a decrease complaint and provides that "[t]he county board of revision shall not decrease any valuation unless a party affected thereby or who is authorized to file a complaint under section 5715.19 of the Revised Code makes and files with the board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made." R.C. 5715.19(A)(1), requires that a complainant must have owned taxable real property in the county at the time that the complaint was filed. See, also, *Public Square Tower One v. Cuyahoga Cty. Bd. of Revision,* 34 Ohio App.3d 49 (1986). See, also, *City of Cincinnati School Dist. Bd. of Edn. v. Harr4ilton Cty. Bd. of Revision* (Jan. 22, 1999) BTA No. 1998-L-138, unreported. Notably, R.C. 5715.19 further provides that if the owner of the property is a trust, a trustee of the trust has standing to file a complaint.

[4] In the present appeal, it is undisputed that Loveman transferred legal title to the subject property prior to the March 25, 2016 filing of the complaint. Loveman asserts, however, that this transfer was in name only due to legal proceedings taking place at the time because it retained an interest in the property even after the quit-claim deed was recorded. Loveman further argues that because there was no prejudice to themselves or any party, a misstated name is not a jurisdictional deficiency, citing to *James Navratil Dev. Co. v. Medina Cty. Bd. of Revision,* 139 Ohio St.3d 183, 2014-Ohio-1931.

[5] Initially, we observe that the transfer of a property's title is not without legal consequence. See, e.g., *Berliner v. Franklin Cty. Bd. of Revision* (Feb. 20, 2013), BTA No. 2012-Y-4465, unreported (where the appellant testified that she and her husband titled the property in a trust to ensure their names would not be in the public records). Despite Loveman's assertions that the transfer to the trust should somehow be treated differently because it was mandated by statute, we see no reason that the trust in this case should be treated differently for purposes of ownership and standing. Loveman has not shown that the effect of the transfer was in any way different from other trust arrangements, with Dottore acting as trustee and Loveman and its creditors acting as the beneficiaries.

[6] The Supreme Court has recognized and adhered to the trust laws for property that is held in trust. In *Columbus City School Dist. Bd. of Edn. v. Wilkins*, 106 Ohio St.3d 200, 2005-Ohio-4556, at ¶11, the court cited its earlier decision in *Goralsky v. Taylor*, 59 Ohio St.3d 197, 198 (1991), where it stated that ""[i]n a trust, the trustee (and not the beneficiary) holds legal title to the trust corpus."' In *Columbus City School Dist.*, the property was held in a trust and titled to "Columbus State Community College District, Trustee," but the applicant was listed as "Columbus State Community College District" on the application for exemption. The court concluded that the applicant was not the owner of the property and therefore lacked standing to file the application. *Columbus City School Dist.*, supra, at ¶12. Thus, despite Loveman's argument to the contrary, it is clear that when title transferred to a trust, even if it retained an equitable interest in the property as a beneficiary, the trustee was the owner that had proper standing to file the complaint. Accordingly, Loveman's equitable interest in the property was not sufficient to confer legal standing to file a valid complaint against the value of the property. See, also, *McNulty v. Ottawa Cty. Rd of Revision* (June 19, 2012), BTA No. 2010-Y-1200, unreported (holding that although the beneficiary of an IRA trust had an equitable interest in the property, she does not hold legal title and is not the "owner" of the property).

[7] Moreover, we find that Loveman's reliance on *Navratil*, supra, is misplaced. We agree that in *Navratil*, the court held that a defect in the named owner listed on a complaint was not jurisdictional. This ruling, however, did not address the issue of standing, which is the basis for the BOE's jurisdictional argument in the present appeal. Rather, the outcome in *Navratil* was based on the court's decision in *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627. In *Groveport Madison*, the court held that although proper identification of the owner on a complaint is not a jurisdictional prerequisite, a complainant must nonetheless prove that it has standing to file a complaint. It is also worth noting that a complainant's accurate disclosure of the titled owner of the property in issue allows county boards of revision to ascertain the standing of a person to institute valuation challenges. See, e.g., *Victoria Plaza*, supra. Consequently, while Loveman is correct that it was not required to name the titled owner on the complaint, it was obligated to prove that It had standing to file the underlying complaint in order to vest the jurisdiction of the BOR. In this case, as previously discussed, we find that it failed to do SO.

[8] Based upon the foregoing, we must conclude that due to Loveman's failure to demonstrate that it had standing to file the complaint in this matter, the BOR lacked jurisdiction to consider the value of the property. As a result, we grant the BOE's motion and remand this matter to the BOR with instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

JOHN BODNAR, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1705

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHN BODNAR
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1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, August 24, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 312-11-801D and 312-11-917D, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and appellant's written argument.

[2] The subject party consists of a three-bedroom, three-bathroom condominium unit and garage, with an initially-assessed total true value of $71,200. Appellant filed a decrease complaint with the BOR seeking a reduction in value to $26,667. At the BOR hearing, appellant's counsel offered sale documents evidencing a September 2015 transfer of the property in addition to a list of sales of other units within the subject's building. The sale documents show that the transfer was a sheriff auction sale, yet appellant provided no additional details about the auction. Appellant also offered a list of sales of other units in the building, though all were one- and two-bedroom units, and included units sold both with and without garages. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. On appeal, appellant argues that he met his burden of proof by presenting evidence of a recent sale and that no evidence was presented to rebut its utility.

[3] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). The court has recently explained that a taxpayer seeking to reduce the value of property based on a sale can satisfy its initial burden through the presentation of undisputed evidence of a sale, and that testimony from an individual with knowledge of the sale is not required. *Lunn v. Lorain Cty. Rd of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075. Once an owner triggers this rebuttable presumption that a sale met all the requirements that characterize true value by presenting unchallenged evidence of sale, however, an opposing party may rebut the utility of the sale by showing that it was not an arm's-length transaction. Id. Once this is done, the burden again shifts to the owner to satisfy a "'heavier burden' to show that "'the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value.' *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723, *** 1143." *Lunn,* supra, at ¶22.

[4] In the present case, although appellant obtained title to the subject property in September 2015, it is clear that he did so at a sheriff's auction. The Supreme Court has expressly held that "the price *** paid at [a] sheriff's sale is not a relevant consideration in establishing true value. R.C. 5713.04 prevents the price paid at [a] sheriff's sale from establishing the best evidence of true value, stating 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.' *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision,* 80 Ohio St.3d 455, 458 (1997). As noted, the court has since held that that "R.C. 5713.04 establishes a rebuttable presumption that a sale price from an auction 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. See *Fenco [Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision],* 127 Ohio St.3d 63, 2010-Ohio-4907, *** at 1134." *Olentangy Local Schools,* supra, at ¶40. Thus, where a property sells via a forced sale or auction, the burden is on the proponent of the sale to show that the transfer was an arm's-length transaction. In this case, appellant did not properly offer any evidence regarding the circumstances of the sale that would allow this board to determine that the auction sale met the characteristics of an arm's-length transaction. Instead, appellant relied only on statements of counsel. It is well established that "statements of counsel are not evidence." *Corporate Exchange Bldgs. JV & V, L. P. v. Franklin Cty. Bd. of Revision,* 82 Ohio St.3d 297, 299 (1998). See, also, *Hardy v. Delaware Cty. Bd. of Revision,* 106 Ohio St.3d 359, 2005-Ohio-5319, ¶14 (discussing adverse consequences which may result from a party's failure to present witness testimony before the board and electing instead to rely upon documentary exhibits discussed by counsel). Accordingly, we find that the record lacks sufficient evidence to show that the sale was arm's-length, and further find that transfer does not furnish a reliable basis to reduce the subject's value.

[5] In the absence of a recent sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964). In the present appeal, however, appellant has not presented a qualifying appraisal report for this board to utilize to reach our determination. Instead, appellant relied on sales data to compare the properties based on the average price per square foot, but made no adjustments for differences among the properties. Significantly, the comparable properties include only units with fewer bedrooms and bathrooms, and the sales may or may not include garage spaces. Without a reliable analysis of the comparability of the comparable sales to the subject properties, 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, etc., and the date of sale as opposed to tax lien date, may affect a valuation determination. See, generally, The Appraisal of Real Estate (14th Ed.2013). See, also, *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4002 (affirming the BTA's rejection of a list of unadjusted sales offered to support a requested reduction because such data was not probative evidence of value).

[6] Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision,* 81 Ohio St.3d 47, 49

(1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

[7] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 312-11-801D

TRUE VALUE

$70,000

TAXABLE VALUE

$24,500

PARCEL NUMBER 312-11-917D

TRUE VALUE

$1,200

TAXABLE VALUE

$420

OHIO BOARD OF TAX APPEALS

ROBERT J. YANEGA, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1585

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROBERT J. YANEGA
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Entered Thursday, August 24, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant Robert J. Yanega appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 129-13-069, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and Yanega's written argument.

[2] The subject property is a two-family residential property, and its total true value was initially assessed at $70,400 for tax year 2015. Yanega filed a decrease complaint with the BOR seeking a reduction in value to $48,000. At the BOR hearing, Yanega provided a copy of a BOR decision dated December 3, 2015, which determined that the value of the subject property should be reduced from $78,200 to $48,000 for tax year 2014. Yanega further provided evidence that he purchased the subject property in 2013 for $15,000 at a sheriffs auction, and had spent between $15,000-$25,000 to make necessary updates and repairs. Yanega further submitted information about sales and listings in the subject's neighborhood and the subject's actual income and occupancy. The BOR issued a decision reducing the initially assessed valuation to $66,000, which led to the present appeal.

[3] Yanega waived the opportunity to appear before this board to present new evidence, relying instead on the evidence provided to the BOR. Yanega cited to R.C. 5715.19(D) and argued that because the values as initially

assessed decreased by 10% from 2014 to 2015, the same 10% reduction should apply to the $48,000 redetermined value. The county appellees have not responded to Yanega's argument.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). An appellant must present competent and probative evidence in support of her requested reduction, and an owner is not entitled to a reduction merely because no evidence is presented against her claim. Id. The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964).

[5] In the present case, while we acknowledge that Yanega has presented evidence that he purchased the property in 2013, we find that such sale cannot provide a reliable basis for a reduction in value. Initially, we note that although he testified there were other bidders present, Yanega has not provided adequate evidence to show that the sheriff's sale, which is a forced sale and presumptively unreliable as evidence of value, was indeed an arm's-length transaction. See *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 455, 458 (1997); *Olentangy Local School Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. Furthermore, the raw sales data and property listings are not competent and probative evidence that can furnish a basis for an adjustment to value. See, e.g., *Carr v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, ¶11, appeal pending; *Kaiser v. Franklin Cty. Aud.*, 10th Dist. Franklin No. 10AP-909, 2012-Ohio-820, ¶12 ("a listing price, in essence an aspirational selling price, is not conclusively probative of what a willing buyer would pay for the property in an arm's-length transaction, and is therefore not conclusively probative of actual market value."). Accordingly, we find that the affirmative evidence of value presented by appellant is insufficient to support a reduction in value.

[6] Yanega argues that the redetermined value for tax year 2014 should be utilized as the starting point for the 2015 update. We agree, and find that the fiscal officer's update percentage should be applied to the 2014 value as redetermined by the BOR.

[7] The court has discussed the role a redetermined value plays when an auditor has performed a countywide update. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision ("Inner City")*, 87 Ohio St.3d 305 (1999). Although the primary issue in *Inner City* was whether the BOR retained jurisdiction over the relevant tax year as a continuing complaint, the court has further clarified the effect of its holding. In *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, at ¶30, the court explained that "the only effect of the earlier complaint [is] that the update percentage must be applied to the value of the earlier year as redetermined." Thus, the proper valuation in the present case for 2015 involves the application of the update percentage to the parcel's 2014 value as redetermined. According to the December 3, 2015 decision letter, which has not been challenged in terms of admissibility or accuracy, the fiscal officer initially assessed the subject's true value at $78,200 for tax year 2014. As such, the 2015 value of $70,400 assigned by the auditor resulted from a 10% reduction during the triennial update. Applying this 10% reduction to the BOR's redetermined value for 2014 results in a new value of $43,210.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$43,210

TAXABLE VALUE $15,120

OHIO BOARD OF TAX APPEALS

PRINCETON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1515

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PRINCETON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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ENNIS BRITTON, CO. L.P.A.
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

WHCI, LLC
Represented by:
THEODORE HAGLAGE
MANAGING MEMBER
WHCI, LLC
11138 READING ROAD
SHARONVILLE, OH 45241

Entered Thursday, August 24, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 608-0004-0076-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the BOE' s written argument.

[2] The subject property is a two-story office building housing the offices of a commercial contractor and real estate agent. The subject's total true value was initially assessed at $382,250. The appellee property owner, WHCI, LLC ("WHCI") filed a decrease complaint with the BOR seeking a reduction in value to $235,000. The BOE filed a countercomplaint in support of maintaining the auditor's values. At the BOR

hearing, WHCI members Jeff Wolf and Ted Haglage appeared to testify in support of the requested reduction. Wolf and Haglage explained that they purchased the subject property in June 2015, after it had been listed on the market for multiple years, to house Wolf's real estate business and Haglage's construction contracting business. Wolf and Haglage testified that the seller had initially been asking for a higher price and that they had offered a lower price, though after some negotiation the parties met in the middle. WHCI also provided an appraisal report that was performed for purposes of financing, and opined that the subject's value was $255,000 as of June 26, 2015. The BOE did not provide any independent evidence of value, relying on cross-examination and legal argument. The BOE pointed out that the seller of the property was a receiver acting in the course of foreclosure proceedings, asserting that the sale was, therefore, a forced sale and not reliable evidence of value. An appraiser from the auditor's staff also appeared at the hearing and indicated that he believed that the value of the property should reflect WHCI's purchase price. The BOR issued a decision reducing the initially assessed valuation to $235,000, which led to the present appeal. The BOE waived the opportunity to appear before this board, arguing that the June 2015 sale was a receiver sale and, therefore, not an arm's-length transaction indicative of the subject's value. Wolf and Haglage again appeared to reiterate the statements made to the BOR.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Rd of Revision,* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, 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. *Cincinnati Bd of Edn. v. Hamilton Cty. Bd of Revision,* 78 Ohio St.3d 325, 327 (1997). Additiohally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[4] This board 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. See, e.g., *Nadler v. Cuyahoga Cty. Bd of Revision* (Feb. 15, 2013), BTA No. 2012-Q-3033, unreported. See, also, *Warrensville Hts. City School Dist. Bd of Edn. v. Cuyahoga Cty. Bd. of Revision,* 145 Ohio St.3d 115, 2015-Ohio-78 (holding the amount received for the subject real property sold at auction under court supervision was a forced sale did not establish its value). 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. *Olentangy Local School Schools Rd of Edn. v. Delaware Cty. Bd. of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723. See, also, *Schwartz v. Cuyahoga Cty. Rd of Revision,* 143 Ohio St.3d 496, 2015-Ohio-3431. Thus, a party relying on the sale may show that it "was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value." *Olentangy Local Schools,* supra, at ¶43.

[5] In the present appeal, although the June 2015 receiver sale clearly falls within the category of a "forced sale" set forth in R.C. 5713.04, we find that through Wolf and Haglage's testimony, WHCI has rebutted the associated presumption and has proven that the sale was an arm's-length

transaction. It is undisputed that the property was marketed by a realtor for at least two years prior to WHCI's offer, and the parties negotiated the terms of the sale. Furthermore, the supporting appraisal presented to the BOR, though on its own not sufficiently probative to independently furnish a value for the property, serves to support the purchase price. See *Emerson v. Erie Cty. Bd. of Revision,* 149 Ohio St.3d 148, 2017-Ohio-865. Based on the information provided and the circumstances of this sale, we find that WHCI has shown that both the buyer and seller, through the receiver, acted as typically-motivated parties to the transaction. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd of Revision,* 134 Ohio St.3d 529, 2012-Ohio-5680. 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.

[6] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$235,000

TAXABLE VALUE

$82,250

OHIO BOARD OF TAX APPEALS

DARWIN R. CRAWFORD, (et. al.),

Appellant(s),

vs.

MERCER COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1138

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DARWIN R. CRAWFORD
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For the Appellee(s) - MERCER COUNTY BOARD OF REVISION
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Entered Friday, August 25, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel numbers 26-089900.0000, 26-090000.0000, 26-086400.0000, and 26-086500.0000, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject's total true aggregate value was initially assessed at $78,900. The property owner filed a decrease complaint with the BOR, seeking an aggregate reduction in the subject's value to $31,000. S.T., Exhibit ("Ex.") A. No counter complaint was filed.

At the BOR's hearing, Mr. Darwin R. Crawford, the property owner, appeared and in support of the reduction sought, offered two appraisal reports. While the reports are similar, in that both were authored by Mr. Jerry Frey, prepared for financing purposes, and opine to an aggregate value for the subject property in an amount of $31,000, the effective date of valuation in each report differs; specifically, one report opines to value as of January 5, 2016, and the other opines to value as of July 27, 2015. S.T., Ex. F. Mr. Frey, however, did not appear before the BOR to provide testimony regarding the reports submitted.

Thereafter, upon consideration of the information available to it, the BOR issued a decision reducing the subject's initially assessed aggregate valuation to $69,300. S.T., Ex. G. Dissatisfied with the result, the property owner timely filed an appeal with this board. On appeal, the appellant property owner did not request a hearing before this board, and, as a result, no new evidence of value has been submitted. Through written argument, the county appellees request this board to affirm the BOR's decrease in value.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It is not enough, however, for an appellant to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is offered to challenge the claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision,* 170 Ohio St. 340 (1960). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record and found to be both competent and probative. *Strongsville Rd of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997).

As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Rd of Tax Appeals,* 175 Ohio St. 410 (1964). Such is the case in this appeal as there exists no evidence the subject property "recently" transferred through a qualifying sale.

As indicated above, Mr. Crawford submitted two appraisal reports (to the BOR) in support of the requested aggregate decrease in value. Upon review of the owner's appraisal evidence, however, it appears that both reports were prepared for financing purposes, value the property as of an effective date that is subsequent to the tax lien date at issue, i.e., January 1, 2015, and there is no testimony from the author regarding the contents of the report, adjustments made, or the opinion of values derived therein. Accordingly, this board is unable to rely upon either of the appraisal reports as competent and probative evidence of the subject's value as of the tax lien date at issue. *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd of Revision,* 75 Ohio St.3d 552 (1996) ("the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question."); *Freshwater v. Belmont Cty. Bd of Revision,* 80 Ohio St.3d 26, 30 (1997) ("[a]n 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."). See also *Evenson v. Erie Cty. Bd of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported.

While it is clear that valuation determinations made by county boards of revision are not presumptively correct, see, e.g., *Vandalia-Butler City School Dist. Bd of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, it is equally clear that a decision made by a board of revision is entitled to some consideration and that an appellant has an affirmative burden to demonstrate entitlement to the value claimed. See, e.g., *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994). In the present case, we conclude the property owner demonstrated that the initial assessment of the subject property overstated its value. The BOR, established to initially review valuation challenges at the local level, took into consideration the taxpayer's evidence, as well as information available to it, and concluded that an adjustment to value was warranted. On appeal, no party disputes the BOR's aggregate decrease in the subject's value and we find the adjustments effected by the BOR to be supported by the record.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 26-089900.0000

TRUE VALUE

$11,300

TAXABLE VALUE

$3,960

PARCEL NUMBER 26-090000.0000

TRUE VALUE

$50,400

TAXABLE VALUE

$17,640

PARCEL NUMBER 26-086400.0000

TRUE VALUE

$3,800

TAXABLE VALUE

$1,330

PARCEL NUMBER 26-086500.0000

TRUE VALUE

$3,800

TAXABLE VALUE

$1,330

OHIO BOARD OF TAX APPEALS

SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-428
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Tuesday, August 29, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Board of Education of the Dublin City Schools ("BOE") appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 570-263202-00, for tax years 2014 and 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record developed at this board's hearings, and any written argument submitted by the parties.

The subject property, a McDonald's restaurant, was initially assessed at $1,000,000. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $780,400. The BOE filed a counter-complaint, which objected to the request.

Although the BOR failed to provide us with a recording of the hearing before it, because of technical problem, we discern that the property owner presented the report and testimony of Stephen J. Weis, who opined the value of the subject property to be $630,000 as of January 1, 2014. The BOE was present at the hearing and we presume that its counsel cross-examined Weis. The BOR subsequently voted to reduce the subject property's value to $630,000 for tax years 2014 and.2015, based upon Weis's appraisal report, and the BOE appealed to this board.

At the hearing before this board, both parties appeared to supplement the record with additional argument and evidence. In the interests of judicial economy, we held a multi-day, consolidated hearing that involved the subject property and two other McDonald's properties. Because of the BOR's failure to provide a complete record of its proceedings, the property owner was allowed to address this deficiency as the hearing commenced. In doing so, the property owner submitted Weis's missing testimony. Weis was examined and cross-examined about the underlying data and methodologies used to derive his final conclusion of value. The BOE submitted the report and testimony of Thomas D. Sprout, who opined the value of the subject property to be $1,380,000 as of January 1, 2014. He was examined, and cross examined, about the underlying data and methodologies used to derive his final conclusion of value. Sprout also reviewed Weis's appraisal report and testified about the alleged deficiencies with such appraisal report. The property owner recalled Weis to testify about alleged deficiencies with Sprout's appraisal report.

Subsequent to the hearing, the parties submitted written argument to more fully explain their respective positions. Both parties argued the relative strength of their own appraiser's report and testimony compared to the weaknesses of the opposing party's appraiser's report and testimony.

Before we consider the merits of this appeal, we must first dispose of a preliminary issue. As previously noted, the BOR failed to provide this board with a recording of its hearing because of a malfunction of its recording system. Parties and various tribunals rely upon boards of revision to fulfill their statutory duties to create and maintain a record capable of being reviewed on appeal. R.C. 5715.08; R.C. 5717.01. The Supreme Court has noted that "[f]ailure to certify the entire evidentiary record may prejudice the interest of the proponents of the omitted items, and therefore, boards of revision should take care to comply with the statutory duty to certify the *entire* record." (Emphasis in original.) *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, at ¶27, fn. 4.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). "However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

The record does not disclose a recent, arm's-length transfer of the subject property; therefore, we proceed to consider the parties' arguments and appraisal evidence.

We begin our analysis with Weis's appraisal report, which developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he compared the subject property to six other restaurant properties (three were vacant) in Franklin County, which sold between 2012 and 2015. After adjusting the comparable sales for differences with the subject property, Weis concluded the subject property's value to be $640,000 as of January 1, 2014. Under the tax additur method of the income approach, he relied upon nine properties that were leased in Franklin County between 2011 and 2015. After adjusting the comparable leased properties for differences with the subject property, Weis determined that the subject property's potential gross income to be $67,505 based upon potential rent and expense reimbursements. He then deducted $3,375, or 5% of potential gross income, for vacancy and credit

loss, to conclude to an effective gross rental income of $64,129. From that number, he deducted $10,273 of expenses, which included items such as insurance, utilities, and a management fee, to conclude to a net operating income of $53,857. In doing so, he capitalized the net operating income at 8.64%, including a tax additur, to conclude the subject property's value to be $620,000 as of January 1, 2014. He reconciled the indicated values, giving equal weight to both approaches to value, and finally concluded the subject property's value to be $630,000 as of January 1, 2014.

We next consider Sprout's appraisal report, which developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he compared the subject property to seven other restaurant properties, and one former restaurant property that was used for a non-restaurant purpose, in various Ohio counties, which sold between 2012 and 2015. After adjusting the comparable sales for differences with the subject property, Sprout concluded the subject property's value to be between $1,365,000 and $1,465,000 as of January 1, 2014. Under the tax additur method of the income approach, he relied upon ten, mostly restaurant properties that were leased, or available for lease, in various Ohio counties. After adjusting the comparable leased properties fqr differences with the subject property, Sprout determined that the subject property's potential gross income to be $237,418 based upon potential rent and expense reimbursements. He then deducted $11,871, or 5% of potential gross income, for vacancy and credit loss, to conclude to an effective gross rental income of $225,547. From that number, he deducted $85,673 of expenses, which included items such as insurance, utilities, management fees and reserves for replacement, to conclude to a net operating income of $139,874. In doing so, he capitalized the net operating income at 10.15%, including a tax additur, to conclude the subject property's value to be $1,380,000 as of January 1, 2014. He reconciled the indicated values, but placed the most weight on the income approach, to finally conclude the subject property's value to be $1,380,000 as of January 1, 2014.

We have often acknowledged in cases where competing appraisals are offered that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported.

Here, the appraisers differed on how broadly, or how narrowly, to define the subject property's highest and best use, which led to the divergence in their selection of comparable properties under the sales comparison and income approaches to value, and their reliance upon opposing approaches to derive final conclusions of value. Upon review of the appraisal reports and the appraisers' testimony, we find that Sprout's analysis of the subject property's value on the tax lien date to be the most credible, competent, and probative evidence of value.

As we consider the appraisers' highest and best use analyses, we find Sprout's conclusion most appropriate. The Supreme Court recently held that this board may accept an appraisal report that considers the present use of real property as long as the appraisal report's highest and best use analysis is consistent with the property's present use and the appraisal report does not exclude "other factors relevant to exchange value." *Johnston Coca-Cola Bottling Co., Inc. v. Hamilton Cty. Bd. of Revision,* 149 Ohio St.3d 155, 2017-Ohio-870, ¶15. Sprout considered the unique physical nature of the subject property in his highest and best use analysis, in which he determined that the physical components of the building make it most suitable for continued use consistent with its original purpose as a national fast-food restaurant. While this may not be as broad as "restaurant," as Weis concluded, it is not so narrow as to limit it to one user, as in the case of a specific meatpacking company or a particular big box store. Compare *Steak 'n Shake, Inc. v. Warren Cty. Bd. of Revision,* 145 Ohio St.3d 244, 2015-Ohio-4836 (holding that a property whose highest and best use is as a restaurant was not shown to come within the special-purpose doctrine). Also in *Johnston Coca-Cola,* the court noted that this board properly relied upon the present use of the property at issue to determine "which comparables identified by the appraisers were 'more analogous' under the sales-comparison approach." Id. at ¶16. Similarly, we find Sprout's selection of comparable properties, under both the sales comparison and

income approaches to value, best represented the market in which the subject property would operate. For example, Sprout mostly relied upon comparables that were operating fast-food restaurants and that continued to operate as fast-food restaurants after their transfer. (We acknowledge that Sprout used various Chipotle restaurants as comparable properties, which do not have drive-thrus, but find that Chipotle restaurants operate in the fast-food restaurant market.) Weis, on the other hand, relied upon comparables that were dissimilar from the subject property, i.e., "sit-down" restaurants, at least one property that was not used as a restaurant, and vaoant properties. We find this difference crucial and conclude that Weis's approach undervalued the subject property.

In addition, Weis's capitalization rate raises concerns given that it was derived from properties that were dissimilar from the subject property, i.e., general retail, instead of restaurant or fast-food restaurant properties. As such, we cannot confirm that his capitalization rate appropriately captures the market in which the subject property would operate. However, Sprout's capitalization rate was based upon fast-food restaurants and, therefore, reflective of the subject property's most likely use.

The property owner faulted Sprout for using qualitative adjustments to adjust the comparable properties in his appraisal report, instead of quantitative adjustments like Weis used. This board has repeatedly recognized the permissibility of qualitative adjustments, rather than quantitative adjustments, and finds no fault with Sprout's adjustments. See, e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd of Revision* (Feb. 27, 2015), BTA No. 2014-2022, unreported.

Additionally, although the property owner faults Sprout's conclusion that the subject property fit the definition of "special-purpose property," we find no error there given that he testified that he did not appraise the property as if it were a "special-purpose property" and the property owner is not advocating that the subject property be appraised in that manner. *Johnston Coca-Cola,* supra, at ¶17 ("Because the BTA did not adopt a present-use valuation, there is no need for an exception to the general rule—and thus no need for us to decide whether the property at issue here is a special-purpose property.")

We note that the property owner repeatedly attempted to impugn Sprout's qualifications and claims that he misled this board about his qualifications. We find no merit with this argument and recognize Sprout (and Weis) as an expert qualified to render an opinion on the subject property's value.

Furthermore, we do not find the property owner's Hearing Exhibit 1, "Top 50 Sorted by Average Sales Per Unit," to be particularly relevant to this matter. As noted above, tax year 2014 is at issue and no effort was made to make the information contained in this exhibit, which provides information for 2009 and 2010, relevant to the issue of the subject property's value for tax year 2014.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that the BOE satisfied its evidentiary Burden on appeal. In so doing, we find that the BOE's appraisal evidence, performed by Sprout, was the most credible, competent, and probative evidence of the subject property's value. It is, therefore, the order of this board that the subject property's true and taxable values, as of January 1, 2014 and January 1, 2015, are as follows:

TRUE VALUE

$1,380,000

TAXABLE VALUE

$483,000

OHIO BOARD OF TAX APPEALS

GROVEPORT MADISON LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-426

(REAL PROPERTY TAX)

DECISION AND ORDER

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Entered Tuesday, August 29, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Board of Education of the Dublin City Schools ("BOE") appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel numbers 530-243505-00 and 530-243506-00, for tax years 2014 and 2015. This matter is'now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record developed at this board's hearings, and any written argument submitted by the parties.

The subject property, a McDonald's restaurant, was initially assessed at $1,072,400. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $732,800. The BOE filed a counter-complaint, which objected to the request.

Although the BOR failed to provide us with a recording of the hearing before it, because of technical problem, we discern that the property owner presented the report and testimony of Stephen J. Weis, who opined the value of the subject property to be $585,000 as of January 1, 2014. The BOE was present at the hearing and we presume that its counsel cross-examined Weis. The BOR subsequently voted to reduce the subject property's value to $667,400for tax years 2014 and 2015, in part, based upon Weis's appraisal report, and the BOE appealed to this board.

At the hearing before this board, both parties appeared to supplement the record with additional argument and evidence. In the interests of judicial economy, we held a multi-day, consolidated hearing that involved the subject property and two other McDonald's properties. Because of the BOR's failure to provide a complete record of its proceedings, the property owner was allowed to address this deficiency as the hearing commenced. In doing so, the property owner submitted Weis's missing testimony. Weis was examined and cross-examined about the underlying data and methodologies used to derive his final conclusion of value. The BOE submitted the report and testimony of Thomas D. Sprout, who opined the value of the subject property to be $1,300,000 as of January 1, 2014. He was examined, and cross examined, about the underlying data and methodologies used to derive his final conclusion of value. Sprout also reviewed Weis's appraisal report and testified about the alleged deficiencies with such appraisal report. The property owner recalled Weis to testify about alleged deficiencies with Sprout's appraisal report.

Subsequent to the hearing, the parties submitted written argument to more fully explain their respective positions. Both parties argued the relative strength of their own appraiser's report and testimony compared to the weaknesses of the opposing party's appraiser's report and testimony.

Before we consider the merits of this appeal, we must first dispose of a preliminary issue. As previously noted, the BOR failed to provide this board with a recording of its hearing because of a malfunction of its recording system. Parties and various tribunals rely upon boards of revision to fulfill their statutory duties to create and maintain a record capable of being reviewed on appeal. R.C. 5715.08; R.C. 5717.01. The Supreme Court has noted that "[f]ailure to certify the entire evidentiary record may prejudice the interest of the proponents of the omitted items, and therefore, boards of revision should take care to comply with the statutory duty to certify the *entire* record." (Emphasis in original.) *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, at ¶27, fn. 4.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). "However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

The record does not disclose a recent, arm's-length transfer of the subject property; therefore, we proceed to consider the parties' arguments and appraisal evidence.

We begin our analysis with Weis's appraisal report, which developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he compared the subject property to five other restaurant properties (two or three were vacant) and one auto-parts store in Fairfield and Franklin counties, which sold between 2012 and 2015. After adjusting the comparable sales for differences with the subject property, Weis concluded the subject property's value to be $590,000 as of January 1, 2014. Under the tax additur method of the income approach, he relied upon nine properties that were leased in Fairfield and Franklin counties between 20'11 and 2015. After adjusting the comparable leased properties for differences with the subject property, Weis determined that the subject property's potential gross income to be $62,471 based upon potential rent and expense reimbursements. He then

deducted $3,124, or 5% of potential gross income, for vacancy and credit loss, to conclude to an effective gross rental income of $59,348. From that number, he deducted $9,568 of expenses, which included items such as insurance, utilities, and a management fee, to conclude to a net operating income of $49,780. In doing so, he capitalized the net operating income at 8.63%, including a tax additur, to conclude the subject property's value to be $580,000 as of January 1, 2014. He reconciled the indicated values, giving equal weight to both approaches to value, and finally concluded the subject property's value to be $585,000 as of January 1, 2014.

We next consider Sprout's appraisal report, which developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he compared the subject property to seven other restaurant properties, and one former restaurant property that was used for a non-restaurant purpose, in various Ohio counties, which sold between 2012 and 2015. After adjusting the comparable sales for differences with the subject property, Sprout concluded the subject property's value to be between $1,280,000 and $1,375,000 as of January 1, 2014. Under the tax additur method of the income approach, he relied upon ten, mostly restaurant properties that were leased, or available for lease, in various Ohio counties. After adjusting the comparable leased properties for differences with the subject property, Sprout determined that the subject property's potential gross income to be $219,918 based upon potential rent and expense reimbursements. He then deducted $10,996, or 5% of potential gross income, for vacancy and credit loss, to conclude to an effective gross rental income of $208,922. From that number, he deducted $80,270 of expenses, which included items such as insurance, utilities, management fees and reserves for replacement, to conclude to a net operating income of $128,651. In doing so, he capitalized the net operating income at 9.89%, including a tax additur, to conclude the subject property's value to be $1,300,000 as of January 1, 2014. He reconciled the indicated values, but placed the most weight on the income approach, to finally conclude the subject property's value to be $1,300,000 as of January 1, 2014.

We have often acknowledged in cases where competing apptaisals are offered that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported.

Here, the appraisers differed on how broadly, or how narrowly, to define the subject property's highest and best use, which led to the divergence in their selection of comparable properties under the sales comparison and income approaches to value, and their reliance upon opposing approaches to derive final conclusions of value. Upon review of the appraisal reports and the appraisers' testimony, we find that Sprout's analysis of the subject property's value on the tax lien date to be the most credible, competent, and probative evidence of value.

As we consider the appraisers' highest and best use analyses, we find Sprout's conclusion most appropriate. The Supreme Court recently held that this board may accept an appraisal report that considers the present use of real property as long as the appraisal report's highest and best use analysis is consistent with the property's present use and the appraisal report does not exclude "other factors relevant to exchange value." *Johnston Coca-Cola Bottling Co., Inc. v. Hamilton Cty. Bd. of Revision,* 149 Ohio St.3d 155, 2017-Ohio-870, ¶15. Sprout considered the unique physical nature of the subject property in his highest and best use analysis, in which he determined that the physical components of the building make it most suitable for continued use consistent with its original purpose as a national fast-food restaurant. While this may not be as broad as "restaurant," as Weis concluded, it is not so narrow as to limit it to one user, as in the case of a specific meatpacking company or a particular big box store. Compare *Steak 'n Shake, Inc. v. Warren Cty. Bd. of Revision,* 145 Ohio St.3d 244, 2015-Ohio-4836 (holding that a property whose highest and best use is as a restaurant was not shown to come within the special-purpose doctrine). Also in *Johnston Coca-Cola,* the

court noted that this board properly relied upon the present use of the property at issue to determine "which comparables identified by the appraisers were 'more analogous' under the sales-comparison approach." Id. at ¶16. Similarly, we find. Sprout's selection of comparable properties, under both the sales comparison and income approaches to value, best represented the market in which the subject property would operate. For example, Sprout mostly relied upon comparables that were operating fast-food restaurants and that continued to operate as fast-food restaurants after their transfer. (We acknowledge that Sprout used various Chipotle restaurants as comparable properties, which do not have drive-thrus, but find that Chipotle restaurants operate in the fast-food restaurant market.) Weis, on the other hand, relied upon comparables that were dissimilar from the subject property, i.e., "sit-down" restaurants, at least one property that was not used as a restaurant, and vacant properties. We find this difference crucial and conclude that Weis's approach undervalued the subject property.

In addition, Weis's capitalization rate raises concerns given that it was derived from properties that were dissimilar from the subject property, i.e., general retail, instead of restaurant or fast-food restaurant properties. As such, we cannot confirm that his capitalization rate appropriately captures the market in which the subject property would operate. However, Sprout's capitalization rate was based upon fast-food restaurants and, therefore, reflective of the subject property's most likely use.

The property owner faulted Sprout for using qualitative adjustments to adjust the comparable properties in his appraisal report, instead of quantitative adjustments .like Weis used. This board has repeatedly recognized the permissibility of qualitative adjustments, rather than quantitative adjustments, and finds no fault with Sprout's adjustments. See, e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd of Revision* (Feb. 27, 2015), BTA No. 2014-2022, unreported.

Additionally, although the property owner faults Sprout's conclusion that the subject property fit the definition of "special-purpose property," we find no error there given that he testified that he did not appraise the property as if it were a "special-purpose property" and the property owner is not advocating that the subject property be appraised in that manner. *Johnston Coca-Cola,* supra, at ¶17 ("Because the BTA did not adopt a present-use valuation, there is no need for an exception to the general rule—and thus no need for us to decide whether the property at issue here is a special-purpose property.")

We note that the property owner repeatedly attempted to impugn Sprout's qualifications and claims that he misled this board about his qualifications. We find no merit with this argument and recognize Sprout (and Weis) as an expert qualified to render an opinion on the subject property's value.

Furthermore, we do not find the property owner's Hearing Exhibit 1, "Top 50 Sorted by Average Sales Per Unit," to be particularly relevant to this matter. As noted above, tax year 2014 is at issue and no effort was made to make the information contained in this exhibit, which provides information for 2009 and 2010, relevant to the issue of the subject property's value for tax year 2014.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that the BOE satisfied its evidentiary burden on appeal. In so doing, we find that the BOE's appraisal evidence, performed by Sprout, was the most credible, competent, and probative evidence of the subject property's value. It is, therefore, the order of this board that the subject property's true and taxable values, as of January 1, 2014 and January 1, 2015, are as follows:

TRUE VALUE

$1,300,000

TAXABLE VALUE

$455,000

OHIO BOARD OF TAX APPEALS

MARYSVILLE EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1445
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
UNION COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Thursday, August 31, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 29-0023054.1020, 29-0023054.1029, 29-0023054.1030, and 29-0023054.1039, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the parties' written argument. To the extent that any new evidence was attached to the parties' written argument or new factual assertions were made that were not properly offered at the BOR hearing, we will not consider those documents in our determination. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

[2] The subject properties consist of two parcels that have been split because they are subject to a tax increment financing ("TIF") agreement. The smaller of the two properties, consisting of parcel numbers 9-0023054.1020 and 29-023054.1029, is roughly 1.68 acres and was initially assessed at a total true value of $134,000. The larger property, parcel numbers 29-0023054.1030 and 29-023054.1039, is approximately 6.66 acres and was initially assessed at a total true value of $541,500. The appellee property owner, Triad Investment Properties LLC ("Triad"), filed a decrease complaint with the BOR seeking a reduction in value to $401,000, with only $1,000 attributable to the smaller property. The BOE filed a countercomplaint in support of maintaining the auditor's values.

[3] At the BOR hearing, Triad offered testimony from member Shane Wilkin, in addition to Marysville City Engineer Jeremy Hoyt and real estate agent Jon Leffler. Wilkin explained that since Triad initially purchased the two properties, the properties had become subject to a stream protection zone. Hoyt testified in greater detail as to the effect that this designation had on the properties, which requires setbacks or other protective measures that he stated can be somewhat cost prohibitive. Because of these setbacks, the properties (especially the smaller property) were difficult to develop, and therefore, difficult to sell. Leffler testified that he had listed the property for several years with little interest, other than one buyer for the smaller parcel that withdrew because of the limitations from the stream protection zone. Triad also provided a letter from an engineer regarding the potential to develop the properties, to which the BOE objected on the basis of hearsay. The BOE did not offer any independent evidence of value, relying on the cross-examination of Triad's witnesses and legal argument. We note that the parties and the BOR referred to an interactive map during the hearing. This map was not included in our transcript and we were, therefore, unable to consider it in reaching our decision.

[4] The BOR issued a decision reducing the initially assessed valuations to $16,800 and $333,000, respectively. The BOR explained that it placed all of the land on the smaller unit into "reserve," which is assessed at 10% of the primary land value, and placed all of the land in the larger parcel into "secondary," which is assessed at 50% of the primary rate. From this decision, the BOE filed the present appeal.

[5] The parties waived the opportunity to appear before this board and present additional evidence in support of the values sought. Instead, the BOE and Triad relied on written legal argument. The BOE argued that the BOR unreasonably and unlawfully lowered the subject's true value because the owner failed to meet its burden to provide reliable evidence of the value of the subject property. As such, the BOE contends, the auditor's value should be reinstated. Triad, on the other hand, reiterated the factual assertions made before the BOR and requested that the BOR's decision be affirmed.

[6] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). In the present appeal, the BOE has chosen to meet its burden not through the presentation of independent evidence of value, but rather by challenging the BOR's determination and the evidence upon which it was based.

[7] While valuation determinations made by county boards of revision are not presumptively correct, see, e.g., *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, under certain circumstances, when the BOR adopts a new value based on the owner's evidence, it has the effect of "shifting the burden of going forward with evidence to the board of education on appeal to the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 193, 2013-Ohio-4543, ¶16. See, also, *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 115 Ohio St.3d 449, 2007-Ohio-5237. "Under the *Bedford* rule as explained in *[Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 140 Ohio St.3d 248, 2014-Ohio-3620], as long as the evidence of value that the owner presented to the board of revision was competent and at least minimally plausible, the board of education may not invoke the auditor's original valuation as a default—with the result that it is notenough for the board of education at the BTA to find fault with the evidence that the owner presented before the board of revision. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶7.

[8] In the present appeal, Triad filed a decrease complaint, and BOR reduced the subjects' values based on Triad's evidence regarding the subject's limited utility based on the stream protection zone. The BOE then appealed these decisions to this board. Accordingly, we find the *Bedford* rule is applicable in the present appeal. See *Dublin City Schools*, 2016-Ohio-3025, supra, at 19-11. See, also, *Madison Route 20, LLC v. Lake Cty. Bd. of Revision*, 11th Dist. Lake No. 2013-L-019, 2014-Ohio-3183 (holding that use restrictions from the Army Corps of Engineers resulting from a determination that the property contained wetlands affirmatively negated the validity of auditor's value where the auditor failed to account for those restrictions in the initial assessment). Thus, as the court summarized, "for the board of education, the board of revision's reduced valuation is the new default valuation of the property, and the burden lies on the board of education to prove a new value (be that the auditor's valuation or some other value)." *Dublin City Schools*, 2016-Ohio-3025, supra, at ¶7. In the present appeal, the BOE has provided no such evidence. Accordingly, we find that the BOE has failed to meet its burden on appeal.

[8] Each of the two original parcels have been separated because of the TIF agreement in place. Because we do not have the benefit of that agreement, we defer to the BOR's allocation among the parcels. As such, we will find value consistent with the decision letter issued by the BOR.

[9] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBERS

29-0023054.1020 and 29-023054.1029

TRUE VALUE

$16,800

TAXABLE VALUE

$5,880

PARCEL NUMBERS

29-0023054.1030 and 29-023054.1039

TRUE VALUE

$333,000

TAXABLE VALUE

$116,550

OHIO BOARD OF TAX APPEALS

DUBLIN CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-551
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Thursday, August 31, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon a motion to dismiss filed by the appellee property owner, Lowe's Home Centers, LLC ("Lowe's) and the response of the appellant board of education ("BOE"). We note that the BOE cites to exhibits purportedly attached to its written argument, but none were submitted to this board.

Lowe's argues that the BOE failed to file the present appeal in compliance with R.C. 5717.01 because the BOE filed the appeal more than thirty days after the board of revision's ("BOR")decision was mailed. Lowe's asserts that the BOR issued its decision on March 2, 2016, but the BOE did not file its notice of appeal until April 8, 2016, thirty-seven days later. The BOE contends that its appeal was timely perfected and was sufficient to invoke this board's jurisdiction because it appealed a decision that was issued by the

BOR on April 8, 2016. The BOE first contends that the March 2, 2016 letter was not reasonably calculated to give notice to the BOE of the decision because the decision letter listed the incorrect owner, which also had a case pending with the BOR. The BOE further maintains that the record does not contain evidence that the BOE received the March 2, 2016 decision letter. The BOE finally maintains that the April 1, 2016 letter served to vacate the March 2, 2016 decision, and thus the thirty-day time period began on April 1, 2016 and the April 8, 2016 notice of appeal was timely filed.

R.C. 5717.01 provides that an appeal may be taken from a decision of a county board of revision to this board within thirty days after the BOR's decision is mailed pursuant to R.C. 5715.20(A), which requires the BOR to "certify its action by certified mail to the person in whose name the property is listed or sought to be listed and to the complainant if the complainant is not the person in whose name the property is listed or sought to be listed. A person's time to file an appeal under section 5717.01 of the Revised Code commences with the mailing of notice of the decision to that person as provided in this section."

The BOE argues that the March 2, 2016 letter was not reasonably calculated to provide it notice and cites to the court's decision in *Knickerbocker Properties, Inc. XLII v. Delaware Cty. Bd. of Revision,* 119 Ohio St.3d 233, 2008-Ohio-3192. The BOE asserts that the March 2, 2016 letter listed the incorrect owner, which also had a pending case with a similar BOR case number and hearing date. The BOE claims that it had no discernable method for discovering for which case the BOR had intended to issue its decision. We disagree.

The March 2, 2016 letter referenced BOR Case number 14-1022 and parcel numbers 273-008284, 273-008310, 273-008311, and 273-009084, which are consistent with the BOR number for the Lowe's complaint and the parcel numbers of the subject property. The letter was addressed to "LBUBS 2007-C1 Complex 2740 LLC C/S The Gibbs Firm LPA," which is the same firm that represents Lowe's in this matter and was listed on the underlying complaint. As such, it appears that the owner name listed on the letter was a typographical error and did not prevent any party from receiving notice of BOR's decision. Importantly, there has been no challenge by Lowe's that it did not properly receive notice of the decision. To the contrary, Lowe's timely filed an appeal on April 1, 2016 and attached the March 2, 2016 letter to its notice of appeal, though the appeal was subsequently voluntarily dismissed. See *Lowe's Home Centers, LLC v. Franklin Cty. Bd. of Revision* (Dec. 19, 2016), BTA No. 2016-521, unreported. Thus, the question in this matter is whether the BOR provided sufficient notice to the BOE. While we acknowledge that the letter named the incorrect owner, the remaining pertinent information was correct and more than sufficient to provide the BOE notice that it was deciding the value of the property owned by Lowe's. Additionally, the value conclusion was consistent with an appraisal offered by Lowe's to the BOR. Accordingly, we find that the March 2, 2016 letter was reasonably calculated to provide the BOE notice of its decision despite the typographical error.

We likewise reject the BOE's argument that we must disregard the March 2, 2016 letter because the record does not contain sufficient proof that it was mailed to the BOE. The BOE cites to this board's decision in *Pund v. Cuyahoga Cty. Bd. of Revision* (June 16, 2000), BTA No. 2000-D-28, unreported. This case is distinguishable from the present matter in one significant aspect: the owner repeatedly averred that he did not receive notice of the BOR's decision and appellees did not contest this affirmation. Even so, this board found that it lacked jurisdiction because the statute refers to the certified *mailing* of the decision and not a party's *receipt.*

In this case, the BOE has not asserted that it did not receive notice of the March 2, 2016 decision or that it was not mailed. Although it was not certified in the transcript, the March 2, 2016 letter was attached to the motion to dismiss and Lowe's above-referenced notice of appeal. The letter indicates that a copy was sent to the BOE's counsel in addition to Lowe's counsel. Furthermore, while the green card included in the transcript does not definitively prove that the decision for BOR number 14-1022 was mailed on March 2, 2016 due to a smudge, the legible portion of the two blurred case numbers are consistent with this number. We disagree with the BOE that they both appear to end in 1. Moreover, the Supreme Court has stated,

"'Wile rule is generally accepted that, in the absence of evidence to the contrary, public officers, administrative officers and public boards, within the limits of the jurisdiction conferred by law, will be presumed to have properly performed their duties and not to have acted illegally but regularly and in a lawful manner. All legal intendments are in favor of the administrative action.' ***." *Cedar Bay Constr., Inc. v. Fremont,* 50 Ohio St.3d 19, 21 (1990). Compare *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision,* 140 Ohio St.3d 114, 2014-Ohio-2872. Based upon the foregoing, we find that the March 2, 2016 letter was mailed to the BOE at the proper address and began the thirty-day time period during which the BOE could timely file an appeal.

Finally, we disagree with the BOE that the April 1, 2016 letter vacated the March 2, 2016 letter, extending the time period during which a party could timely file an appeal. On the face of the April 1, 2016 letter, it served to act as a "corrected letter," and did not change in any way other than the addressee and the date. Additionally, there is no indication that the BOR voted to or intended to vacate its March 2, 2016 decision letter. Accordingly we cannot find that the April 1, 2016 letter was a newly certified letter that would serve to begin a new thirty day period in which the BOE could timely file an appeal. See *Bd. of Edn. Columbus City School Dist. v. Franklin Cty. Bd. of Revision* (Jan. 12, 2010), BTA No. 2007-V-60, unreported (holding that at typographical error on a decision letter did not toll the time period in which a valid complaint could be filed); *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd of Revision,* Slip Opinion No. 2017-Ohio-1428.

In *Hope v. Highland Co). Bd. of Revision,* 56 Ohio St.3d 68 (1990), the court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory." See also *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) (the BTA "can review [BOR] decisions only where the appeals have been filed in a timely manner."). The record here clearly demonstrates that the appeal was filed more than thirty days from the mailing of the BOR's decision.

Upon consideration of the existing record, this matter is determined to be jurisdictionally deficient and is, therefore, dismissed.

OHIO BOARD OF TAX APPEALS

JOHN J. GALLICK, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-405, 2016-406, 2016-433, 2016-435

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Thursday, August 31, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The property owner, John J. Gallick, and board of education ("BOE") have both appealed two decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 010-063544-00 and 010-070331-00, for tax years 2014 and 2015. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and Gallick's written argument.

[2] The subjects' total true values were initially assessed at $115,000 and $216,000, respectively, for tax year 2014. The subjects are multi-family residential properties, with four and twelve units, respectively. Gallick filed decrease complaints with the BOR seeking reductions in value to $28,500 and $48,000, respectively. The BOE filed a countercomplaint in support of maintaining the auditor's values. At the BOR hearing, Gallick explained he purchased the properties in 2009 and described negative conditions, such as crime, in the neighborhood in which the subjects are located. Gallick also provided information about recent purchases of other properties he owns in the area, asserting that they showed the auditor overvalued the

subjects. Gallick acknowledged that he is not an appraiser, but argued that he is qualified as an expert of his own property, which included the properties he was utilizing for comparison purposes. Gallick stated that those properties reflected a range of roughly $4,000 to $8,000 per unit, with $5,000 per unit "about right" for their neighborhoods. Gallick also testified about the range of asking rents for the properties, noting that they are challenged by high vacancy. The BOE argued that the 2009 sales were too remote from the tax lien date to provide a reliable basis for valuation. The BOE also objected to the evidence of negative conditions and the unadjusted sales, asserting that they did not provide a sufficient basis to support a reduction to a specific value. Following the hearing, the BOR issued decisions reducing the initially assessed valuations to $60,200 and $152,500, respectively, having applied a gross rent multiplier ("GRM") to the subjects' asking rents. Both Gallick and BOE appealed these decisions, resulting in the present appeals.

[3] At the hearing before this board, both challenged the BOR's decisions. For his part, Gallick contested the basis for the BOR's decisions and argued in support of further reduction, reiterating the arguments made at the BOR regarding the comparable sales information data and the negative conditions in the neighborhood. Gallick provided a list of five multifamily properties he had purchased since April 2012. In addition to a breakdown of the cost per unit from each sale, Gallick included photographs of each property. The BOE agreed with Gallick that the BOR's decision was flawed, contesting the reliability of the BOR's reliance on GRM analysis. The parties further discussed complaints that were filed, and ultimately dismissed, for tax year 2015. Following the hearing, the BOE supplemented the record with copies of decisions issued on August 30, 2016, which confirmed that the BOR dismissed complaints filed regarding the value of the subject properties for tax year 2015 as second filings within the interim period.

[4] Before we reach the merits of the instant appeals, we must again address the BOR's decision for tax year 2015, which was issued on February 22, 2016 as part of its resolution of the 2014 complaint. This board has repeatedly admonished the Franklin County BOR not to exercise jurisdiction over a year for which a complaint may be filed, as it apparently was in this case, since such a filing would render the earlier decision for the "open tax year" null and void. See, e.g., *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 10, 2016), BTA No. 21315-449, unreported; *Big Walnut Apartments, LLC v. Franklin Cty. Bd. of Revision* (Nov. 6, 2012), BTA No. 2012-K-767, unreported; *GnA Properties, LLC v. Franklin Cty. Bd. of Revision* (May 29, 2012), BTA No. 2012-K-688, unreported. In the present appeals, it was improper for the BOR to exercise its continuing complaint jurisdiction over tax year 2015. Accordingly, we hereby remand tax year 2015 to the BOR with instructions to vacate its February 2016 decisions for tax year 2015.

[5] We now turn to the issue of valuation. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). The court has again reiterated that `"[t]he burden is on the taxpayer to prove his right to a deduction' and that he is 'not entitled to the deduction claimed merely because no evidence is adduced contra his claim.'" *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4002, ¶9, quoting W. *Industries, Inc. v. Hamilton Cty. Bd. of Revision,* 170 Ohio St. 340, 342 (1960). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). In the absence of a recent sale, however, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

[6] In the present case, although Gallick relied on evidence of his purchases of the properties, these sales do not provide a reliable basis to adjust their values. Gallick purchased the subject properties more than four years before the tax lien date and did not offer any evidence that the sales continued to be reliable indications of value despite the passage of time. See *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588. Accordingly, we cannot rely on the sales as competent evidence of value.

[7] In an attempt to reduce the subjects' values, Gallick did not provide a qualifying appraisal of the properties, instead relying on unadjusted sales of other properties and negative conditions to support further reduction in value. The BOE on the other hand, has not presented any independent evidence of value.

[8] We agree that owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987), but in order for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992). The weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). An owner's opinion must still be probative as to the value of the property on lien date. See *Amerimar Canton Office, LLC v. Stark Cty. Bd. of Revision,* 5th. Dist. Stark No. 2014CA00162, 2015-Ohio-2290. Thus, merely because Gallick is an expert regarding his properties, this board is not required to accept his opinion, or the opinion of any expert, as fact, and utilize it as the basis for our determination.

[9] In the instant appeals, Gallick offered sales data to compare the properties on the basis of the cost per unit, but made no adjustments for differences among the properties. Significantly, the comparable properties range from four units to 58, and the subjects vary in both size and location. Without a reliable analysis of the comparability of the comparable sales to the subject properties, 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, etc., and the date of sale as opposed to tax lien date, may affect a valuation determination. See, generally, The Appraisal of Real Estate (14th Ed.2013). See, also, *Beck v. Stark Cty. Bd. of Revision* (Nov. 8, 2011), BTA No. 2008-M-530, unreported at 15-16 (Margulies dissenting) (discussing the need for size adjustments to ensure consistent units of comparison because as size increases, unit prices generally decrease).

[10] We further find that the evidence offered by Gallick with respect to the condition of the properties does not support decreases in value without adequate evidence of the specific impact that these negative factors have on the properties because dollar-for-dollar costs do not necessarily correlate to value. See, e.g., *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996) (emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value); *Gides v. Cuyahoga Cty. Bd. of Revision,* 8th Dist. Cuyahoga No. 100830, 2014-Ohio-4086, ¶17 ("The photographs Gides submitted are similarly deficient. Without testimony to establish how the defects represented in the photographs affect value, there is no basis to determine that the value of the property is less than that currently assessed."). Accordingly, we cannot rely on the evidence of the subjects' negative conditions to adjust their values. Consequently, we find that Gallick has failed to provide sufficient probative evidence support to any further decrease in the subject's value.

[11] Having rejected Gallick's evidence, we now turn the BOR's determination and the BOE's argument that the auditor's value must be reinstated. While valuation determinations made by county boards of revision are not presumptively correct, see, e.g., *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, under certain circumstances, when the BOR adopts a new value based on the owner's evidence, it has the effect of "shifting the burden of going forward with evidence to the board of education on appeal to the BTA ** *." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 193, 2013-Ohio-4543, ¶16. See, also, *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 115 Ohio St.3d 449, 2007-Ohio-5237. "Under the *Bedford* rule as explained *in Northpointe [(Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 140 Ohio St.3d 248, 2014-Ohio-3620)], as long as the evidence of value that the owner presented to the board of revision was competent and at least minimally plausible, the board of education may not invoke the auditor's original valuation as a default—with the result that it is not enough for the board of education at

the BTA to find fault with the evidence that the owner presented before the board of revision." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶7. In the present appeal, Gallick filed decrease complaints, and BOR reduced the subjects' values based on his income evidence, which Gallick was competent to provide. The BOE then appealed these decisions to this board. Accordingly, we find the *Bedford* rule is applicable in the present appeal. Thus, as the court summarized, "for the board of education, the board of revision's reduced valuation is the new default valuation of the property, and the burden lies on the board of education to prove a new value (be that the auditor's valuation or some other value)." Id. at ¶7. In the present appeal, the BOE has provided no such evidence. Accordingly, we find that the BOE has failed to meet its burden on appeal.

[12] Finally, Gallick also made a constitutional argument; however, we are without authority to address its merits. While the Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that this board has no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach,* 35 Ohio St.3d 229 (1988); *MCI Telecommunictuions Corp. v. Limbach,* 68 Ohio St.3d 195 (1994).

[13] As discussed above, the BOR was not authorized to issue its February 2016 decision for 2015 because it was an open year at the time the letter was mailed to the parties. As such, this board is without jurisdiction to consider that tax year. We note, however, that there is nothing disclosed in the record that would prevent the value determination for tax year 2014 from carrying forward into subsequent years. See *Cannata v. Cuyahoga Cry. Bd. of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094 (holding that the carryforward continues to apply despite the filing of a jurisdictionally barred complaint).

[14] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2014, were as follows:

PARCEL NUMBER 010-063544-00

TRUE VALUE

$60,200

TAXABLE VALUE

$21,070

PARCEL NUMBER 010-070331-00

TRUE VALUE

$152,500

TAXABLE VALUE

$53,380

OHIO BOARD OF TAX APPEALS

68 ST THREE MC LLC, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2287

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 68 ST THREE MC LLC
Represented by:
MICHELLE FOLEY TURNER
ESQ.
600 GREENUP STREET
COVINGTON, KY 41011

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Friday, September 1, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 239-0002-0024-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject's total true value was initially assessed at $45,000, which was apparently based on a 2011 sale of the property. Appellant filed a decrease complaint with the BOR seeking a reduction in value to $27,131.80. At the BOR hearing, appellant provided testimony from its sole member, Martin Clarke, as well as its real estate broker, William Korte. Appellant presented evidence that Clarke sold the subject to a nonprofit corporation in 2011 but financed the transaction, securing the property with a mortgage at the time of the sale. Following the sale, the occupant demolished the interior of the building and stripped it of its mechanicals, intending to remodel it for future use. Prior to completing the project, the nonprofit apparently ran out of funds, and ultimately returned the property to Clarke though a deed in lieu of foreclosure in January 2016 to satisfy a debt of $27,131.80. Clarke then transferred the property to appellant. Korte testified that upon review of the sales from the auditor's website, it was his opinion that the consideration for the deed-in-lieu reflected the value of the subject property. Korte also provided a letter in support for this conclusion. The BOR issued a decision maintaining the initially assessed

valuation, which led to the present appeal. At the hearing before this board, Appellant again relied on the January 2016 transfer of the property, and Korte again appeared to give his opinion that the transfer price of $27,131.80 was consistent with local sales. Korte offered a list of four sales within roughly six blocks of the subject, and with improvements in roughly the same condition as the subject property.

[3] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). The court has recently explained that a taxpayer seeking to reduce the value of property based on sale can satisfy its initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075. Once evidence is provided that rebuts the utility of the sale by showing that it was not an arm's-length transaction, however, the burden again shifts to the owner. Id. The owner must then satisfy a "'heavier burden' to show that "'the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value.' *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723, *** ¶43." Id. at ¶22.

[4] Although we acknowledge that the subject property transferred in January 2016 through a deed in lieu of foreclosure, we do not find such transfer to be a reliable indication of value because we find such transfer to be a "forced sale," and further find that appellant failed to meet its heavier burden to show that it nonetheless provided reliable evidence of the subject's value.

[5] In the absence of a recent sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964). In the present appeal, however, appellant has not presented a qualifying appraisal report for this board to utilize to reach our determination. Instead, appellant relied on a broker's opinion of value which was based in part on the forced transfer and in part on sales data, though no adjustments were made for differences among the properties. Significantly, the list of comparable properties provides no details that would allow this board to consider how similar they are to the subject property. We recognize that a variety of professionals may provide valuation services. We must also note, however, that brokers "have training in their field but may or may not have extensive appraisal experience. They are generally familiar with properties in a given locale and have access to market information. They frequently use sales and other market information for property comparison purposes in pricing. Some may develop appraisal expertise. As a group, real estate salespeople evaluate specific properties, but they typically do not consider all the factors that professional appraisers do." The Appraisal of Real Estate (13th Ed. 2008) 8.

[6] Furthermore, without a reliable analysis of the comparability of the comparable sales to the subject properties, 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, etc., and the date of sale as opposed to tax lien date, may affect a valuation determination. See, generally, The Appraisal of Real Estate (14th Ed. 2013). See, also, *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4002 (affirming the BTA's rejection of a list of unadjusted sales offered to support a requested reduction because such data was not probative evidence of value).

[7] Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision,* 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

[8] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE$45,000

TAXABLE VALUE $15,750

OHIO BOARD OF TAX APPEALS

MILLER PETE, KAY ANDREWS, (et. al.),

Appellant(s),

vs.

ALLEN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1625

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MILLER PETE, KAY ANDREWS
Represented by:
PETE MILLER KAY ANDREWS
8430 SPENCERVILLE RD.
SPENCERVILLE, OH 45887

For the Appellee(s) - ALLEN COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Friday, September 1, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owners appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 36-3605-13-005.000, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is a stone parking lot in Lima. The subject's total true value was initially assessed at $36,900. The property owners filed a decrease complaint with the BOR seeking a reduction in value to $25,000. At the BOR hearing, owner Dorsey Pete Miller described the lot, indicating that he and his sister had inherited it from their father. Mr. Miller explained that he charges $15 per month for local employees to park there, with about four people currently paying that rate. Mr. Miller further stated that he had previously received an offer to purchase the land for $20,000, but that sale did not go through. Mr. Miller indicated that the property is too narrow to build anything. The BOR issued a decision reducing the initially assessed valuation to $31,600 based on the recommendation of its appraiser, which led to the present appeal. At the hearing before this board, Mr. Miller again appeared in support of the owners' requested reduction, providing photographs of the lot, and stating that two paved lots near the subject had recently

transferred for roughly $13,000 each. The county appellees did not provide any additional evidence, but asserted that the BOR' s value should be retained.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d

564, 566 (2001). An appellant must present competent and probative evidence in support of her requested reduction, and an owner is not entitled to a reduction merelj· because no evidence is presented against her claim. Id. The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals, 175* Ohio St. 410 (1964).

In lieu of an appraisal of the subject property, the owners offered information that is typically utilized by appraisers, specifically information regarding two sales, the property's condition and location, and the subject's income. In the absence of an appraisal which analyzes such data, however, 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. See, generally, The Appraisal of Real Estate (14th Ed.2013). Although Mr. Miller indicated that the properties are other lots near the subject, it is unclear how they relate in terms of size and condition. Thus, this raw sales data alone provides little value to establish the value of the subject.

Mr. Miller also testified extensively about conditions experienced by the subject property, including limited potential income. In *Throckmorton v. Hamilton Co). Bd. of Revision,* 75 Ohio St.3d 227 (1996), the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value. See, also, *Gupta v. Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397 (1997).

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$31,600

TAXABLE VALUE

$11,060

OHIO BOARD OF TAX APPEALS

HEATH CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. LICKING COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2016-1575 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HEATH CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - LICKING COUNTY BOARD OF REVISION
Represented by:
PAULINE O'NEILL
ASSISTANT PROSECUTING ATTORNEY
LICKING COUNTY
20 SOUTH SECOND STREET
P.O. BOX 830
NEWARK, OH 43058-0830

KESCO INVESTEMENTS
C/O RODGER KESSLER
PO BOX 785
ZANESVILLE, OH 43702

Entered Friday, September 1, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 030-088590-01.000, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject property is improved with a vacant building formerly operated as a beverage drive-thru. The subject's total true value was initially assessed at $160,400. The BOE filed a complaint with the BOR seeking an increase in value to $250,000. The appellee property owner, Kesco Investments ("Kesco"), filed a countercomplaint in support of the auditor's value. At the BOR hearing, the BOE presented evidence of a

May 2015 transfer of the subject property for $250,000, asserting that the sale price reflects its total true value. Kesco did not challenge the existence of the sale, but relied on testimony from partnerRodger Kessler to show that the purchase price was not reliable evidence of the subject's value due to the circumstances of the sale. Kessler explained that it owns a billboard on the property and had previously rented the space from the prior owner. Kessler indicated that Kesco purchased the property in order to maintain its ability to use that billboard. Kessler further asserted that in addition to the real property, Kesco purchased a liquor license and some equipment located on the property. Based on the sale documentation in the record, it appears that the roughly $30,000 attributable to items other than real property was not included in the reported sale price of $250,000. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. At the hearing before this board, the BOE reiterated the arguments made before the BOR, claiming that Kesel:A desire to retain control of the billboard is a subjective motive and does not rise to the level of duress. No representatives appeared on behalf of Kesco or the county appellees.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997). Additionally. because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[4] In the present matter, it is undisputed that Kesco purchased the subject property on May 19, 2015 for $250,000 from Stephen R. White, Victoria J. White, Robert Lee McCall, and Katherine M. McCall. Initially, we observe that every sale of property necessarily involves a motivated seller and buyer. Although Kessler described Kesco's business motivations for purchasing the subject, we agree with the BOE that such motivations reflect Kesco's objective for participating in the transaction, and do not rise to the level of "duress" necessary to invalidate the sale for tax purposes. 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 be made under economic duress or compulsion. See *Lakeside Avenue Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision,* 75 Ohio St.3d 540 (1996). In *Lakeside,* the court held that the sale was made under duress because the choice was between survival and "sure corporate death (bankruptcy) on the other hand," resulting in "no true alternative but to pay the price demanded by the seller." Id. at 548-549. We find that these circumstances were not present in this appeal.

[5] Accordingly, despite the BOR's finding to the contrary, in this case, we find Kesco has failed to show that the property was not sold in an arm's-length transaction. Thus, 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.

[6] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$250,000

TAXABLE VALUE

$87,500

OHIO BOARD OF TAX APPEALS

ISABEL REISSER UNGUREAN, (et. al.),	CASE NO(S). 2016-1286, 2016-1287, 2016-1297, 2016-1320
Appellant(s),	
vs.	(REAL PROPERTY TAX)
COSHOCTON COUNTY BOARD OF REVISION, (et. al.),	DECISION AND ORDER
Appellee(s).	

APPEARANCES:

For the Appellant(s) - ISABEL REISSER UNGUREAN AND ISACON LLC
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - COSHOCTON COUNTY BOARD OF REVISION
Represented by:
JASON W. GIVEN
PROSECUTING ATTORNEY
COSHOCTON COUNTY
318 CHESTNUT ST.
COSHOCTON, OH 43812-1116

Entered Friday, September 1, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellants appeal several decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 043-00006528-00, 043-00006529-02, 043-00005877-00, 043-00003836-00, 043-00003376-00, 043-00003494-00, 043-00003179-00, 043-00000698-00, and 043-00000700-00, for tax year 2015. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject properties consist of a single family home utilized by owner Isabel Reisser Ungurean as her personal residence with some attached land, several one-and two-family rental homes, as well as several vacant lots near the rental properties. The subject's total true values were initially assessed at $436,560, $1,450, $34,040, $6,870, $64,230, $53,770, $75,650, $36,820, and $30,240, respectively. Decrease complaints were filed with the BOR reductions in value to $305,640, $742, $4,452, $4,000, $20,000, $27,500, $50,000, $10,000, and $8,000, respectively. At the BOR hearing, Ungurean appeared on behalf of herself as well as owner Isacon, LLC, an entity of which she is the sole member. In support of her contention that the values of the properties should be reduced, Ungurean discussed a variety of sales and listings of other properties, in addition to the income and occupancy of each income-producing property. With respect to her residence and the attached acreage, Ungurean also discussed the taxes paid

by a neighbor and asserted that the increase in her real property taxes for tax year 2015 was not justified. Ungurean further explained that she had purchased parcel number 043-00005877-00 in 2015 due to its proximity to her residence, and, in February 2016, had demolished the house that was existing on the tax lien date. The BOR issued decisions maintaining the initially assessed valuations, which led to the present appeals.

[3] Appellants appeared before this board, relying on the written reports and testimony of appraiser Thomas D. Sprout, MAI, who opined a value for each property as of January 1, 2015. Sprout relied on the sales comparison approach for each of the parcels, utilizing a gross rent multiplier for those investment properties where it would be applicable, though he did so only as a check on his sales analyses. The county appellees waived the opportunity to appear at the hearing, and provided no written argument or objection to any aspect of Sprouts analysis or value conclusions.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997).

[5] In the present matter, it is undisputed that parcel number 043-00005877-00 transferred from Scott J. Clark and Jason B. Clark to Isabel Reisser Ungurean on March 31, 2015 for $22,000. Although we recognize that a structure existing on the property at the time of the sale was ultimately demolished, this demolition took place after January 1, 2015, and was, therefore, properly included in the value as of the tax lien date. As such, we find that the sale is the best evidence of the value of parcel number 043-00005877-00.

[7] In circumstances where a recent arm's-length sale is not available, the court has held that "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964). Such is the case for the remaining parcels in the instant appeals, as the record does not indicate that any "recently" transferred through a qualifying sale. Instead, appellants relied on Sprout's appraisals of the properties to establish their values. Upon review of these appraisals, which provide an opinion of value as of tax lien date, were prepared for tax valuation purposes, and attested to by a qualified expert, we find them to be competent and probative and the value conclusions reasonable and well-supported. We note that the county appellees have offered no argument as to why this board should not rely on Sprout's appraisals and have provided not additional evidence to refute appellants' evidence.

[8] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 043-00006528-00

TRUE VALUE $373,550

TAXABLE VALUE $130,740

PARCEL NUMBER 043-00006529-02

TRUE VALUE $1,450

TAXABLE VALUE $510

PARCEL NUMBER 043-00005877-00

TRUE VALUE $22,000

TAXABLE VALUE $7,700

PARCEL NUMBER 043-00003836-00

TRUE VALUE $6,000

TAXABLE VALUE $2,100

PARCEL NUMBER 043-00003376-00

TRUE VALUE $47,500

TAXABLE VALUE $16,630

PARCEL NUMBER 043-00003494-00

TRUE VALUE $45,000

TAXABLE VALUE $15,750

PARCEL NUMBER 043-00003179-00

TRUE VALUE $67,500

TAXABLE VALUE $23,630

PARCEL NUMBER 043-00000698-00

TRUE VALUE $15,000

TAXABLE VALUE $5,250

PARCEL NUMBER 043-00000700-00

TRUE VALUE $10,000

TAXABLE VALUE $3,500

OHIO BOARD OF TAX APPEALS

JESSE HITCHCOCK, (et. al.),

Appellant(s),

v s .

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-817

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JESSE HITCHCOCK
Represented by:
JESSE HITCHCOK
709 E 109TH
CLEVELAND, OH 44108

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, September 1, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss. The county asserts the appellant failed to file a copy of the notice of appeal with the Cuyahoga County Board of Revision ("BOR"), as required by R.C. 5717.01. Appellant did not submit a response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision, provided such appeal is filed with this board and the BOR, within thirty days after notice of the decision of the BOR is mailed. See also R.C. 5715.20. The requirements set forth in R.C. 5717.01 are specific and mandatory in nature. When, as here, a statute confers the right of appeal, adherence to the terms and conditions set forth therein is essential to the enjoyment of the right conferred. *American Restaurant and Lunch Co. v. Glander*, 147 Ohio St. 147 (1946). See also *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner."). In this instance, there is no indication in the record that appellant filed the required notice with the BOR. As strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board, we must conclude that we do not have jurisdiction to consider the merits of the instant appeal. See *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990).

Accordingly, the county appellees' motion to dismiss is well taken and the present appeal is hereby dismissed.

OHIO BOARD OF TAX APPEALS

GAHANNA-JEFFERSON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2206
Appellant(s),	. (REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - GAHANNA-JEFFERSON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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373 SOUTH HIGH STREET, 20TH FLOOR
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ASHOT GISHYAN
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BLACKLICK, OH 43004

Entered Friday, September 1, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 025-000094-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject's total true value was initially assessed at $142,300. The appellee property owner filed a decrease complaint with the BOR seeking a reduction in value to $91,709. The BOE filed a countercomplaint in support of the auditor's value. The property owner did not appear at the BOR hearing, relying on a deed, settlement statement, and printout from the auditor's website as evidence that the property transferred in 2015 for $91,709. The BOE did not contest any details of the sale, but argued that it could not be relied on to establish the subject's value. The BOE argued that the sale was presumed to be

distressed, and therefore not arm's-length, because the seller was the Secretary of Housing and Urban Development ("HUD"). The BOR issued a decision reducing the initially assessed valuation to $91,700, accepting the purchase price to establish the subject's value. The BOR added information to the record based on its independent research, which included the property's listing on the multiple listings service ("MLS") and the court's decision in *Schwartz v. Cuyahoga Cty. Bd. of Revision,* 143 Ohio St.3d 496, 2015-Ohio-3431. From this decision, the BOE filed the present appeal. At the hearing before this board, the BOE again argued that the sale was not reliable evidence of value because it was not arm's-length and the owner did not meet his burden to show the sale was nonetheless a reliable indication of value.

[3] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11. The court has recently explained that a taxpayer seeking to reduce the value of property based on sale can satisfy its initial burden through the presentation of undisputed evidence of a sale, and that testimony from an individual with knowledge of the sale is not required. *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075. Once an owner triggers this rebuttable presumption that a sale met all the requirements that characterize true value by presenting unchallenged evidence of sale, however, an opposing party may rebut the utility of the sale by showing that it was not an arm's-length transaction. Id. Once this is done, the burden again shifts to the owner to satisfy a "'heavier burden' to show that "'the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value.' *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Rd of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723, *** ¶43." *Lunn,* supra, at ¶22.

[4] In the present matter, it is undisputed that the owner purchased the subject property from HUD on May 4, 2015 for $91,709. The court has held that a HUD sale constitutes a foreclosure sale that is presumptively not arm's-length. *Cincinnati School Dist. Rd of Edn. v. Hamilton Cty. Bd of Revision,* 127 Ohio St.3d 63, 2010-Ohio-4907 *("Fenco").* As noted, the court has since clarified that "R.C. 5713.04 establishes a rebuttable presumption that a sale price from an auction 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. See *Fenco,* 127 Ohio St.3d 63, 2010-Ohio-4907, *** at ¶34." *Olentangy Local Schools,* supra, at ¶40. Thus, where a property sells via a forced sale or auction, the burden is on the proponent of the sale to show that the transfer was an arm's-length transaction. In this case, the owner did not offer any evidence regarding the circumstances of the sale that would allow this board to determine that the HUD sale met the characteristics of an arm's-length transaction. We recognize that the BOR included the MLS listing as support for the finding the sale was indeed arm's-length. We find, however, that this listing alone without accompanying testimony or information regarding the circumstances of the sale, is not enough to rebut the presumption that the sale is not evidence of the subject's value. Accordingly, we find that transfer does not furnish a reliable basis to reduce the subject's value.

[5] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$142,300

TAXABLE VALUE

$49,810

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2177
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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HYPNOTOAD, LLC
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Entered Friday, September 1, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 010-075888-00, 010-123779-00, and 010-126956-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subjects' total true values were initially assessed at $67,800, $79,800, and $100,900, respectively. The appellee property owner, Hypnotoad, LLC, filed a decrease complaint with the BOR seeking reductions in value to $20,000, $20,000, and $30,000. The BOE filed a countercomplaint in support of maintaining the auditor's values. At the BOR hearing, Hypnotoad's sole owner, Thomas Frato, appeared to testify in support

of the requested reductions. Frato explained that he had recently purchased the subject properties, and described the circumstances of his purchases, which included two sales via online auctions

(010-075888-00 and 010-126956-00), and one sale through a realtor (010-123779-00). Frato also discussed other sales in the subjects' areas, but did not provide detailed information about any of the properties mentioned. The BOE cross-examined Frato regarding the sales, the properties' conditions, and income history, but did not offer any affirmative evidence of value. The BOR issued a decision reducing the initially assessed valuations to $20,000, $27,500, and $40,500, respectively, based on Hypnotoad's purchases of the properties. From this decision, the BOE filed the present appeal.

At the hearing before this board, the BOE indicated that it was not contesting the BOR's decision regarding parcel number 010-123779-00, but argued that the BOR improperly reduced the value of the remaining properties based on sales that were not arm's-length transactions. The BOE asserted that the sellers were a real estate mortgage investment conduit ("REMIC") and a real estate owned ("REO") sale, and because the properties were sold via auctions, Hypnotoad had a higher burden to show that the sales were nonetheless arm's-length and had failed to meet that burden. Frato again appeared to testify on behalf of Hypnotoad, but was prohibited from offering new evidence after this board granted a motion for sanctions filed by the BOE due to Hypnotoad's failure to respond to requests for discovery. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Interim Order, Apr. 3, 2011), BTA No. 2016-2177, unreported. Although the attorney examiner initially overruled an objection to Frato's testimony at the hearing before this board, we now reverse that decision and will exclude any statements that were not already made during the BOR hearing.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, the affirmative burden clearly jests with the opponent of using a reported sale price to demonstrate why it does not reflect the property's value. *Cincinnati Rd of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997). Additionally, because the central issue in the instant appeal is whether the sale prices of the subject properties established their values, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Rd of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present appeal, it is undisputed that Hypnotoad purchased parcel number 010-075888-00 on January 23, 2015 for $20,000 from Bank of America Funding Corporation Mortgage Pass-Through Certificates, Series 2007-7, U.S. Bank National Association, As Trustee, at an online auction. It is likewise undisputed that Hypnotoad purchased parcel number 010-126956-00 on September 9, 2015 for $40,500 from Nationstar Mortgage LLC, also at an online auction. The BOE argues that the sales are not reliable indications of value because the sellers were not voluntary participants to the transactions, and cites to the court's decision in *Lunn v. Lorain Cty. Bd of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075. Although we disagree with the BOE that the identity of the seller alone is sufficient to invalidate the sales in this case, we agree that because both transactions involved auctions, Hypnotoad was required to satisfy a "'heavier burden' to show that "'the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value.' *Olentangy Local Schools Bd of Edn. v. Delaware Cty. Bd of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723, *** ¶43." *Lunn,* supra, at ¶22.

The facts of the instant appeals are distinguishable from the case cited by the BOE in two important ways,

First, the record in *Lunn* included expert testimony about the specific circumstances of the seller and its inability to hold the property at issue and a coinciding obligation to sell it. No such evidence exists in the present appeal. Second, Hypnotoad offered not only evidence of the existence of each sale, but also testimony regarding the circumstances surrounding each transaction. On the other hand, in *Lunn,* the court noted that the owner had not provided any evidence to rebut the county appellees' challenge to the arm's-length nature of each sale. Thus, we find that the instant appeal is easily distinguishable from the facts in *Lunn.*

As noted, however, Hypnotoad had a higher burden in the present appeal because it purchased the properties at issue via auction sales. The court has held that "R.C. 5713.04 establishes a rebuttable presumption that a sale price from an auction 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. See *Fenco [Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision],* 127 Ohio St.3d 63, 2010-Ohio-4907, *** at ¶34." *Olentangy Local Schools,* supra, at ¶40. Thus, where a property sells via auction, the burden is on the proponent of the sale to show that the transfer was an arm's-length transaction.

In an effort to show that the sales were arm's-length, Hypnotoad relied on Frato's testimony before the BOR regarding the circumstances of each auction. Although he was unsure whether the seller could specifically reject the highest bid, Frato explained that the auctions had minimum bids and that he had to make multiple bids on each property. Frato further testified regarding the length of time the properties were available to any party who wanted to bid on the properties before the auction closed. In this case, we find that through Frato's testimony before the BOR, Hypnotoad has overcome the presumption that the sales were not arm's-length. Accordingly, we find that the purchase price for each sale is the best evidence of the subjects' value.

It is therefore the order of this board that the true and taxable values of the subject properties, as of January 1, 2015, were as follows:

PARCEL NUMBER 010-07588-00

TRUE VALUE

$20,000

TAXABLE VALUE

$7,000

PARCEL NUMBER 010-123779-00

TRUE VALUE

$27,500

TAXABLE VALUE

$9,630

PARCEL NUMBER 010-126956-00

TRUE VALUE

$40,500

TAXABLE VALUE

$14,180

OHIO BOARD OF TAX APPEALS

ROBERT STONE TRUSTEE, EDMUND J. STECKER, (et. al.),	CASE NO(S). 2017-407
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Tuesday, September 5, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellants appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 686-08-002, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is a single family rental home, and its total true value was initially assessed at $101,100. A decrease complaint was filed with the BOR seeking a reduction in value to $50,000. At the BOR hearing, appellants amended the value sought to $36,000, consistent with the appraisal evidence submitted, which consisted of testimony and a written report from appraiser George Burke. Burke described the condition of the property, which was in relatively poor condition due to a lack of upkeep by the tenant who has occupied the property for over 25 years and an inability by the owners to enter the property to perform routine maintenance. Burke relied on the sales comparison approach, utilizing the sales of five properties in similar condition, concluding to a value of $36,000 as of January 1, 2015. The BOR members asked Burke several questions about his methodology, and ultimately issued a decision maintaining the initially assessed valuation, which led to the present appeal. Appellants appeared at a hearing before this board, again relying on Burke's appraisal. The county appellees waived the opportunity to appear and did not provide any argument in support of their position.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964).

Such is the case in this matter, as the record does not indicate that the subject property recently transferred through a qualifying sale. Upon review of Burke's appraisal, which provides an opinion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find the appraisal to be competent and probative and the value conclusions reasonable and well-supported. In this case, the BOR disagreed with Burke's conclusions, specifically challenging Burke's treatment of what it believed were curable issues due to the tenant's "clutter." We have often acknowledged that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported. We reiterate this principle and find that Burke explained the effect that the tenant's standard of living has on the physical condition of the house and, therefore, its value even if the contents were removed.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$36,000

TAXABLE VALUE

$12,600

OHIO BOARD OF TAX APPEALS

TRIA ADELPHIA, INC., (et. al.),

Appellant(s),

vs.

SUMMIT COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1846, 2016-1921

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, September 5, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The property owner, Tria Adelphia, Inc. ("Tria"), and board of education ("BOE") appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 67-05190 and 67-05191, for tax year 2015. These matters are now considered upon the notices of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of this board's hearing.

[2] The subject property operates as a 25 unit apartment building, with an underground parking garage in addition to a surface parking lot. The subject's total true value was initially assessed at $671,400. The BOE filed a complaint with the BOR seeking an increase in value to $1,150,000. Tria filed a countercomplaint in support of maintaining the fiscal officer's values.

[3] At the BOR hearing, the BOE provided evidence that the subject transferred in December 2015 for $1,150,000, maintaining that the sale price represents the best evidence of the subject's value. Constantina Apostolis, property manager and daughter-in-law of Tria's owner, appeared to describe the property and the process by which Tria purchased it. Apostolis explained that her father-in-law lived in another state and the only experience he had purchasing commercial real estate prior to the subject property was ownership of the building in which he previously operated a restaurant. Apostolis explained that upon retirement, he sold the restaurant and wanted to utilize the benefits of a §1031 exchange, so named after the section of the Internal Revenue Code that permits a taxpayer to defer the recognition of capital gains or losses ordinarily due upon the sale of an asset, in this case, real property. Because of the time constraints of this process and his lack of experience in both real estate and the Akron area (where Apostolis and her husband lived), Tria's owner did not fully understand the challenges of the subject property. Apostolis indicated that they had looked at several other buildings, but chose not to purchase them when they received the results from their inspections. A realtor then approached them with an opportunity to purchase the subject property, though it was not listed for sale at the time. Because they were limited on time due to requirements of the §1031 exchange, Apostolis's father-in-law agreed to purchase the property without completion of any inspections. After closing, it was discovered that the seller had made misrepresentations about the expenses and that the building could not be insured without upgrades to electrical panels. The subject also suffered water damage to the top floor because of the roof and water issues in the underground parking garage due to damaged drainage. Apostolis did not have personal knowledge about the mortgage process, so the BOR requested that Tria submit a copy of any financing appraisal after the hearing; such appraisal opined that the value of the subject property on October 9, 2015 was $1,150,000 in its current condition, and would be $1,430,000 following a planned renovation.

[4] The BOR issued a decision increasing the initially assessed valuation to $825,000, which led to the present appeals. Tria appeared before this board and reiterated the argument that the sale is not reliable evidence of value because it was not an arm's-length transaction. Tria again asserted that the sale was a §1031 exchange and Tria did not have knowledge of all relevant facts at the time of the transfer. Tria also discussed the financing appraisal, noting that it did not offer an opinion of value as of the tax lien date and that the appraiser did not appear to testify or authenticate the report. Tria further argued that although it was improper for the BOR to increase the property's value at all, because the BOR determined that the sale price did not reflect the subject's value, the BOE was required to present additional evidence to this board in support of its requested value. The BOE waived the 'opportunity to appear and present additional evidence or argument.

[5] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). When a party submits basic documentation of a sale, it is presumed that the submitted sale price "'has met all the requirements that characterize true value,'" and that the party opposing the sale has the burden to rebut the sale with "evidence showing that the price did not, in fact, reflect the property's true value." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415, ¶32, citing *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327-328 (1997). Additionally, contrary to Tria's assertion, when the central issue an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[6] In the present matter, it is undisputed that Tria purchased the subject property from Nimisila Properties LLC on or about December 1, 2015 for $1,150,000. Tria argues, however, that the purchase price did not reflect the subject's true value due to the circumstances of the transaction, particularly the buyer's motivation and lack of sophistication, which Tria contends caused it to overpay for the property. Initially, we disagree with Tria's claim that the constraints of the §1031 exchange negated the arm's-length nature of the sale. This board has previously found that the transfer of real property as part of a §1031 exchange

does not negate the arm's-length nature of a sale. See, e.g., *Bd. of Edn. of the Hilliard City Schools v. Franklin Cty. Bd. of Revision* (Jan. 13, 2009), BTA No. 2006-T-1804, unreported. Furthermore, although we acknowledge that Tria may have had some pressing motivations to purchase the subject property, we note that every party to a sale has some subjective motivations for its participation in the transaction. The record shows that Tria was not held "hostage" because failure to purchase the subject property would have resulted in bankruptcy. Rather, it appears that Tria was forced only to make an investment decision whether it would be more favorable to complete the December 2015 purchase of the subject property or pay the taxes resulting from the failed §1031 exchange. Compare *Lakeside Avenue L.P. v. Cuyahoga Cty. Bd. of Revision,* 75 Ohio St.3d 540 (1996) (discussing the concepts of economic duress and compulsion in the context of determining the utility of a sale in establishing value). We are constrained, therefore, to conclude that Tria failed to provide sufficient evidence to demonstrate that it was not a voluntary participant in the sale.

[7] Tria also points out that it was approached directly by the seller's realtor and the property was not listed on the open market. This alone, however, does not disqualify the sale because. "[t]he case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers." *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 129 Ohio St.3d 172, 2011-Ohio-3092, ¶29.

[8] Furthermore, it has also been suggested that Tria was induced to acquire the property with inaccurate information regarding the subject's expenses and condition. We find the evidence offered insufficient to accept such allegation as the basis for rejecting the sale. Tria points to Ohio Adm. Code 5703-25-05(A)(1), which provides that for purposes of ad valorem taxation, the sale price of a property represents its "true value in money" only when both parties have "a knowledge of all the relevant facts." In this case, however, regardless of the explanation as to its motivation to do so, Tria chose not to have an inspection done and it is unclear as to the extent of due diligence completed in reviewing the subject's financial history.

[9] 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. See, e.g., *Bd. of Edn. of the Huber Hts. City Schools v. Montgomery Cty. Bd. of Revision* (Sept 1, 2006), BTA No. 2004-A-1210, unreported; *Veard Kettering Limited Partnership v. Montgomery Cty. Bd. of Revision* (Jan. 7, 2005), BTA Nos. 2002-R-1393, 1394, unreported, value stipulated on remand *9/15/2005 Case Announcements,* 2005-Ohio-4803; *Granville Village Apartments, Inc. v. Franklin Cty. Bd. of Revision* (Mar. 12, 2004), BTA No. 2002-V-1972, unreported; *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Feb. 22, 2002), BTA No. 1999-R-2049, unreported. As we stated in *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported, "[a] negotiated purchase price is not invalidated merely because a purchaser later believes he made a bad deal." Thus, Tria's purported lack of experience in the realm of real estate investment and apparent inadequacy during the due diligence process cannot serve to invalidate the sale as the best evidence of value.

[10] Finally, although on its own, the financing appraisal would.not be sufficiently probative to independently furnish a value for the property, it does serve to support the purchase price. See *Emerson v. Erie Cty. Bd. of Revision,* 149 Ohio St.3d 148, 2017-Ohio-865. Thus, we find that the owner's argument that the purchase price is not a reliable indication of value is without merit. 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. Because the subject property consists of two parcels, the sale amount will be allocated using percentages reflected by the fiscal officer's original assessment of the property. See, generally, *First Cal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision,* 125 Ohio St.3d 485, 2010-Ohio-1921.

[10] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 67-05190

TRUE VALUE

$39,790

TAXABLE VALUE

$13,930

PARCEL NUMBER 67-05191

TRUE VALUE

$1,110,210

TAXABLE VALUE

$388,570

OHIO BOARD OF TAX APPEALS

WALTER DEOLIVEIRA, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1134, 2016-1135

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, September 5, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 812-29-054 and 812-01-028, for tax year 2015. While not previously consolidated, these appeals are appropriately consolidated far the purpose of this decision and order. Ohio Adm. Code 5717-1-09. These consolidated matters are now considered upon the notices of appeal, transcripts ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and records of hearings ("H.R.") before this board.

The subject parcels were initially assessed at total true values of $47,600 and $38,200, respectively. The property owner filed two decrease complaints with the BOR. For parcel number 812-29-054, the property owner sought a reduction in value to $25,000; which amount was later amended at hearing to $28,000 to conform to appraisal evidence. For parcel number 812-01-028, the property owner sought a reduction in value to $25,000. S.T., Exhibit ("Ex.") A. No counter complaint was filed.

The BOR held a hearing on each complaint. In each instance, in support of the reduction requested, the property owner, Mr. Walter DeOliveira, offered an appraisal report, comparable sales, and the testimony of a realtor, Mr. Don Firem. Both appraisal reports were authored by Mr. Joseph Matovina, a certified residential appraiser, and employed only the sales comparison approach to value; however, Mr. Matovina did not appear at the BOR's hearing, and, as a result, was unavailable to answer questions regarding his

professional credentials and information contained in the reports. S.T., Exs. E, F. Ultimately, the report relating to parcel number 812-29-054, opined to a value of $28,000, as of December 31, 2014 and the

report relating to parcel number 812-01-028, opined to a value of $25,000, as of December 31, 2014. Id. Mr. DeOliveira briefly testified regarding the condition of the subject properties. Mr. Firem provided testimony in relation to the comparable sales data; however, a BOR member pointed out that the majority of the sales provided were the result of HUD transfers.

Thereafter, upon consideration of the owner's evidence and information available to it, the BOR issued two decisions. For parcel number 812-29-054, the BOR issued a decision maintaining the initially assessed valuation. For parcel number 812-01-028, the BOR issued a decision decreasing the initially assessed value to $31,800. S.T., Ex. G. Dissatisfied with the results, the property owner timely filed two notices of appeal with this board.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It is well established that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be supported with reliable tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992). The weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *W.J.IK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record and found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision, 77* Ohio St.3d 402, 405 (1997).

As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

In this instance, there exists no evidence the subject property "recently" transferred through a qualifying sale, and while we acknowledge the owner's two appraisal reports submitted to the BOR, we do not find the information or values concluded to in those reports to be particularly probative and accord them no weight. As indicated above, the author of the two reports at issue did not appear before the BOR, or this board, and as such, was unavailable to authenticate the report, provide professional credentials, and explain methodologies utilized, or be questioned by members of the BOR or this board's attorney examiner. The lack of any testimony from the reports' author is signifjcant. This board relies on the fundamental proposition that "[a]n 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[,]" and, here, we are unable to discern the reliability of comparables selected, adjustments made, and conclusions drawn in developing the opinions of value. *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 30 (1997). In fact, it is unclear what, if any, steps the appraiser took to verify the accuracy of the comparable sales data he utilized in each report. In addition, we question why the appraiser did not also employ an income approach to value, considering the subjects are income producing properties. "We have repeatedly acknowledged that the appraisal of real property is not an exact science. Instead, it is but an opinion, the reliability of which depends upon basic competence, skill, and ability demonstrated by the appraiser." *Brown v. Hamilton Cty. Bd. of Revision* (February 1, 2008), BTA No. 2006-K-764, unreported, at 9. See also *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported. In the absence of Mr. Matovina's testimony, we are unable to rely on his opinions of value.

To the extent that the property owner also relies upon unadjusted, raw comparable sales and Mr. Firem's testimony in relation thereto, we are not persuaded. While we acknowledge Mr. Firem's status as a realtor, we are also mindful that Mr. Firem is not a licensed real estate appraiser, trained to opine real property values. In fact, Mr. Firem did not attest to his education, training, certifications, or his experience in appraising real property before the BOR. As noted in The Appraisal of Real Estate (13th Ed.2008), "[a]s a group, real estate salespeople evaluate specific properties, but they typically do not consider all the factors that professional appraisers do." Id. at 8. Moreover, as this board stated in *Copp v. Franklin Cty. Bd. of Revision* (Sept. 8, 2009), BTA No. 2007-Z-692, unreported, "[b]y not developing a sufficient foundation to establish an appropriate expertise in appraisal methods and the deviation of true value for a particular piece of real property, this board does not find the analyses particularly probative and does not accord them much weight." See generally The Appraisal of Real Estate (14th Ed.2013); *Witt Co. v. Hamilton Cty. Bd. of Revision,* 61 Ohio St.3d 155 (1991).

We also acknowledge the property owner's assertions on the underlying complaints indicating the subject parcels are in need of repairs, e.g., a new driveway, roof, and windows; however, these assertions, alone, do not establish an alternate value for the subject. Both the Supreme Court and this board have repeatedly held that evidence demonstrating the existence of negative conditions is insufficient to support a change in value where, as here, the appellant does not quantify how the negative conditions impact the property's value. *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996); *Zanetos v. Franklin Cry. Bd. of Revision* (Mar. 30, 2010), BTA No. 2008-V-775, unreported.

In the present matter, no party disputes the BOR's decrease in value relating to parcel number 812-01-028; however, we find no support for any further reduction on appeal. Additionally, we find bases cited for parcel number 812-29-054 to be insufficient to support the claimed adjustment to value. *Westlake Med. Investors, L.P. v. Cuyahoga Cry. Bd. of Revision*, 74 Ohio St.3d 547, 549 (1996) ("the BTA may approve a board of revision's value if the taxpayer does not prove a right to a reduction in value").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 812-29-054

TRUE VALUE

$47,600

TAXABLE VALUE

$16,660

PARCEL NUMBER 812-01-028

TRUE VALUE

$31,800

TAXABLE VALUE

$11,130

OHIO BOARD OF TAX APPEALS

GFG PROPERTIES, LLC, (et. al.),

Appellant(s),

vs.

SUMMIT COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1383, 2016-1384, 2016-1387

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GFG PROPERTIES, LLC
Represented by:
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For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
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Entered Wednesday, September 6, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 67-39517, 68-15696, and 67-37211, for tax year 2015. While not previously consolidated, these appeals are appropriately consolidated for the purpose of this decision and order in accordance with this board's rule of practice and procedure 5717-1-09. These consolidated matters are now considered upon the notices of appeal, transcripts ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

Before proceeding to the merits of this appeal, we first address the sales comparable documentation attached to the property owner's notices of appeal. While such documentation is noticeably absent from the record certified to this board, the county appellees admit (through written argument) that such documentation was presented to the BOR and is properly part of the record before this board. As such, the owner's comparable sale documentation, as attached to its notices of appeal, will be received by this board as uncontested supplements to the certified records. Further, we take this opportunity to remind the Summit County Board of Revision of its statutory obligations to create, preserve, and certify complete records of its proceedings to this board. R.C. 5715.19(C), R.C. 5715.08, R.C. 5717.01. See also Ohio Adm. Code 5717-1-10(A). We now proceed to the merits of these consolidated appeals.

The subject parcels' total true values were initially assessed at $39,290; $25,740; and $28,650, respectively, The property owner filed three complaints with the BOR, seeking decreases in value based upon a "decline in market value." S.T., Exhibit ("Ex.") A. For parcel number 67-39517, the owner sought a reduction in value to $18,000. For parcel number 68-15696, the owner sought a reduction in value to $9,000. For parcel number 67-37211, the owner sought a reduction in value to $.10,000. No counter complaint was filed.

The BOR held three hearings. At each hearing, a partner of the ownership entity, Jerry Feeman, and Mike (whose last name is inaudible and relationship to the subject property was not stated at hearing) appeared. In support of the decreases in value sought, Mr. Feeman offered comparable sales information. Through his testimony, Mr. Feeman also indicated his status as a real estate agent. In addition, Mike provided testimony indicating that a decline the subject's neighborhoods, i.e., drug activity and prostitution, has negatively affected property values. S.T., Ex. E.

Thereafter, upon consideration of the information available to it, the BOR found a lack of sufficient evidence for the requested decreases and issued three decisions maintaining the subject property's initially assessed valuations. S.T., Exs. E & G. Dissatisfied with the results, the property owner timely filed three notices of appeal with this board. On appeal, no new evidence of value was submitted to this board.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. In *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6, the court elaborated: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493 *** ."

It is well established that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be supported with reliable tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.*, 65 Ohio St.3d 621 (1992). The weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record which must be found to be both competttnt and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997).

As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

Upon review, the record contains no evidence that the subject properties "recently" transferred through qualifying sales and appellant did not provide competent appraisals of the subject properties, attested to by a qualified expert, for the tax lien date in issue. Through written argument, the county appellees contend the owner failed to provide sufficient competent and probative evidence to support the requested reductions in value and seek affirmance of the BOR's decisions. For the reasons set forth below, we agree with the county

appellees and find the owner's evidence (submitted to the BOR) does not constitute reliable and probative evidence upon which this board may rely to determine lower values for the subject properties.

Turning to the owner's raw comparable sales data, we note, "[t]he purpose of the sales comparison approach, one of the three commonly employed methods of appraising property, is to derive an estimate of value by comparing the property under consideration to similar properties recently sold within the market place." *Kaiser v. Lorain Cty. Bd. of Revision* (Nov. 2, 2010), BTA No. 2009-V-1090, unreported, citing *Speca v. Montgomery Ct. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. Typically, under such approach, appraisers employ qualitative or quantitative adjustments to such comparables to align, and thereby compare such properties to the subject. In this instance, however, the comparable sales data (submitted to the BOR) does not reflect any adjustments accounting for meaningful differences between such properties and the subject properties. In the absence of such adjustments, this board is left to speculate 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; to be sure, "[m]ere speculation is not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶15. See generally *Freshwater v. Belmont Cty. Rd of Revision,* 80 Ohio St.3d 26 (1997); *WJJK Investments*, supra.

While we acknowledge Mr. Feeman's testimony in relation to the comparable sales and his status as a real estate agent, we are also mindful that Mr. Feeman is not a licensed real estate appraiser, trained to opine real property values. In fact, Mr. Feeman did not attest to his education, training, certifications, or, to any significant degree, his experience in appraising real property before the BOR. As noted in The Appraisal of Real Estate (13th Ed.2008), "[a]s a group, real estate salespeople evaluate specific properties, but they typically do not consider all the factors that professional appraisers do." Id. at 8. Moreover, as this board stated in *Copp v. Franklin Cty. Bd. of Revision* (Sept. 8, 2009), BTA No. 2007-Z-692, unreported, "[b]y not developing a sufficient foundation to establish an appropriate expertise in appraisal methods and the deviation of true value for a particular piece of real property, this board does not find the analyses particularly probative and does not accord them much weight." See generally The Appraisal of Real Estate (14th Ed.2013); *Witt Co. v. Hamilton Cty. Bd. of Revision*, 61 Ohio St.3d 155 (1991).

To the extent that the property owner also relies upon assertions of negative conditions affecting the subject properties, i.e., drug activity and prostitution, these assertions alone do not establish alternate values for the subjects. Both the Supreme Court and this board have repeatedly held that evidence demonstrating the existence of negative conditions is insufficient to support a change in value where, as here, the appellant does not quantify how the negative conditions impact the property's value. *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996); *Zanetos v. Franklin Cty. Bd. of Revision* (Mar. 30, 2010), BTA No. 2008-V-775, unreported.

Accordingly, based upon our review of the record, we agree with the BOR and find the bases cited insufficient to support the claimed adjustments to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 67-39517

TRUE VALUE

$39,290

TAXABLE VALUE

$13,750

PARCEL NUMBER 68-15696

TRUE VALUE

$25,740

TAXABLE VALUE

$9,010

PARCEL NUMBER 67-37211

TRUE VALUE

$28,650

TAXABLE VALUE

$10,030

OHIO BOARD OF TAX APPEALS

DEWEY FAMILY LIMITED PARTNERSHIP, (et. al.),

Appellant(s),

vs.

LORAIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1912

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEWEY FAMILY LIMITED PARTNERSHIP
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For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
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Entered Thursday, September 7, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Dewey Family Limited Partnership ("Dewey Family"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 01-00-001-109-028, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property consists of two buildings operating together as a furniture store. The subject's total true value was initially assessed at $1,030,250. The Dewey Family filed a decrease complaint with the BOR seeking a reduction in value to $482,500. At the BOR hearing, the Dewey Family relied on testimony from accountant Anthony Keys and Michael Dewey, who operates the furniture store and was one of the limited partners. The Dewey Family submitted an appraisal report performed by James Delahunt, SRA, without the testimony of its author, opining that the subject's value was $524,000 as of June 10, 2016. The BOR issued a decision maintaining the initially assessed valuation based on the appraisal department's recommendation after reviewing the Delahunt appraisal. From this decision, the Dewey Family filed the present appeal.

At the hearing before this board, Mr. Keys and Mr. Dewey again appeared on behalf of the Dewey Family, providing additional information regarding the purpose of the appraisal and the subject's ownershiphistory. Mr.

Dewey explained that the buildings were constructed in 1976 and 1988 and has housed a retail furniture business run by Mr. Dewey and his brother since they purchased it from their father, Chuck Dewey, roughly 20 years ago. At that time, Chuck Dewey retained roughly 99.6% interest in the property through the limited partnership. After he died, Chuck Dewey's interest in the property transferred into a trust for the benefit, primarily, of his grandchildren, with Mr. Keys acting as trustee. The other partners in the partnership, Mr. Dewey and his siblings, were compensated for their proportionate share. The Delahunt appraisal was obtained as part of the process to determine the fair value attributable to the property following Chuck Dewey's death. At that time, the tax basis of the subject property for purposes of federal taxation was also adjusted consistent with 99.6% of the Delahunt appraisal's opinion of value. Mr. Dewey further explained that due to business considerations, he and his brother had decided to purchase the subject from the trust. Mr. Dewey explained that although he and his brother did not intend to overpay for the subject property, it was also their desire to fairly compensate the trust and did not want to take advantage of any of their family members. Mr. Dewey stated that everyone had agreed upon the appraisal to establish the purchase price, but that title had not yet transferred.

The county appellees presented the testimony and written report of appraiser James T. Caldwell, MAI, SRA, who opined that the subject's value was $1,000,000 as of January 1, 2015. Mr. Caldwell relied primarily on the sales comparison approach, concluding to a value of $25 per square foot, which results in an indicated value of $1,000,000 (rounded). Mr. Caldwell also considered the income approach, which he considered supportive of the sales comparison approach. Based on this approach, Mr. Caldwell capitalized a net operating income of $140,645 at 10% capitalization. rate plus 3.03% tax additur, resulting in an indicated value of $1,080,000 (rounded). Mr. Dewey criticized the properties utilized in Mr. Caldwell's report, explaining how he considered their locations to be superior to the subject and that the circumstances around some of the transactions could result in elevated sale prices.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). The case law is clear that where the evidence negates an auditor's valuation, this board has the duty "to use whatever evidence they could find in the record to perform an independent valuation. [*Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975], at ¶25; [*Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 *("Team Rentals")]*, at ¶ 17-18, citing *Dublin City Schools Bd. of Edn. [v. Franklin Cty. Bd. of Revision]*, 139 Ohio St.3d 193, 2013-Ohio-4543, *** at ¶26, analysis regarding auditor's valuations undisturbed on reconsideration, 139 Ohio St.3d 212, 2014-Ohio-1940, *** ¶ 30." *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-738 *("Olentangy Crossing")*, at ¶19. In the present appeal, where both the property owner and the county appellees have submitted evidence that the subject's value is below that amount assessed by the auditor, we find that such a duty applies.

The Dewey Family, and the trust that owned the subject property at this board's hearing, relied on the Delahunt appraisal value, which provided the price for the March 6, 2017 transfer to the trust, and for federal income tax purposes. The property owners also submitted a draft promissory note evidencing the intention to again transfer the property at an amount based on the appraisal, albeit among related parties. Notably, Mr. Dewey, who has run the business occupying the property for more than 20 years, and Mr. Keys, the owner's accountant and trustee of the trust that owned the property at the time of this board's hearing, testified regarding the subject property and the area in which it is located. The county appellees have challenged the reliability of both the transfer of the subject property and the Delahunt appraisal. The county appellees maintain that the property has not sold on the open market, and, therefore, there is no reported sale price upon which this board may rely. With respect to the appraisal, the county appellees argue that it is not probative evidence of value because it was not authenticated and does not offer an opinion of value as of the tax lien date. Instead, the county appellees urge this board to rely on Mr. Caldwell's appraisal. Upon review

of the record as a whole and all evidence before us, including testimony from Mr. Dewey and Mr. Keys, we find that the true value of the subject property is best reflected by the

value initially concluded to in the Delahunt appraisal, and subsequently relied upon to establish the value for the transfer of the property and for federal income tax purposes.

In the present appeal, the Dewey Family has presented a draft promissory note as evidence that the property will transfer for $524,000 based on the Delahunt appraisal. This potential future transfer, however, cannot be relied upon to establish the value of the subject property because it has not yet been consummated. *N. Royalton Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 129 Ohio St.3d 172, 2011-Ohio-3092, ¶19. Compare *Emerson Network Power Energy Sys., N. Am., Inc. v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 369, 2016-Ohio-8392 (holding that the BTA erred by declining to consider property owner's posthearing evidence of transfer of property).

It is undisputed, however, that the subject property transferred from the partnership to the trust on March 6, 2017, and the property owners have provided a deed as evidence of this transaction. When a party submits basic documentation of a sale, it is presumed that the submitted sale price "'has met all the requirements that characterize true value,' and the party opposing the sale has the burden to rebut the sale with "evidence showing that the price did not, in fact, reflect the property's true value." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415, ¶32, citing *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327-328 (1997). The county appellees have not challenged the recency of this transfer, solely arguing that it is not an arm's-length transaction. Thus, the recency of the transaction to the tax lien date is not at issue. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 144 Ohio St.3d 549, 2015-Ohio-4837, ¶12 ("The BOE waived its claim of error as appellant when it presented neither argument nor evidence before the BTA"). See, also, *Olentangy Crossing,* supra, at ¶19, fn.4 (noting that the BTA erred by focusing solely on the passage of more than 24 months between the sale and the tax lien date, citing to the court's decision in *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588); *W. Carrollton City Schools Rd of Edn. v. Montgomery Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4328 (declining to comment on whether the 24-month bright-line test utilized by this board was appropriate because a more specific exception to the general rule in favor of reliance upon a sale applied). We further note that in his appraisal, Mr. Caldwell considered sales as late as December 2016 and made no adjustments for changes in market conditions.

In this case, the county appellees maintain that there has not been a reliable sale of the subject property for purposes of ad valorem taxation because any transfer of the property has been among related parties and not after exposure to the open market. Even a sale between related parties of a property that was not listed on the open market can be considered the best evidence of value where there is additional evidence to establish that the price reflected fair market value, such as an appraisal performed contemporaneous with the sale. See *Emerson v. Erie Cty. Bd of Revision,* 149 Ohio St.3d 148, 2017-Ohio-865. In this case, we have such an appraisal in the record. The Delahunt appraisal, though prepared for purposes other than the board of revision proceedings, carries with it an increased indicia of reliability due to the Dewey Family's reliance on the report after Chuck Dewey's death to not only establish the value of the assets to compensate the remaining partners and transfer them into the trust, as well as adjust the tax basis for federal income tax purposes. The undisputed testimony that the Delahunt appraisal will serve to establish the future sale price of the property, as evidenced by the draft promissory note, though not dispositive, serves as additional support for the reliability of this report.

While we acknowledge that unlike the Delahunt appraisal, Mr. Caldwell concluded to a value as of the tax lien date and testified regarding his analysis and answer questions from this board, we nonetheless find that it does not provide the most reliable evidence of value for the subject. We find that the comparable sales he utilized were dissimilar from the subject property due to the differences in their locations, which are in better retail markets than the subject property, and differences in the age and utility of the buildings. The subject property consists of two separate buildings with limited office space located in an addition to one of

the buildings, yet Mr. Caldwell did not make any adjustment to account for these unique aspects of the subject property.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$524,000

TAXABLE VALUE

$183,400

OHIO BOARD OF TAX APPEALS

RIVERSIDE LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-883
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
LAKE COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - RIVERSIDE LOCAL SCHOOLS BOARD OF EDUCATION
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ARCP MF PAINESVILLE TOWNSHIP OH, LLC
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Entered Friday, September 8, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 11-A-014-A-00-005-0, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the written argument of the parties.

[2] The subject property was constructed in roughly May 2014 and is operated as a Mattress Firm store. The subject's total true value was initially assessed at $788,720. The BOE filed an original complaint with the BOR seeking an increase in value to $2,011,900. At the BOR hearing, the BOE offered evidence of the sale, including copies of the deed and conveyance fee statement, evidencing that the appellee propertyowner, ARCP MF

Painesville Township Ohio LLC ("ARCP"), purchased the subject property for $2,011,851.85 in July 2014. The BOE argued that the sale was a recent arm's-length transaction and provided the best evidence of the true value of the subject property. ARCP admitted that the sale was a recent arm's-length transaction, but contested the utility of the sale, asserting that it purchased the leased-fee interest and the recorded sale price did not reflect the value of the real property. ARCP further argued that based on the current language of R.C. 5713.03 and recent Supreme Court case law, the BOR should disregard the sale because the property was encumbered by a lease at the time of the transaction. Instead, ARCP maintained, the BOR should find value consistent with an appraisal prepared by Richard G. Racek, Jr., MAI, who opined that the subject's total true value was $1,150,000 as of January 1, 2015.

[3] Racek appeared at the BOR and explained that although he had no personal knowledge of the sale, he verified that it was an arm's-length sale, albeit of the leased fee interest. Racek stated that he had not personally viewed the lease agreement in place at the time of the sale, but that he had reviewed the synopsis of the lease. Racek described the three approaches to value that he considered to reach his ultimate conclusion of value, noting that his income approach showed that, in his opinion, the $35 per square foot rent obtained for the subject property exceeded market conditions because his rent comparables ranged from $7.93 to $20.68 per square foot. Racek further noted that his cost approach showed that the property was built for roughly $1,324,012 (excluding soft costs and entrepreneurial profit) and could be replaced for $1,155,000 (included a reduction for depreciation), which showed that the remaining value must be attributable to the value associated with the lease. The BOR issued a decision increasing the initially assessed valuation to $1,150,000, consistent with Racek's appraisal. From this decision, the BOE filed the present appeal. The parties waived the opportunity to appear before this board to present additional evidence. Instead, ARCP and the BOE filed written argument to further the positions previously advanced before the BOR.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 327 (1997). Additionally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[5] In the present matter, it is undisputed that ARCP purchased the subject property from MF Mentor LLC on July 15, 2014 for $2,011,851.85. As the party opposing the sale, ARCP has the burden to show why the reported sale price is not a reliable indication of the subject's true value. ARCP does not dispute that this was a recent arm's-length transaction, but instead argues that the purchase price is not a reliable indication of value because it purchased the leased fee interest, and that amended R.C. 5713.03 prohibits reliance upon the sale. We disagree.

[6] ARCP argues that due to amended language in R.C. 5713.03, the sale cannot be used to value the property because it purchased the leased fee interest in a sale-leaseback transaction. While the court has held that a taxing authorities may consider non-sale-price evidence, including the effect of a lease encumbering the

property at the time of the sale, the burden remains on the opponent of the sale to show that the price did not reflect the property's true value because of such a lease. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. In this case, we find that ARCP has not provided any evidence to show that it purchased a "positive leased fee interest," which it asserts caused an inflated purchase price. ARCP has offered no evidence regarding the transaction itself, and without firsthand knowledge of the sale, Racek's assertions about the transaction are unreliable hearsay. See Ohio Evid. R. 801; 802. Thus, we cannot conclude that ARCP purchased an interest separable from the subject real property.

[7] Finally, we need not address the reliability of Racek's appraisal and his value conclusions because once evidence of a qualifying sale has been presented, "[i]t is only when the purchase price does not reflect the true value that a review of independent appraisals based upon other factors is appropriate." *Pingue v. Franklin Cty. Bd. of Revision,* 87 Ohio St.3d 62, 64 (1999). See, also, *Cummins,* supra at ¶23 ("[W]e erred ***when we authorized the use of appraisals to adjust the price set in a recent, arm's-length transaction. To do so places the cart (appraisal) before the horse (an actual arm's-length sale)."). "To be sure, 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." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 146 Ohio St.3d 470, 2016-Ohio-757, ¶20.

[8] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$2,011,850

TAXABLE VALUE

$704,150

OHIO BOARD OF TAX APPEALS

ICON OWNER POOL 3 MIDWEST/SOUTHEAST, LLC, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1362, 2016-1363, 2016-1364

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ICON OWNER POOL 3 MIDWEST/SOUTHEAST, LLC
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Represented by:
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Entered Friday, September 8, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Icon Owner Pool 3 Midwest/Southeast, LLC ("Icon"), appeals three decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 560-184538-00, 560-184535-00, and 560-184536-00, for tax year 2015. This matter is now considered upon the notices of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the parties' written argument.

The subject property consists of three separate buildings, and was initially assessed at a total true value of $15,571,000. The appellee board of education ("BOE") filed an increase complaint with the BOR seeking an

adjustment in value to $24,205,600. At the BOR hearing, the BOE provided evidence of a March 2015 transfer of the subject property for $24,205,513, arguing that the sale price provides the best indication of

the value of the subject property as of the tax lien date. Icon did not challenge either the recency or arm's-length nature of the sale, but argued that the BOR should nonetheless disregard the sale because it was a leased-fee transaction. Instead, Icon maintained that the BOR should rely on the conclusions reached by appraiser Robert J. Vodinelic, MAI, who appeared to testify in support of his written report and conclusion that the value of the property was $15,750,000 as of January 1, 2015. The BOE objected to the BOR's consideration of any testimony or documents included in the report intended to rebut the utility of the sale because no testimony was offered from an individual with personal knowledge of the transaction. The BOR issued a decision increasing the initially assessed valuation to $24,205,500, which led to the present appeals. On appeal, Icon argues that the BOR's decisions should be reversed because by adopting the sale price, the BOR failed to value the unencumbered fee simple interest of the property. The BOE again maintained that the sale was the best evidence of value for purposes of ad valorem taxation.

When cases are appealed from a board of revision to this boeard, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd of Revision,* 78 Ohio St.3d 325, 327 (1997). Additionally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Rd of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present matter, it is undisputed that Icon purchased the subject property from BRE/DP OH LLC on March 17, 2015 for $24,205,513. As the party opposing the sale, Icon has the burden to show why the reported sale price is not a reliable indication of the subject's true value. Icon does not dispute that this was a recent arm's-length transaction, but instead argues that the purchase price is not a reliable indication of value because it was a "leased-fee" sale, and that amended R.C. 5713.03 prohibits reliance upon the transaction. We disagree.

Icon argues that due to amended language in R.C. 5713.03, the sale cannot be used to value the property because it purchased the leased fee interest. While the court has held that taxing authorities may consider non-sale-price evidence, including the effect of a lease encumbering the property at the time of the sale, the burden remains on the opponent of the sale to show that the price did not reflect the property's true value because of such a lease. *Terraza 8, L.L.C. v. Franklin Cty. Bid of Revision,* Slip Opinion No. 2017-Ohio-4415. Icon has not offered any evidence to show that the property benefitted from a lease with terms appreciably better than market conditions, which would presumably be required to show that Icon purchased a benefit aside from those inherent in ownership of real property. Accordingly, we find that there is nothing in the record to persuade this board that we sbould disregard the sale as the best evidence of value.

Finally, we need not address the reliability of Vodinelic's appraisal and his value conclusions because once evidence of a qualifying sale has been presented, "[i]t is only when the purchase price does not reflect the true value that a review of independent appraisals based upon other factors is appropriate." *Pingue v. Franklin Cty. Bd. of Revision,* 87 Ohio St.3d 62, 64 (1999).

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 560-184538-00

TRUE VALUE

$8,122,600

TAXABLE VALUE

$2,842,910

PARCEL NUMBER 560-184535-00

TRUE VALUE

$7,601,500

TAXABLE VALUE

$2,660,530

PARCEL NUMBER 560-184536-00

TRUE VALUE

$8,481,400

TAXABLE VALUE

$2,968,490

OHIO BOARD OF TAX APPEALS

TROY HOUGH, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-63

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TROY HOUGH
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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Entered Monday, September 11, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Troy Hough, appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 672-10-061 and 115-31-105, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject properties are improved with a warehouse and multifamily home, respectively, and their total true values were both initially assessed at $44,700. Appellant filed decrease complaints with the BOR seeking reductions in value to $22,000 and $13,580, respectively, referencing sales of each property as the basis for the reduction. The BOR convened a hearing, though Hough neither appeared nor provided additional evidence for the BOR's consideration. The BOR issued a decision maintaining the initially assessed valuations, indicating that the sales relied upon by Hough were too remote from the tax lien date.

From these decisions, Hough filed the present appeal. Hough appeared before this board to discuss his opinions of value, asserting that the subject properties should be valued consistent with his purchase prices. Hough indicated that he had purchased the subject properties in 2010, but that the assessed values of the properties had never been reduced consistent with his sale prices. Hough stated that since those purchases, the market in which they are located has not improved and that several other properties he purchased had been reduced to values consistent with their sale prices. The county appellees cross-examined Hough and challenged his evidence, but did not offer any independent evidence of value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). An appellant must present competent and probative evidence in support of her requested reduction, and an owner is not entitled to a reduction merely because no evidence is presented against her claim. Id. The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964).

In the present appeal, Hough relies on his purchases of the subject properties in 2010 as a basis for his requested reductions. The county appellees maintain that these sales are too remote to provide a reliable indication of value. Although there is no "bright line" test as to when a sale becomes too remote to be a reliable indication of value, we find that neither sale was sufficiently recent to establish the value of the respective subject property as of January 1, 2015. See *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, ¶26 (holding that as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property has not changed between the sale date and lien date"). See, also, *Hough v. Cuyahoga Cty. Bd. of Revision* (Feb. 24, 2015), BTA No. 2014-2501, unreported (finding that the 2010 sale of parcel number 115-31-105 was too remote from the tax lien date to establish its value for tax year 2013).

In lieu of appraisals of the subject properties, Hough offered information about BOR decisions regarding other properties that he recently purchased. Initially, we note that we have no record of the bases for those decisions and that the propriety of those decisions are not before this board. Additionally, Hough has not provided any documentation about these properties or the sales to confirm either that the properties are indeed comparable to the subjects or the details of the sale transactions. Furthermore, we find that even if the record contained sufficient evidence to show that the properties did sell and that the BOR in fact reduced their values, neither of these facts constitute sufficient evidence upon which this board may rely to independently determine a value for the subject property. See *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions having found that the evidence was not probative).

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustments to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject properties, as of January 1, 2015, were as follows:

PARCEL NUMBER 672-10-061

TRUE VALUE

$44,700

TAXABLE VALUE

$15,650

OHIO BOARD OF TAX APPEALS

WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2173
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION
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CHOU KATELLA PARTNERS, LLC AND COREX PARTNERS, LLC
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Entered Monday, September 11, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 600-183730-00, for tax years 2014 and 2015. Following the merit hearing, this board ordered the property owners to show cause why this board should not remand this matter to the BOR with instructions to vacate its decisions due to an

apparent jurisdictional issue. Both the property owners and BOR responded to the order. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written argument.

[2] It appears that the BOR reached its decisions for tax years 2014 and 2015 after the appellee property owners invoked continuing complaint jurisdiction based on a complaint filed for tax year 2011. The 2011 complaint was decided by the BOR and appealed to this board, which issued a decision on July 27, 2015, reducing the subject's value to $1,850,000 for tax years 2011, 2012, and 2013. *Bd. of Edn. of the Westerville City Schools v. Franklin Cty. Bd. of Revision* (July 27, 2015), BTA No. 2014-4463, unreported.
While the 2011 complaint was pending, the auditor performed a triennial update for tax year 2014, retaining the $4,500,000 initially assessed in 2011. On June 30, 2016, the property owners submitted a letter to the BOR indicating that they intended to invoke continuing complaint jurisdiction for tax years 2014, 2015, and 2016. Pursuant to its continuing complaint jurisdiction, the BOR issued decisions determining value for tax years 2014 and 2015, which were appealed this board. The property owners contend that there is no procedural time requirement to invoke the BOR's continuing complaint jurisdiction and that the BOR had the authority to consider the 2014 and 2015 tax years on its own, even without any filings by the property owners.

[3] This board has considered R.C. 5715.19(D) along with the Supreme Court's precedent and discussed the appropriate time to invoke continuing complaint jurisdiction when a final determination for one tax year is made after the deadline to file a complaint on the subsequent tax year. In pertinent part, R.C. 5715.19(D) provides:

> "If a complaint filed under this section for the current year is not determined by the board within the time prescribed for such determination [(90 days)], the complaint and any proceedings in relation thereto shall be continued by the board as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon any appeal ***. In such case, the original complaint shall continue in effect without further filing by the original taxpayer ***."

[4] In *MDM Holdings v. Cuyahoga Cty. Bd. of Revision* (June 2, 2015), BTA No. 2015-60, unreported, appeal pending S.Ct. No. 2015-1065, we acknowledged that R.C. 5715.19(D) does not establish an outer deadline for requesting that a complaint be deemed continuing, but held that a complaint cannot be deemed continuing in perpetuity. We cited the court's decision in *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, which stated that the original complaint "continues as a valid complaint through the year in which the final decision*** is rendered." Id. at ¶12. We then concluded that the BOR's complaint jurisdiction ended at the end of the year during which the earlier complaint was finally determined. See, also, *Molly Company, Ltd. v. Cuyahoga Cty. Bd. of Revision* (Jan. 26, 2016), BTA No. 2015-1157, unreported, appeal pending S.Ct. No. 2016-290; *Life Path Parnters, Ltd. v. Cuyahoga Cty. Bd. of Revision* (Apr. 17, 2015), BTA No. 2015-39, unreported, appeal pending, S.Ct. No. 2015-0759. In this case, although this board's decision was issued in July 2015, the property owners failed to request that its tax year 2011 complaint be deemed continuing for tax year 2014 prior to December 31, 2015. Furthermore, there is no indication that the BOR sought to act on its own prior to the property owners' June 2016 request. Finally, there is nothing in the record to suggest that the property owners filed a new complaint for tax year 2015 prior to the March 31, 2016 deadline to do so. Thus, we find that the BOR improperly exercised its jurisdiction over tax years 2014 and 2015 to find value for the subject property.

[5] Accordingly, upon review, we find that the property owners failed to demonstrate that the BOR had jurisdiction to consider the value of the subject property for tax years 2014 and 2014 pursuant to its continuing complaint jurisdiction. As a result, we hereby remand this matter to the BOR with instructions to vacate its decisions, the practical effect being that the auditor's value will be reinstated.

OHIO BOARD OF TAX APPEALS

ANGELA M. BARBATI, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1932

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ANGELA M. BARBATI
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Monday, September 11, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 014-19-001, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and appellant's written argument.

[2] The subject's total true value was initially assessed at $52,500. Appellant filed a decrease complaint with the BOR seeking a reduction in value to $30,000. Appellant appeared at the BOR hearing, presenting an appraisal report opining that the subject's value was $28,000 as of October 9, 2014. Appellant explained that she had filed a complaint for tax year 2014, but that her appraiser had passed away prior to the hearing and was unable to testify in support of her 2014 complaint. On August 17, 2015, the BOR issued a decision reducing the subject's value from $58,300 to $30,000 for tax year 2014. Appellant noted that the fiscal officer had assessed the value of the subject at $52,500 for tax year 2015, following a decrease of approximately 10% from the original 2014 value. Appellant argued that this reduction should be applied to the BOR's value of $30,000. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. On appeal, appellant waived the opportunity to present additional evidence but again contends that the value of the subject property should be $27,000, which is 90% of the BOR's redetermined 2014 value. The county appellees waived the opportunity to appear at a hearing before this board and have not provided any written argument in support of their position.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). An appellant must present competent and probative evidence in support of her requested reduction, and an owner is not entitled to a reduction merely because no evidence is presented against her claim. Id. The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

[4] Initially, we must reject the appraisal report for several reasons. We have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported. For that reason, the individual who developed the opinion must appear before either this board or the board of revision not only to authenticate the appraisal, but more significantly to allow the other parties and the board the opportunity to evaluate the individual's professional credentials, the methodologies utilized in developing the opinion, the data considered and relied upon, the adjustments and assumptions made, etc. In the absence of the author's testimony, we are often limited in our ability to conduct a meaningful evaluation. Compare, generally, *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd of Revision,* 130 Ohio St.3d 230, 2011-Ohio-3362; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078. See, also, *Cannata v. Cuyahoga Cty. Bd. of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094, ¶19 (holding that even without an objection to the use of the appraisal from the board of education, it was plain error to rely on an appraisal report that was rejected by the board of revision because the record did not contain the appraiser's testimony and cross-examination. In reaching this conclusion, the court described that the lack of the appraiser's testimony as "the absence of potentially material portions of the record.").

[5] This lack of testimony is particularly relevant in the present appeal because the report does not offer an opinion of value as of January 1, 2015. The Supreme Court has repeatedly held that an expert's opinion of value must be expressed "as of the tax lien date in issue. See, e.g., *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd of Revision,* 75 Ohio St.3d 552, 555 (1996) ("We emphasize that the BTA `*** may consider pre- and post-tax lien date factors that affect the true value of the taxpayer's property on the tax lien date.' *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd of Revision* (1981), 66 Ohio St.2d 398, ***, paragraph two of the syllabus. However, the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question."); *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 30 (1997) ("The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. *** The real estate market may rise, fall, or stay constant between any two dates, and the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact.").

[6] We acknowledge that the court has held that even an appraisal report that is not a reliable indication of value may be utilized by this board to independently determine value based on the data therein. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 147 Ohio St.3d 503, 2016-Ohio-1485, ¶24-25 *("Team Rentals").* In this case, however, we find that the appraisal does not contain the same level of reliability that the court determined the *Team Rentals* report possessed and cannot furnish a basis

for an independent determination of value by this board. As the court has pointed out, "[t]he validity of every comparable turns on whether, and to what extent, the sale is in fact comparable, and an appraiser must make adjustments to account for differences — including market changes over time." *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd of Revision*, 146 Ohio St.3d 412, 2016-Ohio-1506, ¶32. Without an ability to assess the reliability of the appraiser's analysis, we are unable to determine the validity of his comparables. Accordingly, we find the appraisal offered by appellant is not reliable evidence and cannot independently support a decrease in value. Appellant argues that the redetermined value for tax year 2014 should be utilized as the starting point for the 2015 update. We agree, and find that the fiscal officer's update percentage should be applied to the 2014 value as redetermined by the BOR.

[7] The court has discussed the role a redetermined value plays when an auditor has performed a countywide update. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 87 Ohio St.3d 305 (1999) (*"Inner City* "). Although the primary issue in *Inner City* was whether the BOR retained jurisdiction over the relevant tax year as a continuing complaint, the court has further clarified the effect of its holding. In *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, at ¶30, the court explained that "the only effect of the earlier complaint [is] that the update percentage must be applied to the value of the earlier year as redetermined." Thus, the proper valuation in the present case for 2015 involves the application of the update percentage to the parcel's 2014 value as redetermined. According to the August 17, 2015 decision letter, which has not been challenged in terms of admissibility or accuracy, the fiscal officer initially assessed the subject's true value at $58,300 for tax year 2014. As such, the 2015 value of $52,500 resulted from a 10% reduction during the triennial update. Applying this 10% reduction to the BOR's redetermined value for 2014 results in a new value of $27,000.

[8] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$27,000

TAXABLE VALUE

$9,450

OHIO BOARD OF TAX APPEALS

VICTORIA VALLE, (et. al.), Appellant(s), vs. LUCAS COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-650 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - VICTORIA VALLE
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MAUMEE, OH 43537

For the Appellee(s) - LUCAS COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
LUCAS COUNTY
711 ADAMS, SUITE 250
TOLEDO, OH 43604

Entered Wednesday, September 13, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 36-60174, for tax year 2016. The county appellees filed written argument raising a jurisdictional issue, which we construe as a motion to dismiss. Specifically, the county appellees contend that this board lacks the jurisdiction to consider this matter on the basis that it was not filed in compliance with R.C. 5717.01 because the appellant failed to file a copy of the notice of appeal with the board of revision ("BOR"). Appellant has not responded to the motion or submitted any documentation to dispute the county appellees' assertion that no such filing took place.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the property owner both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." see, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

In the present appeal, although the DTE Form 3 (Transcript on Appeal from County Board of Revision)

does not specifically indicate that the notice of appeal was never received by the BOR through the checking of the appropriate box, it is clear from the remaining form responses and lack of notice in the file that appellant indeed failed to file with the BOR. Upon consideration of the existing record, this matter is determined to be jurisdictionally deficient and therefore is dismissed.

OHIO BOARD OF TAX APPEALS

ALEX SCHUTZ, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-577

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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Entered Wednesday, September 13, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 684-24-004 ("3228 Berkeley"), 684-29-043 ("3403 Berkeley"), and 684-29-071 ("Desota"), for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject properties consist of two two-family residential properties (3228 Berkeley and Desota) and a single-family home (3403 Berkeley). The subjects' total true values were initially assessed at $101,400, $96,800, and $79,200, respectively. A decrease complaint was filed with the BOR seeking reductions in value to $80,000, $50,000, and $50,000, respectively. At the BOR hearing, appellant indicated that he purchased 3228 Berkeley and 3403 Berkeley at the end of 2008 or the beginning of 2009 for $54,200 and $14,300, respectively. Appellant stated that since those sales, there had been no major improvements to either property and no significant increase in area property values. Appellant also testified that he had purchased Desota in roughly 1991 and that there were some minor violations from the city at the time of the hearing due to its condition. Appellant offered lists of sales in the area that he indicated were comparable to each subject property. Appellant further discussed the potential income of each property, including asking rent, vacancy, and difficulty with collection. Appellant also asserted that many two-family homes in the area had been demolished due to their low values. The BOR issued a decision maintaining the initially assessed valuations, which led to the present appeal.

[3] At the hearing before this board, appellant again relied on the unadjusted lists of sales and testimony about difficulty collecting rents. Appellant argued that the properties' assessed values are much higher than area sale prices, and pointed to a property that was currently listed for $38,000 that had not yet sold after several months on the market. The county appellees cross-examined appellant and argued that he had not met his burden of proof, but offered no independent evidence of value.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). An appellant must present competent and probative evidence in support of his requested reduction, and an owner is not entitled to a reduction merely because no evidence is presented against his claim. Id. The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

[5] In lieu of an appraisal of the subject properties, appellant offered information that is typically utilized by appraisers, specifically information regarding sales, the properties' conditions and locations, and the subjects' income. In the absence of an appraisal which analyzes such data, however, 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. See, generally, The Appraisal of Real Estate (14th Ed. 2013). Although appellant indicated that the properties are comparable to the subjects both physically and in terms of location, it is unclear as to how they relate in terms of overall size and condition. Indeed, according to the list, the properties on the list vary in terms of room count. There is no indication how these potential differences may impact the values of each property. Moreover, the comparable sales range in date from February 2011 to December 2016. Thus, this raw sales data alone provides little utility to establish the values of the subjects as of January 1, 2015.

[6] Testimony about the condition of each subject property, including limited potential income, likewise provides no reliable basis to reduce the value of the subjects without an appraisal to translate them to an influence on value. In *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996), the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value. See, also, *Gupta v. Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397 (1997). Accordingly, in the present appeal, we find that appellant has failed to present sufficient support for his opinion of value for each•subject property, and therefore find that such opinion is not probative. *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions having found that the evidence was not probative).

[7] Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustments to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision,* 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

[8] It is therefore the order of this board that the true and taxable values of the subject properties, as of January 1, 2015, were as follows:

PARCEL NUMBER 684-24-004

TRUE VALUE

$101,400

TAXABLE VALUE

$35,490

PARCEL NUMBER 684-29-043

TRUE VALUE

$96,800

TAXABLE VALUE

$33,880

PARCEL NUMBER 684-29-071

TRUE VALUE

$79,200

TAXABLE VALUE

$27,720

OHIO BOARD OF TAX APPEALS

KATHLEEN A. BUTERA, (et. al.),

Appellant(s),

vs.

LAKE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-382

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KATHLEEN A. BUTERA
Represented by:
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For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
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Entered Wednesday, September 13, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner, Kathleen A. Butera, appeals. a decision of the board of revision ("BOR"), which denied her appeal of the auditor's denial of a partial homestead exemption pursuant to R.C. 323.152(B), commonly known as an owner-occupancy tax reduction, for the subject real property, parcel number 27-B-050-H-00-070, for tax years 1997-2014. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] Butera originally purchased the subject property as vacant land in January 1997 for construction of a single-family home. In July 1997, the house was constructed, and Butera thereafter occupied the subject as her personal residence. Although there is no record of the conveyance fee statement related to her purchase, there is no indication that she applied for an owner-occupancy tax reduction at any time during 1997. In 1998, the 122nd Ohio General Assembly passed 1998 Am.Sub.H.B. No. 177 ("HB 177"), which among other things, required auditors to notify certain owners who had recently purchased their homes and did not already receive an owner-occupancy tax reduction. Butera does not dispute that the required notice was sent to her, but does maintain that she never received one. While following up after a real property valuation decision was issued by the BOR for 2015, Butera discovered that she had not been receiving the owner-occupancy tax reduction at any time since she purchased the subject property. Butera then filed an

application for the owner-occupancy reduction for 2016 and t late application for 2015, both of which were granted by the auditor. These years were not appealed and the propriety of these reductions are not before this board. Butera did, however, appeal to the BOR seeking a reduction for tax years 1997-2014 and a credit for the excessive taxes paid for those years. We note that there is no evidence of an application for any of those tax years in the record.

[3] At the BOR hearing, Butera appeared to discuss the series,of events that led her to request credit for an owner occupancy tax reduction for every year since she initially purchased the property. Butera argued that because the General Assembly passed HB 177, the auditor was required to provide her notice that she may be eligible to apply for the tax reduction. Butera did not challenge whether the notice was in fact sent, but insisted that she and at least one of her neighbors had not received it. Butera also questioned how the county knew that construction was complete and to start assessing taxes on the residence, but failed to notify her that she was not receiving the reduction. Edward H. Zupancic, the Lake County Auditor, was present at the hearing in his capacity as a member of the BOR. Zupancic, who has held that position since the time Butera purchased the subject property, stated that following the passage of HB 177, his office mailed letters to appropriate homeowners via regular mail, but because the notices were mailed nearly 20 years ago, the county no longer had any records to confirm they were sent. Zupancic further described the process by which his office becomes aware of new construction, which includes both a review of permits and physically looking for new construction. Zupancic explained that while his office is able to ascertain when a property transfers ownership or a new home is built, the owner must return an application for the owner-occupancy tax reduction in order for the auditor's office to know if the property will be owner-occupied or rented. The BOR issued a decision denying Butera's claims for tax years 1997 through 2014, which led to the present appeal.

[4] At the hearing before this board, Butera reiterated the arguments made before the BOR and challenged some statements made in the BOR's decision letter regarding the applicability of R.C. 319.35, which discusses the correction of clerical errors in tax lists and duplicates, and R.C. 2723.01 regarding the jurisdiction of courts of common pleas in the process of enjoining and recovering illegal taxes and assessments. Butera also presented affidavits from several neighbors stating that they had never received applications for the owner-occupancy tax reduction or notice that they may qualify for such a reduction, along with late applications they filed for tax year 2015 reductions.

[5] Generally, R.C. 323.152(B) provides for a 2.5% reduction in the taxes levied on any homestead, which is any dwelling "owned and occupied as a home by an individual whose domicile is in this state and who has not acquired ownership from a person, other than the individual's spouse, related by consanguinity or affinity for the purpose of qualifying for the real property tax reduction provided in section 323.152 of the Revised Code." R.C. 323.151(A)(1). In order to obtain this tax reduction, an owner is required to affirmatively file an application with the appropriate county auditor, and may also submit a late application for the preceding year. R.C. 323.153(A)(2). If the late application is granted, the amount of the resulting reduction is treated as an overpayment of taxes and refunded to the owner. R.C. 323.153(B). Once an application for reduction has been approved, it serves as prima-facie evidence that the applicant is entitled to the reduction in taxes calculated on the basis for the information contained in the original application unless a new application is filed or the owner provides notification that it no longer qualifies for the reduction. R.C. 323.153(A)(3). Also relevant to the present appeal, when property transfers during the preceding year and received an owner-occupied tax reduction for the preceding year, county auditors are required to furnish an original application to the new owner. R.C. 323.153(C)(5). This provision continues to provide, however, that if the application is not timely filed, the reduction shall not be granted and the auditor shall notify as much to the owner. Id. Furthermore, "[fjailure of an owner to receive an application does not excuse the failure of the owner to file an original application." Id. We note that this provision was present in R.C. 323.153(C) at the time Butera purchased her property and following the enactment of HB 177.

[6] Initially, we find that the BOR did not have jurisdiction to consider Butera's request for the years before tax year 2015. As an administrative agency, a board of revision may only perform those functions expressly authorized by statute, and Butera must show that this matter is properly before the BOR. See *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147 (1997), paragraph one of the syllabus ("where a statute confers the right to appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the rights conferred"). R.C. 323.154 provides that a denial by an auditor of an application for owner-occupancy tax reduction may be appealed to the county board of revision and "shall be treated in the same manner as a complaint relating to the valuation or assessment of real property under Chapter 5715. of the Revised Code." Consequently, the filing of an application and subsequent denial by the auditor are requisites to invoke the BOR's jurisdiction under R.C. 323.154. Although there is no challenge to whether Butera filed a late application for tax year 2015 and an application for 2016, the record does not disclose any request for prior years. Likewise, the record does not include any indication that such an application was denied by the auditor, which is required to make a proper appeal to the BOR. Thus, we must find that Butera failed to properly invoke the jurisdiction of the BOR in this matter over tax years 1997-2014.

[7][Even if we were to consider the substantive basis for Butera's appeal, however, we would find that she has failed to demonstrate a right to her requested relief. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in valuerequested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). The crux of Butera's argument is that she should be excused from the requirement to affirmatively request the owner-occupancy tax reduction because she was not aware that she had a right to the reduction, in part because she did not receive a required notification from the auditor. We must reject this argument for two reasons.

[8] First, the auditor is presumed to have acted consisted with those duties imposed upon him. 'The rule is generally accepted that, in the absence of evidence to the contrary, public officers, administrative officers and public boards, within the limits of the jurisdiction conferred by law, will be presumed to have properly performed their duties and not to have acted illegally but regularly and in a lawful manner. All legal intendments are in favor of the administrative action.' *State, ex rel. Shafer, v. Ohio Turnpike Comm. [,* 159 Ohio St. 581, 590 (1953); *Bloch v. Glander[,* 151 Ohio St. 381, (1949)]; *State, ex rel. Gerspacher, v. Coffinberry[,* 157 Ohio St. 32 (1952)]; *Wheeling Steel Corp. v. Evatt[,* 143 Ohio St. 71 (1944)]." *Cedar Bay Constr., Inc. v. Fremont,* 50 Ohio St. 3d 19, 21 (1990). In the present appeal, Butera has provided no evidence to show that the auditor did not act consistent with law. To the contrary, while we do not have any documentary evidence due to the passage of time, we have statements from the auditor that he did act consistent with the law. Accordingly, we find that Butera failed to show that the auditor did not meet his statutory obligations.

[9] Second, regardless of whether the auditor had sent an application for reduction to Butera's home rather than her tax mailing address, R.C. 323.153 is clear that failure on the part of the auditor to do so is not an excuse for the owner's failure to properly file an application. Additionally, there is nothing in HB 177 that provides for the contrary. The language that requires an affirmative application and rejects the argument an owner may be excused from filing remained intact even after HB 177's passage. Moreover, R.C. 323.153 includes a process for filing a late application and permits the late filing for only one tax year. Therefore, Butera had a duty to file an affirmative application for the reduction notwithstanding any actions the auditor may or may not have taken. Her failure to do so prior to 2016 cannot now be remedied by retroactively granting her reduction and reimbursement of taxes already paid during those years.

[10] Furthermore, we note that since the passage of HB 177, R.C. 323.131 has required that all tax bills include a notice that "`[i]f the taxes charged against this parcel have not been reduced by the 2-1/2 per cent tax reduction and the parcel includes a residence occupied by the owner, the parcel may qualify for the tax reduction. To obtain an application for the tax reduction or further information, the owner may contact the county auditor's office at (insert the address and telephone number of the county auditor's office)." R.C. 323.131(C)(2). Butera has provided no evidence that this notice was not provided on the tax bills sent for all relevant tax years or that the tax bills were not properly sent to the tax mailing address on file with

the county.Finally, we note that both R.C. 2723.01 and any discussion of whether Butera's request would be a clerical error or fundamental change are irrelevant. As noted by Butera at this board's hearing, R.C. 2723.01 references the jurisdiction of courts of common pleas and is not applicable to proceedings before this board. Additionally, the granting of an owner-occupancy tax reduction is not a change to the property's value and would, therefore, be neither a clerical nor fundamental change to the subject's property record card. Thus, discussion of these issues is inapplicable and unnecessary to resolve this matter. The primary consideration is Butera's failure to file an application for the relevant tax years.

[11] Accordingly, we find that Butera has failed to show that the subject property should qualify for the partial homestead exemption pursuant to R.C. 323.152(B) for tax years 1997 through 2014 and hereby affirm the BOR's decision to deny her request for those tax years.

OHIO BOARD OF TAX APPEALS

RANDY ZELENITZ, (et. al.),

Appellant(s),

vs.

BELMONT COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2391

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RANDY ZELENITZ
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For the Appellee(s) - BELMONT COUNTY BOARD OF REVISION
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Entered Wednesday, September 13, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Randy D. Zelenitz, appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 56-00246.000, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties. Zelenitz attached some documents to his notice of appeal that do not appear in the transcript certified by the BOR. Because these were not properly submitted and accepted during our own proceedings, we will not consider them in our analysis. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13 (1996).

The subject property consists of roughly 0.567 acres of land improved with a commercial building, with four units to the rear that Zelenitz rents to other individuals. On the property record card, these units are identified as three mobile homes, which were added for tax year 2013, and a cabin whose value was first included in the value for tax year 2014. Zelenitz does not challenge the value attributable to the land or commercial building. Instead, he essentially argues that these units cannot be taxed as real property because they are recreational vehicles ("RV") and, therefore, personal property. The county appellees contend that based on their current use, none of the units meets the definition of RV set forth in R.C. 4501.01(Q). As such, the county appellees maintain that all four units should be included in the value of the subject real property.

The total true value for the subject property was initially assessed at $181,740, which includes the value of the four units behind the commercial structure. Although the full value of all four units is attributed to the subject parcel, it appears that two of the units are situated on an adjacent parcel also owned by Zelenitz, but

not subject to the underlying complaint or the instant appeal (parcel number 56-00245.000). Zelenitz filed a decrease complaint with the BOR seeking a reduction in value to $150,170. At the BOR hearing, Zelenitz appeared and asserted that four rental units are park trailers or park model homes, which are considered RVs. Zelenitz stated that the units are connected to water service through a hose and to electric service by a plug, and that they were certified by the RVIA (Recreational Vehicle Industry Association). Zelenitz acknowledged, however, that they are occupied as domiciles and had been in their current location for 2.5 to 3 years. The BOR explained that a certification as an RV may not dictate whether they are subject to real property tax, because such determinations were based on Ohio tax law. The BOR indicated that it would do additional research on the issue, and during deliberations determined that the units did not qualify as RVs. There was some discussion during the hearing about the concrete improving the property and whether the units were connected to sewer service. The BOR then issued a decision maintaining the initially assessed valuation, which led to the present appeal.

The owner of a manufactured or mobile home situated in the State of Ohio is required to pay either manufactured home tax or real property tax for that home. R.C. 4503.06. In this case, the four units at issue are taxed as real property, but Zelenitz argues that they are RVs and therefore not subject to any tax under R.C. 4503.06. As such, we must first ascertain whether the units qualify as mobile or manufactured homes under Ohio law. If we find that they are mobile or manufactured homes, then we can consider the appropriate type of taxation.

Zelenitz maintains that because the units are park trailers, they are fit within the definition of RV and are vehicles rather than mobile homes. Both Zelenitz and the county appellees focus on the definition in R.C. 4501.01(Q), which defines "recreational vehicle" and "park trailer," specifically. The county appellees emphasize the units' current use, while Zelenitz concentrates on the purpose for which they were built. As we look to R.C. 4503.06, which regulates the tax on manufactured or mobile homes, it is clear that even if the four units at issue meet the definition of an RV or park trailer, this does not prohibit their treatment as mobile homes (or as real property). "A travel trailer or park trailer, as these terms are defined in section 4501.01 of the Revised Code, is subject to this section and shall be taxed as a manufactured or mobile home if it has a situs longer than thirty days in one location and is connected to existing utilities," unless the situs is in a state facility or one of several types of camping or park areas. R.C. 4503.06(E)(3). In the present appeal, Zelenitz has acknowledged that the four subject units have been situated on the subject property for longer than thirty days, that they benefit from water and electrical service, and that he has not filed for any special treatment, i.e., as a camping area, for the portion of the subject property on which they are located. Accordingly, we find that the four units at issue qualify as manufactured or mobile homes and are, therefore, subject to taxation as such.

We now must decide whether these mobile homes may be taxed as real property under Revised Code Title 57 or if they should be assessed as manufactured or mobile homes pursuant to R.C. 4503.06. R.C. 5701.02(A) provides that for purposes of ad valorem taxation, in addition to the land itself, "real property" includes "all buildings, structures, improvements, and fixtures of whatever kind on the land, and all rights and privileges belonging or appertaining thereto." In order for a manufactured home, mobile home, travel trailer, or park trailer, to be taxed as real property, it must meet the definition of a "manufactured or mobile home building" set forth in R.C. 5701.02(B)(2). Id. A "manufactured or mobile home building" essentially must meet for requirements. First, it must be a mobile home as defined by R.C. 4501.01(0) or R.C. 3781.06(C)(4). Second, the mobile home must be affixed to a "permanent foundation." Third, the mobile home must be located on land owned by the owner of the home. Finally, the certificate of title for the home must have been inactivated by the clerk of the court of common pleas. Consequently, the value attributable to a park trailer is included in the value of real property if it meets these four elements.

As we review these four elements, we first consider R.C. 45.01.01(0) for the definition of "mobile home," which is "a building unit or assembly of closed construction that is fabricated in an off-site facility, is more than thirty-

five body feet in length or, when erected on site, is three hundred twenty or more square feet, is built on a permanent chassis, is transportable in one or more sections." According to the property record cards certified by the BOR, the area of each unit is "360" (presumably square feet), and there is no dispute that the remaining conditions are present in these four units and park trailers, generally. Thus, based on the information in our record, we find that the four units meet the definition of "mobile home" for purposes of R.C. 5701.02(B)(2).

Next, looking at two related elements, the units must be affixed to a permanent foundation on land owned by the owner of the homes. There is no question that Zelenitz owns both the mobile homes and the land, but it is unclear if the homes are affixed to a "permanent foundation." See R.C. 3781.06(C)(5) ("Permanent foundation' means permanent masonry, concrete, or a footing or foundation approved by the manufactured homes commission pursuant to Chapter 4781. of the Revised Code, to which a manufactured or mobile home may be affixed"). Accordingly, we must remand this matter to the BOR to determine whether the subject units satisfy this requirement.

The fourth and final element is that the certificate of title for the home must have been inactivated by the clerk of the court of common pleas. Whether or not this has yet been done, this element is effectively satisfied when a mobile home has met the other conditions. When a mobile or manufactured home meets the other criteria (provided there is no outstanding lien against the home), an owner must surrender the certificate of title to the auditor within fifteen days, and the auditor must deliver the certificate of title to the clerk of the court of common pleas who issued it. R.C. 4505.11(H)(1). The clerk will then inactivate the certificate of title and maintain it in the automated title processing system for. thirty years. R.C. 4505.11(H)(3). Thus, if the BOR finds that the four units are affixed to permanent foundations, they will have met the remaining conditions, and Zelenitz is required to surrender the certificates of title. Once those certificates of title are inactivated by the clerk, this condition will have been met.

There is one additional aspect of the present appeal that must be reviewed on remand to the BOR. As previously noted, it appears that only two of the units are located on the subject parcel, while the remaining two units are situated on an adjacent parcel also owned by Zelenitz. The value of that parcel, however, was not before the BOR and is not before this board. On remand, if the BOR concludes that the units are affixed to a permanent foundation, the BOR must further verify that only those units located on the subject property are included in its value. If any of the units are not situated on the subject property, then the BOR must reduce its value to remove the value attributable to those units. See *Pennock v. Washington Cty. Bd. of Revision* (Feb. 28, 2013), BTA No. 2011-Q-1799, unreported; *Am. Care Centers, Inc. v. Franklin Cty. Bd. of Revision,* 10th Dist. Franklin No. 88AP-669, 1989 Ohio App. LEXIS 1018 (Mar. 23, 1989).

It is, therefore, the order of this board that this matter is hereby remanded to the BOR to determine if the units are affixed to permanent foundations on the subject property. If the answer to this question is to the negative, then the value of the units should be removed from the value of the real property and they should be taxed as mobile or manufactured homes. If the answer is to the affirmative, then those units are properly included in the value of the real property for the parcel upon which they are located. The BOR should then clarify whether each of the units is situated on the subject parcel. If a unit is not located on the subject, then the BOR must remove the value of those units which do not improve the subject property.

OHIO BOARD OF TAX APPEALS

ICON OWNER POOL 3 MIDWEST/SOUTHEAST, LLC, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1372

(REAL PROPERTY TAX)

DECISION AND ORDER

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Entered Wednesday, September 13, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Icon Owner Pool 3 Midwest/Southeast, LLC ("Icon"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 430-242628-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the parties' written argument.

The subject property is a single occupant distribution warehouse, and its total true value was initially assessed at $3,100,000. The appellee board of education ("BOE") filed an increase complaint with the BOR seeking an adjustment in value to $5,745,100. At the BOR hearing, the BOE provided evidence of a

March 2015 transfer of the subject property for $5,745,053, arguing that the sale price provides the best indication of the value of the subject property as of the tax lien date. Icon did not challenge either the

recency or arm's-length nature of the sale, but argued that the BOR should nonetheless disregard the sale because it was a leased-fee transaction. Instead, Icon maintained that the BOR should rely on the conclusions reached by appraiser Robert J. Vodinelic, MAI, who appeared to testify in support of his written report and conclusion that the value of the property was $3,450,000 as of January 1, 2015. The BOE objected to the BOR's consideration of any testimony or documents included in the report intended to rebut the utility of the sale because no testimony was offered from an individual with personal knowledge of the transaction. The BOR issued a decision increasing the initially assessed valuation to $5,745,100, which led to the present appeal. On appeal, Icon argues that the BOR's decision should be reversed because by adopting the sale price, the BOR failed to value the unencumbered fee simple interest of the property. The BOE again maintained that the sale was the best evidence of value for purposes of ad valorem taxation.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997). Additionally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present matter, it is undisputed that Icon purchased the subject property from BRE/DP OH LLC on March 17, 2015 for $5,745,053. As the party opposing the sale, Icon has the burden to show why the reported sale price is not a reliable indication of the subject's true value. Icon does not dispute that this was a recent arm's-length transaction, but instead argues that the purchase price is not a reliable indication of value because it was a "leased-fee" sale, and that amended R.C. 5713.03 prohibits reliance upon the transaction. We disagree.

Icon argues that due to amended language in R.C. 5713.03, the sale cannot be used to value the property because it purchased a leased fee interest. Initially, we note that the record does not show that the property was subject to a lease at the time of the transfer. Vodinelic's report reflects that the property was vacant as of January 1, 2015 and was not occupied until October 2015, albeit during a period where the tenant did not pay rent. Thus, there is no indication that the March 2015 transaction was a "leased fee" sale, which is the basis for Icon's argument to disregard it. Additionally, even if the board were to find the property transferred subject to a lease and was therefore the subject of a "leased fee transaction," we would likewise reject this argument. While the court has held that taxing authorities may consider non-sale-price evidence, including the effect of a lease encumbering the property at the time of the sale, the burden remains on the opponent of the sale to show that the price did not reflect the'property's true value because of such a lease. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. No such evidence has been offered in this case. Accordingly, we find that there is nothing in the record to show that a lease impacted the sale price or that such conditions, even if they were present, would negate the utility of the sale price to establish the subject's value.

Finally, we need not address the reliability of Vodinelic's appraisal and his value conclusions because once

evidence of a qualifying sale has been presented, "[i]t is only when the purchase price does not reflect the true value that a review of independent appraisals based upon other factors is appropriate." *Pingue v. Franklin Cty. Bd. of Revision*, 87 Ohio St.3d 62, 64 (1999).

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$5,745,050

TAXABLE VALUE

$2,010,770

OHIO BOARD OF TAX APPEALS

BEAVERCREEK CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1278, 2017-203
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
GREENE COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

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Entered Wednesday, September 13, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education ("BOE") appeals three decisions of the Greene County Board of Revision ("Greene BOR"), which determined the value of subject parcel numbers B42-0002-0003-0-0129-00, B42-0002-0003-

0-0133-00, and B42-0002-0005-0-0001-00 for tax year 2015. The property owner, Walnut Grove Country Club Inc. ("Walnut Grove"), appeals a decision of the Montgomery County Board of

Revision ("Montgomery BOR"), which determined the value of subject parcel number 139401506 0046 for tax year 2015. These matters are now considered upon the notices of appeal, the transcripts certified by the boards of revision pursuant to R.C. 5717.01, and the record of the hearing before this board. It appears that there was evidence presented by Walnut Grove and discussed at the hearings before each board of revision that was not included in the record, such as a number of photographs of the subject property offered during the Greene County BOR hearing. To the extent that it is not in the record, we are unable to consider this evidence. Walnut Grove, however, had the opportunity to supplement the record during the hearing before this board, at which time it submitted a number of photographs.

The subject property consists of a private golf course and country club that spans two different counties. The clubhouse and pool are located in Montgomery County, while the course, pro shop, and a vacant single-family home are located in Greene County. The subject's total true value was initially assessed at $2,296,250, with $1,780,580 attributed to the portion in Greene County ($259,490, $142,060, and $1,379,030, respectively, to the individual parcels) and $515,670 attributed to the Montgomery County portion. Walnut Grove filed a decrease complaint with the Greene BOR seeking a reduction in value to $845,000 for those parcels, and another with the Montgomery BOR seeking a reduction in value to $250,000 for that parcel. The BOE filed countercomplaints in both counties in support of the initially-assessed values. Both boards of revision convened hearings, at which Jeff Reichard, Walnut Grove president, appeared to present testimony and evidence in support of the requested reductions. At both hearings, Walnut Grove relied on the testimony and opinion of value from Joseph P. Steuer. Steuer acknowledged that he was not an appraiser and had no ownership interest in the subject property, but was a realtor and had experience performing appraisals for various purposes. Steuer conceded that he had agreed to accept a contingency fee in this case because he had no prior experience valuing a golf course. Steuer first described negative market conditions for golf courses in the area, indicating that several had closed and membership was down. Steuer then expressed an opinion of value based on the sales comparison approach to value, essentially attempting to break down each parcel into its individual components to conclude to an indicated value. Although Steuer provided a packet of information that provided the basis for his opinions, any adjustments to the comparable sales were discussed during the relevant hearing and not included in any written form. Walnut Grove also offered a financing appraisal for the entire golf course that opined its value was $1,000,000 as of September 14, 2012, though the author of the report did not appear at either hearing.

The BOE objected to the September 2012 appraisal, noting that the appraiser was not present and that it did not opine a value as of the tax lien date. The BOE also challenged Steuer's credibility, challenging his ability to opine value as an expert witness and highlighting that he was not a disinterested witness due to the contingency fee arrangement. The BOE also objected to the comparable sales provided by Steuer as being unreliable hearsay because he did not have any person'al knowledge of those transactions. Following the hearings, both boards of revision rejected Steuer's valuation and the September 2012 appraisal as evidence of value. The Montgomery BOR issued a decision retaining the initially assessed value for the Montgomery County parcel. The Greene BOR, however, voted to reduce the overall value of the property. Specifically, based on the photographs and description given during the hearing, the Greene BOR changed the condition associated with the single family home from "fair" to "very poor," which resulted in a reduced value of $180,410 for parcel number B42-0002-0003-0-0129-00. The Greene BOR also considered the value of the property attributable to the course itself, which it attributed to the two remaining parcels. According to its decision letter, the Greene BOR focused on its independent knowledge of a course that had gone out of business and was listed "in the $1 million range including all of the private golf course amenities," and a value reduction it granted to a public golf course. Based on this information, the BOR issued a decision reducing the initially assessed valuation of parcel numbers B42-0002-0003-0-0133-00 and B42-0002-0005-0-0001-00 to $1,000,000. These decisions led to the present appeals, with Walnut Grove appealing Montgomery BOR's decision to retain value and the BOE appealing Greene BOR's decisions to reduce value.

This board convened a hearing, at which Walnut Grove again relied on testimony from Reichard and

Steuer, along with photographs of the subject property and others that Steuer believed were comparable to the subject. The BOE did not present any independent evidence of value, relying on cross-examination and legal argument. The BOE again argued that the evidence relied upon by Walnut Grove was insufficient to establish a basis for an adjustment to the assessed value. The BOE further argued that the auditor's value should be reinstated for the Greene County parcels, emphasizing that the Greene BOR expressly rejected Walnut Grove's evidence and instead based its decision on information that was not presented during the BOR hearing. The BOE maintains that because it did not have the opportunity to view or ask questions about the evidence relied upon by the Greene BOR to reach its decision, the reduction should be reversed. The BOE also requested an opportunity to file written argument following the hearing, but none was filed by any party.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). While valuation determinations made by county boards of revision are not presumptively correct, see, e.g., *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, under certain circumstances, when the BOR adopts a new value based on the owner's evidence, it has the effect of "shifting the burden of going forward with evidence to the board of education on appeal to the BTA ***." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 193, 2013-Ohio-4543, ¶16. This is commonly referred to as the to the *"Bedford* rule," based on the court's decision in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 115 Ohio St.3d 449, 2007-Ohio-5237. The court has defined the parameters of the *Bedford* rule, and it is clear that the present appeals do not fall within those boundaries precisely because both boards of revision expressly rejected the owner's evidence. See *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶9. ("[T]he *Bedford* rule applies when the board of revision has ordered a reduced valuation based on competent evidence offered by the property owner.").

As such, the present appeal falls within another subset of cases where parties appeal a board of revision reduction based on its own evidence, and this board must independently consider the probative value of this evidence. "As the BOE asserts, our case law has repeatedly instructed the BTA to eschew a presumption of the validity of the BOR's value and instead to perform its own independent weighing of the evidence in the record. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 147 Ohio St.3d 409, 2016-Ohio-7381, ¶15, 22; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, *** ¶13, citing *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 128 Ohio St.3d 565, 2011-Ohio-2258, *** ¶17, citing *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 *** (1996)." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-5823, ¶7. The court recognized that a board of revision may consult additional evidence beyond that presented by the owner at its hearing. Id. at ¶9. If a decision based on such evidence is appealed, however, the board of revision "can be called upon to account for the manner in which it determined the reduced value," and this board "should consider all the evidence and decide what weight to accord it." Id. Therefore, this board will weigh all available evidence to independently determine value.

We first review the appraisal evidence offered by Walnut Grove for its probative value, and agree with both boards of revision that it is not reliable evidence. Although the "best evidence" of a property's value for tax purposes is considered the price at which it transfers between unrelated parties near the tax lien date, the Supreme Court has pointed out that "such information is• not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964). In this case, Walnut Grove has presented two different types of appraisal evidence — the September 2012 financing appraisal and Steuer's analysis — and we find that neither constitutes sufficient evidence to support a reduction in the subject's value.

We have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the

appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported. For that reason, the individual who developed the opinion generally must appear before either this board or the board of revision not only to authenticate the appraisal, but more significantly to allow the other parties and the board the opportunity to evaluate the individual's professional credentials, the methodologies utilized in developing the opinion, the data considered and relied upon, the adjustments and assumptions made, etc. In the absence of the author's testimony, we are often limited in our ability to conduct a meaningful evaluation. Compare, generally, *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 130 Ohio St.3d 230, 2011-Ohio-3362; *Vandalia-Butler,* supra. See, also, *Cannata v. Cuyahoga Cty. Rd of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094 (holding that even without an objection to the use of the appraisal from the board of education, it was plain error to rely on an appraisal report that was rejected by the board of revision because the record did not contain the appraiser's testimony and cross-examination. In reaching this conclusion, the court described that the lack of the appraiser's testimony as "the absence of potentially material portions of the record.").

The lack of testimony about the September 2012 financing appraisal is particularly relevant in the present appeal because the report does not offer an opinion of value as of January 1, 2015. The Supreme Court has repeatedly held that an expert's opinion of value must be expressed "as of the tax lien date in issue. See, e.g., *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd of Revision,* 75 Ohio St.3d 552, 555 (1996) ("We emphasize that the BTA `*** may consider pre- and post-tax lien date factors that affect the true value of the taxpayer's property on the tax lien date.' *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398, ***, paragraph two of the syllabus. However, the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question."); *Freshwater v. Belmont Cty. Rd of Revision,* 80 Ohio St.3d 26, 30 (1997) ("The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. *** The real estate market may rise, fall, or stay constant between any two dates, and the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact."). We acknowledge that the court has held that even an appraisal report that is not a reliable indication of value may be utilized by this board to independently determine value based on the data therein. See *Copley-Fairlawn City School Dist. Rd of Edn. v. Summit Cty. Rd of Revision,* 147 Ohio St.3d 503, 2016-Ohio-1485, ¶24-25. In this case, however, we find that the September 2012 financing appraisal does not contain an adequate level of reliability furnish a basis for an independent determination of value by this board. See, e.g., *Westerville City Schools Rd of Edn. v. Franklin Cty. Bd of Revision,* 146 Ohio St.3d 412, 2016-Ohio-1506, ¶32 ("The validity of every comparable turns on whether, and to what extent, the sale is in fact comparable, and an appraiser must make adjustments to account for differences —including market changes over time.").

Again emphasizing the importance of the basic competence, skill, and ability demonstrated by the appraiser, we likewise find that Steuer's valuation is not prObative evidence of value for several reasons. We recognize that a variety of professionals may provide valuation services, but these professionals are not necessarily competent to perform appraisals or be qualified as an expert for ad valorem tax proceedings. These real estate professionals "have training in their field but may or may not have extensive appraisal experience. They are generally familiar with properties in a given locale and have access to market information. They frequently use sales and other market information for property comparison purposes in pricing. Some may develop appraisal expertise. As a group, real estate salespeople evaluate specific properties, but they typically do not consider all the factors that professional appraisers do." The Appraisal of Real Estate (13th Ed. 2008) 8. Even if we ignore Steuer's lack of an appraisal certification, we find that his methodologies and analysis do not lead to a reliable result.

Steuer's acceptance of a contingency fee based on the outcome of the underlying complaint and the instant appeals raises questions about whether the data upon which he relied will lead to a neutral result. See *Witt Co. v Hamilton Cty. Rd of Revision,* 61 Ohio St.3d 155 (1991); *Choice One Communications of Ohio, Inc. v. Wilkins* (June 9, 2006), BTA Nos. 2003-K-1461, 2004-K-409, unreported. Moreover, Steuer stated that he agreed to this fee arrangement due to a lack of experience valuing this type of property. As such, not

only does Steuer have a personal financial interest in expressing an opinion of value that is as low as possible, he also cited to his own lack of experience valuing golf courses as the reason he questioned his ability to accurately appraise the value of the subject property. Without sufficient confidence in the lack of bias or the expertise of the individual who chose the sales relied upon by Walnut Grove and the propriety of any necessary adjustments, we find that those sales cannot provide the basis for an independent valuation.

Having rejected the appraisal evidence offered by Walnut Grove, we now turn to that information utilized by Greene BOR and discussed in its decision letter. We first find that there is sufficient evidence to support the reduction granted by Greene BOR for parcel number B42-002-0003-0-0129-00 based on the owners' evidence which resulted in a change in condition, and, therefore, retain the adjusted value. With respect to parcel numbers B42-0002-0003-0-0133-00 and B42-0002-0005-0-0001-00, Greene BOR indicated that it relied on the property listing of a golf course that was no longer in operation and its decision for another public golf course. None of the supporting documentation for this evidence was provided in our record. Even if it had been, however, we would not find it sufficient to allow this board to determine a specific value. For instance, the listing of a property does not constitute the sale of a property and does not constitute credible evidence upon which this board may rely to reduce the value of the property. See *Kaiser v. Franklin Cty. Aud.*, 10th Dist. Franklin No. 10AP-909, 2012-Ohio-820, ¶12 ("a listing price, in essence an aspirational selling price, is not conclusively probative of what a willing buyer would pay for the property in an arm's-length transaction, and is therefore not conclusively probative of actual market value."). Furthermore, we have no information about the similarities or differences among the properties, let alone an expert opinion as to which adjustments are necessary, particularly where the comparable is no longer being used and the subject property is a fully functional private country club and golf course receiving regular maintenance and use. In the absence of an appraisal which analyzes such data, we are 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. See, generally, The Appraisal of Real Estate (14th Ed.2013).

Finally, we find that Greene BOR's valuation decision for another property is not evidence of value for the subject. We have no way to know the evidence upon which the board of revision relied for that decision, the similarity or differences between that property and the subject, or whether that decision was even proper. See *Benedict v. Bd. of Revision,* 170 Ohio St. 62, 63 (1959) ("It is to be borne in mind that the determination of the true value of each parcel of real estate, with the improvements placed on it, is a separate undertaking and does not wholly depend on values accorded other parcels in the same vicinity. A particular parcel, because of its location and the improvements thereon, may properly be given a higher value than other parcels in the same neighborhood, without discrimination resulting. After all, true value of the particular property is the controlling consideration, and this is a question of fact primarily within the province of the taxing authorities." See, also, *Meyer v. Cuyahoga Cty. Bd. of Revision,* 58 Ohio St.2d 328, 335 (1979); *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996) ("Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner.").

For the above-discussed reasons, except for Greene County parcel number B42-002-0003-0-0129-00, we find that the record lacks any probative evidence of value and that nothing in the record affirmatively negates the auditor's valuation. Furthermore, we find that the Greene BOR's value for parcel numbers B42-0002-0003-0-0133-00 and B42-0002-0005-0-0001-00 was not supported, and that there is no competent and probative evidence in the record for this board to independently determine value for these parcels or the Montgomery County parcel, other than that .first determined by the auditor. Under these circumstances, this board may properly reinstate the auditor's values. See *S.-W. City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 14AP-729, 2015-Ohio-1780, ¶32; *Sapina v. Cuyahoga Cty. Bd. of Revision,* 136 Ohio St.3d 188, 2013-Ohio-3028, ¶35 ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it. This court has emphatically held that the

BTA's independent duty to weigh evidence precludes a presumption of validity of the BOR's valuation."); *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 147 Ohio St.3d 406,

2016-Ohio-7381, ¶20 (where the record does not contain sufficient evidence to perform an independent valuation of the property, the auditor's value may ordinarily be reinstated, even if the auditor's valuation has been negated). Thus, based upon our independent review of the evidence in the record, we find that the true value of Greene County parcel numbers B42-0002-0003-0-0133-00 and B42-0002-0005-0-0001-00 and the Montgomery County parcel is best reflected by the value initially determined by the auditor.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

GREENE COUNTY

PARCEL NUMBER B42-0002-0003-0-0129-00

TRUE VALUE: $180,410

TAXABLE VALUE: $63,140

PARCEL NUMBER B42-0002-0003-0-0133-00

TRUE VALUE: $142,060

TAXABLE VALUE: $49,720

PARCEL NUMBER B42-0002-0005-0-0001-00

TRUE VALUE: $1,379,030

TAXABLE VALUE: $482,660

MONTGOMERY COUNTY

PARCEL NUMBER 139401506 0046

TRUE VALUE: $515,670

TAXABLE VALUE: $180,480

OHIO BOARD OF TAX APPEALS

THE KROGER COMPANY, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2357

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Thursday, September 14, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, The Kroger Company ("Kroger"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 612-0141-0024-00, 612-0141-0035-00, 612-0141-0044-00, 612-0180-0047-00, and 612-0180-0049-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the parties' written argument.

The subject property consists of five parcels, though whether the BOR properly exercised jurisdiction over two of these parcels (612-0180-0047-00 and 612-0180-0049-00) is at issue in the present appeal. The total

true value of the five parcels appealed to this board was initially assessed at $4,916,170. The appellee board of education ("BOE") filed a complaint with the BOR seeking an increase to a total true value of

$9,300,000, noting on line 10 of the complaint that the subject property sold on March 27, 2015 for that amount. Kroger did not file a countercomplaint, but did file a motion to dismiss the complaint just prior to the BOR hearing. Kroger noted that the complaint misidentified two of the parcels, listing parcel numbers 612-0180-0047-00 and 612-0180-0049-00 as 612-0141-0047-00 and 612-0141-0049-00, neither of which are owned by Kroger. Kroger argued that this error went to the core of procedural efficiency, and the complaint was, therefore, jurisdictionally deficient. Kroger maintained that not only was the complaint invalid on its face, but also that the error prevented the BOR from sending proper notice to the owners of the non-Kroger parcels. In response, the BOE acknowledged the inaccuracy, but asserted it was a typographical error and did not prohibit the BOR from considering the value of the correct parcels, i.e., those owned by Kroger and subject to the sale referenced on the complaint and evidenced by the conveyance fee statement attached to the complaint. At the BOR hearing, the parties discussed the merits of Kroger's motion, in addition to the merits of the BOE's increase complaint. Kroger did not dispute that the 2015 sale was a recent arm's-length transaction. The BOR retained jurisdiction over the three parcels that were properly identified and corrected the error as to the two disputed parcels, issuing decisions increasing the total value of the five parcels, i.e., parcel numbers 612-0141-0024-00, 612-0141-0035-00, 612-0141-0044-00, 612-0180-0047-00, and 612-0180-0049-00, to $9,300,000. From these decisions, Kroger filed the present appeal.

On appeal, Kroger has reiterated its jurisdictional arguments, requesting that the matter be remanded to the BOR with instructions to dismiss the complaint. Kroger maintains that the BOE's complaint was jurisdictionally deficient on its face because it failed to list the address of the parcels and failed to list the increase in value sought on each parcel. Kroger contends that jurisdiction must be determined on the face of the complaint, and that the BOE's complaint did not allow the BOR to send proper notice to the owner. The BOE reiterates its contention that the error on the complaint was a "simple typo," and argues that the complaint was adequate to ensure that Kroger received actual notice and clearly communicated its intentions. The BOE further asserts that it was not required to list a separate requested value for each parcel because it clearly specified that the requested value applied to all five parcels. Neither party made any legal arguments related to the substance of the BOR's decision or discussed the reliability of the sale.

At the outset, we deny Kroger's request to remand the matter to the BOR with instructions to dismiss the complaint, which incorporates two distinct jurisdictional arguments. Kroger first argued that the BOE's complaint was deficient because it listed two incorrect parcel numbers. At the BOR hearing, counsel for Kroger conceded that these were likely typographical errors,,but that the error nonetheless ran to the core of procedural efficiency and prevented the BOR from exercising jurisdiction over the complaint. Certain requirements on the complaint form have been held to run to the core of procedural efficiency and are jurisdictional. See *Cleveland Elec. Ilium. Co. v. Lake Cty. Bd. of Revision*, 80 Ohio St.3d 591 (1998). A typographical error in a listed parcel number, however, is not fatal where the complaint contains "enough information to sufficiently identify the property at issue so the auditor can fulfill the statutory notice obligations." *Hilltop Commons, L.L.C. v. Mingo*, 10th Dist. Franklin No. 11AP-1089, 2012-Ohio-5661, ¶24. In the present appeal, the BOE listed five parcel numbers on line six of the complaint but only one address. The BOE likewise listed only Kroger as the owner of the subject property, noted the property had been sold in March 2015 for $9,300,000, and indicated that the value requested was $9,300,000 for all five parcels. Furthermore, the BOE attached the conveyance fee statement to the complaint that reflects the sale of the correct parcel numbers. Contrary to Kroger's assertion, we find that the complaint sufficiently identified the subject property, as evidenced by the BOR's notification to Kroger. Whether the BOR provided accurate notice to Kroger regarding the address of the property at issue does not affect the ability of the BOR to consider the BOE's complaint. *Knickerbocker Properties, Inc. XLII v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192, ¶12 ("Perhaps most significant is the fact that the statutes do not place the burden of providing proper notice to the property owner on the complainant. R.C. 5715.19(B) explicitly requires the auditor, not the complainant, to give notice of the filing of a complaint in particular situations."). Accordingly, we find that the BOE's typographical error was not jurisdictional.

Kroger further argued that the BOE's complaint did not vest the BOR's jurisdiction because it did not list a

requested increase in value for each parcel on the complaint. We agree with Kroger that a complainant's requirement to state the amount of value at issue runs to the core of procedural efficiency and is jurisdictional. See *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. We disagree with Kroger, however, that the BOE failed to fulfill this requirement. Notably, Kroger has provided no statutory or case law that suggests a complaint must list specific reduction requests for each parcel at issue. In this case, the BOE clearly indicated that its requested increase applied to all five parcels and included the total change in taxable value that would result from the requested value adjustment. We find that this aspect of the complaint adequately meets jurisdictional requirements, and the BOE's complaint, therefore, properly invoked the BOR's jurisdictiou to consider the value of the corrected parcels.

We now turn to the value of the subject property. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle,* supra. Additionally, it has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129. It is undisputed that the subject property transferred from Super Food Services Inc. to The Kroger Co. on or about March 27, 2017 for $9,300,000. Kroger has not challenged any aspect of the sale's reliability to establish the subject's value. Accordingly, 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. Additionally, we affirm the BOR's allocation of the sale price among the five correct parcels.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 612-0141-0024-00

TRUE VALUE

$102,430

TAXABLE VALUE

$35,850

PARCEL NUMBER 612-0141-0035-00

TRUE VALUE

$1,380

TAXABLE VALUE

$480

PARCEL NUMBER 612-0141-0044-00

TRUE VALUE

$878,850

TAXABLE VALUE

$307,600

PARCEL NUMBER 612-0180-0047-00

TRUE VALUE

$3,081,490

TAXABLE VALUE

$1,078,520

PARCEL NUMBER 612-0180-0049-00

TRUE VALUE

$5,235,850

TAXABLE VALUE

$1,832,550

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1440
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Thursday, September 14, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 010-278814-00, 010-278815-00, 010-278816-00, and 010-278817-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written argument.

The subject property consists of four separately parceled residential units that make up a single building. The subject's total true value was initially assessed at $535,000. The appellee property owner, Linden Equities II, LLC ("Linden") filed a decrease complaint with the BOR seeking a reduction in value to

$425,050. The BOE filed a countercomplaint in support of maintaining the auditor's value. At the BOR hearing, Linden provided evidence of an August 31, 2015 sale, arguing that the value of the property should be reduced based on the $425,050 purchase price. The BOE did not contest that the sale indeed took place, but argued that it was not reliable evidence of value because it was a forced liquidation sale and not an arm's-length transaction. Although no testimony was presented from a party involved in the transaction, Linden offered the property's listing, to show that it was available on the open market for 14 days and the settlement statement, which showed realtor fees were paid at closing. The BOE objected to these documents because no testimony was offered from the owner or an individual able to authenticate the documents. The BOR issued a decision reducing the initially assessed valuation to $425,100, which led to the present appeal.

At the hearing before this board, the BOE argued that the BOR's decision should be reversed because it was based on a sale that was not arm's-length, and, therefdre, not indicative of the subject's value. The BOE presented a copy of the quitclaim deed to show that the seller was not a typically-motivated participant in the transaction. Linden again maintained that despite the seller being a liquidation agent, the sale was an arm's-length transaction and represents the true value of the subject property. In support of the sale, Linden offered the testimony of its principal, Roberto Santini, to discuss the circumstances around the purchase. The BOE objected to this testimony in addition to a number of documents, including a purchase agreement, on the basis of R.C. 5715.19(G), arguing that they were prohibited from being entered at this board's hearing because they were not offered at the hearing before the BOR. Linden acknowledged that Santini did not testify before the BOR, asserting that he was not present because he thought it was the following day. Linden disputed, however, that the purchase agreement was not offered, contending that it was attached to the underlying complaint and should have been in the record. Linden also offered information about a nearby property that had sold, asserting that it supports a finding that the sale of the subject was consistent with local market conditions. Santini testified that he knew about the sale prior to the BOR hearing. The BOE also objected to the sale evidence as hearsay because Santini did not have personal knowledge of the sale.

During the hearing, the attorney examiner overruled all of the BOE's objections. After further consideration, we find the BOE's R.C. 5715.19(G) objection well-taken. R.C. 5715.19(G) provides:

> "A complainant shall provide to the board of revision all information or evidence within the complainant's knowledge or possession that affects the real property that is the subject of the complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals or the court of common pleas, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for the complainant's failure to provide the information or evidence to the board of revision."

In the instant appeal, it is clear that much of the evidence offered by Linden at this board's hearing, including the contents of Santini's testimony, was in its knowledge or possession prior to the BOR hearing. Additionally, Linden did not provide good cause as to why the evidence was not offered before the BOR. See *East College St., LLC v. Lorain Cty. Bd. of Revision* (Oct. 13, 2015), BTA Nos. 2014-4339, et al, unreported (sustaining a R.C. 5715.19(G) objection where the witness did not appear before the BOR due to a "scheduling conflict"). As such, we must sustain the BOE's objection and will not consider Santini's testimony or appellee's exhibits 1, 3, and 5 in our analysis.. As exhibits 2 and 4 were offered at the BOR hearing and are included in the transcript certified by the BOR, we will give those the appropriate weight.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). The court has recently explained that a taxpayer seeking to reduce the value of property

based on sale can satisfy its initial burden through the presentation of undisputed evidence of a sale, and that testimony from an individual with knowledge of the sale is not required. *Lunn v. Lorain Cty. Bd. of*

Revision, 149 Ohio St.3d 137, 2016-Ohio-8075. Once an owner triggers this rebuttable presumption that a sale met all the requirements that characterize true value by presenting unchallenged evidence of sale, however, an opposing party may rebut the utility of the sale by showing that it was not an arm's-length transaction. Id. Once this is done, the burden again shifts to the owner to satisfy a "'heavier burden' to show that "'the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value.' *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723, *** ¶43." *Lunn,* supra, at ¶22.

In the present appeal, it is undisputed that Linden purchased the subject property from the National Credit Union Administration Board, acting in its capacity as Liquidating Agent for Members United Corporate Federal Credit Union on or about August 31, 2015 for $425,050. As noted, 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. *Olentangy Local Schools,* supra. See, also, *Schwartz v. Cuyahoga Cty. Bd. of Revision,* 143 Ohio St.3d 496, 2015-Ohio-3431. Thus, where a property sells at a forced sale, the burden is on the proponent of the sale to show that the transfer was an arm's-length transaction. In this case, Linden relied on the listing and settlement statement to meet this burden. These documents further confirm that the sale involved realtors and that the purchase price exceeded the amount initially sought by the seller. As such, we find that Linden has successfully met its higher burden. Accordingly, we find that the August 201d sale is a recent arm's-length transaction and constitutes the best evidence of the subject's value as of the tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 010-278814-00

TRUE VALUE

$108,770

TAXABLE VALUE

$38,070

PARCEL NUMBER 010-278815-00

TRUE VALUE

$103,760

TAXABLE VALUE

$36,320

PARCEL NUMBER 010-278816-00

TRUE VALUE

$103,760

TAXABLE VALUE

$36,320

PARCEL NUMBER 010-278817-00

TRUE VALUE

$108,770

TAXABLE VALUE

$38,070

OHIO BOARD OF TAX APPEALS

MALLARD GROUP LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1603, 2016-1604, 2016-1606

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Monday, September 18, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals decisions of the board of revision ("BOR") which determined the value of the subject real property, parcel numbers 862-04-047, 645-40-054, and 545-24-003, for tax year 2015. While not previously consolidated, these appeals are appropriately consolidated for the purpose of this decision and order in accordance with this board's rule of practice and procedure 5717-1-09. These consolidated matters are now considered upon the notices of appeal, transcripts ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subjects' total true values were initially assessed at $75,000; $83,100; and $62,100, respectively. The property owner filed three complaints with the BOR seeking reductions in values to $30,000; $20,000; and $20,000, based upon three transfers. S.T., Exhibit ("Ex.") A. No counter complaint was filed.

At the BOR's hearing, the owner appeared through counsel. In support of the reductions requested, owner's counsel submitted sale documentation relating to each subject parcel. For parcel number 862-04-047, counsel submitted a purchase agreement, settlement statement, and deed with conveyance fee stamp, which reflect a transfer from Laura B. Thompson to Mallard Group, LLC, on January 21, 2016, for $30,000. S.T., Ex. F. For parcel number 645-40-054, counsel submitted a purchase agreement, settlement statement, and deed with

conveyance fee stamp, which reflect a transfer from Ralph M. Hink to Mallard Group, LLC, on June 5, 2015, for $20,000. Id. For parcel number 545-24-003, counsel submitted a MLS listing, settlement

statement, and deed with conveyance fee stamp, which reflect a transfer from Lakeside REO Ventures, LLC, to Mallard Group, LLC, on August 31, 2015, for $20,000. Id. Notably, the BOR's audio recording also indicates that the owner provided a copy of the purchase agreement relating to parcel number 545-24-003; however, such document is not contained in the record certified to this board. While there was no challenge raised as to the sales' recency, BOR members expressed concern over a lack of testimony from the owner and a lack of marketing evidence. Owner's counsel cited to the parties' negotiation of closing costs or real estate commissions in response. S.T., Ex. E.

Thereafter, upon consideration of the information available to it, the BOR elected not to rely on the subjects' January 2016, June 2015, or August 2015 purchase prices and issued decisions maintaining the subjects' initially assessed valuations. S.T., Ex. G. Dissatisfied with the results, the property owner timely filed three notices of appeal with this board; no hearing was requested on appeal.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). The initial burden on a party presenting evidence of a sale "is not a heavy one, where the sale on its face appears to be recent and at arm's length." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶41.

The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104. Then, typically, "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14. See also *Cummins Property Servs., L.L.C.,* supra, at ¶13. Here, the owner submitted sales documentation to the BOR evidencing three facially qualifying sales, and, as such, a presumption of validity arose in favor of each transfer. Consequently, the county appellees, as the opponents of utilizing such purchase prices, have the burden to rebut the sales' presumption of validity and demonstrate why such transfers may not reflect the properties' true value for the tax year at issue. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* 78 Ohio St.3d 325, 327 (1997).

On appeal, as before the BOR, the property owner contends that the January 2016, June 2015, and August 2015 transfers of the subject property constitute the best evidence of value as of the tax lien date at issue. For its part, the county appellees submitted written argument and seek to supplement the record with evidence in support. Through written argument, the county appellees argue the owner's testimony is necessary to determine the arm's-length nature of the subject transfers, contend conflicting documentation exists as there is a difference between the purchase price and the mortgage amount, and assert the transfer of parcel number 545-24-003 resulted from a sheriff sale. In support of the foregoing arguments, the county seeks to supplement the record with mortgage deeds, a sheriffs deed (reflecting a transfer of parcel number 545-24-003 on May 9, 2015), and the subject properties' transfer histories; however, as all of these documents were submitted outside the record, they do not rise to the level of evidence upon which this board may rely and are hereby stricken. *Columbus Bd. of Edn. v. Franklin Cty. Bd of Revision,* 76 Ohio St.3d 13 (1996); *Bd. of Edn. of the Hilliard City School Dist. v. Franklin Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-R- I430, unreported (striking from consideration certified copies of documents attached to a post-hearing brief).

At the outset, "we reject the county's proposition that a taxpayer-complainant must appear at the board-of-revision hearing to satisfy its initial burden" when evidencing a recent arm's-length sale. *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-8075, ¶16; *Utt v. Lorain Cty. Bd. of Revision,* Slip Opinion 2016-Ohio-8402; *Dauch v. Erie Cty. Bd. of Revision,* Slip Opinion 2017-Ohio-1412. In addition, we reject the county's assertion that a difference between the purchase price and the mortgage constitutes conflicting sales documentation. In the present matter, we find the sales documentation, submitted by the owner to the BOR, provides competent and probative evidence of pertinent facts relating to each transfer. Further, we find the county's assertion that parcel number 545-24-003 transferred as result of a sheriff's sale to be without merit. As indicated above, the sale documentation relating to parcel number 545-24-003 reflects a transfer between Lakeside REO Ventures, LLC and the appellant, in August 2015, for $20,000. S.T., Ex. F. In fact, even if we were to consider the sheriff's deed attached to the county's written argument, such document would merely serve to demonstrate the inaccuracy of the county's argument on this point; specifically, the sheriffs deed evidences a prior transfer of this parcel, on May 9, 2015, and, notably, no party has advocated for reliance upon this sale.

We also acknowledge the county's assertions that the BOR found the lack of marketing materials for each transfer to be significant; however, this board has previously considered and rejected similar arguments and finds no reason to deviate in this case. Indeed, as this board commented in *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Mar. 23, 2010), BTA No. 2008-K-202, unreported, "merely because a property is not listed on the open market, or is offered at a 'take it or leave it' selling price, *** does not, per se, mandate the rejection of a sale." Additionally, the Ohio Supreme Court has held, "case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers. See *Walters [v. Knox Cty. Bd. of Revision,* 47 Ohio St.3d 23], at 26 [(1989)] (Douglas, J., concurring in judgment only) (distinguishing 'private sale' transaction from open-market sales and asserting that "[p]rivate sale transactions which are at arm's-length occur every day")." *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 129 Ohio St.3d 172, 2011-Ohio-3092, at ¶29.

Finally, while the BOR was also critical of provisions contained in the purchase agreement for parcel number 545-24-003, we are unable to review such document as it is not contained in the record, prepared and certified by the county appellees to this board. See *Bd. of Edn. of the Columbus City Sch. Dist. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564 (2001). While it is true that the county sought to supplement this board's record with other documentation (as indicated above), the county has made no effort to amend the statutory transcript to include the purchase agreement relating to parcel number 545-24-003, or to alert this board that the record for such parcel was not transmitted in its entirety. See R.C. 5715.09 and 5717.01; *Cannata v. Cuyahoga Cty. Bd. of Revision,* 147 Ohio St3.d 129, 2016-Ohio-1094, at ¶14; *Dauch,* supra at ¶14 ("they cannot now complain about purported defects in the records they were responsible for preparing and certifying.").

In the present matter, the property owner presented sale documentation evidencing three facially qualifying sales to the BOR, and, as a result, a rebuttable presumption of validity arose in favor of each of the subject's transfers. *Cummins Property Servs.,* supra, at ¶41. The county appellees have presented no evidence that would call into question the arm's-length nature of the transfers. See *Berea City Sch. Dist. Bd. of Edn. v. Cuyahoga County Bd. of Revision,* 106 Ohio St.3d 269, 2005-Ohio-4979, at ¶9; *HIN, L.L.C.,* supra, at ¶14. We also note (with the exception of parcel number 862-04-047), the owner's sale documentation is corroborated by the subject's uncontested property record cards. S.T., Exs., C, F; *Bd. of Edn. of the Westerville City Schools v. Delaware Cty. Bd. of Revision* (June 13, 2013), BTA No. 2011-A-155, unreported.

Based upon the foregoing, we find the county appellees were required, but failed, to rebut the presumption of validity accorded the subjects' recent transfers. See *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 124 Ohio

St.3d 481, 2010-Ohio-687. Accordingly, absent an affirmative demonstration that the January 2016, June 2015, and August 2015 sales are not a qualifying sales for tax valuation purposes, this board will not

engage in conjecture, as we find the existing records demonstrate that the transactions were recent, arm's-length, and constitute the best indications of the subjects' values as of tax lien date at issue. See generally *Lakota Local School Dist. Bd. of Edn.*, supra, at ¶26 ("Mere speculation is not evidence.").

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER 862-04-047

TRUE VALUE

$30,000

TAXABLE VALUE

$10,500

PARCEL NUMBER 645-40-054

TRUE VALUE

$20,000

TAXABLE VALUE

$7,000

PARCEL NUMBER 545-24-003

TRUE VALUE

$20,000

TAXABLE VALUE

$7,000

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1279
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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HOWLEY CAPITAL, LLC
1138 CHAMBERS ROAD
COLUMBUS, OH 43212

Entered Wednesday, September 20, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 130-000332-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of hearing before this board. Before proceeding to the merits of this matter, we first acknowledge, the record certified to this board by the county appellees contains only one of the two deeds submitted by the board of education at its hearing; however, having recognized such deficiency, BOE's counsel supplemented the record on appeal at this board's hearing. Nevertheless, we take this opportunity to remind the Franklin County Board of Revision of its statutory obligations to create, preserve, and certify complete records of its proceedings to this board. R.C. 5715.19(C), R.C. 5715.08, R.C. 5717.01. See also Ohio Adm. Code 5717-1-10(A). We now proceed to the merits.

The subject's total true value was initially assessed at $134,200. The Board of Education of the Columbus City Schools ("BOE") filed a complaint with the BOR, seeking an increase in value to $290,000, based upon recent transfers of the subject. S.T., Exhibit ("Ex.") A. No counter complaint was filed, and, despite being given notice of the complaint, the owner elected not to participate in the proceedings before the BOR. S.T., Ex. E.

At the BOR's hearing, in support of the requested increase, counsel for the BOE submitted two conveyance fee statements and two corresponding deeds (collectively, the "sale documentation") reflecting two partial interest transfers of the subject. Specifically, the conveyance fee statement marked as "2 1 of 2" and the corresponding deed reflect an undivided one-half interest transfer of the subject from Troy D. Paskell to Howley Capital, LLC, on November 9, 2015, for $145,000. S.T., Ex. F. The conveyance fee statement marked as "2 2 of 2" and the corresponding deed reflect an undivided one-half interest transfer in the subject from 1165 Chambers Rd., Ltd., to Howley Capital, LLC, on November 9, 2015, for $145,000. Id. Ultimately, the sale documentation evidences a transfer of the subject property's entire fee simple interest, for a total of $290,000. Id. There was no challenge raised as to the recency or arm's-length nature of the sales.

Thereafter, the BOR's audio recording indicates the BOR's inclination to increase the subject's value to the total purchase price; however, the BOR issued a decision only increasing the subject's initially assessed valuation to $145,000, i.e., the purchase price of an undivided one-half interest in the subject. Dissatisfied with the result, the BOE timely filed a notice of appeal with this board.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length trensaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). The initial burden on a party presenting evidence of a sale "is not a heavy one, where the sale on its face appears to be recent and at arm's length." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶41. The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104. Then, typically, "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14 (Emphasis sic.). See also *Cummins Property Servs., L.L.C.,* supra, at ¶13.

While we acknowledge that, typically, a presumption of validity does not attach to a partial interest transfer, when, as here, evidence is submitted that arm's-length sales reflecting the *entire fee simple interest* in the subject real property has occurred, a rebuttable presumption arises that the combined sale prices reflect the true value of the subject properly. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325 (1997); *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Nov. 2, 2016), BTA No. 2015-2101, unreported; *Bd. of Edn. of the Dublin City Schools v. Franklin Cty. Bd. of Revision* (Jan. 15, 2013), BTA No. 2009-A-758, unreported.

On appeal, as before the BOR, the BOE advocates for this board to find value consistent with the subject's two November 2015 partial interest transfers and offers the sale documentation, initially presented to the BOR, in support. H.R., Appellant's Ex. 2. Further, the BOE submits a joint stipulation of facts, between it and the county

appellees, indicating in relevant part that the BOR mistakenly issued a decision for an amount that is less than the two November 2015 purchase prices. H.R., Appellant's Ex.1

Upon review, the BOE has presented evidence of two facially qualifying partial interest sales, which together, constitute the subject's entire fee simple interest, and, as a result, a rebuttable presumption of validity attaches in favor of the subject's combined November 2015 purchase prices, i.e., $290,000. *Cummins Property Servs.*, supra, at 114 l . See also S.T., Ex., 0; *Bd. of Edn. of the Westerville City Schools v. Delaware Cty. Bd. of Revision* (June 13, 2013), BTA No. 2011-A-155, unreported. While such a presumption may be rebutted, in this instance, the owner has elected not to participate in the proceedings before the BOR or this board, and no party to this appeal challenges the arm's length nature or recency of the subject transfers. *Cincinnati Bd. of Edn.*, supra; *Berea City Sch. Dist. Bd. of Edn. v. Cuyahoga County Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, ¶9; *HIN, L.L.C.*, supra, at ¶14.

Accordingly, absent an affirmative demonstration that the two November 2015 partial interest transfers are not qualifying sales for tax valuation purposes, this board will not engage in conjecture, as we find the existing record demonstrates that the transactions were recent, arm's-length, encompass the entire fee simple interest in the subject property, and, therefore, constitute the best indication of the subject's value as of tax lien date at issue. See generally *Lakota Local School Dist. Bd. of Edn.*, supra, at ¶26 ("Mere speculation is not evidence.").

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER 130-000332-00

TRUE VALUE

$290,000

TAXABLE VALUE

$101,500

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1356

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
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JESUS SANTOS
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COLUMBUS, OH 43224

Entered Thursday, September 21, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel numbers 130-002183-00 and 130-006856-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of hearing ("H.R.") before this board.

[2] The subjects' total true values were initially assessed at $57,300 and $71,500, respectively. The property owner filed a decrease complaint with the BOR, seeking reductions in values to $17,005 and $33,650, based upon two transfers. S.T., Exhibit ("Ex.") A. A counter complaint was filed on behalf of the Board of Education of the Columbus City Schools ("BOE") requesting to maintain the subjects' initially assessed values. S.T., Ex. B.

[3] At the BOR's hearing, the property owner, Mr. Jesus Santos, an interpreter, and counsel for the BOE appeared. In support of the reduction requested for parcel number 130-002183-00, Mr. Santos submitted a deed, conveyance fee statement, settlement statement, winning bidder confirmation, and various other related sales documents. The sale documentation and property's uncontested property record card reflect that parcel number 130-002183-00 transferred through an auction sale from JP Morgan Chase Bank, NA, to Jesus Santos, on August 17, 2015, for $17,005. S.T., Exs. C, F. Mr. Santos testified that he found out about the sale through a realtor, the sale occurred on-line through a reserve auction, and he was the winning bidder. S.T., Ex. E. Through the BOE's cross examination and questions posed by BOR members, Mr. Santos also testified that there was a minimum bid of $2,000, the winning bid was subject to the seller's acceptance, and although the auction took place on-line, he believed there were other bidders because the purchase price "kept going up." Id. In support of the reduction requested for parcel number 130-006856-00, Mr. Santos submitted a sales contract and settlement statement. The sale documentation and the subject's uncontested property record card reflect a transfer of parcel number 130-006856-00 from The Department of Housing and Urban Development, to Jesus R. Santos, on July 2, 2015, for $33,650. S.T., Exs. C, F. Mr. Santos testified that the property was on the market for a king time and was in need of plumbing repairs. Mr. Santos also stated that previous offers (from other individuals) had been accepted, but fell through, and that his initial offer of $30,000 was rejected. S.T., Ex. E. Counsel for the BOE argued that both transfers were the result of forced sales, and, as such, should not be relied upon by the BOR to determine value.

[4] Thereafter, based upon the information available to it, the BOR determined that the property owner had overcome the sales' presumption of invalidity, and relying on each transfer, issued a decision decreasing the value of parcel number 130-002183-00 to $22,000, i.e., the auction purchase price plus a $5,000 auction fee, and parcel number 130-006856-00 to $33,700. S.T., Ex. G. Dissatisfied with the results, the BOE timely file a notice of appeal with this board.

[5] "When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379. It is well established that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992). Ultimately, the weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record and found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997).

[6] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). The initial burden on a party presenting evidence of a sale "is not a heavy one, where the sale on its face appears to be recent and at arm's length." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶41. The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104.

[7] However, several factors may render a sale, by itself, an unreliable indicator of value. For example, R.C. 5713.04 provides that "[t]he price for which *** real property would sell at auction or forced sale shall not be taken as the criterion of its value." Pursuant thereto, unlike a typical sale of the property which enjoys a rebuttable presumption of validity, see *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223,2014-Ohio-523, at ¶14, forced sales, such as transfers of property through bankruptcy proceedings, sheriff's sales, and sales by the Secretary of Housing and Urban Development ("HUD") are not considered reliable value indicators and a rebuttable presumption of *invalidity* arises. R.C. 5713.04; *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision,* 80 Ohio St.3d 455 (1997). See, generally, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 127 Ohio St.3d 63, 2010-Ohio-4907. See, also, *Olentangy Local Schools Bd of Edn. v. Delaware Cty. Bd. of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723. Further, the court has indicated, the proponent of utilizing such a sale "bears the burden to prove that[, although forced,] the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value." *Olentangy,* supra, at ¶43.

[8] On appeal, it is undisputed that the two subject sales constitute forced sales. At this board's hearing, no new evidence of value was submitted. Instead, the BOE argues that the property owner failed to overcome the presumption of invalidity of the subject forced sales and seeks reinstatement of the initially assessed values. Specifically, as it relates to the auction transfer of parcel number 130-002183-00, BOE's counsel contends, there is no indication of "whether or not the seller had a right to refuse or whether it was an absolute auction." H.R., at 5. For its part, the appellee property owner (who appeared at hearing and utilized his daughter as an interpreter), provides essentially the same information as was provided to the BOR, relies upon the documentary evidence submitted to the BOR, and contends that the subject transfers, although forced, were nevertheless arm's-length transactions and constitute the best evidence of value. H.R.

[9] At the outset, we acknowledge that the property owner, as the proponent of utilizing forced sales, shoulders the burden to rebut the sales' presumption of invalidity and demonstrate that, although forced, the sales at issue were nevertheless arm's-length transactions. *Olentangy,* supra, at ¶43. Beginning with the on-line auction of parcel number 130-002183-00, we find the BOE's assertions that there is no indication of "whether or not the seller had a right to refuse or whether it was an absolute auction[,]" see H.R., at 5, to be without merit. Before both the BOR and this board, the property owner provided uncontroverted testimony regarding the circumstances of the on-line auction, during which he specifically identified the auction as a reserve auction and explained that the winning bid was subject to the approval of the seller. S.T., Ex. E; H.R., at 10. Moreover, the owner's auction testimony is corroborated by tangible documentary evidence, such as the Winning Bidder Confirmation, Addendum to Winning Bidder Confirmation "Subject to," Addendum to Purchase Agreement "Subject to," and What does "Subject to Confirmation" mean. S.T., Ex. F. Given the evidence before us, we find the owner successfully rebutted the presumption of invalidity accorded this auction sale.

[10] We now turn to the HUD transfer of parcel number 130-006856-00. Similar to the auction sale testimony, the property owner provided uncontroverted testimony regarding the circumstances of the HUD transfer. Specifically, the owner testified, the property was on the market for quite some time, there were several offers from other individuals that were accepted, but ultimately fell through, and, further, that his initial offer of $30,000 was rejected. S.T., Ex. E. Based upon the foregoing, we find the owner provided sufficient evidence demonstrating the arm's-length nature of the transfer and successfully rebutted the presumption of invalidity accorded this HUD sale. See *Schwartz v. Cuyahoga Cty. Bd of Revision,* 143 Ohio St.3d 496, 2015-Ohio-3431.

[11] Accordingly, we find the adjustments effected by the BOR to be supported by the record, with one exception. The BOR increased the purchase price for parcel number 130-002183-00 by $5,000, based upon the assessment of a purported "auction fee." S.T., Ex. E at decision audio recording. However, the BOR points to no documentary evidence, nor do we find any evidence in the record, to support the inclusion of an additional $5,000, attributed to an "auction fee," that is separate from the declared purchase price. See, e.g., *Vandalia-*

Butler City School Dist. Bd of Edn. v. Montgomery Cty. Bd of Revision, 130 Ohio St.3d 291, 2011-Ohio-5078 (this board must independently weigh and evaluate the evidence properly before it and base its decision of value upon such evidence). Upon review of the record, it appears that the winning bid was $14,505, to which a buyer's premium of $2,500 was added, resulting in a total declared purchase price of $17,005, which we find to the be the best evidence of value. S.T., Ex. F.

[12] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 130-002183-00

TRUE VALUE

$17,010

TAXABLE VALUE

$5,950

PARCEL NUMBER 130-006856-00

TRUE VALUE

$33,650

TAXABLE VALUE

$11,780

OHIO BOARD OF TAX APPEALS

ASHLEY HARRIS, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-707

(REAL PROPERTY TAX)

ORDER

APPEARANCES:

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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Tuesday, September 26, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellees move to dismiss this matter on the basis it was not filed in compliance with R.C. 5717.01, which allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and* the board of revision *within thirty days after notice of the decision* of the county board of revision *is mailed.* See, also, R.C. 5715.20. In *Hope v. Highland COL Bd. of Revision* (1990), 56 Ohio St.3d 68, the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Bd. of Revision of Hamilton Cty.* (2000), 87 Ohio St.3d 363, 369 ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner."). The appellant failed to respond to the motion within the time prescribed by this board's rules. See Ohio Adm. Code 5717-1-13(B).

Upon review of the record and the motion, this board finds that appellant failed to file the notice of the appeal with the BOR. Accordingly, the motion is granted and this matter is dismissed.

OHIO BOARD OF TAX APPEALS

MUDDY RIVER HOMES LLC, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2150

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MUDDY RIVER HOMES LLC
Represented by:
CHANNING M. KORDIK
ROGERS & GREENBERG LLP
40 N. MAIN ST, SUITE 2160
DAYTON, OH 45423

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Tuesday, September 26, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 510-0034-0174-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and the record of hearing ("H.R.") before this board.

The subject's total true value was initially assessed at $62,170. The property owner filed a decrease complaint with the BOR, seeking a reduction in value to $36;000, based upon a recent transfer. S.T., Ex. A. No counter complaint was filed.

At the BOR's hearing, the owner appeared through counsel. In support of the requested decrease, owner's counsel submitted sale documentation consisting of a settlement statement and conveyance fee statement. The sale documentation and subject's undisputed property record card evidence a transfer of the subject property from Hilton Capital Group, LLC, to Muddy River Homes, LCC, for $36,000, on June 23, 2015. S.T., Exs. C, F. Further, counsel represented that the subject was listed through Craig's list, a yard sign, or a broker; however, BOR members questioned whether the property was actually exposed to the open market. S.T., Ex. E.

Thereafter, the BOR elected not to rely upon the subject's June 23, 2015 purchase price and issued a

decision maintaining the initially assessed valuation. S.T., Ex. G. Dissatisfied with the result, the property owner timely appealed to this board. On appeal, as before the BOR, owner's counsel contends the subject's June 23, 2015 purchase price provides the best evidence of the subject's value for the tax lien date at issue. At this board's hearing, owner's counsel offered the testimony of Bryan Rhoads, a broker and employee of the parent company of the ownership entity, familiar with the owner's real property purchasing practices. H.R. at 6, 7.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). The initial burden on a party presenting evidence of a sale "is not a heavy one, where the sale on its face appears to be recent and at arm's length." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶41. The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104. Then, typically, "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14 (Emphasis sic.). See also *Cummins Property Servs., L.L.C.,* supra, at ¶13. The Supreme Court has made it clear that no "bright line" test exists when establishing recency and that the mere passage of time does not, per se, render a sale unreliable. See, e.g., *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059. Compare *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588.

Upon review, it is clear that the property owner presented evidence of a facially qualifying June 23, 2015 sale of the subject to the BOR, and, therefore, a rebuttable presumption of validity arose in favor of such transfer. *Cummins Property Servs.*, supra, at ¶41. The burden then shifted to the opponent of utilizing such sale, i.e., the county appellees, to rebut such presumption and prove that the sale price is not indicative of value.

While we acknowledge that the BOR disregarded the subject's June 23, 2015 transfer because it questioned whether the property was exposed to the open market, this board has previously considered, and consistently rejected, similar arguments and we find no reason to deviate in this case. To be sure, "merely because a property is not listed on the open market, or is offered at a 'take it or leave it' selling price, *** does not, per se, mandate the rejection of a sale." *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Mar. 23, 2010), BTA No. 2008-K-202, unreported. Moreover, "case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers. See *Walters [v. Knox Cty. Bd. of Revision,* 47 Ohio St.3d 23], at 26 [(1989)] (Douglas, J., concurring in judgment only) (distinguishing 'private sale' transaction from open-market sales and asserting that "[p]rivate sale transactions which are at arm's-length occur every day")." *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 129 Ohio St.3d 172, 2011-Ohio-3092, at ¶29.

However, a close review of the record reveals that the June 23, 2015 transfer of the subject is not the only 2015 transfer of the subject. In fact, the subject's property record card also discloses an earlier transfer, on

June 9, 2015, to Hilton Capital Group, LLC, for $25,000. S.T., Ex. C. While there was no discussion regarding this sale before the BOR or this board, the June 9, 2015 transfer appears on the subject's

undisputed property record card, and, as this board has held on multiple occasions, "evidence of a sale contained on a property record card, if undisputed, may serve as a sufficient basis upon which to rely in determining the value of a property." *Bd of Edn. of the Westerville City Schools v. Delaware Cty. Bd. of Revision* (June 13, 2013), BTA No. 2011-A-155, unreported, at ¶8. See also *1192 Group Partnership LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 18, 2013), BTA Nb. 2010-Y-651, unreported; *Bd. of Edn. of the Cleveland Mun. School Dist. v. Cuyahoga Cty. Bd of Revision* (May 10, 2013), BTA No. 2009-Y-1596, unreported. Such is the case here.

In this instance, no evidence has been presented that would call into question the recency or arm's-length nature of either of the subject's June 2015 transfers. See *Berea City School Dist. Bd. of Edn. v. Cuyahoga County Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, at ¶9; *HIN, L.L.C.*, supra, at ¶14. Accordingly, absent an affirmative demonstration that either the June 9, 2015 or June 23, 2015 sales are not qualifying sales for tax valuation purposes, this board will not engage in conjecture, as we find the existing record demonstrates that both transactions were recent and conducted at arm's-length. See generally *Lakota Local School Dist. Bd. of Edn.*, supra, at ¶26 ("Mere speculation is not evidence."). Finally, "[w]hen[, as here,] a property has been the subject of two arm's-length sales between a willing seller and a willing buyer within a reasonable length of time either before or after the tax-lien date, the sale occurring closer in time to the tax-lien date establishes the true value of the property for taxation purposes." *HIN, L.L.C. v. Cuyahoga Cty. Bd of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, at ¶20. See also R.C. 5713.03.

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER 510-0034-0174-00

TRUE VALUE

$25,000

TAXABLE VALUE

$8,750

OHIO BOARD OF TAX APPEALS

BRYAN & JOY HARBAUGH, (et. al.),

Appellant(s),

vs.

MEDINA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1309

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BRYAN & JOY HARBAUGH
OWNER
5628 BUFFHAM ROAD
SEVILLE, OH 44273

For the Appellee(s) - MEDINA COUNTY BOARD OF REVISION
Represented by:
DENNIS E. PAUL
ASSISTANT PROSECUTING ATTORNEY
MEDINA COUNTY
72 PUBLIC SQUARE
MEDINA, OH 44256

Entered Tuesday, September 26, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellants appeal a decision of the board of revision ("BOR"), which affirmed the auditor's removal of the subject real property, parcel number 041-15B-27-018, from the current agricultural use value ("CAUV") program, for tax year 2015. This appeal is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, the county's supplements to the record, and any written argument submitted by the parties. Notably, this board issued an order requesting the county appellees to supplement the record with the owner's 2015 CAUV application, and any correspondence between the auditor to the owner relating to the subject's 2015 CAUV audit and its 2015 removal from CAUV. *Harbaugh v. Medina Cty. Bd. of Revision* (Interim Order, June 14, 2017), BTA No. 2016-1309, unreported. In response, the county supplements the record with an affidavit from the county auditor, property record card comments, and four letters relating to CAUV from the auditor to the owner. Supplement of Record of Appeal by Appellee ("Supplemental Motion"). The county did not, however, provide a copy of the owner's 2015 CAUV application or advise this board that such. document does not exist in its record. Id. Nevertheless, the supplements, in particular, the December 8, 2015 recoupment notification letter, suggest that the owner did, in fact, file a 2015 CAUV application for the subject with the auditor. Accordingly, our analysis below will presume that the property owner timely filed a 2015 CAUV application for the subject with the county auditor. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094, at ¶13, 14.

[2] Before proceeding to the merits of this appeal, we first address the county's two motions requesting the dismissal of the within appeal. The owner did not file a response to either of the county's motions. See Ohio Adm. Code 5717-1-13(B). Initially, the county seeks dismissal of the within appeal, arguing that appellants failed to prosecute this matter in accordance with this board's case management schedule, and, further, request all costs be assessed to appellants. Upon consideration of the arguments advanced, the county's motion is hereby denied. Equally unavailing is the county's suggestion, through its supplemental motion, that the owner failed to file a tax year 2015 complaint with the BOR. Here, the record, certified by the county to this board, contains a tax year 2015 BOR complaint signed by the owner. As such, the county's supplemental motion is without merit and is summarily denied. S.T., Ex. A; R.C.5715.19 (A)(1) ("for the current tax year shall be filed with the county auditor on or before the thirty-first day of March of the ***ensuing tax year[.]")*** (Emphasis added.); See also *Bd. of Edn. of the Berea City School Dist. v. Cuyahoga Cty. Bd. of Revision* (Interim Order, June 30, 2004), BTA Nos. 2002-B-1573, et seq., unreported (an incorrect tax year listed on a complaint is not fatal to a complaint and expressly overruling prior cases holding otherwise). We now proceed to the merits of this appeal.

[3] The subject property consists of approximately 5.43 acres. The subject's total true value was initially assessed at $266,060. While the record of events leading up to this appeal is limited, what is clear is that on July 6, 2015 the auditor's office sent an initial CAUV audit letter (and on October 14, 2015, sent a follow up letter), to the property owners, requesting verification of the income received from the subject. Supplemental Motion at Appellee's Affidavit Exhibits #2, #3. Receiving no response from the owners, on December 8, 2015, the auditor's office sent a CAUV recoupment notification letter indicating that the subject property was being removed from the CAUV program for tax year 2015 because "[p]roper commercial agricultural production information was not supplied at the time of CAUV audit." Id. at Appellee's Affidavit Exhibit #4. Thereafter, on March 22, 2016, the property owner filed a complaint with the BOR seeking the subject's reinstatement into the CAUV program for tax year 2015. S.T., Ex A.

[4] For context, when land is devoted "exclusively to agricultural use," and meets certain requirements, a property owner may submit an application to the county auditor requesting to participate in the CAUV program to avoid a real property tax assessment based on the true value. Based upon the application, the county auditor determines a property's participation eligibility and the auditor's determination of eligibility may be reviewed by the BOR. R.C. 5713.31, 5713.38, 5715.19. Here, the auditor removed the subject from the CAUV program for tax year 2015 based upon the owners' failure to provide requested CAUV audit information. Supplement Motion, at Appellee's Affidavit Exhibit #4.

[5] At the BOR's hearing, property owner Joy Harbaugh appeared. In support of her complaint, Ms. Harbaugh testified that the subject property has been, and continues to be, devoted exclusively to agricultural use. Specifically, Ms. Harbaugh explained, the subject is used as a pasture to graze cattle and that once they "make weight," the cattle are processed/sold, and, in the absence of cattle on the subject, i.e., the time between processing mature cattle and obtaining new calves, hay on the property is harvested and sold to other farmers. S.T., Ex. E. In support of her testimony, Ms. Harbaugh submitted a 2016 CAUV application; two Medina County Auditor Current Agricultural Use Value (CAUV) Income Production Sheets; 2015 receipts for the sale of processed steer totaling $2,933.51; 2014 receipts for the sale of processed steer totaling $2,845.55; 2013 receipts for the sale of processed steer totaling $2,836.58; and a 2016 receipt for the sale of 43 round hay bales, totaling $860. S.T., Ex. F.

[6] Ms. Harbaugh also addressed her failure to submit paperwork in response to the auditor's CAUV audit letter and explained that such inadvertence was due to the unexpected loss of a family member. S.T., Ex. E. Further, Ms. Harbaugh acknowledged the absence of cattle on the subject during a visit by a county representative; however, she explained that the county's visit occurred shortly after the cattle were sent for processing, and, further, stated that new calves would be purchased and placed on the subject. Id. Finally, a BOR member requested additional hay bale receipts and. Ms. Harbaugh agreed to provide the same; however, the BOR hearing notes appear to indicate that no such receipts were ultimately received. Id.

[7] Thereafter, based upon the information available to it, the BOR issued a decision determining, "Nile parcel is not in compliance and will not be returned to the CAUV program." S.T., Ex. G. Dissatisfied with the result, the property owner appealed to this board. On appeal, no hearing was requested before this board.

[8] "When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379. Where, as here, the parties elect to present no additional evidence on appeal, this board independently reviews the record as developed before the BOR. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996), quoting *Black v. Cuyahoga Cty. Bd. of Revision,* 16 Ohio St.3d 11, 14 (1985).

[9] Through written argument, as before the BOR, the owners contend the subject has been, and continues to be, devoted exclusively to agricultural use and seeks the subject's reinstatement into the CAUV program for tax year 2015. The owners maintain that the subject is utilized for grazing cattle and for production of hay in the absence of cattle i.e., the time between processing/selling mature cattle and the acquisition of new calves. The owner relies upon the documentary evidence previously submitted to the BOR and also submits a check, dated July 25, 2016, made out for $1,200, with a note indicating payment for "6 calves." Notice of Appeal. For its part, the county contends that the subject does not qualify for inclusion into the CAUV program for tax year 2015 and seeks affirmance of the BOR' s decision.

[10] R.C. 5713.30 defines land, being "devoted exclusively to agricultural use," as "[t]racts, lots or parcel of land totaling less than ten acres that, during the three calendar years prior *** were devoted exclusively to commercial animal or poultry husbandry, aquaculture, algaculture meaning the farming of algae, apiculture, the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental trees, sod, or flowers where such activities produced an average yearly gross income of at least twenty-five hundred dollars during such three-year period or where there is evidence of an anticipated gross income of such amount from such activities during the tax year in which application is made ***."

[11] Here, it is undisputed that the subject property had qualified for CAUV status for the three years prior to the year under consideration herein. R.C. 5713.30. In this instance, based upon the owner's testimony and documentary evidence, we find, for tax year 2015, the subject parcel was devoted exclusively to agricultural purposes (utilized as a pasture for cattle and as hay fields), generating an average yearly gross income of at least $2,500 for a three year period, and, therefore, is properly included in the CAUV program for tax year 2015. Accordingly, the decision of the Medina County Board of Revision to remove the subject parcel from the CAUV list for tax year 2015 must be, and hereby is, reversed.

OHIO BOARD OF TAX APPEALS

FOREST RIDGE APARTMENTS, LLC, (et. al.),

Appellant(s),

vs.

LORAIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1019

(REAL PROPERTY TAX)

ORDER

APPEARANCES:

For the Appellant(s) - FOREST RIDGE APARTMENTS, LLC
Represented by:
ANDREW M. FERRIS
FERRIS LAW, LLC
1391 WEST FIFTH AVENUE, SUITE 257
COLUMBUS, OH 43212-2403

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
SUFIAN DOLEH
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET, 3RD FLOOR
ELYRIA, OH 44035-5642

Entered Tuesday, September 26, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellees move to dismiss this matter on the basis it was not filed in compliance with R.C. 5717.01, which allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and* the board of revision *within thirty days* after notice of the decision of the county board of revision is mailed. See, also, R.C. 5715.20. The appellant has failed to respond to the motion within the time prescribed by this board's rules. See Ohio Adm. Code 5717-1-13(B).

In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Bd. of Revision of Hamilton Cty.*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

Upon review of the record and the motion, this board finds that appellant failed to file the notice of the appeal with the BOR. Accordingly, the motion is granted and this matter is hereby dismissed.

OHIO BOARD OF TAX APPEALS

DEVON SETTLES, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-682

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEVON SETTLES
12852 ROSETTA DRIVE
CHESTERLAND, OH 44026

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, September 26, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now before the Board of Tax Appeals upon the county appellees' motion to affirm the Cuyahoga County Board of Revision's ("BOR") dismissal of the underlying complaint. Through the motion, the county contends the underlying complaint was properly dismissed by the BOR due to the property owner's failure to state an opinion of value on line 8. The appellant did not respond to the motion. We now proceed to consider this matter upon the motion, notice of appeal, and statutory transcript ("S.T.") certified to this board pursuant to R.C. 5717.01.

Upon review, the record reflects that line 8 of the complaint, which seeks information about the change in value sought, was left blank. S.T., Exhibit ("Ex.") A. Additionally, the property owner did not appear at the BOR hearing. S.T., Ex. E. Ultimately, the BOR dismissed the complaint for lack of jurisdiction. Dissatisfied with the result, the property owner timely filed an appeal with this board.

It is well established that for a complaint to vest jurisdiction in a county board of revision, it must include all information that runs to the core of procedural efficiency, including the value sought. *Cleveland Elec. Ilium. Co. v. Lake Cty. Bd. of Revision*, 80 Ohio St.3d 591 (1998); *Shinkle v. Ashtabula Cty. Bd. of Revision* , 135 Ohio St.3d 227, 2013-Ohio-397. This is so, because without such information, the BOR is unable to perform its statutory duty to "give notice of each complaint in which the stated [change in value] is at least seventeen thousand five hundred dollars *** to each board of education whose school district may be affected by the complaint." R.C. 5715.19(B).

Based upon the foregoing, the county's motion is well taken, and the BOR's decision to dismiss the

underlying complaint is hereby affirmed. Accordingly, we find the county's alternative argument for dismissal to be moot.

OHIO BOARD OF TAX APPEALS

ELZAIRE SANKEY, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1047

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ELZAIRE SANKEY
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CINCINNATI, OH 45251

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Wednesday, September 27, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is considered upon the county appellees' motion to dismiss, which we will construe as a motion to remand with instructions to dismiss the underlying complaint. We proceed now to decide this matter upon the motion, appellant's response, the notice of appeal, and the statutory transcript certified pursuant to R.C. 5717.01.

[2] The underlying complaint was filed by property owner Elzaire Sankey. The record indicates that line 8 of the complaint, which seeks information about the value sought, only contains the parcel number and the current taxable value. The documents attached to the complaint do not state the appellant's opinion of value. Appellant responded that comparable values were submitted, but that she did not state the value requested until the day of the BOR hearing. The BOR ultimately decided not to change the value of the property. Thereafter, appellant appealed to this board.

[3] For a complaint to vest jurisdiction in a county BOR, it must include all information that runs to the core of procedural efficiency, including the parcel number and value sought. *Cleveland Elec. Illum. Co. v. Lake Cry. Bd. of Revision,* 80 Ohio St.3d 591, 1998 Ohio 179, 687 N.E.2d 723 (1998); *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397, 985 N.E.2d 1243. Without such information, the BOR is unable to perform its statutory duty to "give notice of each complaint in which the stated [change in value] is at least seventeen thousand five hundred dollars *** to each board of education whose school district may be affected by the complaint." R.C. 5715.19(B).

[4] Based upon the foregoing, it is the decision of the Board of Tax Appeals that the original complaint filed in this matter was insufficient to invoke the jurisdiction of the BOR. Accordingly the matter is remanded to the BOR with instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

PERRY LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1927, 2016-1928
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - PERRY LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

WALTERS ASSET HOLDINGS LLC
Represented by:
SCOTT P. SANDROCK
BRENNAN, MANNA & DIAMOND, LLC
75 EAST MARKET STREET
AKRON, OH 44308

Entered Wednesday, September 27, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 4300954 and 4300326, for tax year 2015. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written argument.

The subject property is comprised of two adjoining parcels operating as a truck repair business. The parcels were initially assessed at $278,500 and $441,100,. respectively. The appellee property owner, Walters Asset Holdings LLC ("Walters") filed decrease complaints with the BOR seeking reductions in value to

$200,210 and $250,000, respectively. The BOE filed countercomplaints in support of maintaining the auditor's value. At the BOR hearing, Walters offered testimony from its sole owner, Kenneth Joseph,

who testified that he has previously bought and sold properties for investment purposes and owns other properties in the area. Walters also submitted 2011 judgment entries from the Stark County Court of Common Pleas that reflect stipulated values for the subject parcels at $200,210 and $249,790, respectively, for tax year 2009. These stipulated values on appeal followed complaints filed by Walters based on its 2009 purchase of the subject for a combined total sale price of $270,000. Following some new construction, the value of parcel number 4300954 was increased to $260,000 for tax year 2013. Joseph, who also operates the business located at the property, stated that he believed the property's value had not increased since the time of the tax year 2009 settlement, certainly not to the extent reflected by the auditor's values. Aside from the judgment entries for the prior tax year, no documentary evidence was presented to support this opinion that those values continue to pertain to tax year 2015. The BOE cross-examined Joseph, and argued that Walters had not offered any evidence to support its opinion and, therefore, failed to meet its burden. The BOE argued that the settled values of prior years were not relevant for tax year 2015. The BOE further pointed to an auditor staff report for parcel number 430094 that appeared to indicate an even higher value, $404,800, was an appropriate overall cost value, though no change was recommended.

It is unclear as to which BOR members attended the BOR hearing and likewise which voted on the ultimate decision. It appears that only two were present, though the record does not disclose which officials were represented, and that only two individuals voted on the BOR decision reducing the value of the subject to $200,200 and $250,000, respectively. The stated basis for these reductions was the owner's opinion of value, though they are consistent with the tax year 2009 stipulated values, albeit rounded slightly. From these decisions, the BOE filed the present appeals.

At the hearing before this board, the BOE argued that the BOR's decision was unsupported and that the auditor's value should be reinstated. The BOE indicated that the two-member panel did not include the auditor or a representative of the auditor when it voted to reduce the value of the property, and that these two BOR members did not consider the staff appraisal report in support of retaining the auditor's value (or even potentially increasing it) when they voted to adjust the subject's value. The BOE acknowledged that as an owner, Joseph was entitled to express his opinion of value on behalf of Walters, but argued that he must provide some additional evidence to support his opinion. Walters argued that because the BOR reduced value based on its evidence, the BOE must present independent evidence of value on appeal, citing to the *Bedford* rule, based on the court's decision in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 115 Ohio St.3d 449, 2007-Ohio- 5237. Walters pointed to the court's interpretation of the *Bedford* rule in *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 140 Ohio St.3d 248, 2014-Ohio-3620 *("Northpointe"),* arguing that the auditor's value may not be reinstated because the BOR's reduction was based on the owner's opinion of value. The BOE contends that the court has since provided additional clarification in *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025 *("Union Savings Bank"),* setting forth four elements necessary to invoke the *Bedford* rule. The BOE argues that this case does not fall within thOse parameters because an owner is required to do more than merely state an opinion of value and must present some evidence in support of that opinion. Walters maintains that because the court cited to *Northpointe* in *Union Savings Bank,* both decisions must be read in conjunction, which it argues would result in the preservation of the BOR's value determination.

Neither party has presented additional evidence on appeal, and instead relies on legal argument regarding the sufficiency of the evidence below and the "default" value upon appeal. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). While valuation determinations made by county boards of revision are not presumptively correct, see, e.g., *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, under certain circumstances, when the BOR adopts a new value based on the owner's evidence, it has the effect of "shifting the burden of going forward with evidence to the board of education on appeal to the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 193, 2013-Ohio-4543, ¶16. "Under

the *Bedford* rule as explained in *Northpointe*, as long as the evidence of value that the owner presented to the board of revision was competent and at least minimally plausible, the board of education

may not invoke the auditor's original valuation as a default—with the result that it is not enough for the board of education at the BTA to find fault with the evidence that the owner presented before the board of revision." *Union Savings Bank,* supra, at ¶7.

Walters relies on the *Bedford* rule as described in *Northpointe* for the premise that the BOE was required to present affirmative evidence of value on appeal. The BOE, however, points to the court's subsequent pronouncements, which further refined the parameters of the *Bedford* rule. For instance, the court cited to *Northpointe* when it explained that this board may reinstate the auditor's value "when the BOR's decision to reject the auditor's valuation is completely unsupported in the record" or when the BOE "presents evidence that the auditor's valuation is more accurate than the BOR's." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 144 Ohio St.3d 324, 2015-Ohio-3633, ¶44. The court has further held that "[a] legal error in the BOR's determination prevents affirmance of the BOR's determination." *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 147 Ohio St.3d 503, 2016-Ohio-1485, ¶30. In *Union Savings Bank,* supra, the court further defined the elements necessary to invoke the *Bedford* rule, including not only the requirements that a property owner filed a complaint (or countercomplaint) and a board of education files an appeal, but also that the BOR reduced value based on "competent evidence offered by the property owner," and, finally, that "the board of revision's determination of value is based on appraisal evidence rather than a sale price offered as the property value." Id. at ¶119-11. Even more recently, the court has reiterated the importance of this board's independent review of evidence offered to the BOR in cases where the BOR has reduced value. See, e.g., *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 147 Ohio St.3d 409, 2016-Ohio-7381 *("Olentangy Crossing"); Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 148 Ohio St.3d 695, 2016-Ohio-8332 *("Kenney Company").*

A review of the case law regarding the *Bedford* rule and subsequent authority results in two important takeaways. First, it is crucial that the BOE properly advances its argument for rejecting the owner's evidence before the BOR, reiterating those arguments and any other relevant claims before this board. See, e.g, *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 144 Ohio St.3d 549, 2015-Ohio-4837; *Oak View Properties, L.L.C. v. Franklin Cty. Bd. of Revision,* 146 Ohio St.3d 478, 2016-Ohio-786. Second, this board must "eschew a presumption of the validity of the BOR's value and instead to perform its own independent weighing of the evidence in the record." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-5823, ¶7, citing *Olentangy Crossing,* supra, at ¶15, 22; *Vandalia-Butler City Schools,* supra, atli13, citing *Hilliard City Schools Bd of Edn. v. Franklin Cty. Rd of Revision,* 128 Ohio St.3d 565, 2011-Ohio-2258, ¶17, citing *Columbus Bd. of Edn. v. Franklin Cty. Bd of Revision,* 76 Ohio St.3d 13, 15 (1996). It is only where the BOR relies on competent evidence that is legally sound that the burden shifts on appeal, though this burden may be met with evidence already in the record. See *Kenney Company,* supra. Otherwise, this board retains its responsibility to determine value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd of Revision,* 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. Since neither the BOE nor the property owner has relied on a qualifying appraisal of the property, we will review all evidence in the record to determine value, and do not abdicate our independent fact-finding duty to the BOR.

We are mindful of the Supreme Court's longstanding pronouncement holding that while a qualifying sale typically provides "[t]he best method of determining value[,} *** such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, 412. See, also, *LTC Properties, Inc. v. Licking Cty. Bd of Revision,* 133 Ohio St.3d 111, 2012-Ohio-3930 (Pfeifer, J., concurring). In the present appeal, neither the BOE nor Walters has presented a qualifying appraisal report for this board to utilize to reach our determination. Instead, Walters relied on Joseph's stated opinion that the values of the subject property should not have increased since the parties stipulated value for tax year 2009 in 2011. The BOE relies on its cross-examination of Joseph and the auditor's staff reports, but did not provide any additional independent evidence of value.

We agree with Walters that owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987), but in order for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern•Indem. Co.,* 65 Ohio St.3d 621 (1992). The weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). An owner's opinion must still be probative as to the value of the property on lien date. See *Amerimar Canton Office, LLC v. Stark Cty. Bd. of Revision,* 5th. Dist. Stark No. 2014CA00162, 2015-Ohio-2290. Thus, merely because Joseph is an expert regarding his properties, this board is not required to accept his opinion, or the opinion of any expert, as fact and utilize it as the basis for our determination. In the present appeal, we find that Walters has failed to present sufficient support for Joseph's stated opinion of value, and therefore find that such opinion is not probative. *Moskowitz v. Cuyahoga Cty. Bd of Revision,* Slip Opinion No. 2017-Ohio-4002 (affirming this board's determination that an owner's opinion of value, while competent, was not probative). Furthermore, we reject the argument that a 2009 stipulated value provides a reliable basis for tax year 2015. *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26 (1997), 29; *TBC Westlake, Inc. v. Hamilton Cty. Bd. of Revision,* 81 Ohio St.3d 58(1998); *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 122 Ohio St.3d 134, 2009-Ohio-2461, ¶20-21. As the court has state, "when determining the true value of real property for the current tax year, the assessor should not accord presumptive or prima facie validity to an earlier year's valuation." *Fogg-Akron Assoc., L.P. v. Summit Cty. Bd. of Revision,* 124 Ohio St.3d 112, 2009-Ohio-6412, ¶15.

We likewise find it relevant in our analysis that it appears that no representative for the auditor was present at the BOR hearing and did not participate in the decision process. It appears that the only communication from the auditor was the Board of Revision Standard Report for each parcel, which contain appraiser findings and a recommendation from a staff appraiser that the initially-assessed values be retained. While we recognize that the report alone would not form an independent basis to determine a value, in this case we find that it provides some explanation as to the basis for the initial assessment in a situation where the auditor was not present at the hearing to provide justification for the assessed value. In these reports, the staff appraiser briefly discussed the subject's historical values and indicated he physically inspected the property and considered any potential adjustments necessary to the parcels' respective listings. Most notably, the staff appraiser report notes that the previously settled value for parcel number 4300954 was determined prior to a 4,000 square foot addition to the pole barn situated on the property. These reports further support the auditor's values.

As noted, we find that the evidence offered by Walters was not probative evidence of value. Since the BOR relied on this evidence, we find that the BOR's decision was not supported by the record. Additionally, because Walters has not adequately challenged the auditor's initial assessment of the property, we find that nothing in the record to affirmatively negate the auditor's valuation, with the staff report affirmatively supporting that value. Furthermore, we find no competent and probative evidence in the record for this board to independently determine value for the subject property, other than that first determined by the auditor. Under these circumstances, this board may properly reinstate the auditor's values. See *S.-W. City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 10th Dist. Franklin No. 14AP-729, 2015-Ohio-1780, ¶32; *Sapina v. Cuyahoga Cty. Bd. of Revision,* 136 Ohio St.3d 188, 2013-Ohio-3028, ¶35 ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it. This court has emphatically held that the BTA's independent duty to weigh evidence precludes a presumption of validity of the BOR's valuation."); *Olentangy Crossing,* supra, at ¶20 (where the record does not contain sufficient evidence to perform an independent valuation of the property, the auditor's value may ordinarily be reinstated, even if the auditor's valuation has been negated). Thus, based upon our independent review of

the evidence in the record, we find that the true value of the subject property is best reflected by the value initially determined by the auditor.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 4300954

TRUE VALUE

$278,500

TAXABLE VALUE

$97,480

PARCEL NUMBER 4300326

TRUE VALUE

$441,100

TAXABLE VALUE

$154,390

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1799
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

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Entered Wednesday, September 27, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel number 010-292307-00, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property was initially assessed at $3,658,000. The BOE filed a complaint with the BOR, which requested that the subject property's value be increased to $6,280,000 purportedly to reflect the price at which it transferred in April 2015. The property owner filed a counter-complaint, which requested that the subject property's value be decreased to $1,503,500 purportedly to reflect the price at which it transferred in March 2014.

At the hearing before the BOR, both parties appeared through counsel to submit argument and evidence in support of their respective positions. In its presentation, the BOE submitted conveyance fee statements and a limited warranty deed, which memorialized the transfers in March 2014 and April 2015, and a printout from the county auditor's website that provided a summgry of building permits related to the subject property. The BOE requested that the subject property's value be increased to reflect the $6,280,000 purchase price from April 2015. In its presentation, the property owners submitted the testimony of Jason Amster, an affiliate of the property owner, who testified that he personally viewed the subject property in February or March 2015 and that the building sitused on the subject property was a "shell." However, on cross examination, he acknowledged that he did not know the details of the construction of the building. The county auditor's representative on the BOR noted that staff appraisers had determined that the subject property was 75% complete on the tax lien date of January 1, 2015. Amster also testified that the property owner purchased the subject property (and several other properties) under time constraints to take advantage of Internal Revenue Code §1031. The property owner requested that the BOR reject the April 2015 transaction as the best indication of the subject property's value. At the BOR decision hearing, the BOR determined that the $6,280,000 sale price of April 2015 did not reflect the subject property's value as of the tax lien date January 1, 2015. Subsequently, the BOR issued a written decision that retained the initially assessed value of $3,658,000 and this appeal ensued.

The parties waived the opportunity to supplement the record with additional evidence at a hearing convened before this board. Instead, the parties opted to submit written argument to more fully elucidate their positions.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Then, typically, "the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St. 3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104.

In this matter, the record demonstrates that the subject property transferred two times "recent" to the January 1, 2015 tax lien date: a $1,503,500 transfer from Columbus Corporate Center, Inc. to East Broad Commons, LLC ("East Broad Commons") in March 2014 and a $6,280,000 transfer from East Broad Commons to the current property owner, AFI East Broad Commons, LLC in April 2015. We begin our analysis with the transfer that occurred closest to the tax lien date, i.e., the $6,280,000 transfer in April 2015. See, *HIN, L.L.C. v. Cuyahoga Cty. Bd of Revision,* 124 Ohio St.3d 481, 2010-Ohio-687, paragraph one of the syllabus ("When a property has been the subject of two arm's-length sales between a willing seller and a willing buyer within a reasonable length of time either before or after the tax-lien date, the sale occurring closer in time to the tax-lien date establishes the true value of the property for taxation purposes.")

The property owner advanced three main arguments, i.e., that the subject property materially changed between the tax lien and sale date, the transaction occurred as the result of an Internal Revenue Code §1031 exchange, and the transaction reflected the leased-fee value, not the fee-simple value, to assert that the transfer of April 2015 was not a recent, arm's-length transaction.

We do not agree that the record demonstrates that there was a material change to the subject property between the tax lien and sale date such that the transaction of April 2015 was too remote. To determine whether a sale is recent to the tax lien date, we consider the passage of time and any changes to market conditions, which could affect the value of real property. See, *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio 5932, at ¶32. Also relevant are those conditions that are specific to the property itself. See *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473; *Dearie v. Miami Cty. Bd. of Revision* (Dec. 12, 2003), BTA No. 2003-N-560, unreported; *M.H. Murphy Dev. Co. v. Franklin Cty. Bd. of Revision* (Dec. 3, 2004), BTA No. 2003-R-1177, unreported. None of the parties dispute that the subject property was 75% complete on the tax lien date. None of the parties dispute that the subject property was 75% complete on tax lien date, and when Amster viewed the subject property in February or March 2015. There has been no indication that the subject property materially changed between the date of Amster's viewing and the date of transaction of April 2015. In fact, he testified that he did not know the details of the construction. We are constrained, therefore, to find that the property owner failed to demonstrate that the subject property materially changed from 75% complete on tax lien date to some higher, material level of completion by the sale date in April 2015.

Furthermore, to the extent that the property owner conflates the occupancy of the subject property with the level of completion of the building situsued on the subject property, we must reject such assertion. The record at the BOR is replete with references to the timing of rental payments, instead of discussion about the level of completion, which is the crucial inquiry in this matter. For example, a building could have 0% occupancy, or 100% vacancy, and the building could be 100% complete.

We also do not find the constraints of the §1031 exchange require rejection of the transfer of April 2015. This board has previously found that the transfer of real property as part of a § 1031 exchange does not negate the arm's-length nature of a sale. See, e.g., *Bd. of Edn. of the Hilliard City Schools v. Franklin Cty. Bd. of Revision* (Jan. 13, 2009), BTA No. 2006-T-1804, unreported. Although we acknowledge that the property owner may have had some pressing motivations to purchase the subject property, we note that every party to a sale has some subjective motivations for its participation in the transaction. The record demonstrates that the property owner was not held "hostage" because failure to purchase the subject property would have resulted in bankruptcy. Instead, it appears that the property owner made a business decision to purchase the subject property to avail itself of the tax advantages of the §1031 exchange. Compare *Lakeside Avenue L.P. v. Cuyahogd Cty. Bd. of Revision,* 75 Ohio St.3d 540 (1996) (discussing the concepts of economic duress and compulsion in the context of determining the utility of a sale in establishing value).

We also reject the property owner's argument that transaction of April 2015 cannot be used to value the subject property because it was a sale of the leased-fee interest, not the fee-simple interest. This board has repeatedly rejected such arguments, and finds no reason to deviate in this case. See, e.g., *Milford Exempted Village Schools Bd of Edn. v. Clermont Cty. Bd. of Revision* (May 9, 2016), BTA No. 2015-1093, unreported.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd of Edn. v. Franklin Cty. Bd of Revision,* 76 Ohio St.3d 13, 15 (1996)(BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript."). Based upon our review of the record, we find that the property owner failed to rebut the presumption

accorded to the $6,280,000 transfer of the subject property in April 2015 and also conclude that the BOR erred when it rejected such 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 2015.

It is, therefore, the order of this board that the subject property's true and taxable values are as follows, as

of January 1, 2015:

TRUE VALUE

$6,280,000

TAXABLE VALUE

$2,198,000

OHIO BOARD OF TAX APPEALS

N AND D RESTAURANTS INC./RED LOBSTER HOLDINGS, INCIARCP RL PORTFOLIO IV LLC, (et. al.),

Appellant(s),

vs.

ERIE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1707, 2016-1708

(REAL PROPERTY TAX)

DECISION AND ORDER

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Entered Wednesday, September 27, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellants appeal two decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 32-03096.000 and 32-'03115.000, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the parties' written argument.

[2] The subject property consists of two parcels making up one economic unit. Parcel number 32-03096.000 is the parking lot for the Red Lobster Restaurant located on the adjacent parcel number 32-03115.000. The subject's total true value was initially assessed at $3,636,320, with the value for the restaurant based on an

August 2014 sale of that parcel. Appellants filed decrease complaints with the BOR seeking a reduction in the total value of both parcels to $1,385,650, amending their requested reduction to $1,200,000 at the BOR hearing based on appraisal evidence submitted. The appellee board of education ("BOE") filed a countercomplaint in support of the auditor's value. At the BOR hearing, appellants relied on the testimony and written report of Richard G. Racek, Jr., MAI, who opined that the subject's total value was $1,200,000. Racek acknowledged that the property had transferred ownership in 2014, but asserted that it was not indicative of value because there was a favorable lease in place at the time of the sale. Appellants argued that because of this lease and based on changes to R.C. 5713.03, the sale was not reliable evidence of value. The BOE argued in support of the auditor's value based on the 2014 sale and cross-examined Racek regarding his appraisal and pointed to what it saw were flaws in his analysis. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

[3] On appeal, appellants argue that the auditor and BOR improperly based their value determinations on the 2014 sale despite the lease in place at the time, and that Racek's appraisal provides the most reliable indication of value. The appellee parties disagree and maintain that the sale provides the best indication of the subject's value.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, 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. *Cincinnati Bd of Edn. v. Hamilton Cty. Bd of Revision,* 78 Ohio St.3d 325, 327 (1997). Additionally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[5] In the present matter, it is undisputed that parcel number 32-03115.000 transferred first from N and D Restaurants, Inc. to Red Lobster Holdings, LLC and then again to ARCP RL Portfolio IX, LLC on August 7, 2014, both times for a recorded sale price of $3,267,274. As the party opposing the sale, appellants have the burden to show why the reported sale price is not a reliable indication of the subject's true value. Appellants do not dispute that this was a recent arm's-length transaction, but instead claim that the purchase price is not a reliable indication of value because it was a "leased-fee" sale, and that amended R.C. 5713.03 prohibits reliance upon the transaction. We disagree.

[6] Appellants argue that due to amended language in R.C. 5713.03, the sale cannot be used to value the property because it purchased the leased fee interest. Initially, while the court has held that a taxing authorities may consider non-sale-price evidence, including the effect of a lease encumbering the property at the time of the sale, the burden remains on the opponent of the sale to show that the price did not reflect the property's true value because of such a lease. *Terraza 8, L.L.C. v. Franklin Cty. Bd of Revision,* Slip Opinion No. 2017-Ohio-4415. Additionally, appellants have not offered any evidence to show that the purchase price included consideration for anything other than real property or testimony from an individual involved in the sale regarding the parties' motivations. Appellants have failed to show that the lease of the

property has rendered the sale price unreliable. Accordingly, we find that there is nothing in the record to persuade this board that we should disregard the sale as the best evidence of value.

[7] Finally, we need not address the reliability of Racek's appraisal and his value conclusions because once evidence of a qualifying sale has been presented, "[i]t is only when the purchase price does not reflect the true value that a review of independent appraisals based upon other factors is appropriate." *Pingue v. Franklin Cty. Bd. of Revision*, 87 Ohio St.3d 62, 64 (1999). We acknowledge that the appraisal contains a value conclusion for parcel number 32-03096.000 based in part on a land sales analysis, but we find that it does not furnish a reliable basis to increase that parcel's assessed value. First, the appellee parties have not advocated for such an increase, and second, the resulting value was part of the appraisal of both properties as a single economic unit. Thus, we will not extract a portion of the final value conclusion to increase the subject's value.

[8] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 32-03096.000

TRUE VALUE

$369,310

TAXABLE VALUE

$129,260

PARCEL NUMBER 32-03115.000

TRUE VALUE

$3,267,270

TAXABLE VALUE

$1,143,540

OHIO BOARD OF TAX APPEALS

MARTIN J. BELICH & BARBARA BELICH (VENDORS) AND 28810 LAKESHORE BOULEVARD, LLC (VENDEE), (et. al.),

Appellant(s),

vs.

LAKE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1123

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, September 27, 2017

Ms. Clements and Mr. Caswell concur. Mr. Harbarger dissents.

[1] The appellants appeal a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 28-A-042-H-00-013-0, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

[2] The subject property, a restaurant, was initially assessed at $484,650. A decrease complaint was filed with he BOR, which requested a reduction to the subject property's value to $200,000, purportedly to reflect the price at which it transferred in November 2015. Line one of the complaint identified the owners as "Martin J. Belich & Barbara Belich (Vendors) and 28810 LakeshOre Boulevard, LLC (Vendee)." The affected board of education ("BOE") filed a counter-complaint, which objected to the request.

[3] At the BOR hearing on the matter, both parties appeared, through counsel, to present argument and/or evidence in support of their respective positions. The appellants submitted the testimony of Martin and Barbara Belich, owners of the subject property. Mr. Belich testified the transfer of a partial-interest in the subject property from his business partner in September 2013, as well as the purported transfer of the subject property via land-installment contract in December 2015. The appellants submitted the land-installment contract, which demonstrated that the appellants and Basia, LLC ("vendors") entered into a land installment contract with 28810 Lakeshore Boulevard, LLC ("vendee") on November 30, 2015, to transfer the subject property to 28810 Lakeshore Boulevard, LLC upon the satisfaction of a $30,000 initial payment, monthly payments of $2,323.70 (which included interest) beginning on January 1, 2016, and a final payment of $53,510.68 due on January 1, 2021. Relying upon the documentary and testimonial evidence presented, the appellants requested that the subject property be valued at $200,000. The BOE

cross-examined Mr. Belich about the facts and circumstances of the partial-interest transfer of 2013 and the land-installment contract of 2015; he conceded that ownership of the subject property did not transfer upon execution of the land-installment contract in December 2015, In support of its request, the BOE submitted a recent decision issued by this board to argue that a land-installment contract does not receive the same presumption of real property value as a recent, arm's-length sale. Relying upon the elicited testimony and this board's case law, the BOE requested that the subject property's initial value be retained. After the hearing, the appellants supplemented the record with additional decisions issued by this board to argue that the land-installment contract of 2015 received the same presumption of real property value as a recent, arm's-length sale.

[4] The appellants and BOE waived the opportunity to supplement the record with additional evidence at a hearing before this board. Instead, they submitted written argument to more fully explain their respective positions. In its submission, the appellants claimed that the land-installment contract of 2015 was, indeed, a recent, arm's-length sale, which reflected the subject property's value as of the tax lien date. In its submission, the BOE conversely claimed that the subject property has not been the subject of a recent, arm's-length sale but instead was the subject of an agreement to transfer the subject property, at some future date, after installment payments had been made.

[5] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964)

[6] The record demonstrates that the subject property previously transferred in September 2013; however, Mr. Belich testified that such transfer was a partial-interest transfer from his business partner. This board has previously found that a transfer of a partial interest in property, by itself, to be insufficient to establish the value of the property as a whole. See, e.g., *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 7, 2014), BTA No. 2012-1599, unreported; *Patterson v. Summit Cty. Bd of Revision* (Dec. 31, 2013), BTA No. 2013-3797, unreported; *Canton City School Dist. Bd of Edn. v. Stark Cty. Bd. of Revision* (May 19, 2006), BTA No. 2004-H-1305, unreported.

[7] We proceed, therefore, to consider the land-installment contract between Mr. and Mrs. Belich and Basia, LLC and 28810 Lakeshore Boulevard, LLC in November 2015.

[8] As we review the land-installment contract in this matter, we acknowledge the Supreme Court's decision in *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 129 Ohio St.3d 172, 2011-Ohio-3092, holding that former "R.C. 5713.03 does not require that an arm's-length sale price be *negotiated* within a reasonable time before or after the lien date; it is the time of *the sale itself* that the `reasonable time' language of the statute addresses." (Emphasis sic.) However, the court did not have before it, as is presented in the instant case, a transfer effected by land contract. Instead, the parties had entered into a lease, typically defined as "a conveyance of an estate in real property for a limited term, with conditions attached, in consideration of rent," *Fadelsak v. Hagley,* 4th Dist. Lawrence No. 02CA41, 2003-Ohio-3413, ¶11, which provided for the transfer of the property at the end of the lease term. A land contract, also known as a contract for deed or land installment contract, is distinguishable from a lease, see, e.g., *Hubbard v. Dillingham,* 12th Dist. Butler No. CA2002-02-045, 2003-Ohio-1443, in that it constitutes a financing device that provides for a present transfer of equitable ownership in the property and, often, a much later transfer of legal title. See R.C. 5313.01(A) (defining a "land installment contract"

as "an executory agreement which by its terms is not required to be fully performed by one or more of the parties to the agreement within one year of the date of the agreement and under which the vendor agrees to convey title in real property located in this state to the vendee and the vendee agrees to pay the purchase price in installment payments, while the vendor retains title to the property as security for the vendee's obligation. Option contracts for the purchase of real property are not land installment contracts."). See *Taylor v. Nickston Investments,* 10th Dist. Franklin No. 92AP-508, 1992 Ohio App. LEXIS 5836 (Nov. 17, 1992) (stating that "R.C. Chapter 5313 was enacted to protect one buying property on a land contract from the unfairness of a forfeiture action instituted by the seller after the buyer has accumulated significant equity in the property.").

[9] While a sale price agreed upon in a land contract *may* provide corroborating evidence of a property's value near the time of negotiation, its utility becomes suspect with the passage of years. Although this board has previously relied upon the sale price to establish value when a land contract is completed and title transferred, provided such transfer is "recent" to tax lien date, we have limited our holdings in this context by according a presumption of "recency" to transfers effected by land contract to only those situations where *both* the date on which the contract was entered into *and* the ultimate transfer occur recent to the tax lien date in issue since to hold otherwise may lead to inequitable and absurd results. See, e.g., *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* (June 16, 2016), BTA No. 2015-1498, unreported. Compare *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588.

[10] In this matter, the terms of the land-installment contract are undisputed. It also undisputed that the subject property has *not* transferred to 28810 Lakeshore Boulevard, LLC in satisfaction of the land installment contract. In fact, at the BOR hearing, Mr. Belich conceded that he (and presumptively Barbara Belich and Basia, LLC) retain ownership of the subject property until January 2021, according to the terms of the contract, and acknowledged that he "hopes that [28810 Lakeshore Boulevard, LLC] makes it that long." BOR Hearing Audio. Thus, it is clear that the subject property has not transfered to 28810 Lakeshore Boulevard, LLC and may not actually transfer as the parties agreed. As such, we conclude that, in this instance, the subject property has *not* been the subject of a recent, arm's-length sale and that the land installment contract is not competent and probative evidence of the subject property's value.

[11] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that the land-installment contract, upon which the appellants rely, is not indicative of the subject property's value. In doing so, we conclude that the appellants have failed to satisfy the evidentiary burden on appeal. Because the appellants failed to provide any other evidence of the subject property's value, we are unable to fulfill our duty to independently determine the subject property's value. It is therefore the order of this board that the subject property's true and taxable values as of January 1, 2015 are as follows:

TRUE VALUE

$484,650

TAXABLE VALUE

$169,630

Mr. Harbarger dissents.

[12] Essentially, the appellants in this matter, the land contract vendors and land contract vendee, argue that their land contract constitutes a "sale" that is the best evidence of value for the tax lien date in question in this matter. The majority relies on a number of Supreme Court cases to reject this position, but chiefly on *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty Bd of Revision,* 129 Ohio St.3d 172, 2011-Ohio-3092. The Board's treatment of land contract vendees in possession is also impacted by *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Bd. of Revision,* 86 Ohio St.3d 181 (1999).

[13] However, in neither of those cases was the Supreme Court reviewing a matter where the buyer/appellant was a land contract vendee in possession. Further, the Supreme Court has never dealt directly with the issue of land contract vendees in possession in the context of real property valuation. In the *N. Royalton* matter, the purchase involved a purchase option and not a land installment contract, and the *Victoria Plaza* matter involved a deed that had not yet been filed by the purchaser. Further, in the instant matter there is no question of standing, since both the land contract vendors and vendee jointly filed the valuation complaint. Compare *Beavercreek Towne Station LLC v. Greene Cty. Bd. of Revision* (Oct. 25, 2016), BTA Nos. 2015-1488 et al., unreported, pending on appeal, S.Ct. No. 2016-1713. Prior to court's decision in *Victoria Plaza,* the standing of land contract vendees to file valuation challenges on their own was upheld by the BTA.

[14] The basic principle is that the land contract vendee has equitable title to the property when the land contract is recorded and obtains legal title upon the completion of the land contract. However, land contract vendees are treated in various manners under the law in Ohio. There are many circumstances in Ohio where a vendee is treated as if they were the "owner" or legal title holder. The first clear example is when foreclosure is required when a vendee is in default under a land contract.

[15] Regarding default by a vendee under a land contract and termination of their right to occupy the property, it is well established under Ohio law that after five years of performance or twenty percent of the purchase has been paid, the vendee is treated as the "owner" of the property and their interest must be terminated in a sale and foreclosure just like any other purchaser of property. R.C. 5313.07; R.C.2323.07. Prior to those thresholds, the vendor may simply use the forcible entry concepts available under R.C. Chapter 1923. R.C. 5313.08. Under R.C. 5313.07 the land contract becomes a financing device like a purchase money mortgage and the vendee in possession has the same rights as a mortgagee. The vendee's equitable title has to be extinguished just like legal title; there absolutely no difference.

[16] There are many other examples of situations where Ohio courts have found that land contract vendees are "owners" for the purpose of the application of various laws. In interpreting and applying homeowners association by-laws and regulations, land contract vendees in possession are "owners" and notice must be provided to them. *Homeowners Assn. at Arrowhead Bay v. Fidoe,* Mahoning C.P. No. 2011 CV 729, 2012 Ohio Misc. LEXIS 21953 (July 11, 2012). Further, courts have determined that land contract vendees are "owners" for the purpose of notice and compensation in eminent domains actions in various decisions. See, e.g., *In re Appropriation of Easement for Highway Purposes, Director of Highways v. Bennett,* 118 Ohio App. 207 (1962). In another appropriation matter, *Clark Cty. Bd. of Park Commrs. v. Dunkle,* 2nd Dist. Clark No. 2002 CA 93, 2003-Ohio-5400, the property ownership involved a land contract but the court didn't even address the land contract vendee issue, resolving the case on other issues. The court could have resolved the parties' issue by ruling that one party was not an "owner" but chose not to do so.

[17] In many cases involving the interpretation of local ordinances and the notice requirements and other procedural requirements under them, land contract vendees in possession have been found to be "owners" under those ordinances. E.g., *Finn v. City of Toledo,* 6th Dist. Lucas No. L-94-157, 1995 Ohio App. Lexis 1207 (Mar. 31, 1995. Other examples can found in numerous local tax foreclosure issues where a land contract vendee in possession has been given notice of property tax foreclosure sales and those sales have been set aside as having not foreclosed their "ownership" interest. E.g., *Hoskins v. Smith,* 10th Dist. Franklin No. 96APE11-1604, 1997 Ohio App. Lexis 3177 (July 15, 1997).

[18] For real property tax exemption purposes, a land contract vendee in possession is specifically granted standing to file an application for exemption pursuant to R.C. 5715.27 (A)(1). In addition, for purposes of the homestead exemption, a land contract vendee in possession qualifies as an "owner" under R.C. 323.151. *Gilman v. Hamilton Cty. Bd. of Revision,* 127 Ohio St.3d 154, 2010-Ohio-4992. Further, a land contract vendee is treated as an "owner" for purposes of current agricultural use valuation ("CAUV") law. R.C. 5713.01(D); *Dublin Woods v. Union Cty. Rd of Revision,* 63 Ohio App.3d 620 (1989). Thus, there are numerous examples of situations where a land contract vendee in possession is treated as an "owner" in Ohio by Ohio courts, political subdivisions, and administrative agencies.

[19] Reading the appellants' brief, I am compelled to agree that the Board has misapplied the Supreme Court's ruling in *N. Royalton.* The contract in question in that case was an option to purchase, and the equitable interest in question was that arising from that purchase option. The buyer in *N. Royalton* was not a vendee in an installment land contract and did not possess the equitable title in the property that a vendee in possession does. It is important to understand this distinction. The issue had to do with the recency of the sale based upon the exercise of the option, which has nothing to do with the vesting of equitable title in a vendee in a land installment contract. As the appellant points out, options to purchase are clearly not land installment contracts and we need not belabor that point. More than a simple equitable interest is vested in a vendee in a land installment contract, equitable *title* is vested in the vendee upon the recording of the instrument and certainly upon the meeting of the requirements in R.C. 5313.07. I would argue that a recorded installment land contract vests equitable title in the vendee for all the world to be see and rises significantly above simply "an equitable interest in real property" as has been addressed by the Supreme Court in *N. Royalton, Victoria Plaza,* or any of the other cases where the court has addressed this issue.

[20] I would further argue that a land installment contract vendee in a recorded instrument should be considered an "owner" in all situations, including under R.C. 5715.19 for purposes of standing to file a valuation complaint. While I believe it is certainly true once the vendee has met the requirements under R.C. 5313.07, I would argue that it should be true in all instances of recorded instruments for simplicity of administration. The provisions for notice to the "legal" title owner also would not be a burden on the system.

[21] Now once overcoming the issue of ownership, a sale involving a land installment contract still has to meet the normal review issue of any sale of recency, arm's—length nature, parties, and so forth. In the instant matter, it appears to me that this sale is otherwise a good sale. The sale was recent to tax lien date, it was negotiated between the parties, there is no evidence the parties are related, and no evidence was presented of any change in the property between the tax lien date and the date of the sale.

[22] As a consequence of my strong feelings that a vendee in a land installment contract is in fact an "owner," and that this is a valid sale, I dissent from the Majority in this matter.

OHIO BOARD OF TAX APPEALS

WICKLIFFE CITY SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

LAKE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1023, 2016-1024, 2016-1025, 2016-1026

(REAL PROPERTY TAX)

DECISION AND ORDER

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Entered Wednesday, September 27, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals decisions of the board of revision ("BOR") which determined the value of the subject real property, parcel numbers 29-A-004-0-00-005-0, 29-A-002-W-00-005-0, 29-A-002-S-00-011-0, 29-A-002-S-00-010-0, for tax year 2015. These consolidated matters are now considered upon the notices of appeal, transcripts ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject's total true values were initially assessed at $82,110; $171,070; $188,650, and $122,780, respectively. The Wickliffe School District Board of Education ("BOE") filed four complaints with the BOR, seeking increases in values to $200,000; $360,000; $550,000; and $565,000, based upon four transfers. S.T., Exhibit ("Ex.") A. No counter complaint was filed; however, counsel and a representative of the property owner appeared at the BOR's hearings.

The BOR held four hearings on the complaints filed. In each instance, in support of the increase sought, BOE's counsel submitted sale documentation consisting of a deed and conveyance fee statement reflecting a transfer of the subject parcel. Specifically, for parcel number 29-A-004-0-00-005-0, the sale documentation reflects a transfer from William Sopko & Sons Co., Inc., to The Lubrizol Corporation ("Lubrizol"), on December 1, 2015, for $200,000. S.T., Ex. F. For parcel number 29-A-002-W-00-005-0, the sale documentation reflects a transfer from EK North Creek, LLC, to Lubrizol, on December 21, 2015, for $360,000. Id. For parcel number 29-A-002-S-00-011-0, the sale documentation reflects a transfer from Terrence P. Chubb, to Lubrizol, on October 26, 2015, for $550,000. Id. For parcel number 29-A-002-S-00-010-0, the sale documentation reflects a transfer from Mario Raguz, to Lubrizol, on December 21, 2015, for $565,000. Id. There was no challenge to the recency or the arm's-length nature of any of the aforementioned transactions.

In fact, counsel specifically stated that the owner does not contest the arm's-length nature of any of the four transfers. S.T., Ex. E. However, owner's counsel argued that the four transfers do not reflect the best evidence of value for each parcel because the owner was motivated to purchase the subject property by a self-imposed "civic duty." Further, owner's counsel cited to amendments made to R.C. 5713.03 and argued, the utilization of a recent arm's-length sale to determine value is now discretionary. In support of the arguments advanced, owner's counsel offered the testimony of Mr. Mark Sutherland, corporate vice president in charge of global communications and global affairs for Lubrizol. Mr. Sutherland testified that Lubrizol sought to acquire twelve properties in the immediate vicinity of its headquarters and intended to utilize such parcels to create green space, "for the civic duty referenced" and "to remove *** the junk vehicles [and] the out-of-assortment of activity that is going on there." S.T., Ex. E. Mr. Sutherland went on to liken Lubrizol's purchase of the subject property to actions taken by the City of Wickliffe through its "Euclid Avenue beatification project," to clean up properties and present a "better view." Id.

Further, Mr. Sutherland explained, Lubrizol retained a broker to acquire the desired parcels. In so doing, Lubrizol authorized the broker to disclose Lubrizol as the purchaser and to negotiate each sale on a case by case basis. Id. The broker advised Lubrizol that it would have to pay a premium for the properties. Mr. Sutherland characterized such purchase prices as both "an incentive" to the sellers and as assistance with costs associated with relocating. Id.

In response to questions posed by both BOE's counsel and BOR members, Mr. Sutherland indicated the following: only one parcel, parcel number 29-A-004-0-00-005-0, was listed for sale at the time of purchase; no appraisals were performed to determine purchase prices; no deed restriction(s) relating to Lubrizol's alleged intent to create green space is contained in any of the subject's deeds; and no substantial improvements have occurred on any of the parcels since the time of purchase. Id.

At the conclusion of the hearing, owner's counsel also advanced a constitutional argument that reliance upon the purchase prices in valuing the subject parcels would violate the uniformity clause of the Ohio Constitution. Id.

Thereafter, upon consideration of the information available to it, the BOR elected not to rely on any of the subject's transfers and issued four decisions maintaining the subject's initially assessed valuations. S.T., Ex. G. Dissatisfied with the results, the BOE timely filed foul• notices of appeal with this board.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379. It has long been held by the Supreme Court that "the best evidence of 'truevalue in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Then, typically, "the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreenlent, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104. The Supreme Court has made it clear that no "bright line" test exists when establishing recency and that the mere passage of time does not, per se, render a sale unreliable. See, e.g., *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059. Compare *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588.

It is well established that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be supported with reliable tangible evidence of a property's value. See *Amsdell v. Cuyahoga C. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992). Ultimately, the weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record and found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997).

In this instance, the BOE submitted sales documentation to the BOR evidencing four facially qualifying sales, and, as such, a presumption of validity arose in favor of each transfer. When, as here, "the issue is whether a proffered sale price should be used to value the property, the burden at the BTA is usually on the same party who bore that burden at the BOR: the opponent of using the sale price. *Cummins Property Servs.,* 117 Ohio St.3d 516, 2008-Ohio-1473. That burden does not shift at the BTA even if the BOR decided not to use the sale price as the criterion of value." *North Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Edn.,* 129 Ohio St.3d 172, 2011-Ohio-3092, at ¶15-16. Thus it is the burden of the property owner, i.e., Lubrizol, to "show why the price reported for the sale did not constitute the criterion of value for the property." Id. at ¶17. See also *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* 78 Ohio St.3d 325, 327 (1997).

On appeal, the parties jointly waived hearing and submitted written argument advancing their positions to this board. When parties elect to present no additional evidence on appeal, this board will independently review the record developed by the parties before the BOR and render a determination regarding value that is consistent with the existing information. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15, (1996), quoting *Black v. Cuyahoga Cty. Bd. of Revision,* 16 Ohio St.3d 11, 14 (1985).

Through written argument, as before the BOR, the BOE maintains that the subject's December 1, 2015; October 26, 2015; and two December 21, 2015 transfers constitute the best evidence of value as of the tax lien date at issue. The owner, however, insists that factors exist which cause the sales to be unreliable indications of value. Specifically, the owner contends, the sales were not generally exposed to the open

market and the parties to the transfers were not typically motivated market participants and did not act in their own self-interest.

In order for a sale to qualify as the best evidence of a property's value, "a key consideration *** is whether the seller and buyer were both willing." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 134 Ohio St.3d 529, 2012-Ohio-5680. See also *Terraza 8, L.L.C., v Franklin Cty. Bd. of Revision,*Slip Opinion No. 2017-Ohio-4415, ¶9. In *Walters v. Knox County Board of Revision* (1989), 47 Ohio St.3d 23, at 26,the court held, "an arm's-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest.' See also *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 112 Ohio St.3d 309, 2007-Ohio-6; *Berea City Sch. Dist. Bd. of Edn. v. Cuyahoga County Bd. of Revision,* 106 Ohio St.3d 269, 2005-Ohio-4979, at ¶9. Recently, in considering amendments to R.C. 5713.03, the court commented, "the General Assembly still favors the use of recent arm's-length sale prices in determining value for taxation purposes," and, ultimately, reaffirmed that the best evidence of value is a recent arm's-length transfer of real property, subject to rebuttal. *Terraza 8, L.L.C.,* supra, at ¶33, 34.

At the outset, we reject the owner's contention that the subject transfers are unreliable because they were not exposured to the open market. This board has previously considered and consistently rejected similar arguments and finds no reason to deviate in this instance. *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Mar. 23, 2010), BTA No. 2008-K-202, unreported ("merely because a property is not listed on the open market, or is offered at a take it or leave it' selling price, *** does not, per se, mandate the rejection of a sale."). Moreover, the Supreme Court has made clear that "case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers. See *Walters* at 26 (Douglas, J., concurring in judgment only) (distinguishing 'private sale' transaction from open-market sales and asserting that "[p]rivate sale transactions which are at arm's-length occur every day.")." *N. Royalton,* supra, at ¶29.

Similarly, we find the owner's contention that the parties to the subject transfers were not typically motivated and did not act in their own self-interest to be without merit. The record contains no tangible evidence corroborating Mr. Sutherland's testimony regarding any alleged civic duty or intended plans for the subject and there has been no suggestion of an alignment of interests between the parties. Moreover, while it is undisputed that the broker was authorized to disclose Lubrizol as the purchaser, there is no evidence in the record suggesting that the prior owners were even aware of Lubrizol's alleged "civic duty" or that the purchasers somehow took advantage of Lubrizol's situation by demanding exorbitant prices. S.T., Ex. E. To the contrary, Mr. Sutherland specifically testified that Lubrizol sought to acquire the subject and was willing to pay a premium, purchase prices were negotiated on a case by case basis, and there was no "compelling need" to acquire the properties within a certain time frame. See generally *Lakeside Avenue L.P. v. Cuyahoga Cty. Bd. of Revision, 75* Ohio St.3d 540 (1996); *Ronald McDonald House Charities of Central Ohio v. Franklin Cty. Bd. of Revision* (Oct. 9, 2014), BTA No. 2014-116, unreported ("the mere allegation of a purchaser's desire to accumulate property in a particular area *** is not itself tantamount to economic duress.").

In this instance, a close review of the record reveals that this was simply a situation where a property owner desired to acquire properties in the immediate vicinity of its headquarters in the furtherance of its own business interests. Simply because Lubrizol now claims it purchased the properties pursuant to a self-imposed "civic duty" and plans to utilize the subject property as green space, does not render the four subject purchase prices unreliable indications of value or serve to overcome the presumptions of validity. See, e.g., *Columbus City Schools Bd. of Edn. v. Franklin Cty. Rd of Revision* (May 25, 2016), BTA No. 2015-1227, unreported; *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262,2653, unreported, at 11.

Accordingly, absent an affirmative demonstration that the subject's October 26, 2015; December 1, 2015; and two December 21, 2015 transfers are not qualifying sales for tax valuation purposes, we find the existing record demonstrates that such transactions were recent, arm's-length, and constitute the best indication of the subject parcels' values as of tax lien date at Issue.

Finally, we acknowledge Lubrizol's constitutional argument that valuing the subject property consistent with the four subject sales is in violation of the uniformity clause of the Ohio Constitution; however, we are mindful that the Ohio Supreme Court has only authorized this board to accept evidence on constitutional

points. *Cleveland Gear Co. v. Limbach,* 35 Ohio St.3d 229 (1988); *MCI Telecommunications Corp. v. Limbach,* 68 Ohio St.3d 195, 198 (1994). As such, we make no finding in relation thereto.

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER 29-A-004-0-00-005-0

TRUE VALUE

$200,000

TAXABLE VALUE

$70,000

PARCEL NUMBER 29-A-002-W-00-005-0

TRUE VALUE

$360,000

TAXABLE VALUE

$126,000

PARCEL NUMBER 29-A-002-S-00-011-0

TRUE VALUE

$550,000

TAXABLE VALUE

$192,500

PARCEL NUMBER 29-A-002-S-00-010-0

TRUE VALUE

$565,000

TAXABLE VALUE

$197,750

OHIO BOARD OF TAX APPEALS

GAMIL & SANAA S MORGAN, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2344

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GAMIL & SANAA S MORGAN
Represented by:
GAMIL S. MORGAN
OWNER
8458 CAMDEM CT BROADVIEW
BROADVIEW HEIGHTS, OH 44147

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, October 4, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 581-10-14, for tax year 2015. This matter is now considered upon the notice of appeal and the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01.

The subject's total true value was initially assessed at $422,700. The property owner filed a decrease complaint with the BOR, seeking a reduction in value to $320,000, based upon property defects and comparable sales. S.T., Exhibit ("Ex.") A. No counter complaint was filed.

In support of the complaint, the property owner submitted photographs of the subject's alleged defects, county records relating to the subject property, and print-outs of comparable sales information; however, the property owner elected not to attend the BOR's hearing. Upon consideration of the information available to it, the BOR issued a decision decreasing the subject property's initially assessed valuation to $397,200. S.T., Ex. G. Dissatisfied with the result, the property owner filed an appeal with this board. On appeal, the property owner waived the opportunity to appear at this board's hearing and submit new evidence of value.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. In *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6, the court elaborated: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493 ***

As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

Upon review, the record contains no evidence that the subject property "recently" transferred through a qualifying sale and appellant did not provide a competent appraisal of the subject property, attested to by a qualified expert, for the tax lien date in issue. For the reasons set forth below, we find the owner's evidence does not constitute reliable and probative evidence upon which this board may rely to further reduce the subject property's value.

Turning to the owner's raw comparable sales data, we note, "[t]he purpose of the sales comparison approach, one of the three commonly employed methods of appraising property, is to derive an estimate of value by comparing the property under consideration to similar properties recently sold within the market place." *Kaiser v. Lorain Cty. Bd. of Revision* (Nov. 2, 2010), BTA No. 2009-V-1090, unreported, citing *Speca v. Montgomery Ct. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. Typically, under such approach, appraisers employ qualitative or quantitative adjustments to such comparables to align, and thereby compare, such properties to the subject. In this instance, however, the comparable sales data (submitted to the BOR) does not reflect any adjustments accounting for meaningful differences between such properties and the subject property. In the absence of such adjustments, this board is left to speculate 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; to be sure, "[m]ere speculation is not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶15. See generally *Freshwater v. Belmont Cty. Bd of Revision,* 80 Ohio St.3d 26 (1997). As this board stated in *Copp v. Franklin Cty. Bd. of Revision* (Sept. 8, 2009), BTA No. 2007-Z-692, unreported, "[b]y not developing a sufficient foundation to establish an appropriate expertise in appraisal methods and the deviation of true value for a particular piece of real property, this board does not find the analyses particularly probative and does not accord them much weight." See generally The Appraisal of Real Estate (14th Ed. 2013); *Witt Co. v. Hamilton Cty. Bd of Revision,* 61 Ohio St.3d 155 (1991).

To the extent that the property owner also relies upon the property defects asserted on the underlying complaint and photographs (submitted to the BOR) of negative conditions affecting the subject property, e.g., a leaking roof, unfinished basement, and windows in need of repair, these assertions alone do not establish an alternate value for the subject. Both the Supreme Court and this board have repeatedly held that evidence demonstrating the existence of negative conditions is insufficient to support a change in value where, as here, the appellant does not quantify how the negative conditions impact the property's value. *Throckmorton v. Hamilton Cty. Bd of Revision,* 75 Ohio St.3d 227 (1996); *Zanetos v. Franklin Cty. Bd. of Revision* (Mar. 30, 2010), BTA No. 2008-V-775, unreported. The record contains no other evidence of value.

While it is clear that valuation determinations made by county boards of revision are not presumptively correct, see, e.g., *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, it is equally clear that a decision made by a board of revision is entitled to some consideration and that an appellant has an affirmative burden to demonstrate entitlement to the value claimed. See, e.g., *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994). In the present case, the property owner demonstrated that the initial assessment of the subject property overstated its value. The BOR, established to initially review valuation challenges at the local level, took into consideration the taxpayer's evidence, as well as information available to it, and concluded that an adjustment to value was warranted. On appeal, no party disputes the reduction in value granted by the BOR and we find the adjustments effected by the BOR to be supported.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 581-10-014

TRUE VALUE

$397,200

TAXABLE VALUE

$139,020

OHIO BOARD OF TAX APPEALS

DOUGLAS & KATHY MCELWEE, (et. al.),

Appellant(s),

vs.

ROSS COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1852

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DOUGLAS & KATHY MCELWEE
Represented by:
DOUGLAS MCELWEE
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For the Appellee(s) - ROSS COUNTY BOARD OF REVISION
Represented by:
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RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

PAINT VALLEY LOCAL SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

Entered Thursday, October 5, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellants appeal a decision of the board of revision ("BOk") which determined the value of the subject real property, parcel number 23-1112687.000, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject's total true value was initially assessed at $357,830. The property owner filed a decrease complaint with the BOR, seeking a reduction in value to $225,000, based upon a "drive by" appraisal by "Southern Ohio Appraiser[.]" S.T., Exhibit ("Ex.") A. The Paint Valley Local School District Board of Education ("BOE") filed a counter complaint requesting to maintain the subject's initially assessed value. S.T., Ex. B.

At the BOR's hearing, both the property owner, Mr. Douglas McElwee, and counsel for the BOE appeared. Mr. McElwee testified that the subject was listed for sale and argued that the listing price should set the limit of the subject's value as his attempts to sell the property had been unsuccessful. Further, Mr.

McElwee stated that only one offer, in an amount of $80,000, had been received and was rejected. Notably, despite the owners' assertion of a "drive by" appraisal on the complaint, the there was no appraisal discussion or written report offered at hearing. S.T., Ex. E. BOE's counsel conducted a brief cross examination of Mr. McElwee. Thereafter, upon consideration of the information available to it, the BOR issued a decision decreasing the subject's initially assessed valuation to $320,010. S.T., Ex. G. Dissatisfied with the result, the property owners timely filed an appeal with this board. On appeal, no hearing was requested before this board.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. In *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6, the court elaborated: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493 *** ."

It is well established that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be supported with reliable tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992). The weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record which must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997).

As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals, 175* Ohio St. 410 (1964). Such is the case in this appeal.

Upon review, the record contains no evidence that the subject property "recently" transferred through a qualifying sale and appellants did not provide a competent appraisal of the subject property, attested to by a qualified expert, for the tax lien date in issue. Instead, the parties to this appeal advance their positions through written legal argument and rely on the record developed before the BOR.

As before the BOR, the owners argue that the subject's value should be limited to its listing price, i.e., $259,000. In addition, attached to the owners' written argument is a broker's letter, stating no showings or offers have been received in relation to the subject property. For its part, the BOE contends the owner failed to provide competent and probative evidence of value and requests this board to reinstate the subject's initially assessed value or, in the alternative, to affirm the BOR's decision. The county appellees elected not to submit written argument.

In considering appellant's claim that the listing price should set the limit of the subject's value, this board cannot agree. "[A] listing price, in essence an aspirational selling price, is not conclusively probative of what a willing buyer would pay for the property in an arm's-length transaction, and is therefore not conclusively probative of actual market value." *Kaiser v. Franklin Cty. Aud.,* 10th Dist. Franklin No.

10AP-909, 2012-Ohio-820, at ¶12. Likewise, it is well settled that unaccepted offers to purchase a property are not entitled to the rebuttable presumption of validity accorded an arm's-length sale. *Gupta v Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397, 400 (1997). Given the characteristics of an arm's-length transaction, see *Walters v. Knox Cty. Bd. of Revision,* 47 Ohio St.3d 23, 25 (1989), we are unable to conclude that the property owners' act of listing the property for sale, in and of itself, provides a sufficient indication of value upon which this board may rely to further reduce the subject's value. *Society Natl. Bank v. Carroll Cty. Bd. of Revision* (Apr. 19, 1996), BTA No. 1994-M-454, unreported. See also *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶15 ("Mere speculation is not evidence.").

While we acknowledge the BOE's reliance upon this board's decision in *Zimmer v. Cuyahoga Cty. Bd. of Revision* (Sept. 16, 2016), BTA No. 2016-25, unreported, in support of its request to reinstate the subject's initially assessed value, we are not persuaded as the instant appeal is factually distinguishable. In *Zimmer,* supra, the BOR elected to maintain the subject's initially assessed value; here, however, the BOR elected to effectuate a slight reduction to the subject's initially assessed value based upon information available to it. While it is clear that valuation determinations made by county boards of revision are not presumptively correct, see, e.g., *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, it is equally clear that a decision made by a board of revision is entitled to some consideration and that an appellant has an affirmative burden to demonstrate entitlement to the value claimed. See, e.g., *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994). In the present case, the property owner demonstrated that the initial assessment of the subject property overstated its value. The BOR, established to initially review valuation challenges at the local level, took into consideration the taxpayer's evidence, as well as information available to it, and concluded that an adjustment to value was warranted. On appeal, we find the adjustments effected by the BOR to be minimally plausible based upon the record.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 23-1112687.000

TRUE VALUE

$320,010

TAXABLE VALUE

$112,000

OHIO BOARD OF TAX APPEALS

DALE WHITE (TR.), (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1628

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DALE WHITE (TR.)
Represented by:
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ATTORNEY AT LAW
3393 NORWOOD ROAD
SHAKER HTS., OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, October 6, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 113-29-031, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject's total true value was initially assessed at $55,900. The property owner filed a decrease complaint with the BOR, seeking a reduction in value to $25,750, based upon a recent transfer. S.T., Exhibit ("Ex.") A. No counter complaint was filed.

At the BOR's hearing, the owner appeared through counsel. In support of the requested decrease, owner's counsel submitted sale documentation relating to two 2015 transfers of the subject, one in June and the other in September. As the June transfer occurred closer to the tax lien date at issue, counsel advocated for the BOR to rely upon that transfer to determine the subject's value. S.T., Ex. E. For the June 2015 sale, owner's counsel submitted sale documentation consisting of a deed with conveyance fee stamp, two residential lease agreements, the MLS listing, and the subject's property record card transfer history. The June sale documentation reflects a transfer of the subject from Pensco Trust Co., to Cleveland Properties, LLC, on June

3, 2015, for $25,750. S.T., Ex. F. For the September 2015 sale, owner's counsel submitted a real estate purchase and sales contract, settlement statement, and deed with conveyance fee stamp. The

September sale documentation reflects a transfer of the subject from Cleveland Properties, LLC, to Dale E. White (Trustee), on September 8, 2015, for $49,500. Id. In discussing the transfers, BOR members raised concern over the lack of testimony from any party to either transaction at hearing. S.T., Ex. E.

Thereafter, upon consideration of the information available to it, the BOR elected not to rely upon either of the subject's 2015 sale prices and issued a decision maintaining the initially assessed valuation. S.T., Ex. G. Dissatisfied with the result, the property owner appealed to this board; no hearing was requested. Through written argument, as before the BOR, owner's counsel contends that the subject's June 2015 purchase price provides the best evidence of the subject's value as of the tax lien date at issue. For its part, the county appellees oppose the utilization of either 2015 transfer of the subject as there was no "testimony of whether the sale in question was an arm's length sale." Appellee Fiscal Officer's Argument.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). "The initial burden on a party presenting evidence of a sale is not a heavy one, where the sale on its face appears to be recent and at arm's length." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶41. The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. B'd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104. Then, typically, "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14. See also *Cummins Property Servs., L.L.C.,* supra, at ¶13. The Supreme Court has made it clear that no "bright line" test exists when establishing recency and that the mere passage of time does not, per se, render a sale unreliable. See, e.g., *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059. Compare *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588.

At the outset, "we reject the county's proposition that a taxpayer-complainant must appear at the board-of-revision hearing to satisfy its initial burden" when presenting evidence of a recent arm's-length sale. *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075, ¶16; *Utt* v. *Lorain Cty. Bd. of Revision,* Slip Opinion 2016-Ohio-8402; *Dauch v. Erie Cty. Bd. of Revision,* Slip Opinion 2017-Ohio-1412. Upon review, it is clear that the property owner presented evidence of two facially qualifying 2015 sales of the subject, and, therefore, a rebuttable presumption of validity arose in favor of such transfers. *Cummins Property Servs.,* supra, at ¶41. See also *Rd of Edn. of the Westerville City Schools v. Delaware Cty. Rd of Revision* (June 13, 2013), BTA No! 2011-A-155, unreported, at 6 ("evidence of a sale contained on a property record card, if undisputed, may serve as a sufficient basis upon which to rely in determining the value of a property. *1192 Group Partnership LLC v. Cuyahoga Cty. Rd of Revision* (Apr. 18, 2013), BTA No. 2010-Y-651, unreported." The burden then shifted to the opponent of utilizing such sale, i.e., the county appellees, to rebut such presumption and prove that the sale price is not indicative of value.

In this instance, however, no evidence has been presented that would call into question the recency or arm's-length nature of either of the subject's 2015 transfers. See *Berea City Sch. Dist. Bd of Edn. v.*

Cuyahoga County Bd of Revision, 106 Ohio St.3d 269, 2005-Ohio-4979, at ¶9; *HIN, L.L.C.*, supra, at ¶14. Accordingly, absent an affirmative demonstration that either the June 3, 2015 or September 8, 2015 sales

are not qualifying sales for tax valuation purposes, this board will not engage in conjecture, as we find the existing record demonstrates that both transactions were recent and conducted at arm's-length. See generally *Lakota Local School Dist. Bd. of Edn.*, supra, at ¶26 ("Mere speculation is not evidence."). Finally, "[w]hen[, as here,] a property has been the subject of two arm's-length sales between a willing seller and a willing buyer within a reasonable length of time either before or after the tax-lien date, the sale occurring closer in time **to** the tax lien date establishes the true value of the property for taxation purposes." *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 124 Ohio St.3d 481, 2010-Ohio-687, at ¶20. See also R.C. 5713.03.

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER 113-29-031

TRUE VALUE

$25,750

TAXABLE VALUE

$9,010

OHIO BOARD OF TAX APPEALS

WAFA AND RANA ODEH, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2058

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WAFA AND RANA ODEH
Represented by:
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
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CLEVELAND MUNICIPAL SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
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Entered Tuesday, October 10, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The above-named appellants appeal a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel numbers 132-15-019 and 132-15-162, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the transcript certified pursuant to R.C. 5717.01, and the record of this board's hearing.

[2] The subject property was initially, collectively assessed at $134,600. A complaint was filed with the BOR, which requested that the subject property's value be reduced to $40,000. The affected board of education ("BOE") filed a counter-complaint, which objected to the request. The BOR held a hearing on the matter, at which time Kamal and Nawal Odeh appeared to testify in support of the requested value. The Odehs

testified about the poor condition of the subject property, i.e., the dilapidated building and contaminated soil; the BOE was also present and cross examined them. The BOR subsequently issued a decision, which retained the initially assessed value, and this appeal ensued.

[3] At the hearing before this board, only Kamal and Nawal Odeh appeared to supplement the record with additional testimony. They essentially reiterated the testimony previously provided to the BOR and further asserted that county appellees erroneously considered the subject property as a "gas station" even though it had not been operated as such for approximately ten years.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

[5] The record indicates that the appellants' requested value of $40,000 is consistent with the price at which the subject property transferred in 2011. We do not find the transaction to be a reliable indicator of the subject property's value because the transaction was too remote to the tax lien date. Ohio courts have refrained from setting forth a "bright line" test to establish whether a sale of property is sufficiently close to a tax lien date to be presumed to accurately reflect its value. See, generally, *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision,* 80 Ohio St.3d 36, 44 (1997), overruled in part on other grounds *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473 ("The question of how long after a sale the sale price is to be considered the best evidence of true value will vary from case to case."). Such restraint results from the recognition that whether a sale is "recent" to or "remote" from a tax lien date is not decided exclusively upon temporal proximity, but may necessarily involve a multitude of other impacts/considerations. See, e.g., *Cummins Property Servs.,* ¶35 (recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property"); *New Winchester Gardens,* supra (recency factors include "changes that have occurred in the market"). As for assertions regarding adjusting market changes, general claims are typically insufficient, and instead a party advocating for the existence of intervening events must demonstrate their actual existence. Nevertheless, as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property have not changed between the sale date and the lien date." *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588. Here, the appellants failed to provide competent and probative evidence to demonstrate that the market remained unchanged between the sale date in 2011 and the tax lien date of January 1, 2015.

[6] We also find the purported defects associated with the subject property, i.e., the dilapidated building and contaminated soil, to be equally unavailing. There was no evidence how the alleged defects impacted the value of the subject property. In *Gides v. Cuyahoga Cty. Bd of Revision,* 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7, the court noted "[t]here was no evidence or testimony submitted that established how those defects might have impacted the property value such that it warranted a *** reduction. Without such evidence, the list of defects are simply variables in search of an equation. See *Throckmorton v. Hamilton Cty. Bd. of Rev.,* 75 Ohio St.3d 227, 228, *** (1996) (stating `[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.')." (Parallel citation omitted.)

Likewise, this board has repeatedly rejected the argument that defects, unquantified by a proper appraisal, are insufficient evidence to determine real property value. See e.g., *Bardshar Apts., Inc. v. Erie Cty. Rd of Revision* (Mar. 15, 2016), BTA No. 2015-1451, unreported.

[7] Similarly, we cannot consider the impact of the deed restriction that prohibits the subject property's use as a gas station because we arerequired "to value the property as a fee simple estate, unencumbered by the voluntarily undertaken restrictions contained in the warranty deed." *Muirfield Assn., Inc. v. Franklin Cty. Bd. of Revision,* 73 Ohio St.3d 710, 712 (1995).

[8] Although the appellants assert that the county appellees improperly classified the subject property as a "gas station," they failed to provide competent and probative evidence of an alternative classification. Based upon our review of the photographs and pictometry contained in the statutory transcript, we find that the county appellees properly classified the subject property as a "gas station" despite the dormancy of such operation.

[9] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript."). Based upon our review of the record, we find that, in the absence of a qualifying sale of the subject property, the appellants were required to provide a competent appraisal report attested to by a qualified expert for the tax lien date in issue. Because the appellants failed to submit such appraisal report, we find that they failed to satisfy the evidentiary burden before this board. See, also *LTC Properties, Inc. v. Licking Cty. Bd. of Revision,* 133 Ohio St.3d 111, 2012-Ohio-3930, at ¶28 (Pfeifer, J., concurring) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** Finally, the best way to challenge a valuation is with a proper appraisal, which was not submitted in this case. Little wonder that the property owner was unable to establish that the board of revision abused its discretion.").

[10] It is, therefore, the order of this board that the subject property's true and taxable values are as follows, as of January 1, 2015:

PARCEL NUMBER 132-15-019

TRUE VALUE: $99,400

TAXABLE VALUE: $34,790

PARCEL NUMBER 132-15-162

TRUE VALUE: $35,200

TAXABLE VALUE: $12,320

OHIO BOARD OF TAX APPEALS

VINEBROOK ANNEX B OHIO LLC, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1755, 2016-1756, 2016-1757, 2016-1758, 2016-1759, 2016-1760, 2016-2144, 2016-2146, 2016-2147, 2016-2148, 2016-2149

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - VINEBROOK ANNEX B OHIO LLC
Represented by:
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
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230 EAST NINTH STREET, SUITE 4000
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Entered Wednesday, October 11, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals eleven decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 247-0005-0084-00, 590-0392-0291-00, 661-0001-0421-00, 179-0077-0192-00, 117-0005-0139-00, 590-0331-0334-00, 510-0081-0086-00, 510-0063-0267-00, 591-0016-0188-00, 520-0173-0046-00, and 510-0081-0079-00, for tax year 2015. As these appeals contain common issues of law and fact, they have been consolidated for hearing and administrative purposes. Ohio Adm. Cod 5717-1-09. These consolidated appeals are now considered upon the notices of appeal, transcripts ("S.T.") certified by the BOR pursuant to R.C. X717.01, the record of hearing ("H.R.") before this board, and any written argument submitted by the parties.

The subjects' total true values were initially assessed at $49,700; $53,585; $36,478; $42,135; $44,400; $47,700; $57,170; $74,480; $88,170; $101,410; $62,250, respectively. The property owner filed eleven decrease complaints with the BOR, seeking reductions in values to $37,934.06; $39,900; $27,588.41; $34,485.51; $51,000; $34,485.51; $42,500; $39,000; $52,000; $39,000; and $42,500, each based upon a recent transfer. S.T., Exhibit ("Ex.") A. No counter complaints were filed.

The BOR held six hearings. Specifically, the BOR consolidated the six complaints relating to a January 2016 bulk transfer and convened five separate hearings for the remaining complaints. The owner appeared through counsel at all six hearings. In support of the reductions sought, counsel submitted a settlement

statement and rent roll, and, for some parcels, counsel also submitted closing documents. S.T., Ex. F. The record also contains a conveyance fee statement and property record card for each subject parcel. S.T., Exs. C, F. The sale documentation reflects the following transfers:

- For parcel number 247-0005-0084-00, a transfer from Grand River Equity, LLC, to Vinebrook Annex B Ohio, LLC, on January 7, 2016, for $37,934;
- For parcel number 590-0392-0291-00, a transfer from Grand River Equity, LLC, to Vinebrook Annex B Ohio, LLC, on January 5, 2016, for $35,348;
- For parcel number 661-0001-0421-00, a transfer from Grand River Equity, LLC, to Vinebrook Annex B Ohio, LLC, on January 7, 2016, for $27,588;
- For parcel number 179-0077-0192-00, a transfer from Grand River Equity, LLC, to Vinebrook Annex B Ohio, LLC, on January 6, 2016, for $34,486;
- For parcel number 117-0005-0139-00, a transfer from Grand River Equity, LLC, to Vinebrook Annex B Ohio, LLC, on January 6, 2016, for $38,969;
- For parcel number 590-0331-0334-00, a transfer from Grand River Equity, LLC, to Vinebrook Annex B Ohio, LLC, on January 6, 2016, for $34,486;
- For parcel number 510-0081-0086-00, a transfer from Kellogg Properties & Services, LLC, to Vinebrook Annex B Ohio, LLC, on February 2, 2016, for $42,500;
- For parcel number 510-0063-0267-00, a transfer from Bumet Capital, LLC, to Vinebrook Annex B Ohio, LLC, on July 30, 2015 for $39,000;
- For parcel number 591-0016-0188-00, a transfer from Robert T. Langford and Darnice R. Langford, to Vinebrook Annex B Ohio, LLC, on November 2, 2015, for $52,000;
- For parcel number 520-0173-0046-00, a transfer from Hilton Capital Group, LLC, to Vinebrook Annex B Ohio, LLC, on August 28, 2015, for $39,000; and
- For parcel number 510-0081-0079-00, a transfer from Jeffery A. Kellogg, to Vinebrook Annex B Ohio, LLC, on February 2, 2016, for $42,500.

In addition, auditor staff members also appeared at the heqrings, testified, and submitted written reports consisting of a sale analysis, conveyance fee statement, county property report, and map. S.T., Exs. E, F. The reports indicate that the staff member was unable to find any MLS listings for the subject properties. BOR members questioned whether each subject parcel was exposed to the open market and expressed concern over the bulk sale purchase price allocations. S.T., Ex. E.

Thereafter, upon consideration of the information available to it, the BOR elected not to rely upon any of the subject's aforementioned 2015 or 2016 transfers and issued eleven decisions maintaining each parcel's initially assessed valuation. S.T., Ex. G. Dissatisfied with the results, the property owner timely appealed to this board. On appeal, as before the BOR, owner's counsel contends that the subjects' purchase prices provide the best evidence of value as of the tax lien date at issue. At this board's hearing, owner's counsel offered the testimony of Bryan Rhoads, a broker and employee of the parent company of the ownership entity, familiar with the owner's real property purchasing practices. H.R., at 6-8.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle. v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). The initial burden on a party presenting evidence of a sale "is not a heavy one, where the sale on its face appears to be recent and at arm's length." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶41. The existence of a facially qualifying sale

may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104. Then, typically, "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14 (Emphasis sic.). See also *Cummins Property Servs., L.L.C.,* supra, at ¶13. The Supreme Court has made it clear that no "bright line" test exists when establishing recency and that the mere passage of time does not, per se, render a sale unreliable. See, e.g., *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059. Compare *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588.

Upon review, we find that each transfer (as listed above) is reflected on the county's property record card for that parcel. As this board has held on multiple occasions, "evidence of a sale contained on a property record card, if undisputed, may serve as a sufficient basis upon which to rely in determining the value of a property." *Bd of Edn. of the Westerville City Schools v. Delaware Cty. Bd of Revision* (June 13, 2013), BTA No. 2011-A-155, unreported, at ¶8. See also *Lunn v. Lorain Cty. Bd of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075; *1192 Group Partnership LLC v. Cuyahoga Cty. Bd of Revision* (Apr. 18, 2013), BTA No. 2010-Y-651, unreported; *Bd of Edn. of the Cleveland Mun. School Dist. v. Cuyahoga Cty. Bd of Revision* (May 10, 2013), BTA No. 2009-Y-1596, unreported. Such is the case here as there has been no dispute as to the sale information contained on any of the subject's property record cards. As such, a rebuttable presumption of validity attaches to each transfer; see *Cummins Property Servs.,* supra, at ¶41, and the burden to rebut such presumption falls upon the opponent of utilizing such sales, here, the county appellees, to prove that the sale price is not indicative of value. See HIN, L.L.C., supra.

While we acknowledge the BOR's concern over whether these properties were exposed to the open market, we find such concern to be unavailing. In fact, this board has previously considered and rejected similar arguments. To be sure, "merely because a property is not listed on the open market, or is offered at a 'take it or leave it' selling price, *** does not, per se, mandate the rejection of a sale." *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd of Revision* (Mar. 23, 2010), BTA No. 2008-K-202, unreported. Moreover, "case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers. See *Walters[v. Knox Cty. Bd of Revision,* 47 Ohio St.3d 23], at 26 [(1989)] (Douglas, J., concurring in judgment only) (distinguishing 'private sale' transaction from open-market sales and asserting that "[p]rivate sale transactions which are at arm's-length occur every day")." *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd of Revision,* 129 Ohio St.3d 172, 2011-Ohio-3092, at ¶29. Likewise, we find the county's allocation argument to be without merit as the bulk sale purchase price allocations were made on each parcel's conveyance fee statement. See generally *HIN, L.L.C. v. Cuyahoga Cty. Bd of Revision,* 124 Ohio St.3d 481, 2010-Ohio-687, at ¶23 (discussion by the court as to the significance of conveyance fee statement disclosures).

Upon a careful review, we can find no evidence contained in the record that would call into question the recency or arm's length nature of the subjects' transfers. See *Berea City Sch. Dist. Bd of Edn. v. Cuyahoga County Bd of Revision,* 106 Ohio St.3d 269, 2005-Ohio-4979, at ¶9. Accordingly, absent an affirmative demonstration that the subject sales (as listed above) are not qualifying sales for tax valuation purposes, this board will not engage in conjecture, as we find the existing record demonstrates that the transactions were recent, conducted at arm's-length, and provide the best evidence of value as of the tax lien date at issue. See generally *Lakota Local School Dist. Bd of Edn.,* supra, at ¶26 ("Mere speculation is not evidence.").

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER 247-0005-0084-00

TRUE VALUE

$37,930

TAXABLE VALUE

$13,280

PARCEL NUMBER 590-0392-0291-00

TRUE VALUE

$35,350

TAXABLE VALUE

$12,370

PARCEL NUMBER 661-0001-0421-00

TRUE VALUE

$27,590

TAXABLE VALUE

$9,660

PARCEL NUMBER 179-0077-0192-00

TRUE VALUE

$34,490

TAXABLE VALUE

$12,070

PARCEL NUMBER 117-0005-0139-00

TRUE VALUE

$38,970

TAXABLE VALUE

$13,640

PARCEL NUMBER 590-0331-0334-00

TRUE VALUE

$34,490

TAXABLE VALUE

$12,070

PARCEL NUMBER 510-0081-0086-00

TRUE VALUE

$42,500

TAXABLE VALUE

$14,880

PARCEL NUMBER 510-0063-0267-00

TRUE VALUE

$39,000

TAXABLE VALUE

$13,650

PARCEL NUMBER 591-0016-0188-00

TRUE VALUE

$52,000

TAXABLE VALUE

$18,200

PARCEL NUMBER 520-0173-0046-00

TRUE VALUE

$39,000

TAXABLE VALUE

$13,650

PARCEL NUMBER 510-0081-0079-00

TRUE VALUE

$42,500

TAXABLE VALUE

$14,880

OHIO BOARD OF TAX APPEALS

FAIRLESS LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

STARK COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2011

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FAIRLESS LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
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For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
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OHCA BETH MHP LLC
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Entered Wednesday, October 11, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 1000055, for tax year 2015. This matter is now considered upon the notice of appeal, the statutory transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

[2] The subject's total true value was initially assessed at $187,700. The Fairless Local School District Board of Education ("BOE") filed a complaint with the BOR requesting an increase in value to $1,300,000, based upon a recent transfer. S.T., Exhibit ("Ex.") A. The property owner filed a counter complaint, seeking an increase to $865,000 and attached a letter advancing its position. S.T., Ex. B. Through the letter, the owner contends the recent purchase price is not the best evidence of value because the transfer included assets other than realty, i.e.,

goodwill, name of park, two mobile homes, and tools. Specifically, the owner estimates goodwill and the name of a mobile home park at 35% of the purchase price, or $390,000, and, further, estimates the value of the two mobile homes and tools for operating the park at $45,000, for a combined total of $435,000. Id.

[3] The BOR held two hearings on the underlying complaints; however, the record before this board only contains the audio recording of the second hearing. S.T. At the BOR's second hearing, counsel for the BOE appeared and Mr. Timothy Tuthill, Vice President of Legal Services for the ownership entity, participated by phone. In support of the increase sought, counsel for the BOE relied upon sale documentation, apparently submitted at the BOR's first hearing. S.T., Ex. The sale documentation consisted of a deed and conveyance fee statement, which reflect a transfer of the subject property from Robert H. Miller, II, to OHCA Beth MHP, LLC, on December 2, 2015, for $1,300,000. S.T., Ex. F. See also S.T., Ex. C. There was no challenge to the recency or arm's length nature of the sale. Instead, as he indicated in the letter attached to the counter complaint, Mr. Tuthill argued that the purchase price should be reduced to account for personal property included in the December 2015 transfer. BOE's counsel briefly cross examined Mr. Tuthill and asked whether the allocation he proposed was included in the subject's purchase contract. Mr. Tuthill stated that he thought that it was, and, at the request of a BOR member, Mr. Tuthill agreed to submit the subject's purchase contract by the close of business that day; however, the BOR's decision audio indicates Mr. Tuthill did not submit the requested document. S.T., Ex. E. In addition, BOE's counsel also made reference to a $1,040,000 mortgage relating to the subject, which Mr. Tuthill thought that sounded correct; nevertheless, we note with importance, no corroborating documentation was offered to evidence such mortgage. Finally, the record also contains a report authored by a county appraiser; however, as there was no testimony from its author, no reference to the report at the BOR's hearing, and no reliance upon the report by the BOR in making its valuation determination, we accord it no weight in our analysis below.

[4] In determining value, the BOR elected to rely upon the reference made by BOE's counsel relating to the subject's mortgage and issued a decision increasing the .initially assessed valuation to the purported mortgage amount, $1,040,000. S.T., Ex. G. Dissatisfied with the result, the BOE timely filed an appeal with this board, and, in lieu of hearing, submits written argument advancing its position to this board. As before the BOR, the BOE maintains the best evidence of value is the subject's recent December 2015 arm's-length purchase price. Further, the BOE submits the owner failed to carry its burden and prove the propriety of allocating a portion of the purchase price to assets other than realty. No other party submitted written argument on appeal.

[5] "When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Then, typically, "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14. See also *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. Compare *Terraza 8 L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932.

[6] In this instance, the BOE submitted documentation to the BOR evidencing a facially qualifying sale, and, as such, a presumption of validity arose in favor of such transfer. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997); *Cummins,* supra, at ¶41. When, as here, an owner seeks to reduce the reported purchase price by allocating a portion to personal property (i.e., goodwill, park name,

mobile homes, and tools), it is the owner's burden to provide supporting documentation, which, in conjunction with the owner's testimony, may be utilized as "corroborating indicia" or the "best available evidence," to substantiate the inclusion of assets other than realty in the purchase price and the propriety of the proposed allocation. *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision,* 125 Ohio St.3d 485, 2010-Ohio-1921; *Sapina v. Cuyahoga Cty. Bd. of Revision,* 139 Ohio St.3d 188, 2013-Ohio-3028. See also *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision,* 115 Ohio St.3d 365, 2007-Ohio-5249; *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 125 Ohio St.3d 103, 2010-Ohio-1040, ¶22; *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd of Revision,* 128 Ohio St.3d 565, 2011-Ohio-2258.

[7] Turning to the conveyance fee statement, when the purchaser was asked to disclose any portion "of [the] total consideration [that was] paid for items other than real property[,]" no such amount was disclosed. S.T., Ex. F, conveyance fee statement at line 7e. As the purchaser possesses the information necessary to make such an allocation and R.C. 319.202 requires the purchaser to submit a conveyance fee statement to the auditor declaring the value of the real property, we find the absence of such disclosure to be significant. *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 124 Ohio St.3d 481, 2010-Ohio-687, at ¶23 (discussion by the court as to the significance of conveyance fee statement disclosures).

[8] In fact, the owner has not presented any reliable tangible 'evidence in support of its claim. The record contains no independent support for the inclusion of any personal property in the December 2015 sale price (e.g., inventory list, purchase contract), nor any corroborating indicia (e.g., financial documents or independent reports) from which this board may conclude that an allocation of a portion of the reported purchase price to other assets is warranted. While we acknowledge the owner's letter (attached to its counter complaint) and the testimony of Mr. Tuthill, such argument/testimony falls well short of sufficiently demonstrating the inclusion of personalty in purchase price and the propriety of the proposed allocation. See *Bd. of Edn. of the Kettering-Moraine City School Dist. v. Montgomery Cty. Bd of Revisoin* (Nov. 16, 2001), BTA No. 1998-M-983, unreported (concluding that the mere assertion that items of personalty are included in a transfer and the amounts attributable thereto is an insufficient basis for disregarding or adjusting a sale price when establishing value for tax purposes). Based upon the foregoing, we find the owner was required, but failed, to provide sufficient evidence to demonstrate the inclusion of personalty in the purchase price and substantiate the propriety of the proposed allocation of the reported purchase price.

[9] We now turn to the propriety of the BOR's decision. Initially, we acknowledge, the Supreme Court has "emphatically held that the BTA's independent duty to weigh evidence precludes a presumption of validity of the BOR's valuation. *Vandalia-Butler City Schools,* 130 Ohio St.3d 291, 2011-Ohio-5078, ***, at ¶13." *Sapina v. Cuyahoga Cty. Bd of Revision,* 136 Ohio St.3d 188, 2013-Ohio-3028, at ¶35. In the instant appeal, the BOR specifically found value based upon a reference made to the subject's alleged mortgage amount; however, as indicated above, there is no corroborating mortgage documentation contained in the record, and, as such, the BOR's reduction in the reported sale price is unsupported. *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, ¶21 ("It is true that the *absence* of sufficient evidence requires the BTA to reverse a reduction or increase ordered by a board of revision."); *Cannata v. Cuyahoga Cty. Bd of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094 ("we will not sustain *** [the BTA's] findings where the record does not contain 'reliable and probative evidence' to support them.").

[10] Accordingly, we find, absent an affirmative demonstration that the subject's December 2015 sale is not a qualifying sale for tax valuation purposes or evidence demonstrating the propriety of allocating a portion of the reported purchase price to other assets, we will not engage in conjecture as 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 dates at issue. *Lakota Local School Dist. Bd. of End. v. Butler Cty. Bd of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶15 ("Mere speculation is not evidence.").

[11] It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER 1000055

TRUE VALUE

$1,300,000

TAXABLE VALUE

$455,000

OHIO BOARD OF TAX APPEALS

PERRY LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1923
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

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Entered Wednesday, October 11, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 700689, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written argument.

[2] The subject property is a single family home purchased by the appellee property owner, Kenneth Joseph, in 2003, but has been sitting vacant for nearly 20 years. The subject's total true value was initially assessed at $281,800. Joseph filed a decrease complaint with the BOR seeking a reduction in value to $200,000. The BOE filed a countercomplaint in support of maintaining the. auditor's value. At the BOR hearing, Joseph explained that he purchased the subject property in 2003 for $430,000. At that time, it was a little rundown

because it had been vacant for a 4-5 years following the death of its previous occupant, though it did not require any major repairs. Joseph stated that although he had initially intended to fix it up and live in it, the property continued to sit empty. Due to its size and condition, he believed the cost to refurbish it was roughly $300,000-$400,000. Joseph stated that due to its condition, he believed the property's value was roughly $250,000 at the time of the hearing, which he asserted was informed by his previous experience buying and selling properties for investment purposes in the area. The BOE cross-examined Joseph, and argued that he had not offered any evidence to support his opinion and, therefore, failed to meet his burden. Joseph argued that based on his experience buying and selling numerous properties, he was qualified to express an opinion of value. It is unclear as to which BOR members attended the BOR hearing and likewise which voted on the ultimate decision. It appears that only two were present, though the record does not disclose which officials were represented. During the decision hearing, one member discussed the owner's testimony regarding condition, specifically mold and "serious deferred maintenance," and noted that no staff appraiser from the auditor's office had entered the property. The record includes a Board of Revision Standard Report that appears to contradict this statement, though the author did not appear before the BOR to authenticate the report or further discuss the issue of entry into the property. The BOR issued a decision reducing the initially assessed valuation $250,000. From this decision, the BOE filed the present appeal.

[3] At the hearing before this board, the BOE argued that the BOR's decision was unsupported and that the auditor's value should be reinstated. The BOE acknowledged that as an owner, Joseph was entitled to express his opinion of value, but argued that he must provide some additional evidence to support his opinion. The BOE indicated that the two-member panel did not include the auditor or a representative of the auditor when it voted to reduce the value of the property, and that these two BOR members did not consider the staff appraisal report in support of retaining the auditor's value when they voted to adjust the subject's value. Joseph argued that because the BOR reduced value based on his evidence, the BOE must present independent evidence of value on appeal, citing to the *Bedford* rule, based on the court's decision in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 115 Ohio St.3d 449, 2007-Ohio-5237. Joseph pointed to the court's interpretation of the *Bedford* rule in *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 140 Ohio St.3d 248, 2014-Ohio-3620 *("Northpointe"),* arguing that the auditor's value may not be reinstated because the BOR's reduction was based on the owner's opinion of value. The BOE contends that the court has since provided additional clarification in *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025 *("Union Savings Bank"),* setting forth four elements necessary to invoke the *Bedford* rule. The BOE argues that this case does not fall within those parameters because an owner is required to do more than merely state an opinion of value and must present some evidence in support of that opinion. Joseph maintains that because the court cited to *Northpointe* in *Union Savings Bank*, both decisions must be read in conjunction, which he argues would result in the preservation of the BOR's value determination.

[4] Neither party has presented additional evidence on appeal, and instead relies on legal argument regarding the sufficiency of the evidence below and the "default" value upon appeal. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). While valuation determinations made by county boards of revision are not presumptively correct, see, e.g., *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, under certain circumstances, when the BOR adopts a new value based on the owner's evidence, it has the effect of "shifting the burden of going forward with evidence to the board of education on appeal to the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 193, 2013-Ohio-4543, ¶16. "Under the *Bedford* rule as explained in *Northpointe,* as long as the evidence of value that the owner presented to the board of revision was competent and at least minimally plausible, the board of education may not invoke the auditor's original valuation as a default—with the result that it is not enough for the board of education at the BTA to find fault with the evidence that the owner presented before the board of revision." *Union Savings Bank,* supra, at ¶7.Joseph relies on the *Bedford* rule as described in *Northpointe* for the premise that the BOE was required to present affirmative evidence of value on appeal. The BOE, however, points to the

court's subsequent pronouncements, which further refined the parameters of the *Bedford* rule. For instance, the court cited to *Northpointe* when it explained that this board may reinstate the auditor's value "when the BOR's decision to reject the auditor's valuation is completely unsupported in the record" or when the BOE "presents evidence that the auditor's valuation is more accurate than the BOR's." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 144 Ohio St.3d 324, 2015-Ohio-3633, ¶44. The court has further held that "[a] legal error in the BOR's determination prevents affirmance of the BOR's determination." *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 147 Ohio St.3d 503, 2016-Ohio-1485, ¶30. In *Union Savings Bank,* supra, the court further defined the elements necessary to invoke the *Bedford* rule, including not only the requirements that a property owner filed a complaint (or countercomplaint) and a board of education files an appeal, but also that the BOR reduced value based on "competent evidence offered by the property owner," and, finally, that "the board of revision's determination of value is based on appraisal evidence rather than a sale price offered as the property value." Id. at 1119-11. Even more recently, the court lias reiterated the importance of this board's independent review of evidence offered to the BOR in cases where the BOR has reduced value. See, e.g., *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 147 Ohio St.3d 409, 2016-Ohio-7381 *("Olentangy Crossing"); Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 148 Ohio St.3d 695, 2016-Ohio-8332 *("Kenney Company").*

[5] A review of the case law regarding the *Bedford* rule and subsequent authority results in two important takeaways. First, it is crucial that the BOE properly advances its argument for rejecting the owner's evidence before the BOR, reiterating those arguments and any other relevant claims before this board. See, e.g, *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 144 Ohio St.3d 549, 2015-Ohio-4837; *Oak View Properties, L.L.C. v. Franklin Cty. Bd. of Revision,* 146 Ohio St.3d 478, 2016-Ohio-786. Second, this board must "eschew a presumption of the validity of the BOR's value and instead to perform its own independent weighing of the evidence in the record." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-5823, ¶7.

[6]With respect to the facts of this case, we note that although the facts are distinguishable, *Northpointe* serves to provide guidance on the role of an owner as "expert" of his property. In *Northpointe,* the court stated that an owner acts primarily as a fact witness rather than as'an expert appraiser, and "the competence and admissibility of his testimony as an opinion of value rests upon its status as constituting an owner's opinion of value." Id. at ¶20. Thus, although this board is not required to accept his opinion, or the opinion of any expert, as fact, see *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996), Joseph's testimony, particularly with respect to the subject's condition and lack of interior inspection by the auditor, was properly admissible. It was this information that the BOR relied upon to reduce the subject's value.

[7] The only information in the record to contradict Joseph's testimony is the Board of Revision Standard Report, containing appraiser findings and a recommendation from a staff appraiser that the initially-assessed values be retained. We find that this report, however, should be given no weight in our analysis. Not only does the record lack any testimony from its author to authenticate her report, but more importantly, Joseph was unable to question the appraiser and ask her to explain the discrepancy between his testimony and her report. Without this appraiser testimony, this board finds that Joseph's statements about the property's condition and a lack of interior inspection are not only competent but also the only reliable evidence in the record. Compare *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's determination that an owner's opinion of value, while competent, was not probative). Accordingly, based upon our independent review of the evidence in the record, we find that the BOR properly reduced the value of the subject's property to account for its condition.

[8] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE $250,000 TAXABLE

VALUE $87,500

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1806

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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LAURIE CLARK
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Entered Wednesday, October 11, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 131-32-024, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01 ("S.T."), and any written argument submitted by the parties.

[2] The subject's total true value was initially assessed at $82,500. The Board of Education for the Cleveland Municipal School District ("BOE") filed a complaint with the BOR, seeking an increase in value to $114,600. S.T., Exhibit ("Ex.") A. Notably, although notice was sent, the owner elected not to participate in the proceedings before the BOR.

[3] At the BOR's hearing, in support of the increase requested, BOE's counsel submitted a deed reflecting a transfer of the subject property from Robert R. Clark, to Laurie Clark, on July 12, 2012, for $114,600. S.T., Ex. F. A BOR member questioned the reliability of the transfer as it occurred more than two years prior tothe tax lien date at issue. Further, a BOR member noted, the transfer appeared to have occurred between family members. S.T., Ex. E. Nevertheless, BOE's counsel argued that the subject's 2012 purchase price is the best evidence of the subject's value for the tax lien date at issue. Thereafter, upon consideration of the information available to it, the BOR elected not to rely upon the July 2012 transfer and issued a decision maintaining the subject's initially assessed value, which led to the present appeal. On appeal, the BOE waived hearing and submits written argument advancing its position to this board. As before the BOR, the BOE maintains the best evidence of value is the subject's July 2012 purchase price.

[4] "When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104.

[5] "[A]n arm's-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision,* 47 Ohio St.3d 23, 25 (1989). The Supreme Court has made it clear that no "bright line" test exists when establishing recency and that the mere passage of time does not, per se, render a sale unreliable; rather, recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property[.]" *Cummins Property Servs. L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. See also *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588.

[6] In this instance, although it is undisputed that the subject property transferred in July 2012 for $114,600, we do not find such transfer to be a reliable indication of value as it is remote from the tax lien date. See R.C. 5713.03; *New Winchester Gardens, Ltd v. Franklin Cty. Bd of Revision,* 80 Ohio St.3d 36, 44 (1997), overruled, in part, on other grounds, *Cummins,* supra ("The question of how long after a sale the sale price is to be considered the best evidence of value will vary from case to case"). See also *Akron City School Dist. Bd of Edn.,* supra at ¶ 26 (as a sale becomes more distant from tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property has not changed between the sale and lien date."). Furthermore, while we acknowledge the BOR's concern that the sale appears to have taken place between related parties, as the transfer is remote from the tax lien date, we need not address that issue. There is no other evidence of value contained in the record.

[7] Here, in the absence of a qualifying sale, the appellant was required, but failed, to provide a competent appraisal of the subject property, attested to by a qualified expert, for the tax lien date in issue. *State ex rel. Park Invest. Co. v. Rd of Tax Appeals,* 175 Ohio St. 410, 412 (1964) ("The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to

sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, *** [absent qualifying sale information,] an appraisal becomes necessary."). See also Justice Pfeifer's concurrence in *LTC Properties, Inc. v. Licking Cty. Rd of Revision,* 133 Ohio St.3d 111, 2012-Ohio-3930. Accordingly, we hereby affirm the decision of the BOR.

[8] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 131-32-024

TRUE VALUE

$82,500

TAXABLE VALUE

$28,880

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1524
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Thursday, October 12, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decis$_s$ion of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 010-191741-00 and 010-267287-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the BOE' s written argument.

The subject properties are two adjacent parcels, improved with a Tim Hortons restaurant and a medical office building, respectively. The subjects' total true value was initially assessed at $769,100 ($419,100

and $350,000, respectively). The appellee property owner, Great Western Outparcels ARCJ LLC ("Great Western"), filed a decrease complaint with the BOR seeking a reduction in value to $400,000. The BOE

filed a countercomplaint in support of maintaining the auditor's value. At the BOR hearing, Great Western argued that the subject's value should be adjusted based on May 2015 sale of the property for $400,000 and provided a deed and conveyance fee statement as evidence of the transaction. The BOE noted that Great Western did not bring an individual with knowledge of the sale for questioning, but did not offer any independent evidence or argument as to why the sale should be rejected. The BOR voted to accept the sale price and issued a decision reducing the initially assessed valuation to $400,000, which led to the present appeal.

Prior to the hearing before this board, upon motion from the BOE, this board ordered Great Western to respond to the BOE's discovery request for a land contract/purchase agreement. Great Western indicated that it was unable to locate a copy of the document but was working to locate a copy and would forward it to the BOE once located. There is no indication that any such document was provided to the BOE. The BOE then issued subpoenas to both the buyer and seller in the May 2015 transaction to appear at the hearing with any documents related to the transfer in addition to any lease for which a memorandum of lease was recorded on November 13, 2012. In lieu of the seller's attendance at the hearing, the BOE accepted a copy of the settlement statement, ground lease for parcel number 010-191741-00, rent roll at the date of the sale, and copy of the unrecorded deed related to the May 2015 transaction. Great Western, however, did not respond and did not appear at the hearing before this board. At this board's hearing, the BOE argued that that this board should disregard the sale as evidence of value. The BOE submitted uncontroverted evidence that parcel number 010-191741 transferred with a ground lease in place, thus the improvement was not included in the purchase price. The BOE also pointed to the conveyance fee statement filed with the county, which reflects that the transaction involved a land contract. The BOE argued that these documents raise questions about the transaction that render it unreliable, emphasizing Great Western's failure to comply with the subpoena. The owner did not appear before this board to address any of the issues raised by the BOE through the presentation of this additional evidence. The BOE's written argument reiterates the contentions made during the hearing, while the owner again did not participate on appeal.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). The court has recently explained that a taxpayer seeking to reduce the value of property based on sale can satisfy its initial burden through the presentation of undisputed evidence of a sale, and that testimony from an individual with knowledge of the sale is not required. *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075. 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. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. Once a party successfully challenges the reliability of the sale, the burden again shifts to the owner to show that the sale should nevertheless be regarded as the best evidence of the property's value. *Lunn,* supra. Additionally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present appeal, it is undisputed that Great Western purchased both parcels from Donaldson Properties, Ltd. on May 28, 2015 for a total of $400,000. While the BOE did not challenge the arm's-length nature of the sale, it did raise several issues regarding the reliability of the purchase price to establish the value of the properties.

The BOE first argues that the sale price is not reliable evidence of value because parcel number 010-191741-00 was encumbered by a ground lease at the time of the transfer. As evidence of this, the BOE provided a copy of a ground lease signed August 8, 2012, with an initial term lasting ten years. According

to the terms of the lease, title to all fixtures, equipment, and buildings remain vested with the lessee during the term of the lease. Thus, the uncontroverted evidence shows that the sale price did not include any improvements on this parcel. Though there was no testimony from an individual with knowledge of the sale before the BOR, counsel for Great Western did not disclose this relevant fact when it provided evidence of the sale to the BOR.

The BOE next argues that the indication on the conveyance fee statement that the sale involved a land contract raises sufficient question regarding the recency arid reliability of the sale that the burden shifts back to the owner show demonstrate that the sale was best evidence of value. This board has previously discussed the reliability of a transfer following the completion of a land installment contract to establish the value of a property:

> "Therefore, while a sale price agreed upon in a land contract *may* provide corroborating evidence of a property's value near the time of negotiation, its utility becomes suspect with the passage of years. Although this board has previously relied upon the sale price to establish value when a land contract is completed and title transferred, provided such transfer is 'recent' to tax lien date, today, we further limit our holdings in this context by according a presumption of 'recency' to transfers effected by land contract to only those situations where both the date on which the contract was entered into and the ultimate transfer occur recent to the tax lien date in issue since to hold otherwise may lead to inequitable and absurd results. Cf. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* [139 Ohio St.3d 92,] 2014-Ohio-1588." (Emphasis sic.) *Akron City School Dist. Bd. of Edn. v. Summit Cty. Rd of Revision* (May 23, 2014), BTA. No. 2013-4427, unreported, at 3.

Compare *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 129 Ohio St.3d 172, 2011-Ohio-3092. In this case, we find that the BOE sufficiently challenged the recency of the sale through the presentation of uncontroverted evidence that the sale involved a land contract. We find it relevant that the party with all information about the sale in its possession, i.e., the property owner who purchased the property and filed a complaint based on this sale to reduce the subject's value, has failed to respond to the BOE's request for such information and appear before this board to answer questions about the circumstances of the transaction. We further find that this notation on the conveyance fee statement, which was signed under penalty of perjury at the time of the sale, combined with Great Western's failure to be forthcoming before the BOR adds doubt to the reliability of the entire transaction. Consequently, we find that the BOE has sufficiently contested the sale, and shifted the burden back to Great Western. Great Western, however, provided no additional evidence in support of the sale.

While the lack of testimony from a representative of Great Western with knowledge of the sale itself does not mandate a rejection of the sale, when the BOE successfully challenged the reliability of the purchase price, Great Western was required to show that the sale was nevertheless best evidence of value. Because it failed to present anything to refute the BOE's challenges, we find that Great Western failed to meet this burden. Accordingly, we find that the transfer does not furnish a reliable basis to reduce the subject's value.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 010-191741-00

TRUE VALUE

$419,100

TAXABLE VALUE

$146,690

PARCEL NUMBER 010-267287-00

TRUE VALUE

$350,000

TAXABLE VALUE

$122,500

OHIO BOARD OF TAX APPEALS

JUNIUS SANFORD, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1058

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, October 18, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is now considered upon the county appellees' motion to remand with instructions to dismiss the underlying complaint, the notice of appeal, and the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01. Appellant did not respond to the motion. See Ohio. Adm. Code 5717-1-13(B).

[2] The underlying complaint, challenging the valuation of parcel number 731-11-025 for tax year 2016, was filed by Sheila Kelly as agent of the owner, Juniusa Sanford. S.T., Ex. A. At the board of revision hearing, Ms. Kelly indicated that she is a real estate agent who filed on behalf of the owner, who resides outside the state. S.T., Ex. E. During the hearing, the board acknowledged a possible issue with Ms. Kelly's filing of the complaint as being the unauthorized practice of law. However, rather than dismissing the complaint, the board issued a decision finding no change in value was warranted due to lack of sufficient evidence.

[3] R.C. 5715.19(A) governs who may file a complaint against the valuation of real property. Included among those who may file are owners, attorneys, and real estate *brokers.* This board has previously addressed R.C. 5715.190 and the associated case law regarding who, without being an attorney, may prepare and file

a complaint on another's behalf, expressly holding in *Menos v. Cuyahoga Cty. Bd. of Revision* (Apr. 11, 2013), BTA No. 2012-Q-5127, unreported, that 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." See also *Sharon Village v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479 (1997).

[4] It is clear from the record that Ms. Kelly filed the complaint on behalf of the owner as the owner's agent. It is further clear that she is not one of those individuals specifically identified in R.C. 5715.19(A) as authorized to file on behalf of another. Accordingly, the county appellees' motion is well taken, and this matter is hereby remanded to the Cuyahoga County Board of Revision with instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

TOMISLAV & JAGODA BAJIC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-670

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Wednesday, October 18, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is considered upon the county appellees' motion to affirm the decision of the Cuyahoga County Board of Revision ("BOR") which dismissed the underlying complaint. Appellants did not respond to the motion. We proceed to decide this matter upon the motion, the notice of appeal, and the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01.

[2] The underlying complaint, filed by property owner TomislaV Bajic, was dismissed by the BOR for failure to state an opinion of value on line 8. The record indicates that line 8 of the complaint, which seeks information about the value sought, contained values for three parcels unrelated to the complaint. The documents attached to the complaint do not specify the appellants' opinion of value for the parcel named in the complaint. The complainant did not appear at the BOR hearing. Ultimately the BOR dismissed the complaint for lack of jurisdiction. Appellants thereafter appealed to this board.

[3] For a complaint to vest jurisdiction in a county BOR, it must include all information that runs to the core of procedural efficiency, including the parcel number and value sought. *Cleveland Elec. Ilium. Co. v. Lake Cty. Bd. of Revision,* 80 Ohio St.3d 591 (1998); *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. Without such information, the BOR is unable to perform its statutory duty to "give notice of each complaint in which the stated [change in value] is at least seventeen thousand five hundred dollars *** to each board of education whose school district may be affected by the complaint." R.C. 5715.19(B). The complaint filed in this matter failed to include any value sought; as such, the BOR

was unable to fulfill its statutory duty to determine whether the board of education needed to be notified of the complaint.

[4] Based upon the foregoing, the county appellees' motion is well taken, and the BOR's decision to dismiss the underlying complaint is hereby affirmed.

OHIO BOARD OF TAX APPEALS

FINANCIAL WEALTH ASSOCIATES, LLC, (et. al.),	CASE NO(S). 2016-2151
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Thursday, October 19, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel number 681-06-129, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the transcript certified pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property was initially assessed at $150,100. The property owner filed a complaint with the BOR, which requested that the subject property's value be reduced to $38,000. The affected board of education ("BOE") filed a counter-complaint, which objected to the request.

At the BOR hearing on the matter, both parties appeared, through counsel, to submit argument and/or

evidence in support of their respective positions. Counsel for the property owner submitted an appraisal report, which valued the subject property at $35,000 as of "2015 Tax Period," though the appraiser did not testify, and a list of raw sales data. He also offered to make the sole member of the property owner, Patricia Secontine, available to testify by telephone if necessary. Counsel for the property owner detailed Secontine's $157,972 purchase of the subject real property, personal property, and "business assets," in 2013, through the assistance of Dean Graziosi, "America's Top Real Estate Educator." Statutory Transcript at BOR Hearing Record. According to counsel, Secontine later discovered that the subject property was allegedly worth much less. Based upon the presentation, counsel for the property owner requested that the subject property's value be reduced. Counsel for the BOE objected to any potential testimony from Secontine by telephone because the BOR members would ˚be unable to judge her credibility, and to the BOR's use of the raw sales data and appraisal report because they were unreliable and there was no testimony from the appraiser about the appraisal report. The BOR members requested additional information to determine how the $157,972 sale price was allocated and to identify "business assets" involved in the sale; no information was provided. The BOR subsequently issued a decision that retained the subject property's initially assessed value and this appeal ensued.

At the hearing before this board, the property owner and county appellees appeared, through counsel, to supplement the record with additional argument and/or evidence. As the hearing commenced, counsel for the property owner attempted to introduce the testimony of Secontine, by telephone; the county appellees objected. In response to the attorney examiner's inquiry into Secontine's failure to appear at the hearing, in person, counsel asserted that "she lives in Florida, and it's too much of an expense to get here." Hearing Record at 6. The attorney examiner sustained the objection and counsel proceeded to proffer the testimony that Secontine would have allegedly provided about the details of her $157,972 sale of the subject property in March 2013. He then argued that the subject property should be valued at $39,000 consistent with the price at which the subject property transferred in April 2017. In response to the property owner's arguments, counsel for the county appellees asserted that, ,because the record indicated that the subject property had twice transferred recent to the tax lien date, the sale of March 2013, approximately twenty-two months before the tax lien date, was the best indication of value as it occurred closer in time than the sale of April 2017, approximately twenty-seven months after the tax lien date. Counsel for the county appellees also questioned whether the sale of April 2017 was a sham transaction between related entities, possibly designed to artificially lower the subject property's value.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. *In EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, at ¶6, the court elaborated: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another *value. Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision,* 68 Ohio St.3d 493 (1994) *** ." (Parallel citation omitted.)

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* 50 Ohio St.2d 129 (1977). Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997). See, also *Terraza 8, LLC v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415, at ¶32 (reaffirming that basic evidence of a sale creates a rebuttable presumption that an indicated sale price reflected true value and that the opponent of using a sale has the burden of rebutting the sale.).

As noted above, the record demonstrates that the subject property transferred two times recent to the

January 1, 2015 tax lien date: a $157,972 transfer of the subject property from Elite 8 Holdings, LLC to the appellant in March 2013 and a $39,000 transfer of the subject property from the appellant to Archon Capital, LP in April 2017. In *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 124 Ohio St.3d 481, 2010-Ohio-687, the court stated, in paragraph one of its syllabus that "[w]hen a property has been the subject of two arm's-length sales between a willing seller and a willing buyer within a reasonable length of time either before or after the tax-lien date, the sale occurring closer in time to the tax-lien date establishes the true value of the property for taxation purposes." We proceed, therefore, to first consider the sale closest to the tax lien date, i.e., the sale of March 2013.

We begin our analysis by considering whether the property owner rebutted the presumption that the $157,972 sale of March 2013 was "recent" to the tax lien date. Although we acknowledge that the property owner provided raw sales data for five alleged comparable properties located in close proximity to the subject property, to the extent that such information was provided to demonstrate market conditions, we do not find it to be particularly persuasive. A party advocating for the existence of intervening events must demonstrate their actual existence. No effort was made to relate the raw sales data to the subject property and tax lien date of January 1, 2015. The property owner could have provided an appraisal report with a paired sales analysis to demonstrate changing market conditions. See e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (May 1, 2014), BTA No. 2011-2227, unreported, *aff'd* 2016-Ohio-757. As a consequence of the property owner's failure, we are forced to conclude that the property owner failed to provide competent and probative evidence that the housing market changed such that the sale of March 2013 should be disregarded.

We continue our analysis by considering whether the property owner rebutted the presumption that the $157,972 sale of March 2013 was conducted by parties acting at arm's-length. Although statements of counsel are not evidence, see e.g., *Corporate Exchange Bldgs. JV & V, L. P. v. Franklin Cty. Bd. of Revision,* 82 Ohio St.3d 297 (1998), we acknowledge that counsel for the property owner suggested that Secontine was not fully informed about the subject property's condition and may have been fraudulently induced to consummate the sale of March 2013 and, as a result, overpaid. A review of the purchase agreement indicates that Secontine waived a number of inspections and "absolutely accept[ed] the Property in its 'AS IS' condition." Statutory Transcript at Purchase Agreement at Article 6.4. We have previously held that failure to engage in greater due diligence is an insufficient basis to disregard a sale. See, *Snodgrass v. Franklin Cty. Bd. of Revision* (July 26, 2016), BTA No. 2015-1924, unreported. Additionally, in *Old Village Ohana, LLC v. Franklin Cty. Bd. of Revision* (Jan. 29, 2013), BTA No. 2010-Y-1551, unreported, we rejected the argument that a sale should be disregarded because a buyer alleged that a sale was consummated as the result of fraud. There, the property owner asserted that the seller fraudulently misrepresented the occupancy and rental rates received, to 'induce the property owner to overpay for the property at issue. We noted that "[w]hile it is suggested the appellant was fraudulently induced to acquire the property, we find the evidence offered insufficient to accept such allegation as the basis for rejecting the sale." Id. at 5-6. Furthermore, "[a] bad investment decision does not equate to failure to act in one's own self interest." *Bd. of Edn. of the Huber Hts. City Schools v. Montgomery Cty. Bd. of Revision* (Oct. 21, 2008), BTA No. 2006-A-1742, unreported, at 9. See, also, *Beatley v. Franklin Cty. Bd of Revision* (June 18, 1999), BTA Nos. 1997-M-262 et seq., unreported, at 11 ("A negotiated purchase price is not invalidated merely because a purchaser later believes he made a bad deal."). Therefore, we are constrained to conclude that the appellant has failed to demonstrate that the parties to the sale of March 2013 did not act at arm's length.

We note that the property owner raised constitutional arguments, i.e., due process and limitation on the state's taxing authority, at this board's hearing. Although this board has authority to accept argument and/or evidence on constitutional issues, it does not have authority to rule on these issues. *Cleveland Gear Co. v. Limbach,* 35 Ohio St.3d 229 (1988); *MCI Telecommunications Corp. v. Limbach,* 68 Ohio St.3d 195 (1994).

In reviewing this matter, we are mindful of our duty to independently determine the subject property's

value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to rebut the presumptions accorded to the $157,972 sale of March 2013, which occurred closer in time than the $39,000 sale of April 2017. Absent an affirmative demonstration that the sale of March 2013 was not a recent, arm's-length transaction, we find that such sale is the best indication of the subject property's value. As a result, we will not analyze the transfer of the subject property in April 2017, as it was more remote from the tax lien date, and the appraisal report that valued the subject property for "2015 Tax Period," as it does not rebut the presumptions accorded to the sale of March 2013. See, *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588 ("[T]he proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property have not changed between the sale date and the lien date."); *Pingue v. Franklin Cty. Bd. of Revision,* 87 Ohio St.3d 62, 64 (1999) ("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. *Ratner v. Stark Cty. Bd. of Revision,* (1986) 23 Ohio St.3d 59, ***.") .

It is, therefore, the order of this board that the subject property's true and taxable values, as of January 1, 2015, are as follows:

TRUE VALUE

$157,970

TAXABLE VALUE

$55,290

OHIO BOARD OF TAN APPEALS

JECA MANAGEMENT & INVESTMENT, LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1773

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JECA MANAGEMENT & INVESTMENT, LLC
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Friday, October 20, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 781-28-145, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, the record of hearing ("H.R.") before this board, and any written argument submitted by the parties.

[2] The subject's total true value was initially assessed at $65,600. The property owner filed a decrease complaint with the BOR, seeking a reduction in value to $45,000. S.T., Exhibit ("Ex.") A. No counter complaint was filed. At the BOR's hearing, Mr. Jessie Ruffin, manager of the ownership entity and a real estate broker, submitted a one page comparative market analysis ("CMA") consisting of three comparable sales and argued that property values in the subject's area have decreased 40% to 50% since 2009. S.T., Exs. E, F. Thereafter, upon consideration of the information available to it, the BOR issued a decision maintaining the subject's initially assessed valuation. S.T., Ex. G. Dissatisfied with the result, the property owner timely filed an appeal with this board.

[3] On appeal, at this board's hearing, Mr. Ruffin offered an appraisal report, authored by Donald H. Durrah, a general real estate appraiser licensed in Ohio. In the report, Mr. Durrah utilized both the sales comparison and income approaches to value and upon reconciling the resulting values, opined to a value of $30,000 for the subject property, as of January 1, 2015. H.R., Appellant's Ex. A. The county appellees, on the other hand, submitted written argument in lieu of attending the hearing and contend the owner failed to provide sufficient competent and probative evidence to support the requested reduction in value and request affirmance of the BOR's decision. For the reasons set forth below, we agree with the county appellees and find the owner's evidence does not constitute reliable and grobative evidence upon which this board may rely to determine a lower value.

[4] "When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It is well established that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be supported with reliable tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992). The weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record which must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. 'of Revision,* 77 Ohio St.3d 402, 405 (1997).

[5] As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964). Such is the case in this appeal as there exists no evidence that the subject property "recently" transferred through a qualifying sale.

[6] Accordingly, we now turn to the owner's appraisal report. In reviewing the owner's report, we note with importance, the report's author did not appear at this board's hearing to provide testimony regarding the contents of the report. As a result, Mr. Durrah was unavailable to authenticate the report, provide professional credentials, explain methodologies utilized, or to respond to questions posed by this board's attorney examiner. This board relies on the fundamental proposition that "[a]n 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[,]" and, thus, we find the lack of any testimony from the report's author to be significant. *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 30 (1997). Turning to the sales comparison approach, for instance, absent testimony from the author, we are unable to discern the reliability of the comparable sales selected, adjustments made, and conclusions drawn in developing the opinion of value for this portion of the report. In fact, upon a careful review, it is unclear what, if any, specific steps the appraiser took to verify the accuracy of the data utilized for each comparable sale selected. H.R., Appellant's Ex. A at 34-36. Turning our attention to the income approach, we find the report does not contain supporting market data for conclusions drawn in developing the opinion of value for this portion of the report. For example, the report contains no rental comparables, no market support for the vacancy and credit loss percentage applied, and, although the report appears to rely, in part, upon capitalization rates of comparable sales to determine an appropriate capitalization rate for the subject, the report does not provide the capitalization rates of the comparable sales identified. H.R., Appellant's Ex. A at 42-44, 46, 49. This board has "repeatedly acknowledged that the appraisal of real property is not an exact science. Instead, it is

but an opinion, the reliability of which depends upon basic competence, skill, and ability demonstrated by the appraiser" through his/her testimony. *Brown v. Hamilton Cty. Bd. of Revision* (Feb. 1, 2008), BTA No. 2006-K-764, unreported. See also *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported. Based upon the foregoing, we do not find the information or values concluded to in the report to be particularly probative and accord it no weight.

[7] To the extent that the property owner also relies upon the CMA submitted to the BOR, we are not persuaded. While we acknowledge Mr. Ruffin's status as a real estate broker, we are also mindful that Mr. Ruffin is not a licensed real estate appraiser, trained to opine real property values. In fact, Mr. Ruffin did not attest to his education, training, certifications, or, to any significant degree, his experience in appraising real property before the BOR or this board. As noted in The Appraisal of Real Estate (13th Ed.2008), a group, real estate salespeople evaluate specific properties, but they typically do not consider all the factors that professional appraisers do." Id. at 8. Such is the case here as the comparable sales utilized do not reflect any adjustments accounting for meaningful differences between the selected comparables and the subject property. Typically, under the sales comparison approach, appraisers employ qualitative or quantitative adjustments to the selected comparables to align, and thereby compare, such properties to the subject. Here, however, in the absence of such adjustments, this board is left to speculate 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; to be sure, "[m]ere speculation is not evidence" and does not serve as a basis upon which this board may rely to reduce value. *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶15. See generally *Freshwater,* supra; *WJJK Investments,* supra. In fact, as this board stated in *Copp v. Franklin Cty. Bd. of Revision* (Sept. 8, 2009), BTA No. 2007-Z-692, unreported, "[b]y not developing a sufficient foundation to establish an appropriate expertise in appraisal methods and the deviation of true value for a particular piece of real property, this board does not find the analyses particularly probative and does not accord them much weight." See generally The Appraisal of Real Estate (14th Ed. 2013); *Witt Co. v. Hamilton Cty. Bd. of Revision,* 61 Ohio St.3d 155 (1991). There is no other evidence of value contained in the record.

[8] Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision,* 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

[9] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 781-28-145

TRUE VALUE

$65,600

TAXABLE VALUE

$22,960

OHIO BOARD OF TAX APPEALS

MICHAEL MORTON, (et. al.),

Appellant(s),

vs.

LORAIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1630

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Friday, October 20, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The above-named appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 04-00-030-142-026, for tax year 2015. Before proceeding to the merits of this appeal, however, we first address the county appellees' motion to strike the appellant's reply brief and "Supplement 2 to Appellant's Hearing Submission," on the basis that both were filed subsequent to the briefing dates set forth in the case management schedule of this appeal. The owner filed a brief in opposition to the county's motion and the county then filed a reply. Upon consideration of the arguments advanced, we note, briefs are typically filed for the benefit of the board, and, generally, will not be excluded absent a demonstration that consideration of such brief would either prejudice the other party or adversely impact the board's ability to consider the appeal. In this instance, no such assertions have been made, and, therefore, the county's motion is hereby denied in its entirety. Ohio Adm. Code 5717-1-17. We now proceed to consider this matter upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and any written argument submittqd by the parties.

The subject's total true value was initially assessed at $210,370. The property owner filed a decrease complaint with the BOR, seeking a reduction in value to $108,500, based upon a recent transfer. S.T., Exhibit ("Ex.") A. No counter complaint was filed. The record reveals the recent history of the subject property as follows. On February 19, 2014, the subject property was sold at sheriff's

sale to Bank of America NA for $140,000. S.T., Ex. F. On December 17, 2014, the property was transferred to Secretary of Housing and Urban Development ("HUD"). S:T., Exs. C, F. The subject was then listed for sale "as is," through the MLS, at a purchase price of $133,900. S.T., Ex. F. Initially, the subject was listed from January 5, 2015 to January 27, 2015, then from March 6, 2015 to March 27, 2015, and, finally, from April 2, 2015 through April 17, 2015. S.T., Ex. F. The property then transferred on May 19, 2015, which is the subject sale of this appeal.

At the BOR's hearing, in support of the reduction sought, owner's counsel offered sales documentation consisting of a deed, sales contract, settlement statement, MLS listing, property record card transfer history, and the testimony of Michael Morton, the property owner. Further, counsel submitted a sheriffs deed (reflecting a February 19, 2014 transfer of the subject), map, comparable sales, repair estimates, and photographs of the subject property. The owner's sale documentation reflects a transfer of the subject property from HUD, to Michael Morton, on May 19, 2015, for $108,500. Id. See also S.T., Ex. C. Mr. Morton testified that he found the property listed for sale through a realtor and made an offer of $108,500, which HUD accepted. S.T., Ex. E. Mr. Morton also testified extensively as to the subject's poor condition and indicated that he is in the process of completing necessary repairs. S.T., Ex. E. Notably, no party advocated for reliance upon the sheriff sale transaction.

Thereafter, based upon the information available to it, the BOR elected not to rely upon the subject's May 2015 purchase price and issued a decision maintaining the initially assessed valuation. S.T., Ex. G. Dissatisfied with the result, the property owner appealed to this board; no hearing was requested. Through written argument, as before the BOR, the owner contends that the subject's May 2015 purchase price provides the best evidence of the subject's value as of the tax lien date at issue. For its part, the county appellees oppose the utilization of the subject's 2015 HUD transfer and essentially argue that the property owner failed to rebut the presumption of invalidity accorded this type of sale.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It is well established that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be supported with reliable tangible evidence of a property's value, relevant to the tax lien date at issue. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.,, 65* Ohio St.3d 621 (1992). The weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record which must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997).

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Indeed, the existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104. However, several factors may give rise to a rebuttable presumption of invalidity and render a sale, by itself, an unreliable indicator of value. Such is the case in this instance.

When property transfers from HUD, it is considered a forced, involuntary transfer, and, pursuant to R.C. 5713.04, "forced" sales are not representative of market value. *Cincinnati School Dist. Bd. of Edn. v.*

Hamilton Cty. Bd. of Revision ("Fenco"), 127 Ohio St.3d 63, 2010-Ohio-4907; *Schwartz v. Cuyahoga Cty. Bd. of Revision,* 143 Ohio St.3d 496, 2015-Ohio-3431, at ¶27, 28. While evidence of a facially qualifying sale typically gives way to a rebuttable presumption of validity, see *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶41, sales falling under the rubric of R.C. 5713.04 do not enjoy such a presumption. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision ("TaDa"),* 141 Ohio St.3d 243, 2014-Ohio-4723, ¶42. Instead, when, as here, a property is transferred from HUD, a rebuttable presumption of *invalidity* attaches to the transaction. *Schwartz,* supra; *TaDa,* supra; *Fenco,* supra. In such instances, once the opponent of such a transfer has established that the transfer, on its face, was a forced sale, the proponent of such a sale, here, the property owner, may rebut the resulting presumption of invalidity by proving that the sale, although "forced," was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best indication of value. *TaDa,* supra, at 43.

In *Schwartz,* supra, the court reversed this board's decision to reinstate the auditor's value and remanded the matter with instruction for this board to implement the owner's HUD purchase price as the property's value. In so doing, the court found that the property owner successfully rebutted the presumption of invalidity that attached to the subject HUD sale. In that case, the owner's representative testified that the property was in poor condition, had a for-sale sign posted, and was listed on the market. Further, with respect to the purchase, the owner's representative testified that after the present owner made several, unsuccessful offers to purchase the property, HUD eventually contacted the present owner to purchase to the property after a potential sale with a different prospective buyer fell through. Id. at 30. In addition, the owner also submitted comparable sales as proof of the subject's market. Id.

Similar to *Schwartz,* here, the record reflects the subject property was in poor condition, marketed on the MLS, had prior offers fall through, and, ultimately, sold to the highest bidder, who had no relationship with HUD, on May 19, 2015, for $108,500. S.T, Exs. C, E, F. Further, based upon the owner's testimony and documentary evidence, it appears that HUD could have rejected Mr. Morton's offer to purchase the subject. Additionally, Mr. Morton also provided comparable sales in subject's vicinity as proof of the subject's market. S.T., Ex. F. See *Schwartz,* supra, at ¶30. See also *NDHMC, Inc. v. Cuyahoga Cty. Bd. of Revision,* 8th Dist. Cuyahoga Nos. 101207, 101300, 2015-Ohio-174. Compare *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075 (the owner offered no evidence to overcome the presumption of invalidity that attached to the subject transfer); *Utt* v. *Lorain Cty. Bd. of Revision,* Slip Opinion No. 2016-Ohio-8402 (the owner's sale documents did not overcome the subject's sales presumption of invalidity).

Accordingly, upon consideration of the existing record, we find the owner's testimony and corroborating documentary evidence successfully rebutted the subject sale's presumption of invalidity. Based upon the foregoing, we find, the subject's May 2015 HUD transfer to the appellant is the best indication of value as of the tax lien date at issue. It is therefore the order of this board that the subject's true and taxable values as of January 1, 2015 were as follows:

PARCEL NUMBER 04-00-030-142-026

TRUE VALUE

$108,500

TAXABLE VALUE

$37,980

OHIO BOARD OF TAX APPEALS

ROBERT BAKER, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-1129, 2017-1162, 2017-1163, 2017-1165, 2017-1171 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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225 COURT STREET, 3RD FLOOR
ELYRIA, OH 44035-5642

Entered Tuesday, October 24, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These consolidated appeals are now before the Board of Tax Appeals ("BTA") upon the county appellees' motions to dismiss, the property owner's response, and any other written argument submitted by the parties. While not previously consolidated, these appeals are appropriately consolidated for the purpose of this decision and order in accordance with this board's rule of practice and procedure 5717-1-09. Through its motions, the county asserts that appellant failed to file a copy of the five notices of appeal (relating to these consolidated matters) with the Lorain County Board of Revision ("BOR"), as required by R.C. 5717.01. The property owner, on the other hand, contends he properly filed his notices of appeal and represents that he filed five notices with this board and with the Lorain County Court of Common Pleas ("Court of Common Pleas"). In support, the owner submits BOR decisions, cover letters, a certified mailing receipt (reflecting delivery at the common pleas court), and tracking information (relating to the owner's receipt of the BOR decisions). The county points out, however, the owner's response makes no assertion that a copy of the five notices of appeal were filed with the BOR.

It is well established that within thirty days after notice of a board of revision decision is mailed, a property owner is authorized to file an appeal from such decision with either the BTA, in accordance with R.C. 5717.01, or a court of common pleas, pursuant to R.C. 5717.05, provided that a copy of the notice of appeal is also filed with the BOR. See also R.C. 5715.19, R.C. 5715.20. The requirements set forth by statute are specific and mandatory in nature. When, as here, a statute confers the right of appeal, adherence to the terms and conditions set forth therein is essential to the enjoyment of the right conferred. *Am. Restaurant & Lunch*

Co. v. Glander, 147 Ohio St. 147 (1946). See also *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

Upon review, the record before this board indicates the BOR issued five decisions on June 15, 2017. The appellant property owner filed five notices of appeal with this board on July 31, 2017, i.e., more than thirty days later, and failed to file the required notice of the appeals with the BOR. Appellant's filings with the common pleas court do not satisfy the requirement to file with the BOR. Instead, the common pleas court is an alternate venue to which an appeal from a BOR decision may be taken. R.C. 5717.05. Notably, under either route of appeal, i.e., to the Board of Tax Appeals or to the court of common pleas, notice of an appeal is required to be filed with the BOR within the 30-day statutory appeal period.

The property owner argues in response that the county "deliberately provide[d] misleading instructions in the appeal process." However, the fact that a representative of the BOR's office may have given incorrect information does not assist the appellant in vesting jurisdiction with this board. "The actions of an employee of the BOR, no matter how well-meaning, confusing or misleading, do not serve to excuse the untimely filing." *Psathas v. Cuyahoga Cty. Bd. of Revision* (Jan. 12, 2001), BTA No. 2000-M-1471, unreported.

As strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board and the record demonstrates that the appellant both filed an appeal with this board more than thirty days after the BOR issued notice of its decision, and did not file the required notice with the BOR, we must conclude that this board does not have jurisdiction to consider the merits of these appeals. See *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Accordingly, the county appellees' motions to dismiss are well taken and these consolidated appeals are hereby dismissed.

OHIO BOARD OF TAX APPEALS

BATAVIA LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1234
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CLERMONT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Tuesday, October 24, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals decisions of the board of revision ("BOR") which determined the value of the subject real property, parcel numbers 01-20-201-077, 01-20-201-080, and 01-20-201-081, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T") certified by the BOR pursuant to R.C. 5717.01, the record of hearing ("H.R.") before this board, and any written argument submitted by the parties.

[2] The subject is commercial property, operated as a golf course, and is comprised of three parcels. The subject's total true aggregate value was initially assessed at $2,263,800. The property owner filed a decrease complaint with the BOR, seeking an aggregate reduction in value to $1,300,000; which amount was later amended at hearing to $1,525,000 to conform to appraisal evidence. S.T., Exhibit ("Ex.") A. The Batavia Local School District Board of Education ("BOE") filed a counter complaint requesting to maintain the

subject's initially assessed aggregate value. S.T., Ex. B. At the hearing before the BOR, Mr. David Shearer, co-owner of the ownership entity, Mr. William King, president of Beck Consulting, and counsel for the BOE appeared. The record contains a deed and settlement statement evidencing a transfer of the subject from Advantage Bank, to 3D Golf, LLC, on May 10, 2013, for $2,650,000. S.T., Ex. F. While there was no challenge raised as to the recency or arm's-length nature of the sale, the owner claimed, "[t]he Net Operating Income for the property does not justify the current valuation." S.T., Exs. A, E, F. In support of the decrease requested, the owner offered an appraisal report and the testimony of Mr. King; notably, on cross examination by BOE's counsel, Mr. King admitted that he is not a licensed appraiser. S.T., Ex. E at 21. In his report, Mr. King utilized the sales comparison and income approaches to value and determined a value of $1,525,000 for the subject property, as of January 1, 2015. S.T., Ex. F. In response to a question posed by a BOR member, Mr. King stated the owner overpaid for the subject and indicated such overpayment was the reason he did not use the subject's sale as a comparable in his report. S.T., Ex. E at 23, 24. Mr. Shearer provided limited testimony; however, on cross examination by BOE's counsel, he testified that there had not been any substantial change in the property since the purchase. Id. at 23.

[3] BOE's counsel advocated for the BOR to find value consistent with the subject's recent arm's-length transfer; however, the BOE did not contest the subject's initially assessed value, which was slightly below the full purchase price. S.T. Ex. E at 28. In addition, a BOR member and county treasurer, Mr. Bob True, introduced and questioned Mr. Louis Caldwell, who was identified as an appraiser consultant for the county. S.T., Ex. E. Mr. Caldwell testified that he looked at Mr. King's report, did not perform any independent research, but "would have to agree" with the report's opinion of value. Id. at 27. No written report or tangible documentary evidence was provided in conjunction with Mr. Caldwell's valuation testimony. Id.

[4] Thereafter, the BOR disregarded the subject's recent arm's length sale, electing instead to rely on the owner's appraiser's valuation, and issued three decisions decreasing the subject's aggregate value to $1,525,000. S.T., Ex. G. Dissatisfied with the results, the BOE timely filed an appeal with this board.

[5] "When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove in right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379. It is well established that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be supported with reliable tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992). Ultimately, the weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record and found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997).

[6] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). The initial burden on a party presenting evidence of a sale "is not a heavy one, where the sale on its face appears to be recent and at arm's length." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶41.

[7] The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cry. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104. Then, typically, "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14. See also *Cummins Property Servs., L.L.C.*, supra, at ¶13. The Supreme Court has made it clear that no "bright line" test 'exists when establishing recency and that the mere passage of time does not, per se, render a sale unreliable. See, e.g., *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059. Compare *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588. Here, the record contains sale documentation evidencing a facially qualifying sale, and, as such, a presumption of validity arose in favor of the transfer. Consequently, the property owner, as the opponent of utilizing such purchase price, has the burden to rebut the sale's presumption of validity and demonstrate why such transfer may not reflect the property's true value for the tax year at issue. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd of Revision* 78 Ohio St.3d 325, 327 (1997).

[8] On appeal, the BOE contends that the subject's May 2013 purchase price constitutes the best evidence of value as of the tax lien date at issue. The property owner, however, despite receiving notice of this appeal, elected not to participate in the proceedings before this board. At this board's hearing, counsel for the BOE submitted written legal argument advancing its position, and, in support of the increase sought, offered a conveyance fee statement evidencing the subject's May 2013 transfer. H.R., Appellant's Exs. A, B. Further, the BOE objected to this board's consideration of owner's appraisal report, submitted to the BOR. H.R. at 9.

[9] Upon review, the conveyance fee statement, deed, purchase agreement, and the subject's property record cards (with the exception of the parcel number 01-20-201-080), all corroborate the May 2013 transfer of the subject. S.T., Exs., C, F; H.R., Appellant's Ex. B; *Bd of Edn. of the Westerville City Schools v. Delaware Cty. Bd of Revision* (June 13, 2013), BTA No. 2011-A-155, unreported.

[10] To the extent that the owner advanced the argument (before the BOR) that it essentially got a bad deal and overpaid for the subject property, the presumption accorded a recent arm's-length transaction is not overcome simply because, after the fact of the sale, the purchaser has unfulfilled expectations and thus, believes it overpaid for the property. See *Beatley v. Franklin Cty. Bd of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported. Further, to the extent that the property owner sought a reduction below the full sale price based upon the 2013 equipment list attached to its complaint (presumably alleging an allocation of other assets), we are mindful that it is the owner who bears the burden of showing the propriety of such action. *Hilliard City Schools Bd of Edn. v. Franklin Cty. Bd. of Revision,* 128 Ohio St.3d 565, 2011-Ohio-2258. To satisfy its burden, the owner must provide "corroborating indicia" to demonstrate the propriety of an allocation of the aggregate purchase price. Id. at ¶18; *Olentangy Local Schools Bd of Edn. v. Delaware Cty. Bd of Revision,* 125 Ohio St.3d 103,„2010-Ohio-1040, at ¶22; *Sapina v. Cuyahoga Cty. Bd of Revision,* 136 Ohio St.3d 188, 2013-Ohio-3028, quoting *St. Bernard Self-Storage LLC v. Hamilton Cty. Bd. of Revision,* 115 Ohio St.3d 365, 2007-Ohio-5249, ¶17. In this instance, however, Mr. Shearer did not provide testimony relating to the equipment list attached to the complaint, no allocation for personalty was made on the conveyance fee statement, see *HIN, L.L.C. v. Cuyahoga Cty. Bd of Revision,* 124 Ohio St.3d 481, 2010-Ohio-687, at ¶23, no allocation for personalty appears in the purchase contract, nor does the record contain any independent support for an allocation of any personal property as it relates to the sale price. *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 132 Ohio St.3d 371, 2012-Ohio-2844, at ¶20.

[11] In the present matter, as the BOE presents evidence of a facially qualifying sale, a rebuttable presumption of validity arises in favor of the subject's May 2013 purchase price. *Cummins Property*

Servs., supra, at ¶41. See also S.T., Ex., C; *Bd of Edn. of the Westerville City Schools v. Delaware Cty. Bd. of Revision* (June 13, 2013), BTA No. 2011-A-155, unreported. While the owner may rebut such presumption, in thisinstance, the owner does not dispute the arm's length nature or recency of the subject transfer, nor is there any evidence supporting a reduction below the full sale price based upon an allocation of other assets. See *Berea City Sch. Dist. Bd. of Edn. v. Cuyahoga County Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, at ¶9; *HIN, L.L.C.*, supra, at ¶14; *Hilliard City Schools Bd. of Edn.*, supra. Based upon the record before this board, we find the property owner was required, but failed, to rebut the presumption of validity accorded the subject's 2013 transfer. See *HIN, L.L.C. v. Cuyahoga Cry. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687; *Cummins Property Servs., L.L.C.*, supra.

[12] Accordingly, absent an affirmative demonstration that the May 2013 sale is not a qualifying sale for tax valuation purposes, this board will not engage in conjecture, as 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 at issue. See generally *Lakota Local School Dist. Bd. of Edn.*, supra, at ¶26 ("Mere speculation is not evidence."). In addition, as we find the subject sale to be the best evidence of value, we will refrain from further addressing the merits of the owner's appraisal report and the county's consultant appraiser's testimony because "[i]t is only when the purchase price does not reflect the true value of a piece of property that a review of independent appraisals based upon other factors is appropriate." *Pingue v. Franklin Cty. Bd. of Revision*, 87 Ohio St.3d 62, 64 (1999). As such, the BOE's objection to the owner's appraisal report is denied as moot.

[13] Finally, in the absence of a more appropriate method of allocation, the sale amount will be distributed using percentages reflected by the auditor's original assessment of the property. See, generally, *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921, at ¶31. It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER 01-20-201-077

TRUE VALUE

$2,608,440

TAXABLE VALUE

$912,950

PARCEL NUMBER 01-20-201-080

TRUE VALUE

$10,890

TAXABLE VALUE

$3,810

PARCEL NUMBER 01-20-201-081

TRUE VALUE

$30,670

TAXABLE VALUE

$10,730

OHIO BOARD OF TAX APPEALS

STEPHEN VINCENT, (et. al.),

Appellant(s),

vs.

MUSKINGUM COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1136

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - STEPHEN VINCENT
OWNER
2332 DRESDEN ROAD
ZANESVILLE, OH 43701

For the Appellee(s) - MUSKINGUM COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Tuesday, October 24, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B).

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1453
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

HERNON COLUMBUS PROPERTIES, LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

Entered Friday, October 27, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellee property owner moves to dismiss this matter on the basis that it filed an earlier appeal from the same Franklin County Board of Revision decision with the Franklin County Court of Common Pleas. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion and appellant's notice of appeal.

On September 5, 2017, the appellant board of education filed an appeal with this board from a decision issued by the Franklin County Board of Revision, i.e., BOR No. 16-900064. The owner's motion argues that it filed an appeal from the same decision with the Franklin County Court of Common Pleas on August 30,

2017. Attached to the owner's motion to dismiss is counsel's affidavit and documentation of such filing, captioned as *Hernon Columbus Properties v. Franklin Cty. Bd. of Revision,* case no. 17CV007863.

R.C. 5717.05 provides that "an appeal from the decision of a county board of revision may be taken directly to the court of common pleas of the county by the person in whose name the property is listed or sought to be listed for taxation." It further requires that "[w]hen the appeal has been perfected by the filing of notice of appeal as required by this section, and an appeal from the same decision of the county board of revision is filed under section 5717.01 of the Revised Code with the board of tax appeals, the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal."

Upon review of the existing record, the owner's motion is well taken. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MARIE WIGGINS, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1324

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARIE WIGGINS
3200 HALESWORTH ROAD
COLUMBUS, OH 43221

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 2bTH FLOOR
COLUMBUS, OH 43215

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Friday, October 27, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B).

R.C. 5717.01 allows for an appeal to be taken to this board'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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a time

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, this matter must be, and hereby is, dismissed.

BOARD OF TAX APPEALS		
RESULT OF VOTE I	YES	NO
Mr. Harbarger		
Ms. Clements		
Mr. Caswell		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.

OHIO BOARD OF TAX APPEALS

HIGRADE PROPERTIES, LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1029

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HIGRADE PROPERTIES, LLC
Represented by:
DAVID DVORIN
ATTORNEY
30195 CHAGRIN BOULEVARD, #300
PEPPER PIKE, OH 44124

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, October 27, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), appellant's response to the motion, and the county appellees' reply thereto.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

A review of the statutory transcript certified to this board indicates that the owner did not file a copy of the notice of appeal with the BOR. Owner's counsel responded that he mailed a copy of the notice of appeal to the county's assistant prosecutor. Initially, we note that "although a county prosecutor acts as counsel for the BOR, the prosecuting attorney is not authorized to accept a notice of appeal in lieu of filing such notice with the BOR." *Kinat v. Lake Cty. Bd. of Revision* (Oct. 2, 2012), BTA No. 2010-Y-1213, unreported, citing *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision,* 80 Ohio St.3d 621 (1998).

Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. Accordingly, the county appellees' motion is well taken. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

HN REALTY, LLC, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-1347, 2017-1349, 2017-1350, 2017-1351, 2017-1352, 2017-1353, 2017-1354, 2017-1355, 2017-1356, 2017-1361, 2017-1362, 2017-1363, 2017-1364, 2017-1365, 2017-1367, 2017-1368, 2017-1369, 2017-1371, 2017-1373, 2017-1374, 2017-1376, 2017-1379, 2017-1381, 2017-1382, 2017-1387, 2017-1399, 2017-1400, 2017-1401, 2017-1402, 2017-1403 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HN REALTY, LLC
Represented by:
SONJA M. SIEBERT
OHIO SAVINGS BUILDING
20133 FARNSLEIGH ROAD
SHAKER HEIGHTS, OH 44122

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
SUFIAN DOLEH
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET, 3RD FLOOR
ELYRIA, OH 44035-5642

Entered Friday, October 27, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these matters on the basis they were not timely filed with the county board of revision. These matters are now decided upon the motion, the statutory transcripts certified by the county board of revision ("BOR"), the notices of appeal, and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board

of revision decisions, and even they can review decisions' only where the appeals have been filed in a timely [and correct] manner.").

The records in these matters indicate that the BOR mailed notices of its decisions on July 26 and 27, 2017; thereby the deadlines to file appeals were August 25 and 28, 2017, respectively. Appellant's response indicates that its appeals were filed August 29, 2017. Although appellant asks that this board not dismiss these matters for being filed with the BOR one day beyond the statutory deadline, because of "mistakes and excusable neglect," this board's authority is strictly limited by statute. Moreover, as this board lacks equitable jurisdiction, the requirements imposed on appellants who seek this board's review can neither be waived nor disregarded. See, e.g. *Jenkins v. Keller*, 6 Ohio St.2d 122 (1966), paragraph five of the syllabus; *Sekerak v. Fairhill Mental Health Ctr.*, 25 Ohio St.3d 38, 39-40 (1986); *Shawnee Twp. v. Allen Cty. Budget Comm.*, 58 Ohio St.3d 14, 15 (1991).

Upon consideration of the existing record, and for the reasons stated in the motion, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

JOHN J. GALLICK, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2016-405, 2016-406, 2016-433, 2016-435 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHN J. GALLICK
8121 OREGON ROAD
CANAL WINCHESTER, OH 43110

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

COLUMBUS CITY SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, October 30, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner, John J. Gallick, and board of education ("BOE") have both appealed two decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 010-063544-00 and 010-070331-00, for tax years 2014 and 2015. We note that on August 31, 2017, this board previously issued a decision resolving these matters. Upon request for reconsideration, this board vacated its prior decision and gave the parties the opportunity to submit additional written argument in light of the court's decision in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-5823 *("Chess").* These matters are now. considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board ("H.R."), and the parties' written argument. Although Gallick, in his Brief Contra BOE's Brief upon Reconsideration, requested another hearing before this board, the request is hereby denied.

The subjects' total true values were initially assessed at $115,000 and $216,000, respectively, for tax year 2014. The subjects are multi-family residential properties, with four and twelve units, respectively. Gallick filed decrease complaints with the BOR seeking reductions in value to $28,500 and $48,000,

respectively. The BOE filed a countercomplaint in support of maintaining the auditor's values. At the BOR hearing, Gallick explained he purchased the properties in 2009 and described negative conditions, such as crime, in the neighborhood in which the subjects are located. Gallick also provided information of recent purchases of other properties he owns in the area, asserting that they showed the auditor overvalued the subject properties. Gallick acknowledged that he is not an appraiser, but argued that he is qualified as an expert of his own property, which included the properties he utilized for comparison purposes. Gallick stated that those properties reflected a range of roughly $4,000 to $8,000 per unit, with $5,000 per unit "about right" for their neighborhoods. Gallick also testified about the range of asking rents for the properties, commenting that they are challenged by high vacancy. The BOE argued that the 2009 sales were too remote from the tax lien date to provide a reliable basis for valuation. The BOE also objected to the evidence of negative conditions and the unadjusted sales, asserting that they did not provide a sufficient basis to support a reduction to a specific value. Following the hearing, the BOR issued decisions reducing the initially assessed valuations to $60,200 and $152,500, respectively, having applied a gross rent multiplier ("GRM") to the subjects' asking rents. Both Gallick and BOE appealed these decisions, resulting in the present appeals.

At the hearing before this board, both Gallick and the BOE challenged the BOR's decisions, specifically the reliability of a GRM in the valuation of the subject properties for purposes of ad valorem taxation. Gallick argued that the BOR's reliance on the GRM was unfair and failed to take into account the subjects' actual income stream, considering his difficulties collecting rent and high vacancy rate. Gallick further objected to a lack of explanation regarding both the auditor's value and the BOR's reliance upon the GRM: "I think it is wrong that the auditor and BOR do not have to document an explanation as to how they arrived at a valuation, but instead merely rendered a calculation on the property record cards. The oral rent multiplier decision by the BOR lumps together all the properties and leaves me at a disadvantage. It amounts to an unsupported allegation, yet involves my constitutional property interest. This scheme also violates notice requirements of constitutional due process as I am left to guess as to why and how the valuation occurred. A calculation by itself is not adequate or meaningful notice." H.R. at 15-16. The BOE agreed with Gallick that the BOR's decision was flawed, noting that Gallick testified to a range of rents for each property and it is unclear as to how the BOR chose the rental rate within that range for its analysis. The BOE further asserted that there is nothing in the record to support that the rent utilized by the BOR conformed to market conditions. The parties also reiterated the arguments made at the BOR regarding the comparable sales information and the negative conditions in the neighborhood. Gallick provided a list of five multifamily properties he had purchased since April 2012. In addition to a breakdown of the cost per unit from each sale, Gallick included photographs of each property. The parties further discussed complaints that were filed, and ultimately dismissed, for tax year 2015.

Following the hearing, the BOE supplemented the record with copies of decisions issued on August 30, 2016, which confirmed that the BOR dismissed complaints filed regarding the value of the subject properties for tax year 2015 as an impermissible second filings within the interim period. As noted, this board also gave the parties an opportunity to submit written argument regarding the applicability of recent Supreme Court case law. Gallick claims that the relevance of *Chess* lies in its discussion of the principles that govern how the BTA processes appeals and that this board did not properly weigh his evidence in our initial decision and the order regarding the motion for reconsideration. In addition to those arguments Gallick previously made before the BOR and this board during those proceedings, Gallick asserted that this board should consider new information regarding a settlement he reached with the county appellees and the BOE for tax years 2011, 2012, and 2013, in separate cases which are pending before the 10th District Court of Appeals. The BOE argued that *Chess* requires this board to not only give full weight to its arguments but also decide how much weight to accord all evidence in the record, including the GRM analysis provided by and relied upon by the BOR. The BOE maintained that after such a review, this board will find no reliable evidence in the record to negate the auditors values or allow this board to independently value the subject property.

Before we reach the merits of the instant appeals, we must again address the BOR's decision for tax year

2015, which was issued on February 22, 2016 as part of its resolution of the 2014 complaint. This board has repeatedly admonished the Franklin County BOR not to exercise jurisdiction over a year for which a complaint may be filed, as it apparently was in this case, since such a filing would render the earlier decision for the "open tax year" null and void. See, e.g., *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 10, 2016), BTA No. 2015-449, unreported; *Big Walnut Apartments, LLC v. Franklin Cty. Bd. of Revision* (Nov. 6, 2012), BTA No. 2012-K-767, unreported; *GnA Properties, LLC v. Franklin Cty. Bd. of Revision* (May 29, 2012), BTA No. 2012-K-688, unreported. In the present appeals, it was improper for the BOR to exercise its continuing complaint jurisdiction over tax year 2015. Accordingly, we hereby remand tax year 2015 to the BOR with instructions to vacate its February 2015 decisions for tax year 2015.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. Furthermore, the court emphasized that this board must "eschew a presumption of the validity of the BOR's value and instead to perform its own independent weighing of the evidence in the record." *Chess,* supra, at ¶7, citing *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision ("Olentangy Crossing"),* 147 Ohio St.3d 409, 2016-Ohio-7381, ¶15, 22; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, ¶13, citing *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 128 Ohio St.3d 565, 2011-Ohio-2258, ¶17, citing *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996). Accordingly, we proceed to review all the evidence in the instant appeals to independently determine value.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). In the present case, Gallick purchased the subject properties more than four years before the tax lien date and did not offer any evidence that the sale continued to be a reliable indication of value despite the passage of time. See *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588. Accordingly, we cannot rely on the sales as competent evidence of value.

In the absence of a recent sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964). See also *LTC Properties , Inc. v. Licking Cty. Bd. of* Revision, 133 Ohio St.3d 111, 2012-Ohio-3930, ¶28 (Pfeifer, J., dissenting) ("All property owners and their counsel know that they have a heavy burden to overcome when challenging a valuation. *** [T]he best way to challenge a valuation is with a proper appraisal ***."). In the present appeal, however, neither party has presented a qualifying appraisal report for this board to utilize to reach our determination. While Gallick characterizes his presentation of allegedly comparable sales, coupled with his testimony, as an "appraisal," we find such information falls far short of a true appraisal. As this board noted in *Moskowitz v. Cuyahoga Cty. Bd. of Revision* (Jan. 23, 2015), BTA No. 2014-1160, unreported, at 3, affirmed on appeal, 150 Ohio St.3d 69, 2017-Ohio-4002, "the compliation of the sales was only one step in a sales-comparison approach to value that would be performed by an appraiser." Instead Gallick challenges the BOR's determinations and relies on unadjusted sales of other properties and negative conditions to support further reduction in value. The BOE has not presented independent evidence of value, but agrees with Gallick that the BOR's decisions are not supported and could not replicated by this board.

We agree that owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987), but in order for such opinion to be considered probative, it must be supported with

tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.*, 65 Ohio St.3d 621 (1992). The weight to be

accorded an owner's evidence is left to the sound discretion 9f this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). An owner's opinion must still be probative as to the value of the property on lien date. See *Amerimar Canton Office, LLC v. Stark Cty. Bd. of Revision,* 5th. Dist. Stark No. 2014CA00162, 2015-Ohio-2290. Thus, merely because Gallick is an expert regarding his properties, this board is not required to accept his opinion, or the opinion of any expert, as fact and utilize it as the basis for our determination. Upon review of Gallick's evidence, we find that he failed to present sufficient support for his stated opinions of value, and therefore find that such opinion is not probative. *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's determination that an owner's opinion of value, while competent, was not probative).

In the instant appeals, Gallick offered sales data to compare the properties on the basis of the cost per unit, but made no adjustments for differences among the properties. Significantly, the comparable properties range from four units to 58, and the subjects vary in both size and location. Without a reliable analysis of the comparability of the comparable sales to the subject properties, 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, etc., and the date of sale as opposed to tax lien date, may affect a valuation determination. See, generally, The Appraisal of Real Estate (14th Ed.2013). See, also, *Beck v. Stark Cty. Bd. of Revision* (Nov. 8, 2011), BTA No. 2008-M-530 at 15-16, unreported (Margulies dissenting) (discussing the need for size adjustments to ensure consistent units of comparison because as size increases, unit prices generally decrease).

We further find that the evidence offered by Gallick with respect to the condition of the properties does not support decreases in value without adequate evidence of the specific impact that these negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value. See, e.g., *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996) (emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value); *Gides v. Cuyahoga Cty. Bd. of Revision,* 8th Dist. Cuyahoga No. 100830, 2014-Ohio-4086, ¶17 ("The photographs Gides submitted are similarly deficient. Without testimony to establish how the defects represented in the photographs affect value, there is no basis to determine that the value of the property is less than that currently assessed."). Accordingly, we cannot rely on the evidence of the subjects' negative conditions to adjust the subjects' values. Consequently, we find that Gallick has failed to provide sufficient support to decrease the subjects' values.

Gallick further asked this board to look at new information regarding a settlement with the BOE and the county appellees for tax years 2011, 2012, and 2013. This information, however, was not presented during either the hearing before this board or the BOR, and therefore is not properly in the record. The Supreme Court has held that this board must consider an appeal upon the transcript certified by the board of revision and evidence properly submitted and accepted during our own proceedings. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13 (1996). Even if we were to consider these statements in our determination, however, we would find that they should be accorded no weight. 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."). Contrary to Gallick's assertions, he has provided no reliable evidence to show how the values for these earlier years relate to 2014. Without such a showing, these values are not probative evidence and cannot provide a reliable basis for this board to independently value the properties.

Having rejected Gallick's evidence, we now turn the BOR's determination and the BOE's argument that the auditor's values must be reinstated. While valuation determinations made by county boards of revision are not presumptively correct, see, e.g., *Vandalia-Butler*, supra, under certain circumstances, when the

BOR adopts a new value based on the owner's evidence, it has the effect of "shifting the burden of going forward with evidence to the board of education on appeal to the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 193, 2013-Ohio-4543, ¶16. This board must nonetheless reinstate the auditor's value "when the BOR's decision to reject the auditor's valuation is completely unsupported in the record" or when the BOE "presents evidence that the auditor's valuation is more accurate than the BOR's." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 144 Ohio St.3d 324, 2015-Ohio-3633, ¶44. Furthermore, "[a] legal error in the BOR's determination prevents affirmance of the BOR's determination." *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 147 Ohio St.3d 503, 2016-Ohio-1485, ¶30.

In the present appeals, the BOR applied a GRM to an asking rental rate, which both Gallick and the BOE have argued was inappropriate in the present appeals. We note that the court has rejected the argument that evidence first offered by the BOR for use in its deliberations should be excluded from our consideration, indicating that we must instead decide the appropriate weight to accord it. *Chess,* supra, at ¶9. The court indicated that while the BOR may elicit evidence from consultants or staff appraisers, but if a BOE appeals a BOR reduction to this board, "the board of revision as an appellee can be called upon to account for the manner in which it determined value." Id. at ¶9. For several reasons, we find that the BOR's application of a GRM does not constitute a reliance on competent and probative evidence and should be accorded no weight in our value determination.

First, we find it troubling that the BOR relied on a number derived from the range of the subjects' asking rents despite a lack of evidence as to a specific rate or demonstration that the rental rates conformed to the market. See, generally, *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision,* 75 Ohio St.3d 552, 555 (1996) ("[A]n appraiser may employ actual income as reduced by actual expenses if both amounts conform to market."). Moreover, the data upon which the BOR relied to conclude to the range of multipliers it considered and how the properties compared to the subject were neither discussed at the BOR hearing nor included in the transcript certified to this board; and no individual involved in the preparation of this report provided testimony regarding his or her methodology. In this case, due to the absence of information in the record, we are unable to review the probative character of the GRM analysis and cannot conclude that it constitutes competent and probative evidence of value.

As noted by the BOE in its brief, the lack of information about the basis for the GRM is particularly relevant as we are unable to review the properties utilized in the analysis and their similarity to the subject properties, such as their expense ratios and the basis for their reported rental income. The Appraisal of Real Estate (14th Ed.2013) explains that a GRM may be used to determine a property's value by comparing the income-producing characteristics of properties. It goes on to caution, however, that appraisers must be careful when attempting to employ this approach because, among other reasons, "[p]roperties with similar or even identical multipliers can have very different operating expense ratios and, therefore, may not be comparable for valuation purposes." Id. at 507. Here, Gallick has provided numerous reasons why the BOR's use of a GRM was especially inappropriate in the instant appeals. We agree. See, e.g., *Independence School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 8th Dist. Cuyahoga No. 94585, 2010-Ohio-5845 (affirming this board's rejection of an effective gross income multiplier within the sales comparison approach).

Accordingly, in this case, we find that the BOR's decisions were not supported and we find no competent and probative evidence in the record that would allow us to independently determine value for the subject properties, other than those first determined by the auditor. Under these circumstances, this board may properly reinstate the auditor's values. See *S. -W. City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 10th Dist. Franklin No. 14AP-729, 2015-Ohio-1780, ¶32; *Sapina v. Cuyahoga Cty. Bd. of Revision,* 136 Ohio St.3d 188, 2013-Ohio-3028, ¶35 ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it. This court has emphatically held that the BTA's independent duty to weigh evidence precludes a presumption of validity of the BOR's valuation."); *Olentangy Crossing,* supra, at ¶20

(where the record does not contain sufficient evidence to perform an independent valuation of theproperty, the auditor's value may ordinarily be reinstated, even if the auditor's valuation has been negated). Thus, based upon our independent review of the evidence in the record, we find that the true values of the subject properties are best reflected by the values initially determined by the auditor.

Gallick also challenges the basis of the auditor's values, as the property record cards appear to indicate that the values are based on a combination of the already-discussed GRM approach and a cost approach. However, we find no legal error in the auditor's valuations, even his use of a cost approach. As the court noted in *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058, ¶47, the age of improvements "does not render the cost approach per se inapplicable." See also Ohio Adm. Code 5705-3-02(G). In the absence of other probative evidence from which we can independently determine value, we find the auditor's values to be the appropriate default values here. Compare *Dublin City Schools*, supra.

With respect to Gallick's constitutional argument, while the Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that this board has no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229 (1988); *MCI Telecommunications Corp. v. Limbach*, 68 Ohio St.3d 195 (1994).

As discussed above, the BOR was not authorized to issue its February 2016 decision for 2015 because it was an open year at the time the letter was mailed to the parties. As such, this board is without jurisdiction to consider that tax year. We note, however, that there is nothing disclosed in the record that would prevent the value determination for tax year 2014 from carrying forward into subsequent years. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094, ¶30; *Chess*, supra, at ¶10.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2014, were as follows:

PARCEL NUMBER 010-063544-00

TRUE VALUE

$115,000

TAXABLE VALUE

$40,250

PARCEL NUMBER 010-070331-00

TRUE VALUE

$216,000

TAXABLE VALUE

$75,600

OHIO BOARD OF TAX APPEALS

LURETHIA JONES, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1422

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LURETHIA JONES
Represented by:
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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CLEVELAND, OH 44113

Entered Thursday, November 2, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss, appellant's response thereto, and the statutory transcript certified pursuant to R.C. 5717.01. The county appellees move this board to dismiss this matter for lack of jurisdiction due to appellant's failure to comply with the statutory requirement to file notice of the appeal with the Cuyahoga County Board of Revision. In response, appellant argues only that the notice was sent to and received by this board.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68, the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *" R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the property owner both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363, 369 ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

Upon review of the record before us, we find that appellant failed to comply with the requirement to file a copy of the notice of appeal with the Cuyahoga County Board of Revision. As such, she has failed to properly invoke the jurisdiction of this board. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

PAMELA CHAPMAN, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1308

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PAMELA CHAPMAN
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Thursday, November 2, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move this board to dismiss this appeal for lack of jurisdiction, arguing that appellant failed to file notice of the appeal with the Cuyahoga County Board of Revision as required by R.C. 5717.01. In response, appellant argues that she properly filed with this board, and that, following her filing, notice of the appeal was sent to the opposing party. We decide the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, the motion, and the replies thereto.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68, the Ohio Supreme Court held that•"[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the property owner both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363, 369 ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

Our review of the record indicates that appellant failed to file the required notice with the Cuyahoga County Board of Revision. While we acknowledge that, upon her filing with this board, we issued a docketing letter to the board of revision alerting it of the filing and the scheduled hearing date, the Ohio Supreme Court has held that such notices do not satisfy an appellant's duty to file notice of the appeal with the board of revision. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d 192 (1989). See also *Rumora v. Ashtabula Cty. Bd. of Revision* (Mar. 30, 2001), BTA No. 2000-G-970, unreported. Accordingly, appellant failed to properly invoke this board's jurisdiction. The motion to dismiss must be, and hereby is, granted.

OHIO BOARD OF TAX APPEALS

EASTLAND MALL HOLDINGS, LLC, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2190

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EASTLAND MALL HOLDINGS, LLC
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COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
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Entered Friday, November 3, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals two decisions of the board of revision ("BOR") which determined the value of the subject real property, parcel numbers 010-005373, 010-283243, 010-283244, 010-005352, 010-137332, 010-283245, which operate as one economic unit, for tax year 2015. This matter is now considered upon the notice of appeal, transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, owner's notice of additional legal authority, and any written argument submittod by the parties.

The subject is commercial property, consisting of approximately 43.44 acres of land, and is improved with a regional shopping mall known as Eastland Mall. S.T., Exhibit ("Ex.") C. The subject's total true aggregate value was initially assessed at $24,455,100. The property owner filed a decrease complaint with

the BOR, seeking an aggregate reduction in value to $7,000,000, which amount was amended at hearing to $7,100,000 to conform to appraisal evidence. S.T., Ex. A. The Board of Education of the Columbus City Schools ("BOE") filed a counter complaint with the BOk, seeking to maintain the subject's initially assessed valuation. S.T., Ex. B.

At the BOR's hearing, in support of the decrease requested, counsel for the property owner provided sale documentation consisting of a conveyance fee statement, deed, closing statement, and purchase contract and offered the testimony of John Mills, senior tax director for the ownership entity, Fred Meno, president and CEO of the asset services division of the Woodmont Company, i.e., the subject's property management company, and Benton Benalcazar, senior managing director and Columbus marketing leader of Newmark, Grubb, Knight, Frank, i.e., an individual directly involved with marketing and auction sale of the subject. In addition, owner's counsel also submitted press releases, various property reports, executive summaries, financial records, and photographs of the subject, and offered the appraisal report and testimony of Mr. Samuel D. Koon, MAI, a state-certified general real estate appraiser in Ohio. The BOE offered no independent evidence of value.

The owner's sale documents reflect an auction transfer of the subject from LBUBS 2007-C1 Complex 2740, LLC, to Eastland Mall Holdings, L.L.C., on May 1, 2015, for $9,712,500. S.T., Ex. F. See also S.T., Ex. C. The property owner, however, advocated for the board's reliance upon Mr. Koon's appraised valuation to establish the subject's value due to its poor physical and financial condition. Mr. Mills authenticated several business records, and, on cross examination by BOE's counsel, indicated he became familiar with such records in July 2015. Mr. Meno began managing the subject property in August 2014 and indicated the subject's occupancy was in decline and no longer marketable to national retailers. Mr. Benalcazar then provided significant testimony regarding marketing efforts put forth to advertise the subject for sale and the procedures in place for the auction that ensued. Specifically, Mr. Benalcazar testified, the subject was marketed nationally and internationally, there were at least ten bidders at the auction, there was an undisclosed reserve, and acceptance of the winning bid was within the sole discretion of the (former) owner. Id. Mr. Koon testified that he employed the sales comparison and income approaches to value, and, upon reconciling the resulting values, placed the greatest weight on the sales comparison approach and opined to a value of $7,100,000 for the subject property, as of January 1, 2015. S.T., Ex. F at appraisal F-12 — G-2. On cross examination, Mr. Koon admitted, due to a lack of necessary information, he had not analyzed or utilized the subject's May 2015 sale in his report, nor had he reviewed the leases that were in place at the time transfer. Id. BOE's counsel advocated for the BOR to rely upon the May 2015 purchase price to establish value and noted that the BOR had found value consistent with the subject's purchase price for a prior tax year.

Thereafter, based upon the information available to it, the BOR chose to rely upon the subject's May 2015 transfer as the best evidence of value and issued two decisions decreasing the subject's total true aggregate value to $9,712,500. S.T., Ex. G. Dissatisfied with the result, the property owner timely filed a notice of appeal with this board. On appeal, in lieu of hearing, the parties submitted written argument advancing their positions to this board. Owner's counsel advocates for this board's reliance upon Mr. Koon's appraised value and contends, due to recent legislative changes to R.C. 5713.03, the subject's May 2015 sale cannot be used to value the property because several leases were in place at the time of the sale. The BOE, on the other hand, maintains that the subject's May 2015 purchase price reflects the best evidence of value.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-379. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property

record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104.

However, several factors may render a sale, by itself, an unreliable indicator of value. As it relates to the subject transfer of this appeal, R.C. 5713.04 provides that "[t]he price for which *** real property would sell at auction or forced sale shall not be taken as the criterion of its value." Pursuant thereto, unlike a typical sale of the property which enjoys a rebuttable presumption of validity, see *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, at ¶14, auction and forced sales, such as the subject's May 2015 auction transfer and sales by the Secretary of Housing and Urban Development ("HUD"), are not considered reliable value indicators and a rebuttable presumption of *invalidity* attaches. R.C. 5713.04; *Dublin Senior Community L.P. v. Franklin City. Bd. of Revision,* 80 Ohio St.3d 455 (1997); *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723. See generally *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 127 Ohio St.3d 63, 2010-Ohio-4907. In order to rebut a presumption of invalidity, the proponent of such a sale must prove that, although forced, "the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value." *Olentangy,* supra, at ¶43.

In this case, we find evidence contained in the record successfully rebuts the presumption of invalidity accorded the subject's May 2015 auction sale. Mr. Benalcazar's uncontroverted testimony before the BOR (relating to the marketing efforts undertaken to advertise the property for sale and the procedures in place at auction), is sufficiently corroborated by probative documentary evidence, e.g., the listing agreement and purchase agreement, and, as a result, we find the sale was an arm's-length sale between typically motivated parties.

Having found that, although sold at auction, the May 2013 sale of the subject was nevertheless a recent arm's-length transfer, we now turn to the owner's contention that, due recent legislative changes to R.C. 5713.03, the subject's May 2015 purchase price may not be relied upon to establish value because leases were in place at time of transfer. In *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415, the court recently considered "whether the statutory change [to R.C. 5713.03] affects how taxing authorities must value lease-encumbered properties that have been the subject of recent arm's-length sales." Id. at ¶1. While the court concluded, under certain circumstances, "evidence of encumbrances and their effect on [the] sale price" may be considered, the court made equally clear that reliance upon recent arm's-length sale prices is still favored when determining value for taxation purposes. Id. at ¶27. In fact, the court specifically commented that "the proponent of a sale is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate." Id. at ¶32, 33. Moreover, the court went on to clarify that the change to "R.C. 5713.03 does not now 'require [] an inquiry into whether a lease in place reflects market rent at the time of sale' and explicitly stated, "[m]arket rent becomes relevant *only* if an opponent presents it as evidence in an attempt to rebut a sale price." (Emphasis added.) Id. at ¶33, 34. In such instances, 'the burden lies upon the party who opposes the use of the sale price [here, the property owner] to show that the encumbrances on the property constitutes a reason to disregard the sale price as an indicator of value.' *Dublin City Schools [Bd. of End. v. Franklin Cty. Bd. of Revision,* 118 Ohio St.3d 45,] at ¶16." Id. at ¶32.

In this instance, however, the owner did not provide the subject's leases, nor any market analysis demonstrating that the subject's rental rates were anything other than market rents at the time of transfer. Based upon the foregoing, we find the owner's mere assertion that the May 2015 purchase price is an unreliable indication of value simply because leases were in place at the time of transfer, to be without merit. *Terraza,* supra at ¶33, 34. See also *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Rd of Revision,* 82 Ohio St.3d 297, 299 (1998) ("statements of counsel are not evidence."). While we

acknowledge the owner's appraisal evidence, we note with importance, the owner's own appraiser admitted that he did not analyze or utilize the subject's May 2015 sale in his report and did not review the leases in place at the time of sale. S.T. Ex. E. In the absence of the subject's leases and evidence demonstrating that the subject's rental rates were something other than market at the time of transfer, we find the owner was required, but failed, to provide rebuttal evidence showing that the May 2015 purchase price did not reflect the property's true value. *Terraza,* supra at ¶32.

Absent an affirmative demonstration that the May 2015 sale of the subject is not a qualifying sale for tax valuation purposes, this board will not engage in conjecture as we find the existing record demonstrates that the transaction was recent, conducted at arm's-length, and constitutes the best indication of the subject's value as of tax lien date. See generally *Lakota Local School Dist. Bd. of Edn.,* supra, at ¶26 ("Mere speculation is not evidence."). Finally, as we find the subject sale to be the best evidence of value, we will not devote further discussion to the owner's appraisal report and appraiser testimony because "[i]t is only when the purchase price does not reflect the true value of a piece of property that a review of independent appraisals based upon other factors is appropriate." *Pingue v. Franklin Cty. Bd. of Revision,* 87 Ohio St.3d 62, 64 (1999).

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER 010-005373

TRUE VALUE

$751,100

TAXABLE VALUE

$262,890

PARCEL NUMBER 010-283243

TRUE VALUE

$7,493,200

TAXABLE VALUE

$2,622,620

PARCEL NUMBER 010-283244

TRUE VALUE

$592,000

TAXABLE VALUE

$207,200

PARCEL NUMBER 010-005352

TRUE VALUE

$267,000

TAXABLE VALUE

$93,450

PARCEL NUMBER 010-137332

TRUE VALUE

$80,000

TAXABLE VALUE

$28,000

PARCEL NUMBER 010-283245

TRUE VALUE

$529,200

TAXABLE VALUE

$185,220

OHIO BOARD OF TAX APPEALS

RICHARD A AND SANDRA M SAUTTER, (et. al.),	CASE NO(S). 2016-1374
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MORROW COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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For the Appellee(s) - MORROW COUNTY BOARD OF REVISION
Represented by:
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MORROW COUNTY
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Entered Friday, November 3, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellants appeal a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number Q40-001-00-272-02, for tax year 2015. This matter is now considered upon the notice of appeal, transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, record of hearing ("H.R.") before this board, any written argument submitted by the parties, and supplements to the record ("supplemental information") provided by the county pursupt to an order issued by this board. *Sautter v. Morrow Cty. Bd. of Revision* (Interim Order, June 14, 2017), BTA No. 2016-1374, unreported.

The subject is woodland property, consisting of approximately 27.44 acres, which previously participated in the Current Agricultural Use Value ("CAUV") program. For context, when land is devoted "exclusively to agricultural use," and meets certain requirements, a property owner may submit an application to the county auditor requesting to participate in the CAUV program to avoid a real property tax assessment based on the true value. R.C. 5713.30, 5713.31. Based upon the application, the county auditor determines a property's participation eligibility and the auditor's determination of eligibility may be reviewed by the BOR. R.C. 5713.31, 5713.38, 5715.19.

The factual background giving rise to this appeal is as follows. On June 4, 2014, the auditor's office sent a letter to the property owners and stated, due to a parcel split and sale of contiguous tillable land, the subject property no longer qualified for participation in CAUV and a recoupment charge would be assessed for tax

year 2014. Supplemental Information. On May 1, 2015, the auditor's office sent the property owners a letter and clarified that, due to the timing of the 2014 sale, a recoupment would be assessed in tax year

2015, not tax year 2014. S.T., Exhibit ("Ex.") F at MCBOR-DD. On September 21, 2015, the county auditor sent a certified letter indicating the subject was ineligible for CAUV and a recoupment charge was assessed for tax year 2015. S.T., Ex. F. at MCBOR-FF; R.C. 5713.34. Thereafter, on March 31, 2016, the property owners filed a tax year 2015 complaint with the BOR challenging "both [the] full market value and [the subject's] removal from CAUV" and attached written argument in support. S.T., Ex. A. See also R.C. 5715.19. No counter complaint was filed.

At the hearing before the BOR, a property owner appeared and offered testimony and documentary evidence in support of the complaint. The BOR hearing notes reflect that both the property's valuation and CAUV status were discussed. S.T., Ex. E. Moreover, the BOR's decision notes reveal the BOR considered both the subject's valuation and CAUV status, see S.T., Ex. E; however, we note with importance, the decision ultimately issued by the BOR provides only a valuation determination and does not make any determination as to the subject's CAUV status. S.T., Ex. G. Dissatisfied with the result, the property owner timely appealed to this board. At this board's hearing, the property owner maintains that the subject qualifies for inclusion in the CAUV program, contests the recoupment assessed, and requests this board to reinstate the property's CAUV status. H.R. at 18, 19. Notably, the property owner is not contesting the BOR's valuation determination on appeal. H.R. at 19.

R.C. 5715.19(C) requires boards of revision to "hear and render its decision" on complaints properly filed with it. Pursuant to R.C. 5717.01, this board may only exercise jurisdiction over boards of revision decisions that are appealed within thirty days after notice of such decision is mailed by the BOR, provided that a copy of the notice of appeal is also filed with the BOR. See *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). In this instance, the property owner challenged both the subject's valuation and CAUV status on the underlying complaint. S.T., Ex. A. While we acknowledge that the BOR issued a valuation determination for the subject property, the BOR failed to issue a decision determining the subject's CAUV status. S.T., Ex. G. Absent a BOR decision determining the subject's CAUV status, this board lacks the jurisdiction necessary to reach the merits of this appeal. R.C. 5717.01. Accordingly, this matter is hereby remanded to the BOR to issue a decision determining the subject's CAUV status for tax year 2015.

OHIO BOARD OF TAX APPEALS

JAMES HELFRICH, (et. al.),

Appellant(s),

vs.

LICKING COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1079

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Friday, November 3, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals two decisions of the board of revision ("BOR") which determined the value of the subject real property, parcel numbers 063-141834-00.018 and 063-147960-00.002, for tax year 2015. This matter is now considered upon the notice of appeal, transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and record of hearing ("H.R.") before this Iloard. Before proceeding to the merits of this appeal, however, we first acknowledge, at hearing, this board's attorney examiner reserved ruling on a hearsay objection raised by the county appellees as to a portion of Appellant's Exhibit A; specifically, a repair estimate and emails. Upon consideration, we hereby overrule the objection.

[2] We now proceed to the merits of this appeal. The subject's total true values were initially assessed at $136,100 and $97,000, respectively. The property owner filed two decrease complaints with the BOR,

seeking reductions in values to $130,000 and $62,000 based upon two transfers. S.T., Exhibit ("Ex.") A. No counter complaint(s) was filed.

[3] The BOR held two hearings. In each instance, the property owner, Mr. James Helfrich, provided evidence of a recent transfer and argued for the BOR's reliance upon the purchase price to determine value. S.T., Ex. E. For parcel number 063-141834-00.018, Mr. Helfrich submitted a sheriff's deed, which reflects a transfer from the sheriff, to Mr. Helfrich, on April 8, 2015, for $129,000. In addition, Mr. Helfrich also submitted a sheriff's "drive by appraisal," which states: "MILES: 34 APPRASIED AT: $130,000 DESCRIPTION: Vinyl ext. shingle roof. 2 c att. garage." S.T., Ex. F. For parcel number 063-147960-00.002, Mr. Helfrich testified as to property defects and submitted a settlement statement, which, in conjunction with the property record card, reflects a transfer from Ronnie B. Moore, to Mr. Helfrich, on April 23, 2015, for $63,000. S.T., Exs. C, F. Further, Mr. Helfrich also contended the purchase included personal property, i.e., a generator, valued at $1,000, argued for a reduction in the full purchase price, and submitted two affidavits from the prior owners in support.

[4] Thereafter, upon consideration of the information available to it, the BOR elected not to rely on either April 2015 transfer and issued two decisions maintaining the initially assessed valuations of the subject properties, which led to the present appeal. On appeal, at this board's hearing, Mr. Helfrich provided additional evidence including an estimate for repair, emails, map, and offered the testimony of subpoenaed witnesses Mike Smith, the Licking County Auditor, and Doug Hines, Chief Appraiser in Licking County. In addition, Mr. Helfrich also offered a comparable market analysis ("CMA") relating to parcel number 063-147960.002 and the testimony of Kathleen H. Fornes, author of the CMA and a real estate broker.

[5] "When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379. It is well established that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be supported with reliable tangible evidence of a property's value. *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992). Ultimately, the weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the prOperty." *WIJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record and found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997).

[6] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Then, typically, "the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104. However, several factors may give rise to a rebuttable presumption of invalidity and render a sale, by itself, an unreliable indicator of value.

[7] When property transfers through an auction, such as the sheriff sale relating to parcel number 063-141834-00.018, it is considered to be a forced, involuntary transfer, and, pursuant to R.C. 5713.04, such sales are not

representative of market value. *Dublin Senior Community Limited Partnership v. Franklin Cty. Bd. of Revision,* 80 Ohio St.3d 455, 458 (1997) (the purchase price "paid at the sheriff's sale is not a relevant consideration in establishing true value."); *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd of Revision ("TaDa"),* 141 Ohio St.3d 243, 2014-Ohio-4723. See generally *Cincinnati School Dist. Bd of Edn. v. Hamilton Cty. Bd of Revision,* 127 Ohio St.3d 63, 2010-Ohio-4907. While evidence of a facially qualifying sale typically gives rise to a rebuttable presumption of validity, see *Cummins,* supra, at ¶41, sales falling under the rubric of R.C. 5713.04 do not enjoy such a presumption. *TaDa,* supra, at ¶42. See also *HIN, L.L.C. v. Cuyahoga Cty. Bd of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, at ¶14. Instead, when, as here, a property is transferred through a sheriff sale auction, a rebuttable presumption of *invalidity* attaches to the transaction and the proponent of utilizing such a sale bears the burden of rebutting such presumption by proving that the sale, although "forced," was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best indication of value. *TaDa,* supra, at ¶43; *Dublin Senior Community,* supra.

[8] While the property owner had an opportunity to rebut the presumption of invalidity accorded the April 8, 2015 transfer of parcel number 063-141834-00.018, the owner presented nothing more on appeal to support his claim than the sale documents previously submitted to the BOR, and those documents do not prove the sale was arm's-length in nature. While we acknowledge the sheriffs appraisal (submitted to the BOR), we find nothing contained in the record that would allow this board to evaluate the reasonableness of the value derived in the half page "appraisal." In fact, upon review, the "appraisal" fails to identify the subject parcel, fails to identify its author(s), and fails to provide any effective date of the value provided. Moreover, there was no testimony from any of the author(s) presented, before the BOR, or this board, regarding its very limited contents. Based upon the foregoing, this board cannot rely on the sheriff sale appraisal as evidence of value. See *Evenson v. Erie Cty. Bd of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported; *Freshwater v. Belmont Cty. Bd of Revision,* 80 Ohio St.3d 26, 30 (1997); *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd of Revision,* 75 Ohio St.3d 552 (1996). Moreover, we find Mr. Helfich's unsupported testimony insufficient to rebut the presumption of invalidity. *Cardinal Federal,* supra. Absent a qualifying sale, "an appraisal becomes necessary"; however, appellant failed to provide a competent appraisal of parcel number 063-141834-00.018, attested to by a qualified expert, for the tax lien date in issue. *State ex rel. Park Invest. Co. v. Bd of Tax Appeals,* 175 Ohio St. 410 (1964). See also Justice Pfeifer's concurrence in *LTC Properties, Inc. v. Licking Cty. Bd. of Revision,* 133 Ohio St.3d 111, 2012-Ohio-3930 at ¶28.

[9] We now turn to parcel number 063-147960-00.002. Upon review, we find the property owner presented evidence of a facially qualifying April 23, 2015 sale of this parcel. As such, a rebuttable presumption of validity arose in favor of such transfer and the burden shifted to the opponent of utilizing such sale, i.e., the county appellees, to rebut such presumption and prove that the sale price is not indicative of value. *Cummins Property Servs.*, supra, at ¶41. While the county contends that this transfer was distressed, we find such argument to be without support. See *Lakeside Avenue Ltd Partnership v. Cuyahoga Cty. Bd of Revision,* 75 Ohio St.3d 540 (1996). See also *HIN, L.L.C. v. Cuyahoga Cty. Bd of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14.

[10] Having found the April 23, 2015 transfer of parcel number 063-147960-00.002 to be a recent arm's-length transfer, we now turn to the property owner's personal property argument and consider whether the owner satisfied his burden to demonstrate the propriety of allocating some portion of the reported price to other assets. *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd of Revision,* 125 Ohio St.3d 485, 2010-Ohio-1921; *Bedford Bd. of Edn. v. Cuyahoga County Bd of Revision,* 132 Ohio St.3d 371, 2012-Ohio-2844. See also *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd of Revision,* 115 Ohio St.3d 365, 2007-Ohio-5249, 1114, 19; *Hilliard City Schools Bd. of Edn. v. Franklin County Bd of Revision,* 128 Ohio St. 3d 565, 2011-Ohio-2258. Initially, we note, the owner elected to submit only the settlement statement to evidence the April 23, 2015 transfer and upon review, such document does not corroborate any alleged allocation of personal property. S.T., Ex. F at settlement statement line 102. The record does not contain a conveyance fee statement or purchase agreement relating to this transfer. While we acknowledge the two affidavits signed by the former owners, in general, affidavits are not considered reliable, competent,

and probative evidence upon which this board can base its decision. See *Bd. of Edn. of Hilliard City School Dist. v. Franklin Cty, Bd. of Revision* (Nov. 25, 1992), BTA No. 1990-G-789, unreported. Here, however, even if were we to consider the affidavits, we would not find such documentation to be sufficient to support an allocation of a portion of the purchase price to personal property as we are unable to determine from the affidavits who was involved in the generator valuation and what their qualifications to make such valuation designation were. As such, we would find, absent an appearance by such individuals before this board for purposes of cross examination, we could not rely upon their statements and the owner's self-serving statements, both uncorroborated by reliable tangible evidence, to determine the value of the subject's generator. As such, we conclude, the property owner was required, but failed, to provide sufficient corroborating indicia to support an allocation of a portion of the reported purchase price to personal property. *Bedford Bd. of Edn.*, supra, at ¶20.

[11] Accordingly, absent an affirmative demonstration that the full purchase price of the April 23, 2015 sale is not a qualifying sale for tax valuation purposes, this board will not engage in conjecture, as we find the existing record demonstrates that the transaction was recent, arm's-length, and constitutes the best indication of value for parcel number 063-147960-00.002 as of tax lien date at issue. See generally *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, ¶26 ("Mere speculation is not evidence.").

[12] It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER 063-141834-00.018

TRUE VALUE

$136,100

TAXABLE VALUE

$47,640

PARCEL NUMBER 063-147960-00.002

TRUE VALUE

$63,000

TAXABLE VALUE

$22,050

OHIO BOARD OF TAX APPEALS

ZACHARY A ZIMMER, (et. al.),

Appellant(s),

vs.

STARK COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-622, 2017-623

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ZACHARY A ZIMMER
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Entered Monday, November 6, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 5210119 and 5209214, for tax year 2016. While not previously consolidated, these appeals are appropriately consolidated for the purpose of this decision and order in accordance with this board's rule of practice and procedure 5717-1-09. These matters are now considered upon two notices of appeal and transcripts ("S.T.") certified by the BOR pursuant to R.C. 5717.01.

The subject parcels' total true values were initially assessed at $48,100 and $76,900, respectively. The property owner filed two decrease complaints with the BOR, seeking reductions in value to $30,033 and $57,033, based upon transfers. S.T., Exhibit ("Ex.") A. No counter complaint(s) was filed.

The BOR held two hearings and the property owner did not attend either. In support of each complaint, however, the owner submitted a settlement statement reflecting a transfer of each subject parcel. For parcel number 5210119, the settlement statement reflects a transfer from Lee Ann Ford, Teri Tonnous, and Jeff Norman, to Zachary A. Zimmer, on March 3, 2017, for $30,033. S.T., Ex. F. In addition, the record also contains a three page unattested report from the auditor's office. The report identified the March 2017 transfer as an estate sale and indicated that this type of transfer does not qualify as an arm's-length

transaction. Further, based upon three comparable sales, the auditor report recommends a value of $42,600 for parcel number 5210119. Id.

For parcel number 5209214, the settlement statement, in conjunction with the county's property record card, reflect a transfer from US Bank Trust, to Zachary A. Zimmer, on September 15, 2016, for $55,033. S.T., Exs. C, F. The record also contains a three page unattested report from the auditor's office for this parcel. The report identified the September 16, 2016 transfer as a "bank sale" and indicated that this type of sale does not qualify as an arm's length transactions. Further, based on three comparable sales, the report recommends a value of $73,600 for parcel number 5209214.

Upon consideration of the information available to it, the BOR elected to disregard the subject's March 2017 and September 2016 purchase prices in favor of the valuation determinations contained in the auditor's reports and issued two decisions: one reducing parcel number 5210119 to $42,600, and the other reducing parcel number 5209214 to $73,600. S.T., Exs. E, G. Dissatisfied with the result, the property owner appealed to this board. On appeal, no hearing was requested before this board and no party submitted written argument advancing its position.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Then, typically, "the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13, citing *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 269, 2015-Ohio-4979. But see *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415 (statutory amendment to R.C. 5713.03 allows for consideration of encumbrances and their effect on the sale price if the party opposing the transfer presents it as rebuttal evidence).

The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record. card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd of Edn. v. Warren Cty. Bd of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104. The Supreme Court has made it clear that no "bright line" test exists when establishing recency and that the mere passage of time does not, per se, render a sale unreliable; rather, recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property[.]" *Cummins Property Servs. L.L.C.,* supra, at ¶35. See generally *Lakota Local School Dist. Bd of Edn. v. Butler Cty. Bd of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059. See also *Akron City School Dist. Bd of Edn. v. Summit Cty. Bd of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588.

At the outset, we reject the BOR's suggestion "that a taxpayer-complainant must appear at the board-of-revision hearing to satisfy its initial burden" when presenting evidence of a recent arm's-length sale. *Lunn v. Lorain Cty. Bd of Revision,* 149 Ohio St.3d 137, 2016-8075, ¶16; *Utt v. Lorain Cty. Bd. of Revision,* 150 Ohio St.3d 119, 2016-Ohio-8402; *Dauch v. Erie Cty. Bd of Revision,* 149 Ohio St.3d 691, 2017-Ohio-1412. Moreover, we find the assertion in the two auditor's reports that both estate sales and bank sales are not qualifying arm's-length transactions, to be without merit. With regard to estate sales, "[w]hile we can conceive of certain circumstances that, if present, might operate to render a sale of real property from a decedent's estate to a private purchase as ndn-voluntary or not at arm's-length, we are not persuaded that such a sale, without any specific evidence to the contrary, is automatically not an arm's-length transaction." *Snyder v. Franklin Cty. Bd of Revision* (Feb. 2, 1988), BTA No. 1986-F-710,

unreported. To be sure, this board has previously found that sales commonly referred to as "estate sales" were the best indication of value. See, e.g., *TDR Group LLC v. Ashtabula Cty. Bd of Revision* (Sept. 4, 2014), BTA No. 2013-4872, unreported; *Griesemer v. Montgomery Cty. Bd. of Revision* (Aug. 29, 2003), BTA No. 2002-A-1949, unreported.

Turning to bank sales, typically, this type of transfer originates with a financial institution, after that financial institution previously acquired such property from a foreclosure sale. To be sure, "[a] foreclosure sale usually does not qualify as an arm's-length transaction because the sale occurs under the compulsion that the property be liquidated for the benefit of creditors[,]" see *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 127 Ohio St.3d 63, 2010-OhiO-4907, ¶3; however, the *subsequent* sale of the property by a lending institution that acquired it, commonly referred to as a "bank sale," may provide a reliable indication of value. See, e.g., *Cattell v. Lake Cty. Bd of Revision*, 1 1 th Dist. Lake No. 2009-L-161, 2010-Ohio-4426; *Kahoe v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 99188, 2013-Ohio-2097. See, also, R.C. 5713.04. Such is the case here. In fact, we conclude, regardless of how the seller, i.e., the financial institution, acquired the subject parcel, the subsequent sale from the financial institution to the appellant, is a reliable indication of value.

In this instance, it is clear that the property owner presented evidence of two facially qualifying sales to the BOR, and, consequently, a rebuttable presumption of validity arose in favor of such transfers. *Cummins Property Servs.*, supra, at ¶41. The burden then shifted to the opponent of utilizing such sales, i.e., the county appellees, to rebut such presumption and prove that the sale prices are not indicative of value. In this instance, however, no evidence has been presented that would call into question the recency or arm's-length nature of the subjects' March 2017 or September 2016 transfers. See *HIN, L.L.C. v. Cuyahoga Cty. Bd of Revision*, 138 Ohio St.3d 223, 2014-Ohio-523, at ¶14.

Accordingly, absent an affirmative demonstration that the subjects' March 2017 and September 2016 sales are not qualifying sales for tax valuation purposes, this board will not engage in conjecture as we find the existing record demonstrates that such transfers were recent and conducted at arm's-length.

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2016, were as follows:

PARCEL NUMBER 5210119

TRUE VALUE

$30,030

TAXABLE VALUE

$10,510

PARCEL NUMBER 5209214

TRUE VALUE

$55,030

TAXABLE VALUE

$19,260

OHIO BOARD OF TAX APPEALS

TERRAZA 8 LLC, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2015-279, 2015-280

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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BOARD OF EDUCATION OF THE HILLIARD CITY SCHOOL DISTRICT
Represented by:
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Entered Wednesday, November 8, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These matters are again before this board following the Supreme Court's decision vacating our November 30, 2015 decision and order, and remanding for further consideration. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. We therefore proceed to consider the matter upon the notices of appeal, the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01, the record of the hearing before this board ("H.R."), the court's decision, and the parties' written legal argument.

These matters involve the valuation of parcel number 560-280577 for tax years 2013 and 2014. Initially, we note that the Franklin County Board of Revision ("BOR") issued its decision for tax year 2014 prior to the deadline for filing complaints for that time period, i.e., March 31, 2015, on February 5, 2015.

Accordingly, the BOR lacked jurisdiction to issue a decision finding value for tax year 2014 at that time. We therefore remand these matters as to tax year 2014 with instructions that the BOR vacate its February 5, 2015 decision and take further action as appropriate to determine value for tax year 2014.

The BOR did, however, properly have jurisdiction to consider the value of the property for tax year 2013. The auditor had initially valued the property at $4,850,000 for tax year 2013. The appellee Hilliard City Schools Board of Education ("BOE") filed a complaint against valuation seeking an increase in value to $15,403,200 — the amount for which the property sold in February 2013. At the BOR hearing, counsel for the BOE presented a conveyance fee statement and deed in support of its requested value; the property owner (Terraza 8, LLC) neither filed a countercomplaint nor participated in the BOR proceedings. The BOR issued a decision finding value for tax year 2013 in accordance with the February 2013 sale.

Terraza 8 thereafter appealed to this board. At this board's hearing, Terraza presented the appraisal report and testimony of Patricia Costello, a certified general appraiser in Ohio, who opined a value of $7,055,000 as of January 1, 2013. Although this board, in our November 30, 2015 decision and order, rejected Ms. Costello's appraisal report in light of the presence of an arm's-length sale, the Supreme Court vacated our decision and remanded the matter for this board to address and weigh the appraisal evidence, in light of its holding that this board "erroneously applied a conclusive presumption in favor of using the sale price as the value of the property." *Terraza 8*, supra, at ¶37.

R.C. 5713.03 provides that "[t]he county auditor *** shall determine *** the true value of the fee simple estate, as if unencumbered, of each separate *** parcel of real property and of buildings, structures, and improvements located thereon ***." If a property has been the subject of a recent, arm's-length sale, "the auditor *may* consider the sale price ** to be the true value for taxation purposes." (Emphasis added.) On appeal, the Supreme Court held that R.C. 5713.03, as applicable to the tax year before us, overrules the court's holding in *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, under a prior version of the statute, that "foreclosed an opposing party from introducing appraisal evidence to override a recent, arm's-length sale price." Id. at ¶26. Following amendment of the statute, a recent arm's-length sale is still presumed the best evidence of a property's value; however, appraisal evidence may be presented to show that the sale price is not reflective of true value. Id. at ¶33-34; *Ratner v. Stark Cty. Bd. of Revision*, 23 Ohio St.3d 59 (1986); *Columbus Bd. of Edn. v. Fountain Square Assocs., Ltd.*, 9 Ohio St.3d 218 (1984).

The parties do not dispute that the subject property transferred in a recent, arm's-length transaction in February 2013 for $15,403,200. Terraza 8 argues that the sale did not reflect the fee simple value of the property, as the property sold subject to a long-term lease to a national tenant. Initially, we note that the court found the presence of a lease at the time of sale does not per se render the sale an unreliable indication of value. "[T]he burden lies upon the party who opposes the use of the sale price to show that the encumbrances on the property constitute a reason to disregard the sale price as an indicator of value." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 45, 2008-Ohio-1588, ¶16; *Terraza*, supra, at ¶32. In these matters, the BOE argues that, as an initial matter, Terraza has failed to establish that the property did, in fact, sell subject to a lease, as no one personally involved with the sale testified before either this board or the board of revision. However, Ms. Costello testified, based on her conversations with individuals associated with the property owner and her review of a lease agreement between P&P Real Estate, LLC and Hilliard Fitness, LLC dated April 1, 2007, that the property did, in fact, sell subject to a lease. H.R. at 16, 19, 21; Ex. 1 at 20, Ex. 2.

While Terraza argues that Ms. Costello is competent to testify about the lease, given her review of the lease in appraising the property and developing her expert opinion of value, the BOE responds that such testimony is hearsay. However, proceedings before this board are not strictly bound by the rules of evidence. *HealthSouth Corp. v. Testa*, 132 Ohio St.3d 55, 2012-Ohio-1871, ¶13. While this board agrees

with the BOE that we would certainly prefer to have testimony from an individual personally involved with the sale of the property, here, "the record contains indicia of reliability" for Ms. Costello's testimony.

Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, 130 Ohio St.3d 230, 2011-Ohio-3362, ¶21. Terraza presented at this board's hearing a copy of a lease agreement for the subject property dated April 1, 2007. H.R., Ex. 2. The terms of that agreement indicate that, during the initial term which would include 2013, the base rent amount was $90,435 per month, or $20 per square foot on an annual basis. Although Ms. Costello indicates in her appraisal report that the lease rate was fixed for ten years at $22 per square foot, H.R., Ex. 1 at 20, we find such discrepancy immaterial to our analysis. We find the evidence presented, i.e., the April 1, 2007 lease and Ms. Costello's testimony, sufficient to establish that the property was subject to a lease at the time of the February 2013 sale.

We therefore turn to whether the actual rent was at, above, or below market rent. Ms. Costello, in appraising the property, prepared a market rent analysis using four lease comparables, and concluded to a market rent (at the top of the range) of $11 per square foot. H.R., Ex. 1 at 31. The BOE argues that Ms. Costello's choice of "second-generation" lease comparables, rather than "first-generation," and of comparables dissimilar in terms of location and amenities, i.e., indoor pool and locker rooms, renders her analysis not probative of the subject's market rent. As to the latter, Ms. Costello noted that the subject, unlike any of her comparables, had an indoor pool — a "unique space." Id. at 18. She did not adjust her comparables for this space, as potential tenants/owners could use the space for employees or an outside organization. Id. at 18.

In prior cases, this board has determined "that the existence of comparable first-generation sales and leases successfully refutes any evidence that suggests that the subject is marketable only to second-generation users." *Meijer Stores Ltd. Partnership v. Franklin Cty. Bd. of Revision* (May 27, 2008), BTA Nos. 2005-T-441, 443, unreported, at 19-20, affirmed 122 Ohio St.3d 447, 2009-Ohio-3479. However, where no evidence of such first-generation sales and leases have been presented, we have declined to speculate about their existence. See, e.g., *Wal-Mart Real Estate Business Trust v. Fulton Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-T-913, unreported. Here, Ms. Costello testified that the subject's lease was not at a market rate due to its length, i.e., 20 years initial term, and it being with a national tenant. H.R. at 19; Ex. 1 at 2. However, she did include in her appraisal report a comparable sale with the same criteria, i.e., long term and national tenant. Comparable sale 5 was reported to have been "purchased on the strength of the existing lease rate of $10.15 per square foot, effective as of February 2, 2015," to a national tenant for a term of seven years. H.R. at 39, 49; Ex. 1 at 48. In the absence of any evidence of "first-generation" leases demonstrating a different market in which the subject operates, as the BOE suggests, we must conclude from the record before us that Terraza has sufficiently demonstrated that the actual rent in place for the subject property at the time of the sale was above market. Accordingly, we find the sale is not reflective of the property's fair market value on tax lien date.

Turning to the remainder of Ms. Costello's report, we review the data therein and her opinion of value in determining the value of the subject property as of January 1, 2013. Ms. Costello gave greatest weight to her sales comparison approach, "as the majority of these facilities sell on a fee simple basis as vacant buildings." H.R., Ex. 1 at 51. Using five comparable sales in Franklin, Delaware, and Fairfield counties that occurred between August 2012 and June 2015 for unadjusted prices of $77.39 to $174.33 per square foot, Ms. Costello concluded to a value of $130 per square fOot for the subject, or $7,055,000 rounded. She also gave some weight to her income capitalization approach as support for her overall value. In her income approach, she utilized four lease comparables to conclude to a market lease rate of $11 per square foot, a vacancy and collection loss of 5.5%, and expenses and replacement allowance of $3.67 per square foot, to arrive at a net operating income of $546,937. She then capitalized that net operating income at 9.68% to conclude to an overall value of $5,650,000 rounded. Relying primarily on the value under the sales comparison approach, she reconciled to a value of $7,055,000 for the subject property as of January 1, 2013.

Upon review of Ms. Costello's report and testimony, we find her value conclusion reasonable and well-supported. We find her opinion of value to be the best evidence of value in the record before us in these matters.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2013, were as follows:

TRUE VALUE

$7,055,000

TAXABLE VALUE

$2,469,250

OHIO BOARD OF TAX APPEALS

DUBLIN CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1294, 2017-1447
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - DUBLIN CITY SCHOOLS BOARD OF EDUCATION
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Represented by:
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Entered Wednesday, November 15, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the board of education's ("BOE") motion to remand with instructions to dismiss the complaint, Continental Broadband LLC's ("Continental") response thereto, and the statutory transcript certified by the Franklin County Board of Revision ("BOR").

The BOE and Continental have both appealed from the same decision of the BOR finding value for parcel number 273-012619-00 for tax year 2016. The BOE moves to remand this matter to the BOR to dismiss the complaint, as the complainant (Continental) lacked standing. The record reveals that the underlying tax year 2016 decrease complaint was filed by Continental, which indicated its relationship to the property as "Sole

Tenant (landlord authorization letter attached hereto)." S.T. at Ex. A. Although counsel for the BOE argued during the BOR hearing that, as a tenant and not an owner of real property, Continental lacked standing to bring the complaint, the BOR issued a decision decreasing the value of the subject property. Id. at Ex. G.

Initially, we reject Continental's arguments that the BOE has failed to properly raise the jurisdictional issue presented. While Continental cites to R.C. 5717.011(C) and a related Ohio Administrative Code provision, neither apply to this case; those sections relate to appeals from municipal boards of appeal, not appeals from county boards of revision. Further, the jurisdiction of a tribunal cannot be waived and may be raised at any stage of the proceedings. *Buckeye Foods v. Cuyahoga Cty. Bd. of Revision,* 78 Ohio St.3d 459 (1997); *Shawnee Twp. v. Allen Cty. Budget Comm.,* 58 Ohio St.3d 14 (1991).

The issue now raised is therefore properly before this board. R.C. 5715.19(A) sets forth who may file a complaint challenging the valuation of real property for tax purposes; while an owner of real property in the county is specified, tenants are not. See, e.g., *Soc. Natl. Bank v. Wood Cty. Bd. of Revision,* 81 Ohio St.3d 401 (1998). "Ohio appellate courts, as well as this board,'have considered the foregoing statute in pari materia with R.C. 5715.13, and rejected the notion that a tenant, simply by virtue of its contractual obligation with a titled owner to pay taxes, ascends to the rights accorded an owner. See, e.g., *Name Brand Furniture Warehouse, Inc. v. Cuyahoga Cty. Bd. of Revision* (1987), 41 Ohio App.3d 47 (holding that tenant has no standing to file a complaint under the statute simply because it is responsible for payment of ad valorem taxes); *N. Olmsted Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1998), 122 Ohio App.3d 654." *WEK Industries, Inc. v. Ashtabula Cty. Bd. of Revision* (Apr. 11, 2013), BTA Nos. 2011-X-2027, 2031, unreported, at 3. See also *City of Dayton v. Montgomery Cty. Bd. of Revision* (Jan. 18, 2008), BTA No. 2006-Z-1811, unreported.

Continental argues that it had standing to file the complaint as agent of the owner, pursuant to its lease agreement and approval from the owner, and argues this matter is analogous to *Toledo Pub. Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision,* 124 Ohio St.3d 490, 2010-Ohio-253 ("Vistula"). In *Vistula,* the complaint listed a property management company (not the owner) as the complainant, an attorney as complainant's agent, and "complainant's relationship to the property" as "management company." Id. at ¶3. As here, the school board in *Vistula* moved to dismiss the complaint for lack of standing. Ultimately, the Supreme Court found that, by specifying its relationship as property manager, Vistula "clearly signal[ed] that the owner is acting through the property manager as its agent." Id. at ¶17.

In stark contrast, here, there is no indication that Continental filed the complaint as an agent of the owner; indeed, the statement "Sole Tenant (landlord authorization letter attached hereto)," and the language of the letter attached to the complaint, indicates that Continental filed on its own behalf, with the assent of the owner. As this board recently reiterated in *Beavercreek Towne Station, LLC v. Greene Cty. Bd. of Revision* (Oct. 25, 2016), BTA Nos. 2015-1488 et al., unreported, appeal pending, S.Ct. No. 2016-1713, "the court and this board have repeatedly reject the argument *** that a lessee who is responsible for paying real property taxes has standing in a real property valuation appeal. *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision,* 86 Ohio St.3d 181 (1999); *Performing Arts School of Metro. Toledo, Inc. v. Wilkins,* 104 Ohio St.3d 284, 2004-Ohio-6389; *Milford Exempted Village Schools Bd. of Edn. v. Clermont Cty. Bd. of Revision* (Jan. 26, 2016), BTA No. 2015-1552, unreported." Accordingly, we find that Continental lacked standing to file the underlying complaint based on its status as tenant of the property.

In the alternative to denying the motion, Continental requests that this matter be stayed pending the Supreme Court's decision in *Beavercreek Towne Station,* supra. However, we find this matter sufficiently distinguishable, as the tenant in this matter did, in fact, file ,a complaint; the tenant in *Beavercreek Towne Station* did not. We therefore deny the request to stay this matter.

Based upon the foregoing, the BOE's motion to remand is hereby granted. We therefore remand this matter to the BOR with instructions to vacate its decision and dismiss the underlying complaint for lack of jurisdiction, the practical effect being reinstatement of the auditor's initial value.

OHIO BOARD OF TAX APPEALS

SISA PROPERTIES LLC, (et. al.),

Appellant(s),

vs.

LAKE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-986

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, November 15, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes

is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions' only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

NAJAM KAZMI FOR KAZMI FAMILY LLC, (et. al.),	CASE NO(S). 2017-427
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Thursday, November 16, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject properties, parcels 702-27-012 and 703-02-052, for tax year 2015. We proceed to consider this matter based upon the notice of appeal and the transcript certified pursuant to R.C. 5717.01.

The subject properties were initially assessed at $99,000 for parcel 702-27-012 and $67,200 for parcel 703-02-052. The property owner filed a complaint with the BOR, which requested reductions to the subject properties' values to $71,000 and $26,100, respectively. The affected board of education ("BOE") filed a counter-

complaint, which objected to the requests. (We note that the complaint, counter-complaint, and subsequent BOR decision include a parcel that is not the subject of this appeal.)

At the hearing before the BOR, representatives of both parties appeared. Najam Kazmi, a member of the property owner, appeared in support of the complaint and testified about the purchases of each of the subject properties, as well as their conditions. The BOR members cross examined him; counsel for the BOE did not. The BOR subsequently issued a decision that reduced the value of parcel 702-27-012 to $71,000 and parcel 703-02-052 to $39,500. Thereafter, the property owner appealed to this board. The parties waived their appearances at a hearing before this board to supplement the record with additional evidence.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "[tjhe *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997).

We begin our analysis with the two transfers of the subject properties. The record evidences the following transactions: a $44,500 sale of parcel 702-27-012 from US Bank National Association, Trustee in August 2014 and a $26,100 sale of parcel 703-02-052 from Fannie Mae in March 2014. The county appellees failed to come forward with evidence that demonstrates the subject sales were not recent, arm's-length transfers. Absent affirmative demonstrations that the subject sales were not qualifying sales for tax valuation purposes, we find each transaction is the best indication of the associated parcel's value as of tax lien date.

It is, therefore, the order of this board that the subject properties' true and taxable values are as follows, as of January 1, 2015:

PARCEL NUMBER 702-27-012

TRUE VALUE

$44,500

TAXABLE VALUE

$15,580

PARCEL NUMBER 703-02-052

TRUE VALUE

$26,100

TAXABLE VALUE

$9,140

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2537

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
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CLEVELAND, OH 44114

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

BILL LAKE BUICK, INC.
15149 LORAIN AVENUE
CLEVELAND, OH 44111

Entered Thursday, November 16, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 025-33-068, for tax year 2015. We proceed to consider this matter based upon the notice of appeal and the statutory transcript certified pursuant to R.C. 5717.01.

[2] The subject property was initially assessed at $255,100. The BOE filed a complaint with the BOR, which requested that it increase the subject property's value to $350,000 purportedly to reflect the price at which it transferred in July 2013. The property owner did not file a counter-complaint. At the BOR hearing, only the BOE appeared to submit argument and evidence into the record. In doing so, the BOE submitted a land-installment contract, which demonstrated that Bill Lake Buick, Inc. (as the seller) and Elias and Sophia Fernandez (as the buyers) entered into a land-installment contract in October 2011, to transfer the subject property to the Fernanders upon the satisfaction of al17,500 initial payment, monthly payments of $2,447.48 beginning on November 1, 2011, and a final payment of the balance due on December 1, 2016,

i.e., payments totaling approximately $350,000. There was a brief discussion about whether title to the subject property had transferred in satisfaction of the land-installment contract. The BOR subsequently issued a decision that retained the subject property's initially assessed value, and this appeal ensued. The BOE and county appellees waived the opportunity to submit additional evidence at a hearing before this board. No written argument was filed by any of the parties. .

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

[4] As we review the land-installment contract in this matter, we acknowledge the Supreme Court's decision in *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Rd of Revision,* 129 Ohio St.3d 172, 2011-Ohio-3092, holding that former "R.C. 5713.03 does not require that an arm's-length sale price be *negotiated* within a reasonable time before or after the lien date; it is the time of *the sale itself* that the `reasonable time' language of the statute addresses." (Emphasis sic.) While a sale price agreed upon in a land contract *may* provide corroborating evidence of a property's value near the time of negotiation, its utility becomes suspect with the passage of years. Although this board has previously relied upon the sale price to establish value when a land contract is completed and title transferred, provided such transfer is "recent" to tax lien date, we have limited our holdings in this context by according a presumption of "recency" to transfers effected by land contract to only those situations where *both* the date on which the contract was entered into *and* the ultimate transfer occur recent to the tax lien date in issue since to hold otherwise may lead to inequitable and absurd results. See, e.g., *Akron City School Dist. Bd. of Edn. v. Summit Cty. Rd of Revision* (June 16, 2016), BTA No. 2015-1498, unreported. Cf. *Akron City School Dist. Rd of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588.

[5] Here, the terms of the land-installment contract are undisputed. The land-installment contract was entered into in 2011, more than three years before the tax lien date, and is not considered recent. The record is devoid of any evidence to demonstrate that the subject property has transferred to the Fernanders in satisfaction of the land-installment contract. In fact, at the BOR hearing, the BOE conceded that Bill Lake Buick, Inc. retained ownership of the subject property. See BOR Hearing Audio. As such, we conclude that, in this instance, the subject property has *not* been the subject of a recent, arm's-length sale and that the land-installment contract is not competent and probative evidence of the subject property's value.

[6] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Rd of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that the land-installment contract, upon which the BOE relies, is not indicative of the subject property's value. In doing so, we conclude that the BOE has failed to satisfy the evidentiary burden on appeal. Because the BOE failed to provide any other evidence of the subject property's value, we are unable to fulfill our duty to independently determine the subject property's value and affirm the BOR's decision to retain the subject property's initially assessed value. It is therefore the order of this board that the subject property's true and taxable values as of January 1, 2015 are as follows:

TRUE VALUE

$255,100

TAXABLE VALUE

$89,290

OHIO BOARD OF TAX APPEALS

NORTHRIDGE LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1798
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - NORTHRIDGE LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
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MONTGOMERY COUNTY
P.O. BOX 972
DAYTON, OH 45422

WILLIAM J. MINNEMAN & NORMA C. MINNEMAN INVESTMENTS, LLC
3370 OBCO COURT
DAYTON, OH 45414

Entered Friday, November 17, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The above-named appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel number R721-170-16-0010, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record developed at this board's hearing.

The subject property was initially assessed at $141,180. The affected board of education ("BOE") filed a complaint with the BOR, which requested that the subject property's value be increased to $195,000 purportedly to reflect the price at which it transferred in June 2015. The property owner did not file a counter-complaint.

The BOR held a hearing on the matter, at which time the BOE appeared through counsel to supplement the record with argument and evidence in support of its complaint. In doing so, the BOE submitted a

conveyance fee statement and general warranty deed, which memorialized the $195,000 transfer of the subject property from Martin H. Nizny to the property owners, William J. Minneman and Norma C. Minneman Investments, LLC, in June 2015. No one appeared on behalf of the property owner. Because no evidence had been submitted to rebut the presumptions accorded to the subject sale, the BOE requested that the subject property's value be increased to $195,000. At the BOR decision hearing, the BOR members voted to accept the subject sale as the best indication of the subject property's value.

However, despite orally voting to accept the $195,000 purchase price from the transaction of June 2015, the BOR issued a decision, dated September 8, 2016, that retained the subject property's initially assessed value of $141,180. On October 4, 2016, the BOE filed its appeal with this board and filed its appeal with the BOR on October 12, 2016. Nevertheless, on November 3, 2016, the BOR issued another decision related to the subject property's value for tax year 2015, which increased its value to $195,000 to reflect the subject sale.

At the hearing before this board, only the BOE appeared, again through counsel, to submit additional argument and evidence into the record. In doing so, the BOE submitted both BOR decisions and the underlying complaint and sale documents previously submitted to the BOR. The BOE requested that we increase the subject property's value to $195,000 because the property owner had failed to rebut the presumption that the subject sale was a recent, arm's-length transaction.

Before we consider the merits of this appeal, we must first address some preliminary issues. First, we note several errors in the statutory transcript certified to this board. The DTE-Form 3 provides erroneous values, both the initially assessed value and the value as (re)determined by the BOR. We were able to discern the actual, correct values based upon other evidence in the record, i.e., the property record card, BOR hearing notes, and BOR decisions. Furthermore, the BOR decision dated September 8, 2016 is notably absent from the statutory transcript. As the result of the BOR's failure to provide us with all of the required information, we again remind the BOR of the various statutes which impose obligations upon boards of revision to create and maintain a record capable of being reviewed on appeal, i.e., R.C. 5715.08 and R.C. 5717.01. See, also, *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078.

Second, we find that the BOR had no authority to issue the decision dated November 3, 2016. Boards of revision only have authority over a matter for thirty days after the issuance of a decision or until an appeal has been perfected to a higher tribunal. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* , 87 Ohio. St.3d 363, 368 (2000) ("[W]e held that prior to the actual institution of an appeal or expiration of the time for appeal, administrative agencies generally 'have inherent authority to reconsider their own decisions since the power to decide in the first instance carries with it the power to reconsider."). Here, the record is void of any indication that the BOR vacated its September 8, 2016 decision within thirty days of issuing such decision. However, the record clearly indicates that the BOR issued a second decision on this matter on November 3, 2016, approximately fifty-six days after the BOR issued its first decision and approximately thirty days after the BOE had perfected an appeal with this board. As such, the BOR's decision dated November 3, 2016 was void ab initio. See *Illadison Local School Dist. Bd. of Edn. v. Lake Cty. Bd. of Revision* (Dec. 4, 1986), BTA No. 1984-C-139, unreported at 7 ("Any action taken by a county board of revision relative to property after 30 days have elapsed since notice of its decision has been given pursuant to R.C. [5715].20 or for which an appeal has been filed with this Board or a Court is void ab initio as it is wholly without statutory authorization or foundation.").

We proceed to consider the merits of this appeal.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio

St.2d 129 (1977). Then, typically, "the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13.

In this matter, the record is completely void of any evidence that demonstrates that the parties to the subject sale were atypically motivated, such that the transaction should be disregarded, and that the subject sale, which occurred slightly more than six months after the tax lien date, was not "recent" to the tax lien date. Absent an affirmative demonstration that the subject sale was not a qualifying sale for tax valuation purposes, we find that it was the best indication of the subject's value as of tax lien date. In doing so, we find that the BOE satisfied the evidentiary burden before the BOR and before this board.

It is, therefore, the order of this board that the subject property's true and taxable values are as follows, as of January 1, 2015:

TRUE VALUE

$195,000

TAXABLE VALUE

$68,250

OHIO BOARD OF TAX APPEALS

EASTBROOK FARMS, INC., (et. al.),

Appellant(s),

vs.

WARREN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1790

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EASTBROOK FARMS, INC.
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For the Appellee(s) - WARREN COUNTY BOARD OF REVISION
Represented by:
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SPRINGBORO COMMUNITY CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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ATTORNEY AT LAW
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810 SYCAMORE STREET, SIXTH FLOOR
CINCINNATI, OH 45202

Entered Friday, November 17, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the Warren County Board of Revision ("BOR"), which determined the value of the subject property, parcel number 04 14 301 005, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, the record of this board's hearing, and any written argument submitted by the parties.

The subject property, 83.115 acres of vacant land (approximately twenty acres are zoned "single-family residential" and approximately 63.115 acres are zoned "office"), was initially assessed at $3,191,620. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at

$1,994,760. The affected board of education ("BOE") filed a counter-complaint, which objected to the request.

The BOR held a hearing on the matter, at which time both parties appeared through counsel to submit argument and evidence in support of their respective positions. In its presentation, the property owner submitted the report and testimony of appraiser Stephen J. Weis, who opined the value of the subject property to be $1,792,000 as of January 1, 2015. Weis was examined about the underlying data and methodologies used to derive his final conclusion of value. He testified that topography and zoning restrictions limited the subject property's future development, which negatively impacted its value. He was also thoroughly cross-examined about his analysis by the BOR members and/or counsel for the BOE. (We note that a representative for the property owner, Ted Gilbert, also attended the hearing, and made unsworn statements during a portion of the hearing, before he was placed under oath.) Relying upon its presentation, the property owner amended its opinion of value to reflect Weis's opinion of value and requested that the subject property be revalued accordingly. An appraiser with the appraisal firm contracted by the auditor's office, Ed Rinck, also testified about perceived deficiencies with Weis's appraisal report and his failure to consider the recent sale of a nearby parcel that sold for higher per acre value than that opined to by Weis. He also testified about the methodology used to derive the subject property's initially assessed value.

At the BOR decision hearing, the BOR members had a spirited discussion about the property owner's arguments, Weis's appraisal report, and the availability of developable land within the county before they determined to that the property owner had failed to meet its burden. The BOR subsequently issued a decision, which retained the initially assessed value, and this appeal ensued.

At the hearing before this board, all parties appeared through counsel to supplement the record. As the hearing commenced, all of the appellees objected to any testimony from the property owner's potential witnesses; the attorney examiner deferred ruling and allowed the testimony to be proffered into the record. In its case in chief, the property owner proffered the testimony of broker, Jeff Eichorn, who testified about the property owner's efforts to sell the subject property over the prior eleven years and the limited nature of its future development because of zoning restrictions. However, on cross-examination, he conceded that the subject property's future development was not quite as limited as he had testified on direct examination. In its case in chief, the BOE submitted the testimony of appraiser James W. Burt, who opined the value of the subject property to be $3,325,000 as of January 1, 2015. Burt was examined, and cross-examined, about the underlying data and methodologies used to derive his final Conclusion of value. To rebut Burt's testimony, the property owner called Weis, who testified about perceived deficiencies with Burt's appraisal report and differences between the two appraisal reports.

Subsequent to the hearing, the parties submitted written argument to more fully explain their respective positions.

Before we consider the merits of this appeal, we must first dispose of some preliminary issues. First, there are outstanding objections, which were deferred at this board's hearing. Both the BOE and county appellees objected to testimony from Eichorn, based upon R.C. 5715.19(G)'s requirement that evidence known to or in the possession of a party be first provided at the board of revision level, and additional testimony from Weis, based upon Ohio Adm. Code 5717-1-16(I)'s requirement to disclose potential hearing witnesses. Upon review, we sustain the appellees' objection to Eichorn's testimony, because the property owner failed to demonstrate good cause for failing to present his testimony at the BOR hearing, and overrule the objection to Weis's testimony, because such testimony was in rebuttal to the BOE's case in chief. See e.g., *CASA 94, L.P. v. Franklin Cty. Bd. of Revision*, 89 Ohio St. 3d 622 (2000); *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Dec. 3, 2015), BTA No. 2014-3918, unreported, appeal pending Sup. Ct. No. 2015-2105.

Second, the property owner and BOE attempt to submit additional evidence into the record by way of their post-hearing briefs, i.e., the property owner's brief includes a chart that was not provided at this board's hearing and the BOE's brief includes a number of attachments that were not provided at this board's hearing. Despite instruction from the attorney examiner that the parties would have to agree to submit

additional evidence after the hearing, neither party represented that there was any such agreement. As such, we will not consider the chart in the property owner's brief or the attachments to the BOE's brief *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13 (1996); *GC Net Lease @ 3 (Westerville) Investors, LLC v. Franklin Cty. Bd. of Revision* (May 17, 2017), BTA No. 2016-540, unreported.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). "However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

The record does not disclose a recent, arm's-length transfer of the subject property; therefore, we proceed to consider the parties' appraisal evidence.

As an initial matter, the appraisers agree that the 20 acres of the subject property zoned as "single-family residential" should be valued at $40,000 per acre; therefore, we find that this portion of the subject property shall be valued accordingly. We proceed to consider the value of the remaining 63.115 acres zoned as "office."

We begin our analysis with Weis's appraisal report, which solely developed the sales comparison approach to valuing real property. He determined that 13.5 acres were "unusable" and deducted it from the remaining 63.115 acres zoned for office use. He compared the balance of the subject property, i.e., 49.615 acres, to seven other vacant properties, with a variety of zoning classifications, located in various Ohio counties, which sold between December 2013 and March 2016. After adjusting the comparable properties for differences with the subject property, Weis concluded that the portion of the subject property zoned for office use should be valued at $20,000 per acre or $992,000 as of the tax lien date.

We now turn to Burt's appraisal report, which solely developed the sales comparison approach to valuing real property. He determined that 2.975 acres were dedicated to a right-of-way and deducted it from the remaining 63.115 acres zoned for office use. He compared approximately 60.14 acres of the subject property zoned for office use to four other vacant properties, with a variety of zoning classifications, located in various Ohio counties, which sold between June 2013 and November 2014. After adjusting the comparable properties for differences with the subject property, Burt concluded that the portion of the subject property zoned for office use should be valued at $42,000 per acre or $2,525,000 as of the tax lien date.

We have often acknowledged in cases where competing appraisals are offered that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported.

In this matter, we find Burt's appraisal report to be the most competent and probative evidence of the subject property's value. We are particularly troubled that Weis did not value the subject property in its entirety. It is undisputed that he deducted 13.5 acres from the subject property because he determined that such acreage was "unusable," which Burt disputed. Although Weis applied his final conclusion of value to the overall acreage of 83.115, it is clear that he only analyzed 69.615 acres of the subject property, i.e., 49.615 acres

zoned for office use and 2 acres zoned for single-family residential use. We find that his failure to determine the contributory value of the 13.5 acres undervalues the subject property. Furthermore, we have consistently rejected the argument that real property has no value simply because it has limited use. See, e.g., *Parker v. Clark Cty. Bd. of Revision* (Dec. 9, 2008), BTA No. 2007-M-280, unreported, at 9 ("The claim that real property is worthless, or has a zero value, has in the past been rejected by the Board of Tax Appeals. *Loriz v. Butler Cty. Bd. of Revision* (May 6, 2008), BTA No. 2006-K-1503, unreported; *Dankovich v. Portage Cty. Bd. of Revision* (Jan. 6, 2006), BTA No. 2005-T-784, unreported; *Johnson v. Cuyahoga Cty. Bd. of Revision* (Dec. 22, 2000), BTA No. 1999-A-1978, unreported.").

We also find Burt's appraisal report more competent and probative because his conclusion of value is based upon comparable properties that are more similar to the subject property. Burt relied upon comparable properties that could be developed for office use; however, Weis relied upon comparable properties that were primarily zoned for industrial use. Burt relied upon comparable properties that were similarly sized as the subject property; however, Weis relied upon comparable properties that were significantly smaller than the subject property. Considered together, we find that Burt's selection of comparable properties most accurately reflect the market in which the subject property would compete on the tax lien date.

Although there was much discussion about whether the subject property's zoning would or would not allow limited retail development, we do not find such discussion necessary to our analysis. It is important to note that neither appraisers nor any of the parties advocated for retail use. Therefore, we will give this issue no consideration.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that that the BOE's appraisal evidence, performed by Burt, was the most competent and probative evidence of the subject property's value as of the tax lien date. It is, therefore, the order of this board that the subject property's true and taxable values, as of January 1, 2015, are as follows:

TRUE VALUE

$3,325,000

TAXABLE VALUE

$1,163,750

OHIO BOARD OF TAX APPEALS

LESLEY BLANEY, (et. al.), Appellant(s), vs. LAKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-990, 2017-991, 2017-992, 2017-993, 2017-1003, 2017-1004, 2017-1005, 2017-1006, 2017-1007, 2017-1008, 2017-1009, 2017-1010, 2017-1011, 2017-1012, 2017-1013, 2017-1014, 2017-1015, 2017-1100, 2017-1101, 2017-1102, 2017-1103, 2017-1104, 2017-1105, 2017-1106, 2017-1107, 2017-1108, 2017-1109, 2017-1111, 2017-1112, 2017-1114 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LESLEY BLANEY
5856 MALLARD CT
MENTOR, OH 44060

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
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LAKE COUNTY
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P.O. BOX 490
PAINESVILLE, OH 44077

Entered Monday, November 20, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these matters on the basis they were not filed with the county board of revision. Appellant did not respond to the motions. See Ohio Adm. Code 5717-1-13(B). These matters are now decide upon the motions and appellant's notices of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. **5715.20. In** *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

Appellant has failed to demonstrate that such notices were properly filed with the BOR. Accordingly, for the reasons stated in the motions, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

ERIC SANCHEZ, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1203

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ERIC SANCHEZ
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COLUMBUS, OH 43202

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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Entered Tuesday, November 21, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis that appellant failed to file notice of the appeal with the Franklin County Board of Revision as required by R.C. 5717.01. Appellant has not responded to the motion. We consider the matter upon the motion, the notice of appeal, and the statutory transcript certified pursuant to R.C. 5717.01.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68, the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the property owner both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn.*

v. Hamilton Cty. Bd. of Revision (2000), 87 Ohio St.3d 363, 369 ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review

The record does not demonstrate that appellant filed the requisite notice with the board of revision. Accordingly, the county's motion is well taken, and the matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

RAMIRO ORTEGA, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1097

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RAMIRO ORTEGA
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Entered Tuesday, November 21, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is before the Board of Tax Appeal upon the filing of a motion to remand with instructions to dismiss. By way of the motion, the county appellees assert that the complainant before the board of revision ("BOR"), and appellant before this board, Ramiro Ortega, committed the unauthorized practice of law by filing the underlying complaint in his capacity as the father of the property owner. Although Mr. Ortega was afforded an opportunity to respond to the motion, he did not do so within the time prescribed by this board's rules. See Ohio Adm. Code 5717-1-13(B). Based upon our review of the record, we grant the county appellees' motion.

[2] A review of the record demonstrates the following. A complaint was filed with the BOR, which requested a reduction in value for the subject property, parcel 020-08-009, from $55,400 to $12,000 for tax year 2016. The complaint identified "Faviola Ortega" as the owner of the subject property and "Ramiro Ortega father" as the complainant if not owner. Mr. Ortega signed the complaint as "father" and "owner." After an unsuccessful attempt to hold a telephone hearing, the BOR issued a decision that retained the subject property's initially assessed value. Mr. Ortega appealed to this board and opted to have a telephone

hearing via the board's small claims docket. During the telephone hearing, the county appellees raised the issue of unauthorized practice of law and subsequently filed a written motion to remand with instructions to dismiss for lack of jurisdiction based upon that issue. Mr. Ortega did not file a written response to the motion.

[3] The burden is on a complainant to demonstrate the authority to file a complaint. See, generally R.C. 5715.13 and 5715.19. See also *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision,* 86 Ohio -1- St.3d 181 (1999). To have the authority to file a complaint against the value of real property, a complainant must be identified by R.C. 5715.19(A) as one who may file a complaint. See *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 137 Ohio St.3d 266, 2013-Ohio-4627; *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd of Revision,* 134 Ohio St.3d 529, 2012-Ohio-5680. A review of the statute demonstrates that "a person's spouse" is the only familial relative who may file a complaint on behalf of a property owner.

[4] In *Menos v. Cuyahoga Cty. Bd of Revision* (Apr. 11 , 2013), BTA No. 2012-Q-5127, unreported, we explained that the Supreme Court's holdings permit those persons identified in R.C. 5715.19, whether or not licensed to practice law in Ohio, to file a valid complaint on behalf of an owner of real property. However, because R.C. 5715.19 does not authorize non-attorney family members, other than a spouse, to file a complaint on behalf of another family member, this board has also held that such action constitutes the unauthorized practice of law, which deprives a board of revision of jurisdiction to consider a complaint. See *Glick v. Wayne Cty. Bd. of Revision* (July 28, 2006), BTA No. 2004-P-552, unreported (remanding with instructions to dismiss a complaint filed by father on behalf of children); *Lavery v. Summit Cty. Ed of Revision* (Nov. 2, 2001), BTA No. 2000-V-1647, unreported. See also *Fravel v. Stark Cty. Bd of Revision,* 88 Ohio St.3d 574 (2000) (non-attorney operating under a power of attorney engages in the unauthorized practice of law when he or she prepares and files a complaint with a board of revision on behalf of a property owner).

[5] In this matter, it is undisputed that Mr. Ortega filed the underlying complaint in his capacity as the father of the property owner. The record is devoid of any evidence to demonstrate that he was an attorney licensed to practice law in Ohio at the time the complaint was filed. Thus, we find that Mr. Ortega was not authorized to file the underlying complaint on behalf of the property owner, his daughter, and that he engaged in the unauthorized practice of law by doing so. As such, we conclude that the BOR lacked jurisdiction to consider the merits of the underlying complaint and, derivatively, we lack jurisdiction to consider the merits of this appeal.

[6] Based upon the foregoing, the county appellees' motion is granted and this matter is, therefore, remanded to the BOR with instructions to dismiss the under ying complaint.

OHIO BOARD OF TAX APPEALS

UNION ALLIED CONSULTING, LLC, (et. al.),

Appellant(s),

vs.

CLERMONT COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1322

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - UNION ALLIED CONSULTING, LLC
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Represented by:
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Entered Tuesday, November 21, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellee board of education moves to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56

Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The board of education attached to its motion the affidavit of the Deputy Auditor of Real Estate Administration for the BOR, asserting that appellant's notice of appeal was not filed with the Clermont County Board of Revision. Appellant's response argued that the BOR received automatic notification of the appeal. This board notes that docketing letters sent by the Board of Tax Appeals do not satisfy the requirement of R.C. 5717.01 that an appealing party file a notice of appeal with a county board of revision. *Austin Co. v. Cuyahoga Cty. Bd. of Revision,* 46 Ohio St.3d 192 (1989). See, also, *Rumora v. Ashtabula Cty. Bd. of Revision,* BTA No. 2000-G-970 (Mar. 30, 2001), unreported. Appellant also argues that the error was corrected when it mailed a copy of the appeal to all parties, but did not provide documentation to demonstrate that such notice of the appeal was timely filed with the BOR.

Upon consideration of the existing record, this matter is determined to be jurisdictionally deficient and therefore is dismissed.

OHIO BOARD OF TAX APPEALS

FRED P. SCHWARTZ, TRUSTEE, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-433

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FRED P. SCHWARTZ, TRUSTEE
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Entered Tuesday, November 28, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 684-31-045, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, written argument submitted by the property owner, and the record of this board's hearing.

[2] The subject property was initially assessed at $107,900. The property owner filed a complaint with the BOR, which requested the subject property be revalued at $5,000 because "[p]roperty values have declined in Cuyahoga County[.]" At the BOR hearing on the matter, the property owner appeared, through counsel, and argued that the subject property should be valued consistent with the $5,000 price at which it transferred from the Secretary of Housing and Urban DevelOpment (more commonly known as "HUD") in October 2011. In support of that argument, the property owner submitted a number of documents including a copy of a Supreme Court decision, *Schwartz v. Cuyahoga Cty. Bd. of Revision*, 143 Ohio St.3d 496, 2015-Ohio-3431, which determined that the HUD sale was the best indication of the subject property's value for tax year 2011, and a settlement agreement between the parties, which valued the subject property at $12,500 for tax years 2012, 2013, and 2014. In addition, there was some discussion about the property owner's request for a county information technology employee, Joseph Toledo, to testify at the hearing

about the mass appraisal process and multiple regression analysis, which the BOR denied. The BOR subsequently issued a decision, which retained the subject property's initially assessed value, and this appeal ensued.

[3] Prior to the hearing before this board, the property owner filed a pre-hearing brief that primarily asserted that the BOR had violated its constitutional right to due process of law, i.e., "the right to a fair and impartial BOR tribunal *** and the right to confront by cross examination the evidence used by the BOR to establish the true value of the taxpayer's property." At the hearing, both the property owner and county appellees briefly appeared to submit additional argument in support of their respective positions.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

[5] As an initial matter, we note that the property owner primarily argued violations of the Ohio Constitution or the United States Constitution to advance his claim. While the Ohio Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that this board has no jurisdiction to decide constitutional issues. *Cleveland Gear Co. v. Limbach,* 35 Ohio St.3d 229 (1988); *MCI Telecommunications Corp. v. Limbach,* 68 Ohio St.3d 195 (1994).

[6] The property owner argues that the $5,000 transfer of the subject property to the property owner in October 2011 is the best indication of value, as the Supreme Court previously determined for tax year 2011. See *Schwartz,* supra. We do not find the transaction to be a reliable indicator of the subject property's value because it was too remote from the tax lien date. Ohio courts have refrained from setting forth a "bright line" test to establish whether a sale of property is sufficiently close to a tax lien date to be presumed to accurately reflect its value. See, generally, *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision,* 80 Ohio St.3d 36, 44 (1997), overruled in part on other grounds *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473 ("The question of how long after a sale the sale price is to be considered the best evidence of true value will vary from case to case."). Such restraint results from the recognition that whether a sale is "recent" to or "remote" from a tax lien date is not decided exclusively upon temporal proximity, but may necessarily involve a multitude of other impacts/considerations. See, e.g., *Cummins Property Servs.,* supra, at ¶35 (recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property"); *New Winchester Gardens,* supra (recency factors include "changes that have occurred in the market"). As for assertions regarding market conditions, general claims are typically insufficient, and instead a party must provide competent and probative evidence that demonstrates whether market conditions were stagnant, declining, or improving. Nevertheless, as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property have not changed between the sale date and the lien date." *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588. Here, the property owner failed to come forward with any evidence that demonstrates whether market conditions remained stagnant, or were otherwise in equilibrium, during the approximately fifty-one months between the sale date in October 2011 and tax lien date on January 1, 2015 such that the subject sale would be reflective of the subject property's value for tax year 2015.

[7] We note the property owner's argument, made in its pre-hearing brief, that unadjusted comparable sales data provided by the BOR, specifically those properties located on the same street as the subject property,

"lends support" to the property owner's $5,000 opinion of value for the subject property. We disagree. With nothing more than a list of raw sales data, a 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. See, generally, The Appraisal of Real Estate (13th Ed. 2008). As this board stated in *Copp v. Franklin Cty. Bd. of Revision* (Sept. 8, 2009), BTA No. 2007-Z-692, unreported, "[b]y not developing a sufficient foundation to establish an appropriate expertise in appraisal methods and the deviation of true value for a particular piece of real property, this board does not find the analyses particularly probative and does not accord them much weight." See, also, *Witt Co. v. Hamilton Cty. Bd. of Revision,* 61 Ohio St.3d 155 (1991); *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision,* 44 Ohio St.2d 13 (1975). For example, the alleged comparable properties have wide variation in sales prices, i.e., the property located at 3266 Desota Avenue sold for $3,000 in January 2013 but the property located at 3345 Desota Avenue sold for $50,500 in May 2013. There is no explanation for the price difference between the properties. No effort was made to equalize the alleged comparable properties with the subject property, i.e., for condition and size, or to make the sale dates relevant to the tax lien date, i.e., a demonstration of market conditions between the sale and tax lien dates. As the Eighth District Court of Appeals recently noted, "[t]here has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning." *Carr v. Cuyahoga Cty. Fiscal Officer,* 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, at ¶11.

[8] The property owner alleges that the BOR is biased in favor of the fiscal officer and tends to retain the fiscal officer's initial valuations of real property. However, the property owner completely ignores the real property tax valuation scheme. First, the fiscal officer is not required to defend the initially assessed, real property value, but rather *the burden is placed upon the complainant,* in this case the property owner, to bring forth sufficient evidence that the value is something other than that which was initially assessed. *Fairlawn Assoc. Ltd. v. Summit Cty. Bd. of Revision,* 9th Dist. Summit No. 22238, 2005-Ohio-1951. See, also, *Weldon v. Medina Cty. Bd. of Revision* (June 7, 2011), BTA No. 2008-M-1591, unreported. Second, in the absence of proof otherwise, county officials are presumed to have performed their duties properly and in good faith and the burden is on the complainant, again, the property owner in this matter, to prove, with competent and probative evidence, that the taxing official has committed error in valuing the property under consideration. See, *State ex rel. Shafer. v. Ohio Turnpike Comm.,* 159 Ohio St. 581 (1953) ("in the absence of evidence to the contrary, public officers, administrative officers and public boards, within the limits of the jurisdiction conferred by law, will be presumed to have properly performed their duties and not to have acted illegally but regularly and in a lawful manner."). Compare *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision,* 140 Ohio St.3d 114, 2014-Ohio-2872 (the presumption of regularity did not apply to the actions of a county auditor and board of revision that failed to satisfy their statutory duties related to the filing and hearing of a real property valuation complaint.). The property owner has submitted no evidence to demonstrate that either the fiscal officer or the BOR acted improperly in this matter. "Mere speculation is not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶26.

[9] To the extent that the property owner argued that, by filing the complaint and challenging the subject property's value, the burden was on the county appellees to demonstrate the accuracy of the subject property's initially assessed value, the Supreme Court has recently considered and rejected this argument. In *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4002, at ¶9, the court noted that "case law unequivocally refutes [this] burden-shifting theory" and, in doing so, reaffirmed the longstanding principle that the burden is on the complainant to prove the right to a change in real property value, even when taxing authorities do not present evidence to contradict the claim. See e.g., W. *Industries, Inc. v. Hamilton Cty. Bd. of Revision,* 170 Ohio St.3d 340 (1960); *EOP-BP Tower, LLC v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096.

[10] We note that the statutory transcript contains a number of documents, i.e., a transcript of a hearing before this board, which involved properties other than the subject property, and other documents dated in 2012, and the tax commissioner's approval of Cuyahoga County's certification of real property values for taxyear 2015, for

which neither the property owner nor the county appellees have provided any explanation. Upon review, we do not find these documents to be relevant to our determination of the subject property's value for tax year 2015.

[11] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). Based upon our review of the record, with regard to the non-constitutional claims, we conclude that the sale upon which the property owner relies, the $5,000 transfer of the subject property in October 2011, is not competent and probative evidence of the subject property's value for tax year 2015. We also find the unadjusted comparable sales data, provided by the BOR at its hearing, to be equally unhelpful in our quest to independently determine the subject property's value. As the result of the property owner's failure to provide competent and probative evidence, we find that the property owner also failed to satisfy the evidentiary burden before the BOR and, on appeal, before this board.

[12] It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, are as follows:

TRUE VALUE

$107,900

TAXABLE VALUE

$37,770

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2335
Appel lant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Wednesday, November 29, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The Board of Education of the Columbus City Schools ("BOE") appeals a decision of the board of revision ("BOR") which determined the value of the subject real properties, parcels 010-065477-00, 010-064075-00, and 010-44034-00, for tax years 2014 and 2015. This matter is now considered upon the notice of appeal, the statutory transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and the record developed at this board's hearing.

[2] The record demonstrates that this matter emanates from a complaint filed for tax year 2014. There is conflicting information in the record regarding the subject properties' initially assessed values. According to the certified copy of the county auditor's tax list and treasurer's duplicate ("tax list") for tax year 2014, parcel 010-065477-00 was initially assessed at approximately $285,030, parcel 010-064075-00 was initially assessed at approximately $29,200, and parcel 010-044034-00 as initially assessed at $42,400. However,

according to the DTE-Form 3 certified by the county auditor, the subject properties were initially assessed $145,000 for parcel 010-065477-00, $18,600 for parcel 010-064075-00, and $20,000 for parcel 010-044034-00.

[3] On March 31, 2015, a complaint was filed with the BOR, which requested reductions to the subject properties' values. Apparent from record, the BOR failed to provide the statutorily required notice of the complaint to the BOE. See R.C. 5715.19(B). Instead, the complaint was diverted to the BOR's mediation program, where the property owners and county auditor agreed that the subject properties would be valued consistent with the following for tax year 2014 (and presumably the remaining years of the triennial period): $145,000 for parcel 010-065477-00, $18,600 for parcel 010-064075-00, and $20,000 for parcel 010-044034-00. On November 18, 2015, the BOR orally voted to accept each of the stipulated values as the best evidence of the respective parcel's value.

[4] At some point, the BOE discovered that the BOR failed to provide it with notice of the underlying complaint. As a result, on December 18, 2015, the BOE filed a motion to vacate the BOR decisions to accept the settlement agreements that valued the subject properties for tax year 2014, and filed a counter-complaint. On July 13, 2016, the BOR met and voted to vacate its November 18, 2015 oral decision.

[5] On October 11, 2016, the BOR held a merit hearing on the matter, at which time only counsel for the BOE appeared. As the hearing commenced, one BOR member noted that the hearing was being convened at the request of the BOE, as the result of a motion to vacate the BOR's prior decision that recognized a settlement agreement between the property owners and the county auditor for tax year 2014. The BOE asserted that such decisions were improper because the BOE was not notified about the initial complaint, and therefore had a right to challenge it, and because the decisions impermissibly carried forward settlement agreements that valued the subject properties for tax year 2013 *only*. As such, the BOE argued that the property owners had not satisfied their burden to demonstrate error in the subject properties' initial valuations.

[6] On October 20, 2016, the BOR held a consolidated decision hearing that involved other parcels, which are not part of this appeal. The BOR voted to retain "the auditor's current valuations," in order "to be consistent with our prior decisions," and because "the board of education presented no additional information" of the subject property's value for tax years 2014 and 2015. See S.T. at Audio 4. The BOR subsequently issued written decisions consistent with its oral vote and this appeal ensued.

[7] On May 2, 2017, this board held a hearing, at which time, again, only counsel for the BOE appeared. The BOE argued that the BOR impermissibly carried forward the parties' settlement agreement for tax year 2013 into tax year 2014 (and 2015 as the second year of the triennial period) although the BOE specifically did not agree to that action. The BOE also objected to documents contained in the statutory transcript that were not submitted at the BOR hearing and for which there is no explanation of their origin and raised the issue of unauthorized practice of law in the filing of the complaint. Neither the property owners nor county appellees appeared at the hearing.

[8] Before we proceed to consider the merits of this matter, we must first dispose of preliminary issues. As noted above, the BOE objected to documents contained in the statutory transcript that were not introduced at the BOR hearing. Although the BOE correctly noted that the origin of these documents is unclear, we overrule the objection because the documents provide additional information about transfers of the subject properties, which are noted on the property record card and which the BOE has not disputed actually took place. See *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402. We also overrule the BOE's motion to remand with instructions to dismiss the complaint based upon the unauthorized practice of law.

[9] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

[10] As we review this matter, it is important to note that the burden is placed upon the complainant, in this case, the property owners, to bring forth sufficient evidence that the value is something other than that assessed by the county auditor. *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* 150 Ohio St.3d 69, 2017-Ohio-4002, at ¶9. See, also, *Fairlawn Assocs. v. Summit County Bd of Revision,* 9th Dist. Summit No. 22238, 2005-Ohio-1951; *Weldon v. Medina Cty. Bd. of Revision* (June 7, 2011), BTA No. 2008-M-1591, unreported. It is clear that the BOR reversed the burden in this matter and instead of requiring the property owners to provide competent and probative evidence of the subject properties' values, the BOR explicitly placed that burden on the BOE, the counter-complainant in this matter. Our conclusion is not only supported by the explicit language used at BOR decision hearing on October 20, 2016, it is also supported by the BOR's decision to retain "the auditor's current valuation[]," in order "to be consistent with our prior decisions," i.e., its prior decisions that recognized agreements between the various property owners and county auditor to value the subject properties for tax year 2014, decisions that were vacated. As such, we find that the BOR committed legal error in its decisions.

[11] To the extent that the BOR attempted to carry forward the subject properties' values from tax year 2013, the last year of the prior triennial period, into to tax year 2014, the first year of a new triennial period, we find such action was impermissible. The Supreme Court has held "that a complaint properly filed in a new triennium supersedes the carryover from the earlier complaint." *Cannata v. Cuyahoga Cty. Bd of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094, at ¶30, citing *Cincinnati School Dist. Rd of Edn. v. Hamilton Cty. Bd. of Revision,* 74 Ohio St.3d 639, 642 (1996). See, also *Columbus Bd. of Edn. v. Franklin Cty. Bd of Revision,* 87 Ohio St.3d 305 (1999) ("[A] fresh complaint filed by Inner City or the BOE would have halted the automatic carryover of the [previously determined] value ***."). As such, we find that the filing of the underlying tax year 2014 complaint prevented the BOR from carrying forward the subject properties' tax year 2013 values into tax year 2014.

[12] Having found that the BOR's decisions were in error, we now proceed to independently determine the subject properties' values based upon the evidence before us. *Sapina v. Cuyahoga Cty. Bd of Revision,* 136 Ohio St.3d 188, 2013-Ohio-3028, at ¶35 ("This court has emphatically held that BTA's independent duty to weigh evidence precludes a presumption of validity of the BOR's valuation. *Vandalia-Butler City Schools [Bd of Edn. v. Montgomery Cty. Bd of Revision],* 130 Ohio St.3d 291, 2011-Ohio-5078 ***, ¶ 13.").

[13] The record demonstrates that each of the subject properties were the subject of recent sales. A fiduciary deed and settlement statement illustrate that parcel 010-065477-00 transferred to Wei Li for $189,900 in December 2013, less than four weeks before the tax lien date of January 1, 2014. Although the BOR noted that it rejected such sale because there had been new construction, the record is devoid of any evidence to support that assertion. We note that the property record card should contain information about new construction; it does not. Because there is no evidence to suggest that the $189,900 of December 2013 was anything other than a recent, arm's-length transfer, we find that such sale is the best indication of value for parcel 010-065477-00. See *Lunn,* supra; *Utt,* supra.

[14] A purchase contract, general warranty deed, and settlement statement demonstrate that parcel 010-064075-00 transferred to Xiao Yu Huang for $5,000 in September 2014. The property record card contains

a notation that this sale was not an arm's-length transaction because it was not on the open market. This alone, however, does not disqualify the sale because "[t]he case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to abroad range of potential buyers." *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 129 Ohio St.3d 172, 2011-Ohio-3092, at ¶29. As such, we find that such sale is the best indication of value for parcel 010-064075-00.

[15] A limited warranty deed demonstrates the $13,833 transfer of parcel 010-044034-00 to Lu Shi in November 2014. However, this parcel transferred from the Secretary of Housing and Urban Development ("HUD"); such a sale is presumptively invalid as it considered a "forced" sale. See R.C. 5713.04. However, a proponent of a HUD sale could overcome the presumption accorded to a forced sale by providing proof that the transaction occurred between typically motivated parties operating at arm's-length. *Schwartz v. Cuyahoga Cty. Bd. of Revision,* 143 Ohio St.3d 496, 2015-Ohio-3431, at ¶ 27. Here, the record is devoid of any such proof and, therefore, we find that this sale is not the best indication of value for parcel 010-044034-00. See, also *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723.

[16] Furthermore, we note that tax year 2014 was the triennial update year for Franklin County and the county auditor had a statutory duty to update the value of real property in the county. *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision,* 127 Ohio St.3d 44, 2010,-Ohio-4468; R.C. 5713.01, 5713.03, 5715.33, and 5715.24; Ohio Admin. Code 5703-25-16(B). In the absence of any evidence from which this board may determine value for tax year 2014, we are mindful that the auditor is "presumed to have properly performed [his] duties and not to have acted illegally but regularly and in a lawful manner." *State ex rel. Shafer v. Ohio Turnpike Commission,* 159 Ohio St. 581, 590 (1953). Absent any evidence to the contrary, we will presume that the required update in valuation took place in Franklin County and resulted in the subject properties' lawful valuation as originally assessed on the tax list. Because the record is devoid of any evidence of value for parcel 010-044034-00, we find that such parcel should be valued consistent with the value initially certified on the tax list for tax year 2014, i.e., $42,400. See, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 87 Ohio St.3d 305 (1999); *AERC Saw Mill,* supra.

[17] It is therefore the order of this board that the subject properties' values, as of January 1, 2014 and January 1, 2015, are as follows:

PARCEL NUMBER 010-065477-00

TRUE VALUE

$189,900

TAXABLE VALUE

$66,470

PARCEL NUMBER 010-064075-00

TRUE VALUE

$5,000

TAXABLE VALUE

$1,750

PARCEL NUMBER 010-044034-00

TRUE VALUE

$42,400

TAXABLE VALUE

$14,840

OHIO BOARD OF TAX APPEALS

DAF INVESTMENTS, LLC, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2016-2213 (REAL PROPERTY TAX) DECISION AND ORDER

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Represented by:
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Entered Wednesday, November 29, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the Montgomery County Board of Revision, which determined the value of the subject property, parcel 068 01827 0012, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the record of this board's hearing.

The subject property was initially assessed at $366,690. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $250,000 based upon the price at which it transferred in February 2016. The affected board of education ("BOE") filed a counter-complaint, which objected to the request.

At the hearing before the BOR, both the property owner and BOE appeared, through counsel, to submit argument and/or evidence in support of their respective positions; however, the BOE participated by way of telephone. In its presentation, the property owner asserted that a review of the assessed values of neighboring properties indicated an average value per square foot of $77, which resulted in a $250,000 approximate value for the subject property. In support of that argument, Debbie Fletcher, the property owner's sole member, testified about the circumstances of her purchase of the subject property from her parents. According to Fletcher, she reviewed listing and purchase prices of other properties in the area and determined that $250,000 was a fair price to purchase the subject property; her parents agreed and the subject property transferred in February 2016. The BOR members and BOE cross examined Fletcher about the circumstances of the subject sale and how the $250,000 purchase price was derived. Based upon the testimony elicited during cross examination, the BOE asserted that the subject sale was not an arm's-length transfer, because of the familial relationship between the parties, and not indicative of the subject property's value. Conversely, the property owner argued that the subject sale did not occur under duress and the parties agreed on the purchase price, therefore, it was indeed an arm's-length transfer. The BOR voted to retain the subject property's initially assessed value and this appeal ensued.

At this board's hearing, the property owner appeared, again through counsel, and submitted additional testimony from Fletcher about the condition of the subject property and circumstances of the subject sale. The property owner also submitted a number of documents, which included information about the assessed values of properties neighboring the subject property and discovery requests propounded upon the BOR by the property owner. Based upon its presentation, the property owner requested that the subject property's value be reduced to $250,000. Neither the BOE nor the county appellees appeared at the hearing.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax* Appeals, 175 Ohio St. 410, 412 (1964).

In this matter, we are constrained to find that the property owner has not demonstrated that the subject sale is the best indication of the subject property's value. The transfer occurred between related parties and there was no affirmative demonstration that the $250,000 purchase price actually reflected fair market value. Although transfers between related parties do occur, for property tax purposes, such transfers are presumptively considered not to be arm's-length transactions unless there has been a showing that the purchase price reflected market value. See, e.g., *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 129 Ohio St.3d 172, 2011-Ohio-3092; *Walters v. Knox Cty. Bd. of Revision,* 47 Ohio St.3d 23 (1989). The Supreme Court recently held "that a certified appraisal *** can be used to show that the purchase price in a sale between related parties reflected fair market value." *Emerson v. Erie Cty. Bd. of Revision,* 149 Ohio St.3d 148, 2017-Ohio-865, at ¶14. However, the record is devoid of an appraisal report or any other competent and probative evidence to demonstrate that the $250,000 purchase price actually reflected fair market value.

We must also reject the property owner's argument that there was a disparity between the subject property's assessed value and neighboring properties' assessed values and that such disparity necessitates a reduction to the subject property's value. The fallacy of reliance upon other properties' assessed values must be acknowledged since the fundamental basis of this challenge is the erroneous nature of the subject property's value. Indeed, "[m]erely showing that two parcels of property have different values without more does not

establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). See, also, *Meyer v. Bd. of*

Revision, 58 Ohio St.2d 328, 335 (1979). Moreover, this board has consistently rejected the averaging of sale prices, or assessed values, as such calculations do not account for difference between properties, i.e., condition, location, or size. See e.g., *Sweeney v. Ottawa Cty. Bd. of Revision* (June 7, 2017), BTA No. 2016-1078, unreported; *Matuszewski v. Erie Cty. Bd. of Revision(June* 17, 2005), BTA No. 2004-T-1140, unreported.

We likewise find the discovery requests propounded upon the BOR to be equally unavailing. Specifically, the property owner requested that the matters in its requests for admissions be deemed admitted. In *Salem Med. Arts & Dev. v. Columbiana Cty. Bd. of Revision,* 82 Ohio St.3d 193 (1998), the Supreme Court commented that a request for admissions "is not a discovery procedure but is a procedure used to narrow the issues and to eliminate unnecessary proof at trial by obtaining the admission of facts known to the party requesting the admissions and concerning that upon which there should be no issue." Id. at 197, citing McCormac, Ohio Civil Rules Practice (2d Ed. 1992) 287, Suction 10.56. However, as this board noted in *Elizabeth Williams Group Home, Inc. v. Levin* (Interim Order, Feb. 1, 2011), BTA No. 2010-K-1967, unreported, such requests "may not be used in proceedings before this board as a means by which to secure what is, in essence, summary judgment." See also *Brown v. Levin,* 119 Ohio St.3d 335, 2008-Ohio-4081 (holding that this board is without authority to act in a summary manner with respect to substantive issues). It is clear that property owner seeks summary disposition of dispositive facts in this matter through its requests for admission.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). Based upon our review of the record, we conclude the sale upon which the property owner relies is not indicative of the subject property's value because the property owner failed to demonstrate that the $250,000 sale price of February 2016 actually reflected fair market value. As a result, we find that the property owner failed to satisfy the evidentiary burden on appeal. It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

TRUE VALUE

$366,690

TAXABLE VALUE

$128,340

OHIO BOARD OF TAX APPEALS

MASSILLON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

STARK COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1926

(REAL PROPERTY TAX)

DECISION AND ORDER

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Entered Wednesday, November 29, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision issued by the board of revision ("BOR"), which determined the value of the subject property, parcel 613030, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

[2] The subject property, a bank branch, was initially assessed at $390,000. The property owner filed a complaint with the BOR, which requested that the subject property's value be reduced to $225,000. The BOE filed a counter-complaint, which objected to the request.

[3] The BOR held a hearing on the matter, at which time both parties appeared through counsel to support argument and/or evidence in support of their respective positions. The property owner submitted an appraisal report that opined the value of the subject property to be $225,000 as of April 6, 2015; however,

the appraiser was not present to testify. The BOE pointed out errors in the appraisal report, as well asquestioned the appraisal's final conclusion of value. At the BOR decision hearing, the BOR members voted to reduce the subject property's value to $264,500 based upon a recommendation from a staff appraiser in the county auditor's office; a written decision was subsequently issued consistent with such vote. Thereafter, the BOE appealed to this board.

[4] None of the parties availed themselves of the opportunity to supplement the record with additional evidence at a hearing before this board. Instead, the BOE submitted written argument to assert that the BOR properly rejected the property owner's hearsay appraisal report that was performed purposes other than property tax valuation and failed to opine value as of the tax lien date. However, the BOE further argued that it was improper for the BOR to reduce the subject property's value based upon the recommendation from an appraiser in the county auditor's office when such person failed to testify before the BOR and when the staff appraiser's written recommendation was not provided to the parties at the BOR hearing. Neither the property owner nor the county appellees filed written argument.

[5] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). "However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

[6] In this matter, although the property owner submitted an appraisal report, we agree with the BOR that it has little, if any, evidentiary weight. The appraisal report fails to opine value as of the tax lien date at issue and there was no testimony of the author presented either before the BOR, or this board, regarding the contents of the report, adjustments made or the opinions of value. In the absence of the author's testimony, we are often limited in our ability to conduct a meaningful evaluation. Compare, generally, *Plain Local Schools Bd of Edn. v. Franklin Cty. Bd of Revision,* 130 Ohio St.3d 230, 2011-Ohio-3362; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty Bd of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078. See, also, *Cannata v. Cuyahoga Cty. Bd of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094, at ¶19 (describing that the lack of the appraiser's testimony as "the absence of potentially material portions of the record."). Furthermore, the appraisal report was performed for the property owner for purposes of "internal business making decisions," not property tax valuation. See Statutory,Transcript at Appraisal Report at page 1. This board has held that appraisals for purposes other than tax valuation are not necessarily a complete and thorough evaluation of the property. *Moore v. Hamilton Cty. Bd of Revision* (July 23, 1999), BTA No. 1997-R-1541, unreported; *Laughlin v. Erie Cty. Bd of Revision* (Aug. 23, 1996), BTA No. 1995-S-1005 unreported. Compare *Copley-Fairlawn City School Dist. Bd of Edn. v. Summit Cty. Bd. of Revision,* 147 Ohio St. 3d 503, 2016-Ohio-1485 (holding that a hearsay, financing appraisal report had the "indicia of reliability" because an owner testified about the appraisal's origin and use.) For the preceding reasons, this board cannot rely on the appraisal report as evidence of value. See *Evenson v. Erie Cty. Bd of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported; *Freshwater v. Belmont Cty. Bd of Revision,* 80 Ohio St.3d 26, 30 (1997) ("[a]n 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."); *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd of Revision,* 75 Ohio St.3d 552, 554-555 (1996) ("the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question.").

[7] Having concluded that the property owner's appraisal report was not competent and probative evidence of the subject property's value, we now turn to the BOR's decision to reduce value based upon the written recommendation of a staff appraiser in the county auditor's office. As an initial matter, we note that the BOR's value decision is not the "default value" for the subject property because the BOR's decision is not based upon the property owner's evidence. See, *Worthington City Schools Bd of Edn. v. Franklin Cty. Bd of*

Revision, 140 Ohio St.3d 248, 2014-Ohio-3620, at 1135 ("[W]hen the board of revision has reduced the value of the property based on the owner's evidence, that value has been held to eclipse the auditor's original valuation[.]") Therefore, we must evaluate whether the BOR's decision was based upon competent and probative evidence. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 147 Ohio St.3d 409, 2016-Ohio-7381, at ¶15 ("We hold that the BTA erred in failing to evaluate the probative character of the deputy auditor's report before accepting it as a basis for the BOR's reductions.")

[8] A review of the staff appraiser's written recommendation suggests that "2016 changes to the record," i.e., 60% adjustment for market influences, and zoning and deed restrictions, were applied to determine th subject property's value for tax year 2015, the year at issue. However, these are insufficient bases to reduce the subject property's value for a number of reasons. First, the Supreme Court has previously held that each tax year stands alone, and the fact that value has been modified in another year is not competent and probative evidence that a different year's value should be changed. *Olmsted Falls Rd of Edn. v. Cuyahoga Cty. Bd. of Revision,* 122 Ohio St.3d 134; 2009-Ohio-2461; *Freshwater,* supra. Second, the record is completely devoid of any market information for tax year 2015 (or 2016) that would allow us to determine whether a 60% adjustment was appropriate. See *Sapina v. Cuyahoga Cty. Rd of Revision,* 136 Ohio St.3d 188, 2013-Ohio-3028, at ¶ 35 ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it. This court has emphatically held that the BTA's independent duty to weigh evidence precludes a presumption of validity of the BOR's valuation.") Third, the record is equally devoid of any indication of how zoning restrictions, purported to be limited to office and/or retail use, affects the value of the subject property, or otherwise limits its use. Fourth, it is inappropriate to consider the affects of deed restrictions to determine subject property's value. *Alliance Towers v. Stark Cty. Bd. of Revision,* 37 Ohio St.3d 16, 23 (1988) (" *** voluntary encumbrances, such as leasehold interests, deed restrictions, and restrictive contracts with the government, which the owner had granted, should not complicate the true value of property.") Fifth, the BOR hearing record demonstrates that the staff appraiser did not testify at the hearing and that the written recommendation was not provided to the parties to allow them to argue for, or against, the statements made within such document at the hearing. As a consequence, we do not find the staff appraiser's written recommendation to be competent and probative evidence of the subject property's value.

[9] In reviewing this matter, we are mindful of our duty to independently determine the subject properties' values. *Columbus Rd of Edn. v. Franklin Cty. Rd of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to satisfy the evidentiary burden before the BOR to provide competent and probative evidence of the subject property's value. We also find that the BOR erred when it reduced the subject property's value based upon its own evidence because such evidence was not competent and probative. As a consequence, we are constrained to reinstate the subject property's initial value. *Olentangy Local Schools Rd of Edn.,* supra at ¶20 ("To be sure, the case law acknowledges the possibility that the record may not contain [sufficient evidence to conduct an independent evaluation,] even if the auditor's valuation has been negated. *** Under those circumstances, the auditor's value may ordinarily be reinstated.").

[10] It is, therefore, the order of this board that the subject property's true and taxable values are as follows, as of January 1, 2015:

TRUE VALUE

$390,000

TAXABLE VALUE

$136,500

OHIO BOARD OF TAX APPEALS

PERRY LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1914
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Wednesday, November 29, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which valued the subject properties, parcels 4317845 and 4303775, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the record of this board's hearing.

The subject properties, adjacent parcels, were initially assessed at $250,300 for parcel 4317845 and $100,300 for parcel 4303775. The property owner filed a single complaint with the BOR, which requested

reductions to the subject properties' values, to $150,000 and $75,000, respectively. The BOE filed a counter-complaint, which objected to the requests.

At the hearing before the BOR, both parties appeared to submit argument and/or evidence in support of their respective positions. David Piero appeared on behalf of the property owner and presented two emails from two different realtors, which provided ranges in value for the subject properties for various dates in 2016. He also testified about his unsuccessful attempt to sell the subject properties for $395,000. The BOE cross examined Piero. At the BOR decision hearing, the BOR voted to reduce the subject properties' total value based upon a staff appraiser's recommendation and Piero's testimony that the subject properties were vacant and no rent was being paid. The BOR subsequently issued a decision that reduced the value of parcel 4317845 to $173,700 and parcel 4303775 to $93,900. This appeal ensued.

At this board's hearing, both parties appeared to supplement the record with argument and/or evidence. The BOE argued that the record did not support the BOR's decision because neither the staff appraiser nor the staff appraiser's recommendation were presented at the BOR hearing and, as a result, the staff appraiser's recommendation, and the information upon which it relies, was hearsay or hearsay within hearsay. In support of the BOR decision, Piero submitted a letter, dated June 12, 2017, from a vice-president of brokerage firm CBRE that indicated his opinion of the subject properties' values, i.e., collectively $225,000 to $240,000. The BOE objected to the letter, alleging that the contents of the letter was hearsay because the author was not present to testify and that the letter was not relevant to the tax lien date at issue; the attorney examiner deferred ruling and allowed the letter to be proffered into evidence.

Before we proceed to the merits of this appeal, we must dispose of the outstanding objection raised at this board's hearing. The objection is now overruled and the letter will be accorded its due weight, if any.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). "However, such information ' is not usually available, and thus an appraisal becomes necessary." *State ex rel Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

In *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 148 Ohio St.3d 695, 2016-Ohio-8332, at ¶15, the Supreme Court held that this board "erred in failing to evaluate the probative character of the deputy auditor's report before accepting it as a basis for the BOR's reductions." Therefore, we proceed to consider whether the appraiser's recommendation was competent and probative evidence to justify the BOR's decision.

A review of the staff appraiser's recommendation indicates that he determined that the opinions of the two realtors presented by Mr. Piero, and changes to the subject property's property record card for tax year 2016, i.e., "Adjustment for Slope for 30%[;] Condition change on the porch (415)[; and] Adjustments for market influence and functional obsolescence were added to the main building[,]" retroactively applied to tax year 2015, supported reductions to the subject properties' values. However, we do not find the staff appraiser's recommendation to be a sufficient basis to reduce the subject properties' values, for a number of reasons.

First, the staff appraiser who authored the recommendation did not testify at the BOR hearing. As such, he was not subject to questioning about the recommendation. For example, the record is devoid of any information about "the adjustments for market influence and functional obsolescence." Statutory Transcript ("S.T.") at Recommendation. How much were the adjustments? Where is the market information that allegedly negated the subject properties' initially assessed values? In the absence of the staff appraiser's testimony, we are limited in our ability to conduct a meaningful evaluation. Compare, generally, *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 130 Ohio St.3d 230, 2011-Ohio-3362; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078. See, also, *Cannata v. Cuyahoga Cty. Bd. of Revision,* 147 Ohio St.3d 129,

2016-Ohio-1094, at ¶19 (describing that the lack of the appraiser's testimony as "the absence of potentially material portions of the record."). We are constrained, therefore, to conclude that the staff appraiser's recommendation is hearsay and not competent and probative evidence. See, e.g., *Dellick v. Eaton Corp.*, Mahoning App. No. 03-MA-246, 2005-Ohio-566, ¶25. ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). *** Generally, hearsay is inadmissible. Evid.R. 802.").

Second, the staff appraiser's hearsay recommendation is based, in part, on hearsay. Although the staff appraiser did not completely rely upon representations by the two realtors (via emails provided by Piero and telephone), he gave their representations "moderate weight" in concluding that the subject properties' values should be reduced. However, the emails and notes regarding the substances of any telephone conversations are hearsay because neither of the realtors testified at any of the hearings in this matter. See, *Dellick*, supra. See, also *Copley-Fairlawn City School Dist. Bd. of Educ. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶ 30 ("Although the BTA erred in reverting to the auditor's valuation, it correctly perceived that the BOR's determination could not be simply affirmed and adopted. That is so because the BOR deliberation relies exclusively on the appraisal opinion of value, without any qualification *** Although the ultimate determination of value might turn out to be correct, the BOR's straightforward reliance on the expressed opinion of value set forth in the appraisal is wrong ***.") For the same reason, we do not find the letter from the broker, dated June 12, 2017, submitted at this board's hearing, to be particularly persuasive. Furthermore, we note that the record is devoid of any indication that any of the realtors or brokers were also appraisers qualified to opine real property value and that their opinions of value related to the tax lien date of January 1, 2015. See The Appraisal of Real Estate (13th Ed. 2008), at 8-9 ("Real estate salespeople are licensed to sell real estate. They have training in their field but may or may not have extensive appraisal experience. *** As a group, real estate salespeople evaluate specific properties, but they typically do not consider all the factors that professional appraisers do."); *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997) ("The real estate market may rise, fall, or stay constant between any two dates, and the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact.").

Third, the staff appraiser failed to demonstrate that the changes to the property record card for tax year 2016 were relevant to tax year 2015, the year at issue. As we noted in a prior example above, there was no market information provided that would allow us to determine whether a market adjustment was appropriate for tax year 2015. The Supreme Court has previously held that each tax year stands alone, and the fact that value has been modified in another year is not competent and probative evidence that a different year's value should be changed. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St. 3d 134; 2009-Ohio-2461; *Freshwater*, supra; *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶35 ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it. This court has emphatically held that the BTA's independent duty to weigh evidence precludes a presumption of validity of the BOR's valuation.")

Furthermore, we question whether the BOR's decision is based upon the facts and circumstances of the subject properties as they existed on the tax lien date of January 1, 2015. For example, both the staff appraiser's recommendation and BOR decision hearing noted that the subject properties were vacant and the property owner was not receiving rental payments. However, the record does not substantiate those conclusions because Piero testified that there was a tenant leasing part of the subject properties for approximately $500 per month until mid-2015. In addition, the emails and letter from realtors and brokerage firm, which provided opinions of the subject properties' values, were dated on various dates in 2016 and 2017. However, because there was no indication that their opinions related back to the tax lien date of January 1, 2015, either by the actual text of the emails and letter or testimony from Piero, it is reasonable to conclude their opinions of value related to the dates on which the emails and letter were transmitted, i.e., on various dates in 2016 and 2017. As a result, we find that the BOR erred when it relied upon information that did not relate to the tax lien date at issue.

In reviewing this matter, we are mindful of our duty to independently determine the subject properties' values. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to satisfy the evidentiary burden before the BOR to provide competent and probative evidence of the subject properties' values. We also find that the BOR erred when it reduced the subject properties' values based upon its own evidence because such evidence was not competent and probative. As a consequence, we are constrained conclude that the BOR's decision is not entitled to any degree of deference pursuant to the rule derived from *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 115 Ohio St.3d 449, 2007-Ohio-5237. See *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2016-Ohio-3025, 9-11 (setting forth the four elements necessary to invoke the *Bedford* rule). Therefore, we must reinstate the subject properties' initial values. *Olentangy Local Schools Bd. of Edn.,* supra at ¶20 ("To be sure, the case law acknowledges the possibility that the record may not contain [sufficient evidence to conduct an independent evaluation,] even if the auditor's valuation has been negated. *** Under those circumstances, the auditor's value may ordinarily be reinstated.").

It is, therefore, the order of this board that the subject properties' true and taxable values are as follows, as of January 1, 2015:

PARCEL NUMBER 4317845

TRUE VALUE

$250,300

TAXABLE VALUE

$87,610

PARCEL NUMBER 4303775

TRUE VALUE

$100,300

TAXABLE VALUE

$35,110

OHIO BOARD OF TAX APPEALS

BWR LIBERTY WAY, LLC, (et. al.),

Appellant(s),

vs.

BUTLER COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1565

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BWR LIBERTY WAY, LLC
Represented by:
JOHN J. GERBUS
MEMBER
BWR LIBERTY WAY, LLC
894 BLACKPINE DRIVE
MILFORD, OH 45150

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
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HAMILTON, OH 45012-0515

LAKOTA LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
GARY T. STEDRONSKY
ENNIS BRITTON, CO. L.P.A.
1714 WEST GALBRAITH ROAD
CINCINNATI, OH 45239

Entered Friday, December 1, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education moves to dismiss this matter, asserting that it was not timely filed with this board and it was not filed at all with the county board of revision. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board.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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate

statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record shows that the BOR mailed its decision on August 3, 2017. Appellant filed his notice of appeal with this board on September 15, 2017, forty-nine days after the mailing of the BOR's decision. Despite the appellees' contentions that appellant failed to file a copy of the notice of appeal with the BOR, the statutory transcript contains a copy of such notice; however, it was filed with the BOR on September 14, 2017, forty-eight days after the mailing of the BOR's decision. Both filings fail to comply with the mandatory requirements of R.C. 5717.01.

Upon consideration of the existing record, and for the reasons stated in the motion, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MARVIN MOSKOWITZ, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-435

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARVIN MOSKOWITZ
Represented by:
J. ALEX MORTON
ATTORNEY AT LAW
5247 WILSON MILLS ROAD, #334
RICHMOND HTS., OH 44143

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, December 4, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 684-29-120, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, written argument submitted by the property owner, and the record of this board's hearing.

[2] The subject property was initially assessed at $138,400. The property owner filed a complaint with the BOR, which requested the subject property be revalued at $25,000, based upon fire damage to the interior of the home and an alleged BOR appraisal report for the subject property for tax year 2012. At the BOR hearing on the matter, the property owner appeared, with his counsel, to submit argument and evidence in support of the complaint. The property owner testified about the condition of the home, and his attempts to rehabilitate it, and his efforts to sell the subject property. To support his argument, the property owner submitted photographs of the subject property, taken at some unknown time prior to the tax lien date, as well the statutory transcript filed in an appeal with this board that involved the subject property's value for tax year 2012, i.e., BTA No. 2014-1160. Based upon his presentation, the property owner argued that the subject property had been overvalued, particularly in light of the "wacky" mass appraisal system employed by the county fiscal officer. The BOR subsequently issued a decision, which reduced the subject property's value to $55,800, and this appeal ensued.

[3] Prior to the hearing before this board, the property owner filed a pre-hearing brief that primarily asserted that the BOR had violated his constitutional right to due process of law, i.e., "the right to a fair and impartial BOR tribunal *** and the right to confront by cross examination the evidence used by the BOR to establish the true value of the taxpayer's property." Appellant's Pre-Hearing Brief at page 3. The property owner also argued that the BOR impermissibly relied upon the subject property's value for the prior triennial value, $60,000, as a "base value" (to which the BOR applied 0.93 adjustment factor) for determining the subject property's value for tax year 2015, the first year of a new triennial period. At the hearing, both the property owner and county appellees appeared to submit additional argument and/or evidence in support of their respective positions.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

[5] As an initial matter, we note that the property owner primarily argued violations of the Ohio Constitution or the United States Constitution to advance his claim. While the Ohio Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that this board has no jurisdiction to decide constitutional issues. *Cleveland Gear Co. v. Limbach,* 35 Ohio St.3d 229 (1988); *MCI Telecommunications Corp. v. Limbach,* 68 Ohio St.3d 195 (1994).

[6] Upon review, we are constrained to conclude that the property owner failed to satisfy the evidentiary burden before the BOR and this board. As we consider this matter, we find the Supreme Court's recent decision in *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4002, to be instructive. There, the same property owner advanced substantially similar arguments in an appeal about the subject property's value for tax year 2012, all of which the court rejected. The court rejected the property owner's "burden-shifting theory," i.e., that a complainant satisfies the burden of proof by submitting minimal evidence that supports a requested value, by relying upon longstanding case law that *affirmatively* places the burden on a complainant to come forward with "'competent and probative evidence to establish the correct value of the subject property.'" Id. at ¶9, quoting *Amsdell v. Cuyahoga Cty. Bd. of Revision.* 69 Ohio St.3d 572, 574 (1994). The court also rejected the property owner's attempts to impugn the fiscal officer's initially assessed value for the subject* property, by challenging the mass appraisal system, because that value had been eclipsed by the lower value determined by the BOR. As such, the court determined that the property owner "was no longer aggrieved by the original mass-appraisal value ***." Id. at ¶11. We see no reason to stray from the court's determination and also find that the property owner's arguments fail in this matter.

[7] We find the unadjusted comparable sales data, provided in the statutory transcript, to be equally unavailing. We have repeatedly held that information of this type is an insufficient basis to determine real property value because it fails to adequately to consider and to account for unique aspects and differences of the property under consideration and those properties to which comparison is made. See, e.g., *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported. Here, there was no attempt to adjust the properties to account for any differences among the properties. See, generally, The Appraisal of Real Estate (13th Ed.2008). For example, there are several sales that occurred in 2016 and 2017; however, no attempt was made to relate those sales to the tax lien date of January 1, 2015. The record is also devoid of any evidence of the condition of the alleged comparable properties, which would be of particularly

importance given the condition of the home situated on the subject property. See *Carr v. Cuyahoga Cty. Fiscal Officer,* 8th Dist. Cuyahoga No. 10.4652, 2017-Ohio-1050, at ¶11 ("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.")

[8] Having concluded that the property owner has failed to provide competent and probative evidence in support of this appeal, we now turn to the BOR's decision to reduce the subject property's value from $138,400 to $55,800, based upon the prior triennial value, $60,000, less a 0.93 adjustment factor. We note that the fiscal officer was statutorily required to update real property values in Cuyahoga County for tax year 2015, which began a new triennial period. Based upon the statutory transcript for tax year 2012 and the property record card for tax year 2015, we can discern that the 0.93 adjustment factor was applied to the subject property's initially assessed value for tax year 2012, $148,800, to derive the subject property's initially assessed value of $138,400 for tax year 2015. We fipd no error in the BOR's decision to apply the same 0.93 adjustment factor to the BOR's decision value for tax year 2012, $60,000. See *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision,* 127 Ohio St.3d 44, 2010-Ohio-4468, ¶30 ("the update percentage must be applied to the value of the earlier year as redetermined."); *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 87 Ohio St.3d 305 (1999).

[9] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, with regards to the non-constitutional claims, we conclude that the property owner failed to provide competent and probative evidence to demonstrate that the subject property should be valued at $25,000. We also conclude that the BOR's decision to reduce the subject property's value to $55,800 is supported by the record and affirm such decision.

[10] It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, are as follows:

TRUE VALUE

$55,800

TAXABLE VALUE

$19,530

OHIO BOARD OF TAX APPEALS

JOHN J. CONRAD, (et. al.),

Appellant(s),

vs.

COLUMBIANA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1721

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHN J. CONRAD AND KRISTINE M. CONRAD
Represented by:
JOHN J. CONRAD
2013 PEARCE CIRCLE
SALEM , OH 44460

For the Appellee(s) - COLUMBIANA COUNTY BOARD OF REVISION
Represented by:
KRISTA R. PEDDICORD
ASSISTANT PROSECUTING ATTORNEY
COLUMBIANA COUNTY
105 SOUTH MARKET STREET
LISBON, OH 44432-1295

Entered Monday, December 4, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter for lack of jurisdiction, asserting that appellants failed to file the statutorily-required notice of the appeal with the Columbiana County Board of Revision. Appellants have not responded to the motion. We consider the matter upon the notice of appeal, the motion, and the affidavit attached thereto.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68, the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the property owner both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363, 369 ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

Upon review of the motion and the attached affidavit attesting that the Columbiana County Board of Revision did not receive notice of the appeal from appellants, we find that appellants have failed toproperly invoke the jurisdiction of this board. Accordingly, this matter must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

FOUR WINNERS, INC., (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1532

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FOUR WINNERS, INC.
Represented by:
MARCUS DUNN
ESQ.
ZACKS LAW GROUP
33 SOUTH JAMES ROAD
3RD FLOOR
COLUMBUS, OH 43213

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, December 4, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss for lack of jurisdiction. Specifically, the county asserts that appellant failed to comply with the statutory requirement to file notice of the appeal with the Franklin County Board of Revision. Appellant did not respond to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision* (1990),

56 Ohio St.3d 68, the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the property owner both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363, 369 ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

Our review of the statutory transcript certified pursuant to R.C. 5717.01 indicates that appellant failed to file the requisite notice with the Franklin County Board of Revision. Accordingly, the motion to dismiss is well taken and this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JEROME BEDDINGFIELD, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s),

CASE NO(S). 2017-1284

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JEROME BEDDINGFIELD
882 RUDYARD
CLEVELAND, OH 44110

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, December 7, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Appellant responded only that he did not understand the requirements necessary to file an appeal. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MARK & TERESA MCCORKLE, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1065

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARK & TERESA MCCORKLE
Represented by:
MARK MCCORKLE
1012 BRYAN DRIVE
SOUTH EUCLID, OH 44121

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, December 7, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and the notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that the appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

KIMBERLY H BEACH, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1479

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KIMBERLY H BEACH
Represented by:
KIMBERLY BEACH
3922 POCAHONTAS AVENUE
CINCINNATI, OH 45227

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Monday, December 11, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant **did** not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the notice of appeal, and the statutory transcript certified pursuant to R.C. 5717.01.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

AMINA & AHMED RADWAN, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-619

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AMINA & AHMED RADWAN
Represented by:
AMINA RADWAN
14512 BENNINGTON DR
STRONGSVILLE, OH 44136

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, December 11, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MIAMI TRACE LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

FAYETTE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1335

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MIAMI TRACE LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
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For the Appellee(s) - FAYETTE COUNTY BOARD OF REVISION
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PROSECUTING ATTORNEY
FAYETTE COUNTY
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WASHINGTON C.H, OH 43160-1355

TWENTY LAKE MANAGEMENT, LLC
Represented by: .
PRAXIS COMMERCIAL, LLC
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ARDMORE, PA 19003

11477 ALLEN ROAD LLC
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SUITE 1940
NEW YORK, NY 10022

GITABEN JASANI
11477 ALLEN ROAD
JEFFERSONVILLE, OH 43138

Entered Monday, December 11, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the appellant board of education's ("BOE") motion to remand with instructions to dismiss the underlying complaint for failure to properly invoke the board of revision's jurisdiction. None of the appellees responded to the motion. We decide the matter upon the motion, the notice of appeal, and the statutory transcript certified pursuant to R.C. 5717.01.

The record reveals that the underlying complaint against the valuation of parcel number 090-015-0-01-001-00 was filed by Twenty Lake Management, LLC (complainant on line 2) by its agent Praxis Commercial, LLC (line 3), and that the property was owned at the time by 11477 Allen Road LLC. The record further indicates that, while the underlying complaint was mailed to the Fayette County Board of Revision ("BOR") on March 31, 2017 by UPS Next Day Air, it was not received and filed by the auditor as secretary of the BOR until April 3, 2017. The BOE .argues in its motion that the complaint was untimely, that the complainant lacked standing, and that the complainant's agent committed the unauthorized practice of law by filing the complaint, all of which deprive the BOR of jurisdiction to consider the property's valuation. Although it also made such motion during the BOR proceedings, the BOR implicitly denied the motion by issuing a decision reducing the value of the property for tax year 2016.

Under R.C. 5715.19(A), complaints against the valuation of real property must be filed by March 31 of the ensuing tax year, i.e., by March 31, 2017 for tax year 2016. While the statute provides that the United States postmark date is to be used as the date of filing if a complaint "is filed by mail or certified mail," no such provision is made for filings using another delivery service such as UPS. Compare R.C. 5717.01. For filings not made using US mail or certified mail, complaints are filed when "delivered to the proper official and by him received and filed." *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision,* 96 Ohio St.3d 170, 2002-Ohio-4032, quoting *United States v. Lombardo,* 241 U.S. 73, 76 (1916).

The Supreme Court has held that full compliance with R.C. 5715.19(A), including the filing deadline, is required "before a county board of revision is empowered to act on the merits of the claim." *Stanjim Co. v. Mahoning Cty. Bd. of Revision,* 38 Ohio St.2d 233, 235 .(1974). The court has expressly noted that "statutory filing requirements are mandatory, jurisdictional requirements which cannot be waived even by a tax official." *VeriFone, Inc. v. Limbach,* 69 Ohio St.3d 699, 702 (1994). See also *Bd. of Edn. of the Westerville City Schools v. Delaware Cty. Bd. of Revision* (May 17, 2011), BTA No. 2011-K-152, unreported. It is clear from the record that the underlying complaint in this matter was not filed by the statutory deadline. The complaint therefore failed to properly invoke the jurisdiction of the board of revision.

Although the BOE also raises additional jurisdictional issues involving complainant's standing and the unauthorized practice of law by complainant's agent in filing the complaint, we find the failure to meet the statutory filing deadline dispositive and need not reach the additional issues raised.

Based upon the foregoing, we find that the underlying complaint did not properly vest jurisdiction in the BOR. Accordingly, the BOE's motion is well taken and this matter is hereby remanded to the Fayette County Board of Revision with instructions to dismiss the underlying complaint, the practical effect being reinstatement of the auditor's initial valuation.

OHIO BOARD OF TAX APPEALS

LAKOTA LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1400
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
BUTLER COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - LAKOTA LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
GARY T. STEDRONSKY
ENNIS BRITTON, CO. L.P.A.
1714 WEST GALBRAITH ROAD
CINCINNATI, OH 45239

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L. FERGUSON
ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
P. O. BOX 515
HAMILTON, OH 45012-0515

UNION CENTER STATION LLC
Represented by:
SCOTT R. THOMAS
HEMMER DEFRANK WESSELS PLLC
250 GRANDVIEW DRIVE, SUITE 500
FORT MITCHELL, KY 41017

Entered Monday, December 18, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Lakota Local Schools Board of Education ("BOE") appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number M5610-033-000-058, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property was initially assessed at $1,832,080. The BOE filed a complaint, which requested that the subject property's value be increased to $3,075,000 to reflect the price at which it transferred in April 2015. The

property owner did not file a counter-complaint. At the BOR hearing, only the BOE appeared to submit argument and evidence into the record. The BOE submitted a conveyance fee statement, which

demonstrated the property owner's $3,075,000 purchase of the subject property in April 2015, to argue that the subject property's value should be increased to reflect the sale price. One of the BOR members expressed concern that line 6 of the conveyance-fee statement failed to indicate the circumstances of the subject sale. At the BOR decision hearing, that same BOR member expressed concern over the absence of information on line 6 on the conveyance-fee statement and noted that the use of the subject property indicated that the subject sale may reflect the leased-fee interest, not the fee simple interest. As such, the BOR voted to reject the subject sale and to retain the initially assessed value; it subsequently issued a written decision consistent with the oral vote. This appeal ensued.

None of the parties availed themselves of the opportunity to submit additional evidence at a hearing before this board. Instead, the BOE and property owner submitted written argument to assert their respective positions. By way of its submission, the BOE argued that the property owner failed to appear at the BOR hearing to submit evidence about the subject sale. As a result, the BOE further argued that the record is devoid of any evidence to rebut the presumption that the subject sale was a recent, arm's-length transfer that reflected the subject property's value as of the tax lien date. The BOE also objected to any consideration of a handwritten notation on the property record card made by an unknown person about the circumstances of the sale. By way of its submission, the property owner argued that the BOE was required to provide the deed and purchase agreement, in addition to the conveyance-fee statement, in order to create the rebuttable presumption that the subject sale was the best indication of the subject property's value. Because the BOE failed to provide all such documentation, the property owner argued that the BOE failed to satisfy its burden before the BOR and this board. Notably, the county appellees did not file written argument.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and *typically* the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The Supreme Court recently held that a party may rebut a sale price of real property encumbered by a lease, at the time of the sale, with information about market lease rates. See *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997).

We begin our analysis with the subject sale. Neither party disputes the arm's-length character or recency of the sale. However, the BOR impliedly relied upon changes to R.C. 5713.03 and rejected the subject sale because it *may* have reflected the value of the leased-fee interest, not the fee simple interest. We note that there is absolutely no evidence that the subject property was subject to any leases at the time of the subject sale and we will not engage in conjecture. See, generally, *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶26, ("Mere speculation is not evidence."). See, also *Terraza 8,* supra. To the extent that the BOR based its decision on an alleged conversation between a county employee and someone affiliated with the property owner, evidenced through a handwritten note on the property record card, we consider such notation to be unreliable hearsay especially in this instance because no one with firsthand knowledge of the subject sale testified at the BOR hearing. See, e.g., *Dellick v. Eaton Corp.,* Mahoning App. No. 03-MA-246, 2005-Ohio-566, at ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). *** Generally, hearsay is inadmissible. Evid.R. 802.").

The property owner argued that the BOE was required to submit the deed and purchase agreement, in addition to the conveyance-fee statement, in order to create the rebuttable presumption that the subject sale was the best indication of the subject property's value. Unfortunately, the property owner is wrong. The

court has noted that a party need only present minimal evidence of a sale when there is "no real dispute about the basic facts of the sale." *Dauch v. Erie Cty. Bd. of Revision*, Slip Opinion No. 2017-Ohio-1412, at ¶18. The property owner failed to advance any arguments that raised doubt as to the probative value of the subject sale and there is nothing in the record that would lead us to believe that the subject sale did not actually occur.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weigh.ing of the evidence contained in [the BOR] transcript"). Absent an affirmative demonstration that the $3,075,000 sale in April 2015 was not a qualifying sale for tax valuation purposes, we find that it was the best indication of the subject property's value as of tax lien date. Neither the BOR nor the property owner came forward with any argument and/or evidence that would lead us to conclude otherwise. As a result, we find that the BOE has satisfied its evidentiary burden on appeal.

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER M5610-033-000-058

TRUE VALUE

$3,075,000

TAXABLE VALUE

$1,076,250

OHIO BOARD OF TAX APPEALS

WILMINGTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-902
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CLINTON COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - WILMINGTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - CLINTON COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

ARCP WILMINGTON OH LLC
C/O AMERICAN REALTY CAPITAL PROPERTIES
2325 EAST CAMELBACK RD, SUITE 1100
PHOENIX, AZ 85016

Entered Monday, December 18, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 290-18-05-09-0005-PC, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of this board's hearing.

[2] The subject property was initially assessed at $691,060. The BOE filed a complaint with the BOR, which requested that the subject property's value be increased to 61,470,000, purportedly to reflect the price at which it transferred in March 2015. The property owner did not file a counter-complaint.

[3] At the BOR hearing, only the BOE appeared to submit argument and/or evidence of the subject property's value for tax year 2015. In support of its request, the BOE submitted a conveyance fee statement and

limited warranty deed, which demonstrated the $1,470,000 transfer of the subject property from Continental 286 Fund, LLC to ARCP Wilmington OH, LLC in February 2015. The BOR subsequently issued a decision, which retained the initially assessed value, and this appeal ensued.

[4] At this board's hearing, only the BOE and county appellees appeared to submit additional argument into the record. The BOE resubmitted the conveyance fee statement and limited warranty deed, which memorialized the subject sale. The county appellees asserted that the BOR concluded that the subject sale was not indicative of value because the subject property was likely the subject of an above-market lease.

[5] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and *typically* the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The Supreme Court recently held that a party may rebut a sale price of real property encumbered by a lease, at the time of the sale, with information about market lease rates. See *Terraza 8, L.L.C. v. Franklin Cty. Bd of Revision,* Slip Opinion No. 2017-Ohio-4415. Accordingly, 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. *Cincinnati Bd of Edn. v. Hamilton Cty. Bd of Revision,* 78 Ohio St.3d 325, 327 (1997).

[6] We will begin our review with the $1,470,000 transfer of the subject property just fifty-three days after the tax lien date, in February 2015. Neither party disputed the recency of the subject sale. However, the county appellees argued that the sale was not reflective of the subject property's value because the subject property was likely the subject of an above-market lease. For a number of reasons, we disagree.

[7] First, we note that the record is completely void of competent and probative evidence to demonstrate whether the subject property was, or was not, leased at the time of the subject sale. Second, we further note that the record is completely void of the lease agreement to which the subject property may, or may not, have been subject. If the BOR had this information then it was obligated to include such information in the statutory transcript certified to this board. R.C. 5715.08; R.C. 5717.01; *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, at ¶27, fn. 4. If the BOR did not have this information, "[m]ere speculation is not evidence." *Lakota Local School Dist. Bd of Edn. v. Butler Cty. Bd of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶26.

[8] Third, recent revisions to R.C. 5713.03, which now require real property to be valued in the "fee simple unencumbered" interest, do not require us to reject the subject sale because of the subject property may have had a lease in place at the time of the subject sale. Instead, "[t]he statutory amendment thus allows taxing authorities to consider non-sale price evidence-particularly evidence of encumbrances and their effect on sale price—in determining the true value of property that has been the subject of a recent arm's-length sale." *Terraza 8,* supra, at ¶27. Here, there has been no evidence to demonstrate the effect(s) that a lease may have had on the subject sale price.

[9] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that the BOE satisfied its evidentiary burden on appeal by providing competent and probative evidence of the subject property's value. In doing so, we find that the subject property should be valued consistent with the price at which it transferred in February 2015.

[10] It is therefore the order of this board that the subject property's true and taxable values as of January 1, 2015 are as follows:

TRUE VALUE

$1,470,000

TAXABLE VALUE

$514,500

OHIO BOARD OF TAX APPEALS

WILMINGTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-900
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CLINTON COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - WILMINGTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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For the Appellee(s) - CLINTON COUNTY BOARD OF REVISION
Represented by:
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O'REILLY AUTO ENTERPRISES LLC
RYAN LLC
P.O. BOX 06116
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Entered Monday, December 18, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 290-17-01-20-0000-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of this board's hearing.

[2] The subject property was initially assessed at $202,190. The BOE filed a complaint with the BOR, which requested that the subject property's value be increased to $400,000. The complaint disclosed that the subject property had been the subject of a recent $400,000 transfer. The property owner did not file a counter-complaint.

[3] At the BOR hearing, only the BOE appeared to submit argument and/or evidence of the subject property's value for tax year 2015. In support of its request, the BOE submitted a conveyance fee statement

and limited warranty deed, which demonstrated the $400,000 transfer of the subject property from Fifth Third Bank to O'Reilly Automotive Stores, Inc. in November 2013. The BOR subsequently issued a decision, which retained the initially assessed value, and this appeal ensued.

[4] At this board's hearing, only the BOE and county appellees appeared to submit additional argument into the record. The county appellees asserted that the BOR concluded that the $400,000 transfer was not the best indication of the fee simple value because a deed restriction, prohibiting the subject property's use for financial services, precluded the subject property's highest and best use.

[5] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and *typically* the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The Supreme Court recently held that a party may rebut a sale price of real property encumbered by a lease, at the time of the sale, with information about market lease rates. See *Terraza 8, L.L.C. v. Franklin Cty. Rd of Revision,* Slip Opinion No. 2017-Ohio-4415. Accordingly, 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. *Cincinnati Bd of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997).

[6] We will begin our review with the $400,000 transfer of the subject property in November 2013. Neither party disputed the arms'-length nature and recency of the subject sale. However, the county appellees argued that the sale was not reflective of the subject property's value because the deed restriction, which prohibits the subject property's use for financial services, precludes its highest and best use and is not, therefore, reflective of the fee simple value. For a number of reasons, we disagree.

[7] First, we note that the record is devoid of evidence that the seller transferred less than the fee-simple interest when it sold the subject property to the property owner. Second, every sale involves parties with subjective motivations, and a seller acting in its own self-interest may not necessarily seek the highest sale price if other conditions are met. Likewise, a buyer seeking to purchase a property for purposes of development or redevelopment is not atypical. The county appellees have not presented any testimony from any of the parties to the sale to indicate their respective motivations, nor is there any evidence in the record to show that either party was "forced" to act in any way that was not in its own self-interest. Therefore, despite the seller's desire to retain some influence over the subject property's future development or use, there is no indication that the property owner did not voluntarily choose to accept such condition and ultimately enter into the sale transaction. Accordingly, we find that the county appellees failed to demonstrate that the sale was not an arm's-length transaction,.

[8] Third, recent revisions to R.C. 5713.03, which now require real property to be valued in the "fee simple unencumbered" interest, do not require us to reject the subject sale because of the deed restrictions. Instead, "[t]he statutory amendment thus allows taxing authorities to consider non-sale price evidence—particularly evidence of encumbrances and their effect on sale price—in determining the true value of property that has been the subject of a recent arm's-length sale." *Terraza 8,* supra, at ¶27. Here, there is no evidence to demonstrate the effect(s) that the deed restriction had on the subject sale price, i.e., whether the parties to the transaction considered the deed restriction in their negotiations.

[9] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Rd of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that the BOE satisfied its evidentiary burden on appeal by providing competent and

probative evidence of the subject property's value. In doing so, we find that the subject property should be valued consistent with the price at which it transferred in November 2013.

[10] It is therefore the order of this board that the subject property's true and taxable values as of January 1, 2015 are as follows:

TRUE VALUE

$400,000

TAXABLE VALUE

$140,000

OHIO BOARD OF TAX APPEALS

E. 56 LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1190

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - E. 56 LLC
Represented by:
DAVID DVORIN
ATTORNEY
30195 CHAGRIN BOULEVARD, #300
PEPPER PIKE, OH 44124

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, December 18, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is again considered upon the county appellees' motion for reconsideration of our November 21, 2017 decision and order finding value for the subject property. Although this matter had been pending at the board since August 10, 2017, the county has now raised the issue of this board's jurisdiction due to appellant's failure to file notice of the appeal with the board of revision within the time period required by R.C. 5717.01, i.e. within thirty days of the mailing of the board of revision's decision on July 12, 2017. Appellant has not responded to the motion.

Upon review of the motion, we must vacate our November 21, 2017 decision and order and dismiss this matter for failure to properly invoke this board's jurisdiction. However, we also take this opportunity to admonish the county appellees for their conduct in this matter. This matter was filed on August 10, 2017, nearly *four months* prior to the raising of the jurisdictional issue by motion. Under the case management schedule applicable to this matter, dispositive motions were to be filed with this board sixty days after the filing of the appeal, i.e., October 9, 2017. Ohio Adm. Code 5717-1-08(D)(2). Further, any written legal argument was to be filed with this board by October 24, 2017; the county appellees filed no such argument. Only upon receipt of this board's decision reducing the value of the subject property did the county appellees raise the jurisdictional issue now presented, Had the county appellees raised the issue in a more timely

manner, resources would not have been expended toward the decision this board now has no choice but to vacate. In the future, the county appellees are advised to file such motions more timely, in

accordance with the deadlines established by this board's rules. We note that the county appellees have been previously admonished for such practice on at least one prior occasion. *Merriweather v. Cuyahoga Cty. Bd. of Revision* (Dec. 7, 2015), BTA No. 2015-456, unreported.

Alas, the subject matter of this board may be raised at any time during the pendency of the appeal. *Gates Mills Investment Co. v. Parks*, 25 Ohio St.2d 16, 19-20 (1971) ("The failure of a litigant to object to subject-matter jurisdiction at the first opportunity is undesirable and procedurally awkward. But it does not give rise to a theory of waiver, which would have the force of investing subject-matter jurisdiction in a court which has no such jurisdiction."); *National Tube Co. v. Ayres*, 152 Ohio St. 255 (1949), paragraph one of the syllabus ("The Board of Tax Appeals has control over its decisions until the actual institution of an appeal or the expiration of the time for an appeal.").

This board, as a creature of statute, has only the jurisdiction, power, and duties expressly given by the General Assembly. *Steward v. Evatt*, 143 Ohio St. 547 (1944); *Leiphart Lincoln-Mercury, Inc. v. Bowers*, 107 Ohio App. 259 (1958). The requirements of R.C. 5717.01 are specific and mandatory in nature. When a statute confers the right of appeal, adherence to the terms and conditions set forth therein is essential to the enjoyment of the right conferred. *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946). The statutory requirements for filing a notice of appeal from a decision of a county board of revision and mandatory and jurisdictional. *Bd. of Edn. of Mentor v. Bd. of Revision*, 61 Ohio St.2d 332 (1980). The record in this matter demonstrates that appellant failed to comply with the requirement file notice of the appeal with the county board of revision within thirty days of the mailing of the board of revision's decision.

Based upon the foregoing, we hereby vacate our November 21, 2017 decision and order and dismiss this matter for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

BEAVERCREEK TOWNE STATION, LLC, (et. al.),	CASE NO(S). 2016-1345, 2016-1347
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
GREENE COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - BEAVERCREEK TOWNE STATION, LLC
Represented by:
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THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
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For the Appellee(s) - GREENE COUNTY BOARD OF REVISION
Represented by:
MICHAEL E. FOLEY
ASSISTANT PROSECUTING ATTORNEY
GREENE COUNTY
258 MIAMI ST., BOX 429
WAYNESVILLE, OH 45068

BEAVERCREEK CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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DUBLIN, OH 43017

Entered Monday, December 18, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Beavercreek Towne Station LLC, appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers B42-0004-0002-0-0008-00, B42-0004-0002-0-0010-00, B42-0004-0002-0-0019-00, and B42-0004-0002-0-0020-00, for tax year 2015. This matter is now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, and the parties' written argument. We note that along with parcel number B42-0004-0002-0-0021-00, which is not included in this matter, the value of the subject property for tax year 2014 was previously considered before this board. The previous matter was decided by this board and is pending at the Supreme Court. See *Beavercreek Towne Station LLC v. Greene*

Cty. Bd. of Revision (Oct. 25, 2016), BTA Nos. 2015-1488, et al., unreported, appeal pending S.Ct. No 2016-1713. Upon motion of the parties, we have incorporated the record of the tax year 2014 cases into

the record for the instant appeals. *Beavercreek Towne Station, LLC v. Greene Cty. Bd. of Revision* (Interim Order, Nov. 30, 2016), BTA Nos. 2016-1345, 2016-1347, unreported.

The subject property is improved with a multi-tenant shopping center and was initially assessed at a total true value of $34,246,100, based on the BOR's 2014 decision. Beavercreek Towne Station filed decrease complaints with the BOR seeking a reduction in value to $29,375,000 for tax year 2015. The BOE filed a countercomplaint in support of maintaining the $34,246,100 value. At the BOR hearing, Beavercreek Towne Station acknowledged that there was an October 30, 2014 sale of at least a portion of the subject property, but argued that it could not provide a reliable indication of value because it was transferred subject to leases in place. Instead, Beavercreek Towne Station asserted, the BOR should utilize the values opined by appraiser Richard G. Racek, Jr., to establish the subject's true value. The BOE argued that because the BOR adjusted the value of the subject property based on the sale for the prior year, the owner was collaterally estopped from challenging the arm's-length nature of the sale, which was the basis for the BOR's values. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeals.

The parties waived the opportunity to present additional evidence before this board, though the record from the tax year 2014 cases, which has been incorporated into this matter, includes testimony and cross-examination regarding the sale and Racek's appraisals. Through written argument, Beavercreek Towne Station argues that this board cannot rely on the sale price as allocated on the conveyance fee statement and should instead rely on Racek's valuation of the property. The BOE again argues that Beavercreek Towne Station has failed to rebut either the recency or arm's-length nature of the sale, and the sale should therefore provide the basis for the tax year 2015 values.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Rd of Revision,* 78 Ohio St.3d 325, 327 (1997).

In the present matter, although we recognize that collateral estoppel does not apply because the matter is on appeal and has not yet been finally determined, we have previously addressed many of Beavercreek Towne Station's arguments in our tax year 2014 decision. For instance, we rejected the argument that the conveyance fee statement was not probative and credible evidence and found that the record corroborated the information reflected on that document. *Beavercreek Towne Station LLC,* BTA Nos. 2015-1488, et al, supra, at 4.

We likewise rejected the argument that the sale could not be used to value the property because the subject transferred with leases in place. Id. at 5. Since this case, the court has held that while taxing authorities may consider non-sale-price evidence, including the effect of a lease encumbering the property at the time of the sale, the burden remains on the opponent of the sale to show that the price did not reflect the property's true value because of such a lease. *Terraza 8, L.L.C. v. Franklin Cty. Bd of Revision,* Slip Opinion No. 2017-Ohio-4415. In this case, we find that Beavercreek Towne Station has failed to meet this burden. We acknowledge that an individual testified during the tax year 2014 proceedings that leases in

place would typically be considered when looking at a potential acquisition. That individual, however, was not personally involved in the negotiations of the present sale and could not testify that such a consideration was in fact made in this case, and what effect, if any, the leases in place had on the agreed-upon price. Furthermore, we find that Racek's conclusion that the sale was not reliable evidence of value merely because the property was leased is insufficient to meet this burden. During the 2015 BOR hearing, when asked about the leases in place, he stated that "[s]ome were above market, some were at market, some might have been below market." Additionally, the subject's actual rental rates appear to fall within the range set forth though Racek's lease comparables. Thus, we find that Beavercreek Towne Station failed to show that the leases had such an impact on the sale price to invalidate the sale as the best evidence of value.

Additionally, in our prior decision, we indicated that we would not address the merits of Racek's appraisal because the sale reflected the true value of the subject property and reliance on an appraisal, therefore, would be inappropriate. . *Beavercreek Towne Station LLC*, BTA Nos. 2015-1488, et al, supra, at 6. Although we did not address Beavercreek Towne Station's final argument in the instant appeals, i.e., that a decision relying on the sale would place the property owner.in a punitive class of taxpayers in violation of the equal protection and uniform rule of taxation, we decline to address this here. While the Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that this board has no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach,* 35 Ohio St.3d 229 (1988); *MCI Telecommunications Corp. v. Limbach,* 68 Ohio St.3d 195 (1994).

It is therefore the order of this board that the October 2014 sale is the best evidence of the subject property's value, and the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER B42-0004-0002-0-0008-00

TRUE VALUE

$103,360

TAXABLE VALUE

$36,180

PARCEL NUMBER B42-0004-0002-0-0010-00

TRUE VALUE

$3,694,140

TAXABLE VALUE

$1,292,950

PARCEL NUMBER B42-0004-0002-0-0019-00

TRUE VALUE

$13,698,600
TAXABLE VALUE

$4,794,510

PARCEL NUMBER B42-0004-0002-0-0020-00

TRUE VALUE

$18,828,320

TAXABLE VALUE

$6,589,910

OHIO BOARD OF TAX APPEALS

SHWETAL DESAI MD DBA GERICARE ASSOCIATES INC, (et. al.),	CASE NO(S). 2017-1188
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
BUTLER COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - SHWETAL DESAI MD DBA GERICARE ASSOCIATES INC
Represented by:
SHWETAL DESAI
PRESIDENT
GERICARE ASSOCIATES INC.
5157 PLEASANT AVE.
FAIRFIELD, OH 45014

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L. FERGUSON
ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
P. O. BOX 515
HAMILTON, OH 45012-0515

Entered Monday, December 18, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcels A0700-008-000-081 and A700-008-000-131, for tax year 2016. We proceed to consider this matter based upon the notice of appeal and the record certified pursuant to R.C. 5717.01.

The subject property was initially, collectively assessed at $163,560. The property owner filed a complaint with the BOR, which requested that the subject property be valued at $80,000 based upon the price at which it transferred in April 2016. The affected board of education ("BOE") filed a counter-complaint, which objected to the request.

At the hearing before the BOR, the property owner appeared through its president and sole shareholder, Dr. Shwetal Desai. Desai testified about the condition of the subject property and neighborhood in which it was located to argue that such conditions necessitated a reduction to the subject property's value. As additional support for the property owner's complaint, he submitted the appraisal report and testimony of appraiser Robert

Bigner, who opined the value of the subject property to be $92,300 as of January 1, 2016. Bigner testified about the underlying data and methodologies used to derive his opinion of value. There was much

discussion between Bigner, counsel for the BOE, and the BOR members about the accuracy of the information contained in the appraisal report, specifically the square footage of the subject building and building in sale comparable 1, and which of the comparables had sold via auction. In addition, Dr. Desai testified about the $80,000 transfer of the subject property from his wife, Sangita Desai, to Gericare Associates, Inc. in April 2016. In doing so, he argued that the sale price reflected the subject property's fair market value better than Bigner's appraisal report. At the BOR decision hearing, the BOR members recognized weaknesses in Bigner's appraisal report, specifically the use of comparable sale number 2 because it did not appear to be an arm's-length transaction and the many inaccuracies in the information provided for comparable sale number 1. The BOR subsequently issued a written decision, which retained the subject property's initially assessed value, and this appeal ensued.

By way of its notice of appeal, the property owner requested that this matter be resolved through this board's small claims docket. However, this appeal does not qualify for such treatment. R.C. 5703.021(B) provides that lain appeal may be filed with the board of tax appeals and assigned to the small claims docket as authorized under division (C) of this section, provided the appeal is either of the following: (1) Commenced under section 5717.01 of the Revised Code in which the property at issue qualifies for the partial tax exemption described in section 319.302 of the Revised Code." R.C. 319.302(A)(1) provides that "[r]eal property that is not intended primarily for use in a business activity shall qualify for a partial exemption from real property taxation." It is undisputed that the subject property is "intended primarily for use in a business activity" and is actually used as a physician's office. As such, the instant appeal is ineligible for the small claims docket.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax* Appeals, 175 Ohio St. 410, 412 (1964).

We begin our consideration with the sale of the subject property, which was the basis of the appellant's complaint and notice of appeal. A review of the record demonstrates that the property owner purchased the subject property for $80,000 from Sangita Desai, Dr. Desai's wife, in April 2015. As such, we conclude that the subject sale occurred between related parties. Although transfers between related parties do occur, for property tax purposes, such transfers are presumptively considered not to be arm's-length transactions unless there has been a showing that the purchase price reflected market value. See, e.g., *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 129 Ohio St.3d 172, 2011-Ohio-3092; *Walters v. Knox Cty. Bd. of Revision,* 47 Ohio St.3d 23 (1989). The Supreme Court recently held "that a certified appraisal *** can be used to show that the purchase price in a sale between related parties reflected fair market value." *Emerson v. Erie Cty. Bd. of Revision,* 149 Ohio St.3d 148, 2017-Ohio-865, at ¶14. Here, the record is devoid of an appraisal report performed contemporaneous with the subject sale, or any other competent and probative evidence, to demonstrate that the $80,000 purchase price actually reflected fair market value. At the BOR hearing, Desai conceded that the transfer took place as part of their wealth management strategy and that no real effort was made to determine whether the $80,000 purchase amount reflected market value. As a consequence, we find the subject sale is not the best indication of the subject property's value as of January 1, 2016.

We proceed to consider the property owner's appraisal report. Bigner compared the subject property to three other properties that sold within the same vicinity in February 2016 or March 2017. After comparing the features of the comparable properties to those of the subject property, he made adjustments based upon gross building area and site size. In doing so, he concluded to a market value of $45 per square foot, which

he then applied to the subject building's 2185 square feet, to preliminarily conclude to the subject property's value, $98,325. He proceeded to deduct $6,000 to account for the negative impact of the condition of the roof of the subject building. Bigner finally concluded to the subject property's value of $92,300 as of January 1, 2016.

This board may accept all, part, or none of the appraiser's opinion. *Witt Co. v. Hamilton Cty. Bd. of Revision,* 61 Ohio St.3d 155 (1991); *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision,* 85 Ohio St.3d 609 (1999). Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported.

Upon review, we, like the BOR, find that Bigner's appraisal report is not competent and probative evidence of value. There are many material issues in the report, which cause us to question its credibility and reliability. For example, a review of the BOR hearing record demonstrates that the information contained in the appraisal report about comparable sale 1 may not be accurate. There was substantial discussion at the BOR hearing about the seller retaining some portion of that property, which Bigner failed to reflect in the appraisal report, and resulted in a substantial overstatement of the square footage of the gross building area of that property. Additional review of the hearing record further demonstrates that Bigner conceded that one of his comparable sales was an auction sale, though he was unable to identify which comparable property sold at auction. An auction sale of a property is presumptively invalid absent a showing that the parties to such sale acted as typically motivated parties, i.e., at arm's-length. R.C. 5713.04; *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723. Thus, using an auction sale as a comparable property *may* not be proper without some showing that such sale was an arm's-length transaction. There was no such showing at the BOR hearing. Furthermore, as noted above, the BOR members noted that sale comparable 2 may have transferred by way of a sale-leaseback transaction. Sale-leaseback sales are also presumptively invalid. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-7578. Based upon our review, we find that the appraisal report is not supported by the selected comparable properties.

Beyond the selection of comparable properties, we find the appraisal report problematic in other ways. Page 1 of the appraisal report highlights that it was performed for investment making decision purposes. This board has generally rejected such reports, finding that "they are not necessarily a complete and thorough evaluation of the property." *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported, at 7. Compare *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 147 Ohio St.3d 503, 2016-Ohio-1485. We also question the propriety of deducting $6,000 for the negative affect of the roof.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that the evidence upon which the property owner relied is not competent and probative evidence of the subject property's value as of the effective tax lien date. We find the cumulative errors in Bigner's appraisal report to be detrimental to its credibility and reliability. See, *Syed v. Cuyahoga Cty. Bd. of Revision* (Sept. 17, 2015), BTA No. 2014-4303, unreported (rejecting an appraisal report that contained substantial errors, including the "as of date and specious methodologies); *AMA Ventures, Inc. v. Cuyahoga Cty. Bd of Revision* (Mar. 27, 2015), BTA No. 2014-4313, unreported, at 3 (questioning "the reliability of the appraisal report based upon the errors or inaccuracies contained in the report.")

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2016:

PARCEL NUMBER A0700-008-000-081

TRUE VALUE

$150,570

TAXABLE VALUE

$52,700

PARCEL NUMBER A700-008-000-131

TRUE VALUE

$12,990

TAXABLE VALUE

$4,550

OHIO BOARD OF TAX APPEALS

T. LAVERY, (et. al.),

Appellant(s),

vs.

SUMMIT COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1957

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - T. LAVERY
Represented by:
T LAVERY
OWNER
160 SHERWOOD DR.
AKRON , OH 44303

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVENUE, 7TH FLOOR
AKRON, OH 44308

COPLEY-FAIRLAWN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KARRIE M. KALAIL
SMITH, PETERS, KALAIL CO,, LPA
6480 ROCKSIDE WOODS BLVD. SOUTH
SUITE 300
CLEVELAND, OH 44131-2222

Entered Wednesday, December 20, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, appellant's notice of appeal, and the statutory transcript certified by the fiscal officer pursuant to R.C. 5717.01.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56

Ohio St.3d 68 (1990), the Ohio Supreme Court held that ."[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant filed the appeal with the BOR thirty-one days, and with this board thirty-two 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.

OHIO BOARD OF TAX APPEALS

WILLIAM R. SCHLANGER, JR., (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2003

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WILLIAM R. SCHLANGER, JR.
P. O. BOX 306
GALENA, OH 43021

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

PLAIN LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Thursday, December 21, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 220-000802-00, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the record of this board's hearing.

The subject property was initially valued at $154,200. The property owner filed a complaint with the BOR, which requested a reduction to the subject property's value to $82,000. Several documents, consisting of a settlement statement and invoices and/or estimates, were attached to the property owner's complaint. The affected board of education ("BOE") filed a counter-complaint, which objected to the request.

At the hearing before the BOR, only counsel for the BOE appeared. Although the property owner did not appear at the hearing, the BOR noted the documents that were attached to his complaint. The BOE requested

that the BOR retain the subject property's initially assessed value because the property owner failed to appear to testify about the submitted documents in order to authenticate and/or to explain them. At

the BOR decision hearing, the BOR members noted the property owner's purchase of the subject property for $120,000 from an estate in September 2015; however, they were unable to determine whether the property owner was related to the deceased person. They discerned that the property owner's $82,000 opinion of value was based upon the purchase price less the costs of necessary repairs. Because the property owner did not testify at the BOR hearing to provide missing details, the BOR members voted to retain the initially assessed value and issued a written decision to that effect. This appeal ensued.

At the hearing before this board, the property owner and BOE appeared to supplement the record with additional argument and/or evidence. At the outset, the BOE raised an objection pursuant to R.C. 5715.19(G) based upon the property owner's failure to first provide relevant evidence, within his knowledge and possession, to the BOR; the property owner explained his absence. The attorney examiner deferred ruling and allowed the property owner to proffer his evidence. He testified that he purchased the subject property from his aunt's estate after she passed away and determined that it was worth $120,000 based upon the condition of the subject property, and cost of necessary repairs, and the subject property's initially assessed value. He also asserted that other people made offers to buy the subject property and that his offer of $120,000 was the highest offer. As such, the property owner requested that we reduce the subject property's value to $82,000. The BOE reasserted that R.C. 5715.19(G) applied to this appeal and argued that the subject sale occurred between related parties and that there had been no demonstration that the $120,000 purchase price reflected fair market value. As such, the BOE requested that we affirm the BOR's decision to retain the subject property's initially assessed value.

Before we consider the merits of this appeal, we must first dispose of the R.C. 5715.19(G) objection raised at this board's hearing. We find that the property owner demonstrated good cause for his failure to first provide his evidence to the BOR. As a result, the BOE's objection is now overruled.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax* Appeals, 175 Ohio St. 410, 412 (1964).

In this matter, we find that the property owner has demonstrated that the subject sale was, indeed, an arm's-length transfer that is indicative of the subject property's value. Although the BOE argued that the subject sale occurred between related parties, we do not agree for two reasons. First, the property owner purchased the subject property from his aunt's estate, through its administrator who owed a fiduciary duty to the estate, and not directly from his aunt. See, *Emerson v. Erie Cty. Bd. of Revision,* 149 Ohio St.3d 148, 2017-Ohio-865, at ¶11; R.C. 2109.01. Second, the property owner testified that there were other offers to purchase the property and his offer was the highest. As such, we find that the property owner has successfully demonstrated that his $120,000 purchase of the subject property was the best indication of its value.

We deny, however, the property owner's request to further reduce the subject property's value to $82,000. The record indicates that the property owner purchased the subject property with full knowledge of its condition and need for repairs. See BTA Hearing Record. Furthermore, Ohio courts, as well as this board, have pointed out in a number of contexts that dollar-for-dollar costs do not necessarily directly correlate to value. See, e.g., *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996); *Gupta v. Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397 (1997); *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported. Therefore, we will not reduce the $120,000 purchase price to reflect any repair costs.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). Based upon our review of the record, we find that the property owner has satisfied the evidentiary burden on appeal. It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

TRUE VALUE

$120,000

TAXABLE VALUE

$42,000

OHIO BOARD OF TAX APPEALS

EDWARD E. HOWARD JR., (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1948

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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EUCLID CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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Entered Wednesday, December 27, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati*

School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

Appellant responded that he was only recently made aware of this matter and attached a copy of the certified mailing, dated April 10, 2017, with a "Return to Sender" label affixed to it. The statutory transcript reveals that on April 10, 2017, the BOR sent a hearing notice to the same address as that shown on the certified mailing in appellant's response. However, appellant's response did not provide documentation to demonstrate that notice of the appeal was filed with the BOR.

Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

EUERLE GROUP LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2447

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EUERLE GROUP LLC
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Entered Wednesday, December 27, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel 442-01-003, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record developed at this board's hearing.

[2] The subject property was initially assessed at $222,400. The affected board of education ("BOE") filed a complaint, which requested that the subject property's value be increased to $570,000 to reflect the price at which it transferred in October 2015. The property owner did not file a counter-complaint. At the BOR hearing, only counsel for the BOE appeared to offer argument and/or evidence into the record. The BOE submitted a conveyance fee statement and warranty deed, which demonstrated the property owner's $570,000 purchase of the subject property from 5301 Group Partnership, an Ohio Limited Liability Company in October 2015, to argue that the subject property's value should be increased to reflect the sale price. The BOR subsequently issued a written decision that increased the subject property's value to $570,000. This appeal ensued.

[3] At this board's hearing, Robert Euerle, a member of the property owner, appeared to supplement the record with additional argument and/or testimony. He testified about the facts and circumstances of the $570,000 transfer of the subject property in October 2015. Although Mr. Euerle did not believe that his broker provided much value during the negotiation process, he conceded that he offered to purchase the subject property for just $10,000 less than the $580,000 asking price. He also asserted that the age and condition of the subject property necessitated a reduction to its value. In support of the property owner's case, Mr. Euerle submitted several pictures of the subject property and some estimates to demonstrate its condition. In sum, he argued that the property owner overpaid for the subject property,and that it, instead, is worth approximately $390,000.

[4] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and *typically* the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. See, also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-441. Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997).

[5] We proceed to consider the subject sale, i.e., the property owner's $570,000 purchase of the subject property in November 2015. None of the parties have disputed the arm's-length character, recency or voluntariness of the sale. However, the property owner argued that it overpaid for the subject property.

[6] Upon review, we must reject the property owner's argument that the subject sale must be disregarded because it overpaid. All buyers and sellers have subjective motives in any transaction. This board will not disregard a sale simply because a party may have gotten a good deal and potentially underpaid for a property or, conversely, may have gotten a bad deal and potentially overpaid for a property. See *Wendel v. Mercer Cty. Bd of Revision* (Jan. 15, 2013), BTA No. 2012-L-1824, unreported ("[G]etting a 'good deal' on the purchase of a property does not automatically negate an arm's-length transaction as being the best indication of value. Therefore, as there is insufficient evidence to indicate that the sale occurring around May 25, 2011 sale was not an arm's-length transaction ***."); *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported, at 11 ("A negotiated purchase price is not invalidated merely because a purchaser later believes he made a bad deal."). To the extent that Mr. Euerle implied that his broker may have not worked in his best interest because of a possible connection with the seller, who was also a broker, we note that there is no evidence to support such assertion. In *Old Village Ohana, LLC v. Franklin Cty. Bd. of Revision* (Jan. 29, 2013), BTA No. 2010-Y-1551, unreported, we noted that "[w]hile it is suggested the appellant was fraudulently induced to acquire the property, we find the evidence offered insufficient to accept such allegation as the basis for rejecting the sale." Id. at 5-6. Furthermore, the sale price *was* negotiated down from $580,000 to $570,000, which indicates that the parties to the subject sale were acting in their own self-interests.

[7] We must also reject the property owner's argument that the'defects to the buildings located on the subject property, i.e., the disrepair of the roofs and the cost to repair and/or replace them, require rejection of the subject sale or, at minimum, some reduction to the $570,000 sale price. Ohio courts, as well as this board, have pointed out in a number of contexts that dollar-for-dollar costs do not necessarily directly correlate to value. See, e.g., *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996); *Eldabh v. Cuyahoga Cty. Bd of Revision* (Nov. 17, 2016), BTA No. 2016-729, unreported. As such, we find this argument unpersuasive.In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to rebut the presumption that the subject sale was a recent, arm's-length transfer. Absent an affirmative demonstration that the $570,000 sale in November 2015 was not a qualifying sale for tax valuation purposes, we find that it was the best indication of the subject property's value as of tax lien date.

[8] It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

TRUE VALUE

$570,000

TAXABLE VALUE

$199,500

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

OHIO BOARD OF TAX APPEALS

835 EDWIN MOSES, LLC, (et. al.),

Appellant(s),

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-138

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Represented by:
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Entered Thursday, December 28, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals decisions of the board of revision ("BOR"), which determined the value of the subject property, parcels R72 10105 0034, R72 10105 0035, R72 10105 0040, R72 10105 0054, R72 10105 0038, R72 10105 0039, R72 10105 0048, R72 10105 0049, R72 10105 0046, R72 10105 0045, R72 10105 0044, R72 10105 0051, R72 10105 0042, R72 10105 0050, R72 10106 0006, R72 10106 0014, R72 10105 0036, and R72 10105 0037, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property, comprised of an industrial warehouse, was initially, collectively assessed at $1,871,100. The property owner filed a complaint with the BOR, which requested that the subject property's value be reduced to $1,100,000. The complaint disclosed that the subject property had been the

subject of a $900,000 transfer in December 2015 and that $200,000 worth of improvements were performed on or about January 1, 2016. The affected board of education ("BOE") filed a counter-complaint, which objected to the request.

At the hearing on the matter, representatives for both the property owner and board of education appeared in support of their respective requests. Ken Schuermann appeared on behalf of the property owner and was examined by the BOR members about the circumstances of the $900,000 transfer in December 2015, the subject property's condition, and rental income. The BOE also cross-examined Schuermann on these topics. During the BOR decision hearing, the BOR voted to reject the subject sale because the property owner failed to submit documentation that confirmed such sale. The BOR subsequently issued written decisions that retained the subject property's initially collectively assessed value of $1,871,100. This appeal ensued.

None of the parties availed themselves of the opportunity to submit additional argument and/or evidence in support of their respective positions. Instead, the property owner submitted additional documentation to which the BOE objected in its written argument. The objection is now overruled as these documents were included in the statutory transcript and marked as "EVIDENCE." The BOE's written argument also asserted that the property owner failed to submit documentation to corroborate the subject sale and, as a consequence, failed to meet its burden before the BOR and this board.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and *typically* the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. See, also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-441. Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997).

In this matter, the minimal details of the subject sale are undisputed. Neither the county appellees nor the BOE challenge the recency or arm's-length character of the subject sale or even challenge whether the subject sale occurred. Instead, they claim that the property owner failed to submit documentation *to prove* that the subject sale occurred. However, the Supreme Court has determined that sale documents are not necessary unless an opponent to a sale disputes that a sale actually occurred. See *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶15 ("In fact, at no point during the proceedings below did the parties dispute that Lunn had paid $22,000 for the property in a recent sale."); *Utt v. Lorain County Bd. of Revision,* Slip Opinion No. 2016-Ohio-8402, at ¶14 ("The absence of a deed or purchase agreement here is not fatal to the Utts' claim, because no party disputed the timing or price of the sale and the documents the Utts did provide demonstrated a 'sale [that] on its face appear[ed] to be recent and at arm's length.' *Cummins* at ¶ 41.") We also note that the subject sale is noted on the property record cards, and the one-page settlement statement submitted by the owner to the BOR, and none of the parties disputed the sale information provided. See *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner successfully demonstrated that the subject sale was a recent, arm's-length transfer. Absent an affirmative demonstration that the $900,000 sale in December 2015 was not

a qualifying sale for tax valuation purposes, we find that it was the best indication of the subject property's value as of tax lien date.

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER	TRUE VALUE	TAXABLE VALUE
R72 10105 0034	$6,100	$2,140
R72 10105 0035	$6,100	$2,140
R72 10105 0040	$10,460	$3,660
R72 10105 0054	$2,920	$1,020
R72 10105 0038	$6,980	$2,440
R72 10105 0039	$6,980	$2,440
R72 10105 0048	$5,230	$1,830
R72 10105 0049	$6,980	$2,440
R72 10105 0046	$8,240	$2,880
R72 10105 0045	$6,980	$2,440
R72 10105 0044	$6,980	$2,440
R72 10105 0051	$5,740	$2,010
R72 10105 0042	$5,230	$1,830
R72 10105 0050	$5,290	$1,850
R72 10106 0006	$683,310	$239,160
R72 10106 0014	$114,280	$40,000
R72 10105 0036	$6,980	$2,440
R72 10105 0037	$6,980	$2,440

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

OHIO BOARD OF TAX APPEALS

ANGELA KARAPETYAN LLC, (et. al.),

Appellant(s),

vs.

BUTLER COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1477

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ANGELA KARAPETYAN LLC
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For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
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Entered Thursday, December 28, 2017

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel Q6532-028-000-100, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, the record of this board's hearing, and any written argument submitted by the parties.

The subject property, a Rite Aid drugstore, was initially assessed at $3,350,000. Both the board of education ("BOE") and property owner filed original complaints with the BOR. By way of its complaint, the BOE

requested that the subject property's value be increased to $3,800,000 to reflect the price at which the subject property transferred in April 2015. The BOE attached a copy of the conveyance fee statement,

which memorialized the transfer, to the complaint. By way of its complaint, although the property owner noted that the subject property had been the subject of a $3,800,000 transfer in April 2015, it requested that the subject property's value be decreased to $1,370,750.

At the BOR hearing on the matter, both parties appeared through counsel to submit argument and/or evidence in support of their respective requests. In its presentation, the BOE requested that the subject property be valued consistent with the $3,800,000 price at which it transferred in April 2015, as evidenced by the conveyance-fee statement that memorialized the transfer. In its presentation, the property owner asserted that recent changes to R.C. 5713.03 required rejection of the subject sale and, instead, the subject property should be valued consistent with the appraisal report and testimony of appraiser, Stephen J. Weis, who opined the value of the subject property to be $550,000 as of January 1, 2015. Weis was examined, and cross-examined, about the underlying data and methodologies used to derive his conclusion of value. At the BOR decision hearing, one of the BOR members noted his concern with Weis's selection of a capitalization rate, which did not appear to be based in the local market or to be consistent with the capitalization rate garnered from transfers of other Rite Aid stores, as well as Weis's conclusion of market rent and final conclusion of value. We note that the BOR gave absolutely no consideration to the BOE's complaint to increase the subject property's value to reflect the $3,800,000 transfer of April 2015. The BOR voted to retain the subject property's initially assessed value and subsequently issued a written decision consistent with said vote. The property owner, thereafter, appealed to this board.

At the hearing before this board, both parties appeared, through counsel, to submit additional argument and/or evidence into the record. The property owner supplemented the record with additional testimony from Weis, who was examined, and cross-examined, about the underlying data and methodologies to derive his conclusion of value. Subsequent to the hearing, the parties submitted written argument to more fully articulate their respective positions. By way of its brief, the property owner argued that Weis's appraisal demonstrated that such sale, as well as a prior sale of $3,350,000 in August 2014, reflected the creditworthiness of the tenant, Rite Aid, and the terms of the underlying lease, rather than the value of the real property. Conversely, by way of its brief, the BOE argued that the $3,800,000 sale of April 2015 was the best indication of the subject property's value and that the Supreme Court's recent decision in *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2017-Ohio-4415 did not dictate a different outcome, specifically, because Weis's appraisal report failed to rebut the presumptions accorded to any of the sales of the subject property.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and *typically* the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The Supreme Court recently held that a party may rebut a sale price of real property, encumbered by a lease at the time of the sale, with information about market lease rates. *zimmer*, supra. Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 327 (1997).

In this matter, the record indicates that the subject property twice transferred recent to the tax lien date: a $3,350,000 transfer in August 2014 (as noted on the property record card) and a $3,800,000 transfer in April 2015. We begin our analysis with the sale closest to the tax lien date of January 1, 2015, i.e., the $3,800,000 transfer of the subject property that occurred approximately ninety-six days after the tax lien date, in April 2015. See *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687.

As we consider the transfer of April 2015, we note that neither party challenges that such sale occurred

recent to the tax lien date, between parties acting in their own self-interest. Instead, the property owner argued that the $3,800,000 represented the value of the underlying lease in place at the time of such sale, as evidenced by Weis's appraisal report and testimony, and, therefore, the subject sale should be disregarded. We disagree.

The property owner argued that subject sale must be rejected because legislative changes to R.C. 5713.03 now require that real property be valued in the fee-simple estate. The court recently interpreted the effects of the statutory change when there is a sale of real property, encumbered by a lease at the time of sale. In *Terraza,* the court rejected a property owner's contention that the very existence of a lease, in place at the time of a sale, necessitated rejection of the sale under the current iteration of R.C. 5713.03. Instead, the court reaffirmed the longstanding principle that the sale of real property was the best indication of value; however, "[t]he statutory amendment thus allows taxing authorities to consider non-sale price evidence—particularly evidence of encumbrances and their effect on sale price—in determining the true value of property that has been the subject of a recent arm's-length sale." *Terraza 8,* supra at ¶27. Therefore, we start with the premise that the $3,800,000 sale of April 2015 *was,* indeed, the best indication of the subject property's value and proceed to evaluate Weis' appraisal report.

In his appraisal report, Weis's developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he commenced his analysis with a matched-pair analysis of sales that he claimed demonstrated that sales of real property subject to leases, at the time of the sales, reflected investment value, not the actual value of the real property involved. Weis then compared the subject property to six other freestanding retail properties (five were vacant), located in various Ohio counties, which sold, or were available to purchase, between 2012 and 2016. After adjusting the comparable sales for differences with the subject property, Weis concluded the subject property's value to be $550,000 as of January 1, 2015. Under the tax additur method of the income approach, he relied upon nine properties that were leased, or available to be leased, in various Ohio counties since 2007. After adjusting the comparable leased properties for differences with the subject property, Weis determined that the subject property's potential gross income to be $91,018 based upon potential rent and expense reimbursements. He then deducted $9,102, or 10% of potential gross income, for vacancy and credit loss, to conclude to an effective gross rental income of $81,916. From that number, he deducted $24,152 of expenses, which included items such as insurance, utilities, and a management fee, to conclude to a net operating income of $57,764. He proceeded to survey the Ohio and national markets to determine the appropriate capitalization rate. In doing so, he capitalized the net operating income at 10.51%, which included a tax additur of 0.26%, to conclude the subject property's value to be $550,000 as of January 1, 2015. He reconciled the indicated values, giving significant weight to the sales comparison approach to value, and finally concluded the subject property's value to be $550,000 as of January 1, 2015.

Because the property owner relied upon an appraisal report that values the subject property at just under 15% of the $3,800,000 sale price, i.e., at $550,000, we must critically review the appraisal report. See, *Cannata v. Cuyahoga Cty. Bd. of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094, at ¶20 ("Moreover, the appraisal opinion of value, $330,000, reflected a reduction of 62 percent from the fiscal officer's original valuation, and the character of the property called for careful scrutiny of an appraisal that advocated so great a reduction."). Upon review, we find that Weis's appraisal report failed to demonstrate that the underlying lease in place at the time of the either of the sales of the subject property was above market rental rates, specifically, because the appraisal report failed to accurately capture the market in which the subject property would compete. The appraisal report notes (at page 32), and Weis's testimony confirmed, that there were other *leased* properties in the market and the sale and/or lease rates of those properties were consistent with the underlying lease rate of the subject property. Because the subject property was leased on the tax lien date, it would have been more appropriate for Weis to consider how it would have competed against other leased properties, not vacant properties. See *Johnston Coca-Cola Bottling Co., Inc. v. Hamilton Cty. Bd. of Revision,* 149 Ohio St.3d 155, 2017-Ohio-870, at ¶15 (holding that the present use of real property may be considered in an appraisal as long as the appraisal report's highest and best use analysis is consistent with the property's present use and the appraisal report does not exclude "other factors relevant to exchange

value."). By inappropriately narrowing the market, we conclude that Weis significantly undervalued the subject property.

We also find no support for the capitalization rate relied upon in Weis's development of the income approach. As noted above, Weis concluded to a 10.25% capitalization rate, before applying a 0.26% tax additur. However, after reviewing the capitalization rates provided in the appraisal report, we find no support for the selection of a capitalization rate at the higher end of the range, particularly when the capitalization rates for drug store properties indicated that capitalization rates were falling between 2014 and 2015. We note that the capitalization rate derived from the $3,800,000 sale in April 2015, at 6.73%, was within range of median capitalization rates for Rite Aid stores between third quarter 2014 and third quarter 2015.

We reject Weis's argument that either of the sales in this matter represented the value of the underlying lease to Rite Aid, a creditworthy tenant. He noted various other, non-realty factors that may influence a purchase price, i.e., financing, required rate of return, lease rate, and remaining years on the lease. As previously noted, no one involved in the sales testified at the BOR or this board, therefore, we are left to speculate whether these factors, in fact, influenced the negotiations and the ultimate sales prices.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to rebut the presumptions accorded to the $3,800,000 transfer in April 2015. 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, of the fee-simple interest, upon which we rely to determine the subject property's value for tax year 2015.

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2015:

TRUE VALUE

$3,800,000

TAXABLE VALUE

$1,330,000

OHIO BOARD OF TAX APPEALS

MIDVIEW LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1713, 2016-1715, 2016-2441
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
LORAIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

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Entered Wednesday, January 3, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education ("BOE") and property owner, Grafton Main, LLC ("Grafton"), appeal two decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 11-00-099-000-008, 11-00-099-000-009, 11-00-099-000-010, 11-00-099-000-029, 11-00-099-000-258, 11-00-099-000-259, 11-00-099-000-387**,** 11-00-099-000-389, 11-00-100-101-023, 11-00-100-101-025, and 11-00-100-101-027, for tax year 2015. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, and the parties' written argument.

The subject property consists of 11 parcels improved with an approximately 14,804 square-foot building on roughly 2.16 acres of land, operating as a Rite Aid Pharmacy. The subject's total true value was initially assessed at $3,511,760. Grafton filed a decrease complaint with the BOR seeking a reduction in value to $1,200,830. The BOE filed a countercomplaint in support of the auditor's values. At the BOR hearing, Grafton acknowledged that it purchased the subject property in December 2014, but maintained that the sale price did not represent the value of the real property because the property transferred with a lease in place. Grafton submitted a copy of the lease. Grafton relied on the testimony and written report of appraiser Roger Sours, MAI, who opined that the subject's value was $1,630,000 as of January 1, 2015. Sours stated that he looked at the December 2014 sale of the subject property but did not give it any weight in his analysis because it was not the purchase of the fee simple interest due to the lease in place. The subject property is leased at roughly $18 per square foot. Sours stated that this rent is paid on a "semi-gross" basis, i.e., the tenant pays for all expenses except real property taxes. Sours determined the market rent for the subject was $13.00 per square foot on a semi-gross basis, though he reached this number by considering properties leased on a net basis, making an adjustment to account for the difference in tenant expenses. Sours also acknowledged that he did not look at other drug stores in his analysis when he considered the market rent, conceding that the subject's rental rate was typical for similar drug stores, if not "on the low side." The BOE did not present independent evidence of value, but argued that the mere presence of a lease at the time of a transfer does not render the sale unreliable evidence of value.

Following the hearing the BOR also considered a recommendation from the auditor's appraisal department, which was apparently based on testimony from the hearing, income, and expense data, though the report and specific explanation of the recommendation is not included in the record. Based on this recommendation, the BOR issued a decision reducing the.initially assessed valuation to $2,325,000 on August 31, 2016. From this decision, both the BOE and Grafton filed the present appeals. On October 31, 2016, the BOR issued a second letter correcting the stated basis for its determination of one of the parcel numbers, though the values remained unchanged. Because there is no difference in the values of these two letters, we will disregard whether the BOR had authority to issue the second decision. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of* Revision, 121 Ohio St.3d 218, 2009-Ohio-760. Grafton also appealed this decision.

On appeal, the parties again argue about the reliability of the sale, with Grafton arguing the lease negates the sale's utility and this board should, therefore, rely on Sours' appraisal to find value. The BOE urges this board to accept the sale price to establish the subject's value, claiming that Grafton has failed to rebut the utility of the sale.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997). Additionally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present matter, it is undisputed that Grafton purchased the subject property from Andrich of Grafton LLC on or about December 18, 2014 for $3,404,728. As the party opposing the sale, Grafton has the

burden to show why the reported sale price is not a reliable indication of the subject's true value. Grafton does not dispute that this was a recent arm's-length transaction, but instead argues that the purchase price is not a reliable indication of value because it was a "leased-fee" sale, and that amended R.C. 5713.03 prohibits reliance upon the transaction. We disagree.

Grafton argues that due to amended language in R.C. 5713.03, the sale cannot be used to value the property because it purchased the leased fee interest. While the court has held that taxing authorities may consider non-sale-price evidence, including the effect of a lease encumbering the property at the time of the sale, the burden remains on the opponent of the sale to show that the price did not reflect the property's true value because of such a lease. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. Although Grafton presented a copy of the lease in place at the time of the sale in addition to the testimony and written report of Sours, this evidence fails to persuade this board that we should disregard the sale as the best evidence of value. Notably, there is no testimony in the record from an individual with knowledge of the sale to indicate that transaction involved any atypical motivations or that Grafton paid a premium due to favorable lease terms. Additionally, the appraisal alone does not show that the lease was above market or particularly favorable to the owner. In preparing his report, Sours acknowledged that he did not consider lease rates of other similar drug stores to determine his market rent, admitting that the subject's rent was likely similar to — if not lower than — other build-to-suit drugstores. While the present use of the subject property as a drugstore is not the only measure of its value, it may be considered in order to determine to which properties it is most comparable. See *Johnston Coca-Cola Bottling Co., Inc. v. Hamilton Cty. Bd. of Revision,* 149 Ohio St.3d 155, 2017-Ohio-870. Furthermore, the rent comparables that are included in Sours' report were leased on a net basis, rather than semi-gross as the subject, and there is not a thorough description as to how he adjusted for this discrepancy. Thus, we must conclude that Sours' opinions alone are not adequate to show that the lease was above market. Consequently, we find that Grafton has failed to rebut the utility of the sale as the best evidence of value.

Finally, we need not address the reliability of Sours' appraisal methodology and value conclusions because once evidence of a qualifying sale has been presented, "[i]t is only when the purchase price does not reflect the true value that a review of independent appraisals based upon other factors is appropriate. ***" *Pingue v. Franklin Cty. Bd. of Revision,* 87 Ohio St.3d 62, 64 (1999). (Citation omitted.) See, also, *Cummins,* supra at ¶23 ("[W]e erred ***when we authorized the use df appraisals to adjust the price set in a recent, arm's-length transaction. To do so places the cart (appraisal) before the horse (an actual arm's-length sale)."). "To be sure, 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." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 146 Ohio St.3d 470, 2016-Ohio-757, ¶20.

Accordingly, this board finds that the December 2014 sale is the best evidence of true value in money as of the tax lien date, and will utilize the sale price (rounded to $3,404,730) to establish the subject's value. The beginning point of the board's value findings is the auditor's original assessments for tax year 2015. We have utilized the percentages reflected therein to allocate value among the parcels, rounding values to the nearest $10. See *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision,* 125 Ohio St.3d 485, 2010-Ohio-1921.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 11-00-099-000-008

TRUE VALUE $101,350

TAXABLE VALUE $35,470

PARCEL NUMBER 11-00-099-000-009

TRUE VALUE $51,440

TAXABLE VALUE $18,000

PARCEL NUMBER 11-00-099-000-010

TRUE VALUE $141,920

TAXABLE VALUE $49,670

PARCEL NUMBER 11-00-099-000-029

TRUE VALUE $96,280

TAXABLE VALUE $33,700

PARCEL NUMBER 11-00-099-000-258

TRUE VALUE $258,460

TAXABLE VALUE $90,460

PARCEL NUMBER 11-00-099-000-259

TRUE VALUE $2,557,400

TAXABLE VALUE $895,090

PARCEL NUMBER 11-00-099-000-387

TRUE VALUE $95,280

TAXABLE VALUE $33,350

PARCEL NUMBER 11-00-099-000-389

TRUE VALUE $5,330

TAXABLE VALUE $1,870

PARCEL NUMBER 11-00-100-101-023

TRUE VALUE $9,990

TAXABLE VALUE $3,500

PARCEL NUMBER 11-00-100-101-025

TRUE VALUE $15,030

TAXABLE VALUE $5,260

PARCEL NUMBER 11-00-100-101-027

TRUE VALUE $72,230

TAXABLE VALUE $25,280

OHIO BOARD OF TAX APPEALS

G6 HOSPITALITY PROPERTY LLC, (et. al.),

Appellant(s),

vs.

STARK COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2394

(REAL PROPERTY TAX)

DECISION AND ORDER

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Entered Wednesday, January 3, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, G6 Hospitality Property LLC ("G6"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 1617016, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is improved with an 83-room single-story motel, operating as a Motel 6. The subject's total true value was initially assessed at $2,598,900. G6 filed a decrease complaint with the BOR seeking a reduction in value to $1,420,000. The appellee board of education ("BOE") filed a countercomplaint in support of maintaining the auditor's value. At the BOR hearing, G6 offered testimony from Mitchell Wilson,

a tax representative and consultant for G6, and provided a packet of documents in support of its requested reduction. These documents included a "Revised Assessment Opinion" apparently prepared by

Wilson and colleague Mark A. Whitelaw. Although he is licensed in Colorado, Wilson indicated that he was not testifying as an appraiser during the BOR hearing. Wilson offered an opinion that the subject's value should be reassessed at $1,300,000 for tax year 201'5 based on the income and sales comparison approaches to value. For the income approach, Wilson utilized the subject's actual income for 2015 ($819,038), and reduced that number consistent with an expense ratio (74%) based on the expense ratios derived from the subject's actual experience for 2011 through 2015. Wilson reduced this amount further for capital replacement (4%), resulting in a net income of $180,447. Wilson utilized a capitalization rate of 10% plus 2.3% tax additur, resulting in an indicated value of $1,466,573, which he reduced by $207,500 for personal property based on a value of $5,000 per room at "50% good." Wilson concluded to an indicated value of $1,259,000 (rounded), or $15,169 per unit.

Wilson also performed a sort of sales-comparison analysis, looking at sales of comparable limited service motels from 2010 through 2015. In his analysis, however, Wilson did not make any adjustments to the sales, but utilized them to establish a gross rent multiplier ("GRM") of 1.62. Wilson applied that multiplier to the 2015 revenue, indicating a value of $16,000 per room, or $1,330,000 total. Wilson then included correspondence related to an exclusive listing agreement at an asking price of $2,500,000 without the Motel 6 flag, an email from the broker regarding his opinion of an ultimate sale price, and letters of intent to purchase from two potential buyers, which were rejected by G6. The packet also included a portion of an appraisal performed by HVS that opined the as-is value of the subject property was $1,500,000 ($18,072 per room) as of November 21, 2014, and prospectively that the stabilized value would be $2,100,000 ($25,301 per room) as of January 1, 2018 after an investment of $499,000. There was also some discussion at the BOR that the auditor's value was based on a 2012 sale-leaseback transaction, which G6 argued was not indicative of value. The BOE did not present independent evidence of value, but cross-examined Wilson and objected to the HVS appraisal and correspondence regarding the subject's listing. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. A hearing was convened before this board, at which the parties generally reiterated the arguments made to the BOR.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Qhio St.3d 564, 566 (2001). The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964). In the present appeal, G6 has challenged the reliability of the sale that apparently formed the basis for the auditor's value. We need not address the reliability of this sale and whether it is the best evidence of the subject's value, however, because G6 has failed to offer any competent and probative evidence to provide a basis for an alternative value. An appellant must present competent and probative evidence in support of his requested reduction, and an owner is not entitled to a reduction merely because no evidence is presented against his claim. *Columbus City School Dist.,* supra. Compare *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 193, 2013-Ohio-4543; *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 212, 2014-Ohio-1940 (holding that the auditor's value could not be reinstated because the evidence clearly negated the auditor's value and the record contained sufficient evidence for this board to independently determine value).

G6 primarily relied on Wilson's valuation as support for its requested reduction. Generally, testimony regarding property value is only competent and admissible where it is the professional opinion of an expert or an owner testifying as an expert of the property at issue. See *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd of Revision,* 140 Ohio St.3d 248, 2014-Ohio-3620. Initially, we find it extremely relevant that Wilson expressly indicated that he was not testifying as an appraiser and had not adhered to the Uniform Standards of Professional Appraisal Practice ("USPAP") in his analysis. Although this is not necessarily fatal to a valuation, it certainly suggests he was not acting in a professional capacity as an expert and calls into question the reliability of his analysis. See *Lowe's Home Ctrs., Inc. v. Washington*

Cty. Bd. of Revision, 145 Ohio St.3d 375, 2016-Ohio-372, ¶27. This is particularly troubling in this case because Wilson has a relationship with the owner as its "tax representative" and consultant, and is not an unbiased third party. This relationship alone, however, does not give Wilson the same status enjoyed by an owner as expert of a property because he has not shown that he has the requisite knowledge about the subject property. *Worthington City Schools,* supra, at ¶19. Rather, his opinions are based on information obtained from others within G6's organization and his opinions appear to be based on a broad understanding of the national market in which Motel 6 operates. Thus, we find that his valuation of the property does not constitute expert testimony by way of either ownership or professional expertise.

A thorough review of Wilson's report shows that the information contained therein cannot be relied upon to independently establish value, even if we were to disregard his ultimate value conclusions. Looking first to his income approach, he relies solely on the subject's actual income without consideration of how this conforms to the market. Notably, Wilson stated that G6 was meeting minimum standards for maintenance but was not putting in the money the property required because it was up for sale. In *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision,* 75 Ohio St.3d 552, 555 (1996), the court commented that "an appraiser may employ actual income as reduced by actual expenses if both amounts conform to market." Continuing, the court noted that it has "required the BTA to make factual findings, supported by the record, of the appropriate market rents and expenses to be used in the income approach to value." Id. The market data that is included in his analysis includes only industry averages and not local market conditions. We are unable to discern whether the actual data conforms to the market and none of this information forms a reliable basis for this board to adjust the subject's value.

Wilson's report also included a number of documents, including the HVS appraisal and listing/offer correspondence, though he had no personal knowledge of their contents. We reject the HVS appraisal report for several reasons. We have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported. For that reason, the individual who developed the opinion must appear before either this board or the board of revision not only to authenticate the appraisal, but more significantly to allow the other parties and the board the opportunity to evaluate the individual's professional credentials, the methodologies utilized in developing the opinion, the data considered and relied upon, the adjustments and assumptions made, etc. In the absence of the author's testimony, we are often limited in our ability to conduct a meaningful evaluation. Compare, generally, *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 130 Ohio St.3d 230, 2011-Ohio-3362; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty Rd of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078. See, also, *Cannata v. Cuyahoga Cty. Rd of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094, ¶19 (holding that even without an objection to the use of the appraisal from the board of education, it was plain error to rely on an appraisal report that was rejected by the board of revision because the record did not contain the appraiser's testimony and cross-examination. In reaching this conclusion, the court described that the lack of the appraiser's testimony as "the absence of potentially material portions of the record.").

This lack of testimony is particularly relevant in the present appeal because the report does not offer an opinion of value as of January 1, 2015 and we do not have any information about the identity of the individual who prepared the report. The Supreme Court has repeatedly held that an expert's opinion of value must be expressed "as of the tax lien date in issue. See, e.g., *Olmsted Falls,* supra, at 555 ("We emphasize that the BTA `*** may consider pre- and post-tgx lien date factors that affect the true value of the taxpayer's property on the tax lien date.' *Youngstown Sheet & Tube Co. v. Mahoning Cty. Rd of Revision* (1981), 66 Ohio St.2d 398, ***, paragraph two of the syllabus. However, the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question."); *Freshwater v. Belmont Cty. Rd of Revision,* 80 Ohio St.3d 26, 30 (1997) ("The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. *** The real

estate market may rise, fall, or stay constant between any two dates, and the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact.").

We acknowledge that the court has held that even an apprisal report that is not a reliable indication of value may be utilized by this board to independently determine value based on the data therein. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 147 Ohio St.3d 503, 2016-Ohio-1485, ¶24-25 *("Team Rentals").* In this case, however, we find that the appraisal does not contain the same level of reliability as the report in *Team Rentals.* Here, we have no information about the identity or credentials of the individual who prepared the report, the purpose of the report, or the extent that this report was relied upon by any party. Finally, because we are unable to weigh the credibility of the individual who prepared the report, we find that the data contained therein is not usable for purposes of determining the subject's value as of January 1, 2015 and cannot furnish a basis for an independent determination of value by this board. As the court recently pointed out, "[t]he validity of every comparable turns on whether, and to what extent, the sale is in fact comparable, and an appraiser must make adjustments to account for differences — including market changes over time." *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 146 Ohio St.3d 412, 2016-Ohio-1506, ¶32. Without an ability to assess the reliability of the appraiser's analysis, we are unable to determine the validity of the comparables or income data, particularly considering the stretch of time between the two effective dates within the appraisal and the tax lien date. Accordingly, we find the HVS appraisal is not reliable evidence and cannot support a decrease in value.

Finally, we find the documents related to G6's attempts to sell the subject property do not constitute competent and probative evidence of value that can support a reduction. As the BOE pointed out, Wilson did not have any firsthand knowledge of the information contained in these documents and no one with such knowledge appeared to testify. These documents constitute hearsay, see Evid.R. 802, and we find that they are not sufficiently reliable to accord them weight in our analysis. This is particularly true of the opinion of value set forth by the selling broker, as we have extremely limited information as to the basis of that opinion. Even if we consider the asking price and offers, these are not probative evidence of value that can support the requested reduction. The Supreme Court has held that unaccepted offers to purchase a property are not entitled to the rebuttable presumption accorded an actual sale. *Gupta v Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397 (1997). Likewise, "a listing price, in essence an aspirational selling price, is not conclusively probative of what a willing buyer would pay for the property in an arm's-length transaction, and is therefore not conclusively probative of actual market value." *Kaiser v. Franklin Cty. Aud.,* 10th Dist. Franklin No. 10AP-909, 2012-Ohio-820, ¶12. Accordingly, we find that the information regarding attempts to sell does not constitute competent and probative evidence that can support an adjustment to value.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision,* 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$2,598,900

TAXABLE VALUE

$909,620

OHIO BOARD OF TAN APPEALS

THOMAS SCHLEPPI, (et. al.),

Appellant(s),

vs.

FAYETTE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-677

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THOMAS SCHLEPPI
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WASHINGTON COURT HOUSE, OH 43160

For the Appellee(s) - FAYETTE COUNTY BOARD OF REVISION
Represented by:
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DUBLIN, OH 43017

Entered Thursday, January 4, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 211-009-1-00-001-01, 211-006-1-00-002-00, and 211-009-1-00-001-00, for tax year 2015. At the hearing before this board, the county appellees raised a jurisdictional issue and followed up by filing a motion to dismiss. Specifically, the county appellees contend that this board lacks the jurisdiction to consider this matter on the basis that it was not filed in compliance with R.C. 5717.01 because the appellant failed to file a copy of the notice of appeal with the BOR. At the hearing, appellant first challenged the county appellees' timing, noting that it had plenty of time to raise the issue prior to the hearing. Appellant then indicated he believed his wife filed the appeal with this board electronically and he was not sure whether a copy was sent to the BOR. Appellant also filed a written response to the motion, stating that a copy was mailed to Fayette County, purportedly after being placed into the "out mail" box at a real estate company. Appellant did not, however, submit any documentation to corroborate his claim or to affirmatively contest the county appellees' assertion that no such filing took place.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the property owner both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v.*

Hamilton Cty. Bd. of Revision, 87 Ohio St.3d 363, 369 (2'000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision

decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

In the present appeal, there is no indication that appellant filed the required notice of the appeal with the board of revision. Although the DTE Form 3 (Transcript on Appeal from County Board of Revision) indicates that the BOR received notice of the appeal on March 31, 2016, such date clearly corresponds to the date the underlying complaint against valuation was received by the county, rather than notice of appellant's appeal of the BOR's May 3, 2017 decision. Moreover, while the BOR notes that it received notice of the appeal by way of this board's docketing letter, such letter does not meet the statutory requirement that an appellant file notice of its appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d 192 (1989). Upon consideration of the existing record, this matter is determined to be jurisdictionally deficient and therefore is dismissed.

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-369
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
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Q INVESTMENT PROPERTIES LLC
Represented by:
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Entered Thursday, January 4, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 113-01-008, for tax year 2015. We proceed to consider this matter based upon the notice of appeal and transcript certified pursuant to R.C. 5717.01.

The subject property, a retail strip center, was initially assessed at $480,000. The BOE filed a complaint with the BOR, which requested that the subject property be revalued at $600,000 based upon the price at which it transferred in February 2013. The property owner filed a counter-complaint, which requested that the subject property's $480,000 value be retained.

At the BOR hearing, both parties appeared through counsel to submit argument and/or evidence in support of their respective requests. The BOE presented a warranty deed that demonstrated the $600,000 transfer of the subject property to the property owner in February 2013, as well as the BOR's prior decision that valued the subject property at $600,000 for tax year 2012. Based upon its presentation, the BOE requested that the subject property be revalued at $600,000. The property owner submitted the testimony of Abdul and Nahla Qotaynah. Mr. Qotaynah testified about the circumstances of the subject sale, specifically that he had been misled about rental income and occupancy of the subject property, which led to him (via the corporate entity property owner) overpaying for the subject property. He also testified about his efforts to work with the tenants in the subject property to make it a desirable retail space for people in the neighborhood. In support of the testimony, the property owner submitted a number of documents, such as profit and loss statements and excerpts of federal income tax returns. The property owner also argued that the character of the neighborhood in which the subject property was located necessitated rejection of the subject sale. Both the BOE and BOR examined Mr. Qotaynah further about the circumstances of the sale. According to the BOR hearing worksheet, the BOR members voted to retain the subject property's initially assessed value because of the testimony about the subject property's performance in the market. The BOR subsequently issued a written decision that retained the subject property's initially assessed value and this appeal ensued.

On appeal, this board scheduled a merit hearing to allow the parties to submit additional evidence in support of their respective positions. However, all parties waived their appearances at the hearing and no written argument was submitted. As such, we will base our decision upon the argument and evidence submitted at the BOR hearing.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,50* Ohio St.2d 129 (1977). Once the existence of a sale is established., "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, ¶13. The affirmative burden rests with the opponent of using a reported sale price to demonstrate why it does not reflect the property's value. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997).

The minimal details of the subject sale are undisputed. None of the parties challenge that such sale was recent to the tax lien date. However, the property owner implicitly argued that the subject sale did not occur between parties acting at arm's-length because the seller may have fraudulently induced the property owner to overpay for the subject property. "[A]n arm's-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision,* 47 Ohio St.3d 23, 25 (1988).

We first consider whether the property owner was under duress to purchase the subject property. "The standard for duress is whether compelling circumstances lead to the parties consummating a transaction whose terms would likely be unacceptable to a typically motivated seller or buyer. *** A finding of duress lies within the province of the fact-finder, whose determination we will uphold as long as the record contains sufficient support." (Citations omitted.) *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 134 Ohio St.3d 529, 2012-Ohio-5680, ¶31. Here, there was no documentary or testimonial evidence submitted at the BOR to suggest that either party to the February 2013 transaction was compelled to sell or to buy the subject property or otherwise acted under duress.

We next consider whether the subject sale took place in an open market. In *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Mar. 23, 2010), BTA No. 2008-K-202, unreported, at 8, this board observed that "merely because a property is not listed on the open market, or is offered at a 'take it or leave it' selling price, *** does not, per se, mandate the rejection of a sale." Indeed, in *N. Royalton City*

School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶29, the Ohio Supreme Court held "[t]he case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers." Here, Mr. Qotaynah testified that he and his wife discovered the subject property after searching for investment properties through "Loopnet" (an online, commercial real-estate site) and other sources, and immediately called their realtor to begin the purchase process. As a result, we find that the subject property was sufficiently marketed.

We next consider whether the parties to the subject sale acted in their own self-interest. As an initial matter, the record is devoid of any evidence to demonstrate that the seller did not act in its own self-interest. The property owner primarily argued that the subject sale should be disregarded because the seller may have fraudulently induced the property owner to overpay for the subject property and because Mr. Qotaynah was a novice real-estate investor. While we sympathize with the property owner, such allegation is an insufficient basis to reject the subject sale. In *Old Village Ohana, LLC v. Franklin CO. Bd. of Revision* (Jan. 29, 2013), BTA No. 2010-Y-1551, unreported, we rejected the same argument. There, the property owner asserted that the seller fraudulently misrepresented the occupancy and rental rates received, to induce the property owner to overpay for the property at issue. We noted that "[w]hile it is suggested the appellant was fraudulently induced to acquire the property, we find the• evidence offered insufficient to accept such allegation as the basis for rejecting the sale." Id. at 5-6. Furthermore, 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. See, e.g., *Bd. of Edn. of the Huber Hts. City Schools v. Montgomery Cty. Bd. of Revision* (Sept. 1, 2006), BTA No. 2004-A-1210, unreported. We have explicitly held that a property owner's "failure to engage in greater due diligence does not equate to failure to act in his own self-interest." *Snodgrass v. Franklin Cty. Bd. of Revision* (July 26, 2016), BTA No. 2015-1924, unreported at 3. See also *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported at 11 ("A negotiated purchase price is not invalidated merely because a purchaser later believes he made a bad deal.")

We likewise reject the property owner's argument that defects of the subject property, i.e., the neighborhood in which it was located, require rejection of the subject sale. We note that there is no evidence to suggest that the character of the neighborhood changed between the sale and tax lien dates, which *may have* demonstrated some material change to the subject property. See, generally, *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Williamsburg Court Co., LLC v. Summit Cty. Bd. of Revision* (Mar. 30, 2010), BTA No. 2006-K-1717, unreported. Compare *Beechwood II, L.P. v. Clermont Co. Bd. of Revision,* 12th Dist. Clermont. No. CA2011-04-033, 2011-Ohio-5449. Furthermore, there was no evidence how the alleged defect impacted the value of the subject property. In *Gides v. Cuyahoga Cty. Bd. of Revision,* 8th Dist. Cuyahoga NO. 102649, 2015-Ohio-4385, the court noted "[t]here was no evidence or testimony submitted that established how those defects might have impacted the property value such that it warranted a *** reduction. Without such evidence, the list of defects are simply variables in search of an equation." Id. at ¶7.

At the BOR hearing, the property owner argued that the subject property's value should be reduced in order to give the property owner "some relief." 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 and must make value decisions based upon the evidentiary record before us. See, e.g., *HealthSouth Corp. v. Levin,* 121 Ohio St.3d 282, 2009-Ohio-584, ¶24 (quoting *Columbus S. Lumber Co. v. Peck,* 159 Ohio St. 564 (1953)).

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR]

transcript"). As such, we find that the BOE satisfied its evidentiary burden before the BOR when it submitted the general warranty deed, which demonstrated a recent, arm's-length sale of the subject property, and that the property owner failed to rebut any aspect of such sale.

It is therefore the order of this board that the subject property's true and taxable values as of January 1, 2015 are as follows:

TRUE VALUE

$600,000

TAXABLE VALUE

$210,000

OHIO BOARD OF TAX APPEALS

DH PARTNERS, LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-161

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DH PARTNERS, LLC
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Thursday, January 4, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The above-named appellant appeals a decision of the board of revision ("BOR"), which issued a decision that dismissed the underlying complaint for lack of standing under R.C. 5715.13 and 5715.19. The county appellees have now filed a motion to dismiss, which we construe as a motion to affirm the BOR's decision, to which the appellant responded. We proceed, therefore, to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the motion to affirm and associated response.

[2] A complaint was filed with the BOR, which requested that the value of the subject property, parcel 842-09-002, be reduced from its initially assessed value of $980,800 to $654,000 for tax year 2015. The complaint disclosed "DH Partners LLC" as the owner of the subject property, "Tax Detective LLC" as the non-owner complainant, and "Paul Euler" as the complainant's agent; Mr. Euler signed the complaint as "agent." Although the BOR scheduled the matter for a hearing, no one appeared on behalf of the property owner and, instead, several documents were submitted in support of the complaint. However, in its deliberations, the BOR focused on whether Tax Detective and/or Euler were authorized to file the complaint on behalf of the property owner. After scouring public records and discovering no evidence that either Tax Detective or Euler owned real property in the county, the BOR voted to dismiss the complaint for lack of standing and issued a written decision to that effect.

[3] Thereafter, an appeal was filed on behalf of the property owner. The notice of appeal is comprised of a letter from Euler, on Tax Detective LLC letterhead, which noted that the complaint was being resubmitted without the errors contained in the initial complaint, i.e., the identity of the complainant and Euler's relationship to the complainant were omitted, as well as additional documentation. No hearing was requested. As noted above, the county appellees subsequently filed a motion to affirm, which requested that we find that the BOR acted properly when it dismissed the complaint because both Tax Detective LLC and Euler lacked standing to file such complaint and, as an additional basis, because Tax Detective LLC and Euler engaged in the unauthorized practice of law when it filed the complaint on behalf of the property owner. John Gregor responded on behalf of the property owner, as an owner of the limited liability company, and asserted that he requested Tax Detective LLC and Euler to represent the property owner in the real property valuation process in Ohio because they represented him on such matters in Arizona. Gregor also argued that no one from the BOR alerted Tax Detective or Euler that such representation might be prohibited.

[4] In reviewing this matter, we are mindful that the burden is on a complainant to demonstrate standing to file a complaint. See, generally R.C. 5715.13 and 5715.19. See also *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd of Revision,* 86 Ohio St.3d 181 (1999). To have standing, a complainant must be identified by R.C. 5715.19(A) as one who may file a complaint. See *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd of Revision,* 137 Ohio St.3d 266, 2013-Ohio-4627; *Columbus City School Dist. Bd of Edn. v. Franklin Cty. Bd of Revision,* 134 Ohio St.3d 529, 2012-Ohio-5680. R.C. 5715.19(A) states that the following persons may file:

> "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 ***."

[5] Furthermore, on a separate but related basis, we have considered whether a complainant engages in the unauthorized practice of law by filing a complaint on behalf of a property owner. In *Menos v. Cuyahoga Cty. Bd of Revision* (Apr. 11, 2013), BTA No. 2012-Q-5127, unreported, we held that the Supreme Court's holdings permit those persons identified in R.C. 5715.19, whether or not licensed to practice law in Ohio, to file a valid complaint on behalf of an owner of real property. However, agents not identified in R.C. 5715.19(A) commit the unauthorized practice of law by filing a complaint on behalf of another, and by doing so, fail to properly invoke the jurisdiction of the BOR. *Sharon Village Ltd v. Licking Cty. Bd. of Revision,* 78 Ohio St.3d 479 (1997).

[6] Based upon our review of the record, we conclude that the BOR acted properly when it dismissed the underlying complaint in this matter. There is no indication that either Tax Detective LLC or Euler owned real property in Cuyahoga County or, otherwise, was one of the enumerated persons authorized to file complaints under R.C. 5715.19(A). Similarly, there is no indication that Tax Detective LLC and/or Euler was authorized to practice law in Ohio and, as a consequence, we must also conclude that Tax Detective and/or Euler engaged in the unauthorized practice of law when they filed the complaint on behalf of the property owner. See *Cleveland Metro. Bar Assn. v. Wallace,* 147 Ohio St.3d 338, 2016-Ohio-5603.

[7] Although we note that an attempt was made to amend the complaint, on appeal, so that it did not provide the identifying information, a complaint may only be amended in an effort to correct jurisdictional defects *prior* to the statutory filing deadline, i.e., March 31, 2016. See *Schetter v. Champaign Cty. Bd. of Revision* (Oct. 18, 2011), BTA No. 2009-K-1157, unreported; *Bd. of Edn. of the Cleveland Mun. School Dist. v. Cuyahoga Cty. Bd. of Revision* (May 25, 2007), BTA No. 2006-T-415, unreported. As such, Gregor's response to the motion, filed with this board, did not correct the jurisdictional issue of standing and unauthorized practice of law before the BOR. Accordingly, we find that the complaint failed to invoke the jurisdiction of the BOR and that the BOR acted properly when it dismissed the complaint.

[8] Based upon the foregoing, we affirm the BOR's decision to dismiss the underlying complaint in this matter.

OHIO BOARD OF TAX APPEALS

AKSHAR, LTD., (et. al.),

Appellant(s),

vs.

WYANDOT COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2092

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Represented by:
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Entered Thursday, January 4, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 06-192503.0000, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the transcript certified pursuant to R.C. 5717.01, the record of this board's hearing, and any written argument submitted by the parties.

The subject property was initially assessed at $1,512,020. On March 31, 2016, the property owner filed a complaint with the BOR, which requested that the subject property be revalued at $850,000. On April 25, 2016, the affected board of education ("BOE") filed a counter-complaint, which objected to the request.

On August 23, 2016, the BOR held a hearing on the matter, at which time both parties appeared, through counsel, to submit argument and/or evidence in support of their respective positions. As the hearing commenced, counsel for the property owner asserted that the property owner not only sought to challenge the subject property's value for tax year 2015, but also for tax years 2013 and 2014. Counsel proceeded to provide a history of the challenge of the subject property's value since tax year 2010, which included challenges before the BOR and this board. In doing so, counsel argued that this board's prior decision that valued the subject property at $610,000 for tax year 2010, *Akshar v. Wood Cty. Bd. of Revision* (May 2, 2014) BTA No. 2011-3725, unreported *("Akshar I")*, not only gave the BOR the authority to revalue the subject property's value for tax years 2013, 2014, and 2015, under continuing complaint jurisdiction, but also that the BOR was required to carry forward the $610,000 value into those years as well. Counsel cited to *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision,* 127 Ohio St.3d 44, 2010-Ohio-4468 and R.C. 5715.19(D) in support of his arguments. There was some discussion about the accuracy and/or interpretation of the information upon which counsel for the property owner relied regarding the subject property's value history. Counsel for the property owner conceded that although the statutory carryforward provision might not apply, continuing complaint jurisdiction did apply and requested a hearing under such provision, R.C. 5715.19(D). Samir Patel, a member of the property owner, also attended the hearing but did not testify.

Counsel for the BOE questioned whether the property owner had properly invoked continuing complaint jurisdiction and requested that the BOR retain the subject property's initially assessed value for tax year 2015 because the property owner had failed to submit evidence of the subject property's value for that year, i.e., the year for which the property owner had filed the underlying complaint. Counsel for the property owner conceded that the tax year 2015 complaint was filed in an effort to get the issue of the subject property's value for tax year 2013, 2014, and 2015 before. the BOR and amended the property owner's opinion of the subject property's value to $610,000 for tax year 2015. On September 27, 2016, the BOR issued a decision, which retained the subject property's initially assessed value and this appeal ensued on October 24, 2016.

On June 21, 2017, this board held a brief merit hearing, at which time the property owner, BOE, and county appellees appeared, through counsel, to submit additional argument and/or evidence in support of their respective positions. Counsel for the property owner essentially reiterated the arguments made before the BOR. Counsel for the county appellees argued that although continuing complaint jurisdiction may apply to this matter, this board's value decision in *Akshar I,* could not carryover into a new triennial period, i.e., tax years 2013, 2014, and 2015, because the county auditor was under the independent duty to revalue real property in the county for tax year 2013, i.e., the sexennial reappraisal. Counsel for the county appellees also argued that the property owner had never formally requested continuing complaint jurisdiction, by letter, to which counsel for the property owner responded that he "may still be able to file that letter ***." Hearing Record ("H.R.") at 8. Counsel for the BOE noted that the property owner was provided a refund for any overpayment of property taxes for tax years 2010, 2011, and 2012. Subsequent to the hearing, the property owner submitted written argument to further argue its position.

Before we consider the merits of this appeal, we note that the county appellees supplemented the record to provide a corrected DTE-Form 3 and an updated property record card.

R.C. 5715.19(C) provides in relevant part that "*** [t]he board of revision shall hear and render its decision on the complaint within ninety days after the filing thereof with the board ***." Further, R.C. 5715.19(D) contains a continuing-complaint provision, and its "operation is triggered when the BOR does not issue a decision within the time frame set forth in R.C. 5715.19(C)." *AERC Saw Mill Village v. Franklin Cty. Bd. of Revision,* 127 Ohio St.3d 44, 2010-Ohio-4468, at ¶12. "Once the continuing-complaint provision has been triggered, the original complaint *** continues as a valid complaint through the year in which the final decision, by the board of revision or on appeal, is rendered in the proceedings on that complaint. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio

St. 3d 305, 307, ***." Id. See also *1495 Jaeger L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 132 Ohio St.3d 222, 2012-Ohio-2680, at ¶10.

However, pursuant to R.C. 5715.19(D), a board of revision's continuing complaint jurisdiction is not without limits and the filing of a subsequent complaint for a subsequent year terminates the continuation of the prior complaint. See, *Fogg-Akron Assocs., L.P. v. Summit County Bd. of Revision,* 124 Ohio St. 3d 112, 114, 2009-Ohio-6412; *Cincinnati Sch. Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 74 Ohio St.3d 639, 643 (1996). In *AERC Saw Mill,* supra, the court held that "[t]he carryover provision of R.C. 5715.19(D) should be read in pari material with the statutes that require the auditor to reappraise and update the valuation of real property." Id. at ¶14. After an exhaustive review of prior case law, the court held that "the carryover provision operates with full force only when the auditor is not under a separate statutory duty to adjust the value assigned to the property." Id. at ¶31.

As we consider this matter, it is relevant to note that tax year 2013 was the year of a sexennial update in Wyandot County. Upon review, we disagree with the property owner's argument that the BOR had continuing complaint jurisdiction over tax year 2013. As previously noted, this board issued its decision, which determined the subject property's value for tax year.2010 (and presumably any ensuing tax years within the triennial period for which no complaint had been filed), in May 2014. As such, the property owner had until December 31, 2014 to request that the BOR conduct proceedings regarding the subject property's value for tax year 2013 under continuing complaint jurisdiction. See *MDM Holdings, LLC v. Cuyahoga Cty. Bd. of Revision* (June 2, 2015), BTA No. 2015-60, pending on appeal, S.Ct. No. 2015-1065. The property owner did not make the request for continuing complaint jurisdiction until it orally raised the issue at the BOR's hearing on August 23, 2016, more than nineteen months after the outer deadline to make such request.

Furthermore, at the time this board issued its decision in *Akshar I* in May 2014, tax year 2014 was still open to future challenge, i.e., a complaint could have been (and should have been) filed prior to March 31, 2015 pursuant to R.C. 5715.19(A). Although Justice Pfeifer noted in his concurrence in *1495 Jaeger,* supra, that "because there is no need to file a fresh complaint for the later years, the usual deadline of March 31 in the ensuing year does not apply," Id. at ¶28 (Pfeifer, J., concurring), we find that this exception applies only to those years for which a timely complaint was not and can no longer be timely filed. We acknowledge that the statute does not definitively set forth a deadline for invoking jurisdiction under R.C. 5715.19(D). The statutory provisions and case law indicate, however, that, when the original complaint is finally decided prior to the deadline for filing a complaint for the tax year sought, i.e., 2014, to now be challenged through continuing complaint jurisdiction, such jurisdiction must be invoked for that year prior to March 31 of the ensuing year. In a similar matter, we held that "[t]o find otherwise would produce the absurd result of the year in which a complaint is finally decided pursuant to R.C. 5715.19(D) being left open to challenge in perpetuity." *Life Path Partners, Ltd. v. Cuyahoga Cty. Bd. of Revision* (Apr. 17, 2015), BTA No. 2015-39, unreported at 3, appeal pending, S.Ct. No 2015-0759. See also *Novita Industries, LLC v. Lorain Cty. Bd. of Revision* (Nov. 30, 2015), BTA Nos. 2014-4243 et al., unreported, appeal pending S.Ct. No. 2015-2073. Therefore, for the BOR to have jurisdiction over tax year 2014, a proper complaint needed to be filed for that tax year after creation of the tax duplicate for that year and March 31 of the following year. See *Mr. Gasket Co. v. Cuyahoga Cty. Bd. of Revision* (May 12, 1995), BTA No. 1994-B-785, unreported. Because the property owner failed to file a complaint that challenged the subject property's value for tax year 2014, the BOR lacked jurisdiction to redetermine the subject property's value for that year and, likewise, this board does as well.

We also disagree with the property owner's contention that the carryover provision required the BOR and/or this board to carryover our decision that valued the subject property for tax year 2010 into years within a new triennial period, especially when the county auditor conducted the statutorily required sexennial reappraisal in 2013. See, *AERC Saw Mill,* supra; *Bd. of Edn. of the Columbus City Schoos. v.*

Franklin Cty. Bd. of Revision (Jul. 20, 2015), BTA No. 2014-3114, unreported, appeal pending S.Ct. No. 2015-1366. See, also *Apple Group Ltd. v. Medina County Bd. of Revision,* 139 Ohio St. 3d 434, 2014-Ohio-2381, at ¶29 ("Moreover, recognizing that the BTA may exercise discretion under the

continuing-complaint provision is consistent with the case law applying the carryover provision, which has acknowledged the BTA's jurisdiction over the ensuing years within the same triennium, but which to date has not extended that jurisdiction beyond the triennium.").

Because we conclude that the BOR did not have continuing complaint jurisdiction over tax years 2013 and 2014, we proceed to consider the merits of this appeal over the only year for which the BOR and this board have jurisdiction, i.e., tax year 2015.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). "However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

A review of the record demonstrates that the subject property transferred to the property owner for $610,000 in April 2010. We do not find the transaction to be a reliable indicator of the subject property's value because the transaction was too remote to the tax lien date. The Supreme Court has made it clear that no "bright line" test exists when establishing recency and that the mere passage of time does not, per se, render a sale unreliable. See, e.g., *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059. However, in *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588, the Supreme 'Court held "that a sale that occurred more than 24 months before the lien date and that is reflected in the property record maintained by the county auditor or fiscal officer should not be presumed to be recent when a different value has been determined for that lien date as part of the six-year reappraisal. Instead, the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property has not changed between the sale date and the lien date." Id. at ¶26. Here, the $610,000 sale occurred more than 32 months *before* the county auditor was under the statutory obligation to revalue real property in the county as part of the sexennial reappraisal for tax year 2013 (and the remaining tax years in the triennial period) and more than 56 months *before* the tax lien date of January 1, 2015. Because the property owner failed to come forward with any evidence regarding market conditions between the sale and tax lien dates, specifically that market conditions remained unchanged, and/or the character of the subject property, specifically that its character remained unchanged, we are constrained to find that the property owner failed to rebut the presumption that the $610,000 sale in April 2010 was too remote to the tax lien date and, therefore, not the best indication of the subject property's value.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we conclude that the BOR lacked jurisdiction to consider the subject property's value for tax years 2013 and 2014 under continuing complaint jurisdiction and that the statutorily required sexennial reappraisal precluded the BOR from carrying over this board's determination of the subject property's value for tax year 2010. We further conclude that the property owner failed to provide any evidence, much less competent and probative evidence, of the subject property's value for tax year 2015. As such, we find that the property owner failed to satisfy the evidentiary burden before the BOR and this board.

It is, therefore, the order of this board that the subject property's true and taxable values as of January 1, 2015 are as follows:

TRUE VALUE

$1,512,000

TAXABLE VALUE

$529,200

OHIO BOARD OF TAX APPEALS

FIRST CLASS APPRAISALS LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2112

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FIRST CLASS APPRAISALS LLC
Represented by:
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FIRST CLASS APPRAISALS
1284 SOM CENTER RD.
SUITE 176
MAYFIELD HTS., OH 44124

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, January 5, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that ."[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MERLIN G. AND CHERRIE R. WILLIAMS, (et. al.),	CASE NO(S). 2017-1865
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - MERLIN G. AND CHERRIE R. WILLIAMS
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For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
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STARK COUNTY
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CANTON, OH 44702-1413

Entered Friday, January 5, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with this board or with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

BRANDY C. FOWARD, (et. al.),	CASE NO(S). 2017-816
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - BRANDY C. FOWARD
Represented by: BRANDY FOWARD 5898 HILLARY ST.
TROTWOOD, OH 45426

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
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DAYTON, OH 45422

Entered Tuesday, January 9, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel H33 01715 0007, for tax year 2016. We proceed to consider this matter based upon the notice of appeal and the transcript certified pursuant to R.C. 5717.01.

The subject property was initially assessed at $103,730. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $77,000 based upon the price at which the subject property transferred in November 2016. The BOR held a hearing on the matter at which time the property owner testified about the circumstances of her $77,000 purchase of the subject property from the Secretary of Veterans Affairs (more commonly referred to as "VA") in November 2016. The property owner submitted comparable sales data, as well as an appraisal report performed contemporaneous with the subject sale, which valued the subject property at $77,000 as of October 2016, in support of her arguments. The BOR determined the transfers of real property from the VA were not arm's-length transfers and rejected the subject sale. At the BOR decision hearing, the BOR members noted that it did not consider the subject sale to be an arm's-length transaction because, generally, such sales occur under duress. They also noted that they searched listings of the local board of realtors and discovered two sales of similar properties in the same vicinity as the subject property that sold for higher prices. The BOR subsequently issued a written decision that was consistent with its oral vote and this appeal ensued.

Although the property owner had an opportunity to request a hearing before this board, in order to

supplement the record with additional evidence, she opted not to do so. Instead, she submitted additional documentation in support of her requested valuation. Because these documents were submitted outside the hearing context, they will not be part of our analysis and we restrict our consideration to only that evidence offered at the BOR hearing. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13 (1996).

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

In this matter, the details of the November 2016 transaction are undisputed. R.C. 5713.04 specifically provides that "[t]he price for which *** real property would sell at auction or forced sale shall not be taken as the criterion of its value." This board has previously determined that transfers of real property from the VA are "forced" sales within the meaning of R.C. 5713.04. See *Authorized Properties LLC v. Montgomery Cty. Bd. of Revision* (June 20, 2013), BTA Nos. 2012-L-3001, et seq., unreported; *Falknor v. Montgomery Cty. Bd. of Revision* (Nov. 20, 2012), BTA Nos. 2011-Y-931, 1359, unreported; *Charm of Cleveland, LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 6, 2012), BTA Nos. 2010-Q-500, 501, unreported; *Blocksom v. Columbiana Cty. Bd. of Revision* (Apr. 29, 1994), 93-H-609 and 93-M-795, unreported. See, also *Blocksom v. Columbiana Cty. Bd. of Revision* (Apr. 29, 1994), 93-H-609 and 93-M-795, unreported ("The Veterans Administration as guarantor of the loan received the property under duress upon foreclosure and sought only to recover the amount of its loan."). However, in *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723), the court held that "when the underlying transaction is an auction or forced sale, the proponent of the sale price bears a heavier burden. *** Accordingly, we likewise adjust the typical burdens of proof with regard to sale prices. Namely, the opponent of a sale price has a very light burden to establish that a transaction was on its face an auction or forced sale. Once that threshold has crossed, then the proponent of the sale price bears the burden to prove that the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value." Id. at ¶43. See, also *Schwartz v. Cuyahoga Cty. Bd. of Revision,* 143 Ohio St.3d 496, 2015-Ohio-3431.

Here, we conclude that the county appellees have satisfied the burden to establish that the subject sale was a forced sale. We now turn to the property owner's heavier burden to demonstrate that the VA sale was an arm's-length transaction between typically motivated parties. The property owner testified that she discovered the subject property while searching for homes on the Internet and was listed for $77,000. As such, find that the property owner has successfully demonstrated that the subject sale occurred between typically motivated parties. We further find that the financing appraisal report performed contemporaneous with the subject sale supports such a finding. See *Emerson v. Erie Cty. Bd. of Revision,* 149 Ohio St.3d 148, 2017-Ohio-865.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd of Edn.*, supra, at 15 (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). Absent an affirmative demonstration that the subject sale was not a recent, arm's-length transaction, we find that such sale is the best indication of the subject property's value. It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2016, are as follows:

TRUE VALUE

$77,000

TAXABLE VALUE

$26,950

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-336
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CUYAHOGA COUNTY
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CLEVELAND, OH 44113

SYNERGETIC INVESTMENTS, LLC
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CLEVELAND, OH 44111

Entered Tuesday, January 9, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 018-15-002, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the BOE' s written argument.

[2] The subject's total true value was initially assessed at $112,200. The BOE filed an original complaint with the BOR seeking an increase in value to $210,000. At the BOR hearing, the BOE asserted that the value should be increased for tax year 2015 based on a June 2012 sale, providing documentary evidence of the transaction. The BOE also amended its request to $160,000, citing to an agreement made among the parties for tax year

2012 due to the inclusion of equipment in the reported sale price. The appellee property owner, Synergetic Investments, LLC ("Synergetic"), disputed the BOE's argument that the property's value should be increased based on the sale, noting that the fiscal officer considered the subject's value during the 2015 triennial update and chose to disregard the sale. The BOR issued a decision maintaining the initially assessed valuation, indicating that the sale was too remote frpm the tax lien date and no additional evidence was provided. From this decision, the BOE filed the present appeal.

[3] Only the property owner appeared at the hearing before this board, asserting that the BOE had failed to present sufficient evidence to support a reduction in value, noting that both the fiscal officer and the BOR had rejected the sale to establish the subject's value for tax year 2015. Although it waived the opportunity to appear before this board, the BOE filed written argument in support of its requested adjustment to value. The BOE claimed that a June 2012 sale of the subject property provides the best evidence of the subject's value, and that Synergetic has failed to rebut the utility of the sale.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). 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. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. When a party successfully challenges the reliability of the sale, the burden again shifts to the proponent of the sale to show that it should nevertheless be regarded as the best evidence of the property's value. *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075. Additionally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[5] In the present appeal, it is undisputed that Synergetic purchased the subject property in June 2012, and none of the parties has challenged the arm's-length nature of the sale. The recency of the sale, however, has been contested. Although there is no "bright line" test as to when a sale becomes too remote to be a reliable indication of value, as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property has not changed between the sale date and lien date." *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588, ¶26. In *Akron,* the court held that when a sale occurs more than 24 months before tax-lien date, it should not be presumed to be "recent" when different value has been determined for that lien date as part of six-year reappraisal. The BOE argues that this holding does not apply to the facts of the instant appeal because the 2015 revaluation was a triennial update and *Akron* is limited only to the rejection of a sale during the sexennial reappraisal. We disagree.

[6] In reaching its decision in *Akron,* supra, the court discussed the fiscal officer's duties pursuant to Ohio Adm.Code 5703-25-06:

> "In conducting the reappraisal, the sale price should be used if the sale was 'within a reasonable length of time, either before or after the tax lien date.' Ohio Adm.Code 5703-25-06(F). On the other hand, the fiscal officer also has the duty, 'when practicable, [to] increase or decrease the taxable valuation of parcels in accordance with actual changes in valuation of real property which occur in different subdivisions, neighborhoods, or among classes of real property in the county.' Ohio Adm.Code 5703-25-06(E). In other words, the fiscal officer must conduct a reappraisal that considers all relevant factors in determining the current value of the property." Id. at ¶24.

The court further emphasized that absent a showing to the contrary, "the fiscal officer is presumed to carry out his statutorily prescribed duties in good faith and in the exercise of good judgment." Id. Notably, these Administrative Code sections apply equally to the fiscal officer's duties during the triennial update. Thus, we see no reason why the court's holding would not apply equally to a sale occurring more than 24 months from the tax lien date that was disregarded by the fiscal officer during the triennial update.

[7] In the present appeal, the sale took place more than 24 months before January 1, 2015, the relevant tax lien date for the first year of the new triennial. Additionally, the fiscal officer presumably considered and rejected this sale in performing his statutory duty for tax year 2015, the first year following the triennial update. As such, in this case, the BOE was required to present additional evidence to show that the sale was indeed recent to the tax lien date, but failed to do so. Accordingly, we find that the transfer does not furnish a reliable basis to reduce the subject's value.

[8] To the extent that the BOE would contend that the value following the 2012 complaint, which was based on the June 2012 sale, should form the basis for the 2015 values, we likewise reject this argument. The Ohio Supreme Court has consistently rejected the argument that a property's valuation from one tax year, resulting from either an agreement among the affected parties or a finding by a tribunal, is competent and probative evidence of value for another tax year. *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 29 (1997); *TBC Westlake, Inc. v. Hamilton Cty. Bd. of Revision,* 81 Ohio St.3d 58 (1998); *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 122 Ohio St.3d 134, 2009-Ohio-2461, ¶20-21. Indeed, the court stated in *Fogg-Akron Assoc., L.P. v. Summit Cty. Bd. of Revision,* 124 Ohio St.3d 112, 2009-Ohio-6412, ¶15, that "when determining the true value of real property for the current tax year, the assessor should not accord presumptive or prima facie validity to an earlier year's valuation."

[9] Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision,* 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

[10] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$112,200

TAXABLE VALUE

$39,270

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2049
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Tuesday, January 9, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the Franklin County Board of Revision ("BOR") which determined the value of the subject property, parcel number 010-008500-00, for tax year 2015. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written arguments.

[2] The auditor initially valued the subject property at $1,930,000 for tax year 2015. The appellee property owner filed a complaint against the valuation of the property, requesting a decrease in value to $500,000 based on its purchase for that amount in December 2015. The BOE filed a countercomplaint in support of

the auditor's valuation. At the BOR hearing, the owner presented the testimony of Mo Dion, officer of the ownership entity and an experienced real estate developer, and the settlement statement and purchase contract as evidence of the sale and its terms. Mr. Dion testified that he was personally involved in negotiating the transfer in December 2015 of only the land on the subject property. He explained that the improvements on the property had previously been used by Roxane Laboratories as a pharmaceutical laboratory, and had been vacant due to environmental contamination. The December 2015 land-only sale was contingent upon the seller, Boehringer Ingleheim Roxane Inc., demolishing the improvements and conducting any needed environmental clean-up prior to the transfer. Mr. Dion testified that he had been informed by the seller that the cost to demolish the property was approximately $2,000,000, though the BOE objected to the testimony as hearsay. Because the property substantially changed between tax lien date, i.e., January 1, 2015, and the date of the land-only sale, i.e., December 23, 2015, the BOE argued that the sale was not indicative of the property's value as it existed on tax lien date. Upon consideration of the evidence presented, the BOR found the December 2015 sale to be a recent, arm's-length transaction, and decreased the value of the property to $500,000, allocating $28,000 to the improvements. S.T., Property Record Card. Though the record is unclear as to the reason, one day later, the BOR issued a second decision valuing the property at $500,400.

[3] The BOE thereafter appealed to this board. At this board's hearing, Mr. Dion again testified in response to questions from this board's attorney examiner. Both the BOE and property owner made legal arguments at the hearing, and by way of briefs after the hearing.

[4] "When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2000). While this board has a duty to independently determine the value of real property, eschewing a presumption of validity to a decision of a board of revision, *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-5823, we are also cognizant that the BOR's value, rather than the auditor's, serves as the "default value" on appeal in certain circumstances. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025 *("Union Savings Bank").*

[5] The BOE argues on appeal that the BOR improperly relied on a remote sale price to value the property as of January 1, 2015. Because the improvements on the property were demolished prior to the sale, and the sale was of the land only, the BOE argues that the $500,000 sale price is not indicative of the value of the property as it existed on tax lien date, i.e., with all improvements. See *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473. However, there is substantial evidence in the record that the condition of the improvements on the property had a negative impact on the property's value on tax lien date. Indeed, the purchase contract submitted by the owner contains specific language requiring the seller to demolish the improvements before closing could take place. S.T., Purchase Contract at Section 5, Exhibit B. Moreover, Mr. Dion testified that the appellee owner would not have purchased the property with the improvements in place, and that the value of the property was solely in the land.

[6] Upon review of the record, we find that the owner presented sufficient evidence to negate the auditor's initial valuation of the property at $1,930,000. While reliance on the sale price might not be appropriate in other circumstances, here we have sufficient testimony and evidence that the condition of the improvements on the property were such that they had little if any value, even on tax lien date. As the court explained in *Union Savings Bank,* supra, at ¶7, "as long as the evidence of value that the owner presented to the board of revision was competent and at least minimally plausible, the board of education may not invoke the auditor's original valuation as a default — with the result that it is not enough for the board of education at the BTA to find fault with the evidence that the owner presented before the board of revision." In the absence of any other evidence, we find that the owner's evidence negated the auditor's

initial valuation and the BOR's reduction was sufficiently supported. It is therefore the order of the board that the value of the subject property on January 1, 2015, was as follows:

TRUE VALUE

$500,000

TAXABLE VALUE

$175,000

It is the order of the Board of Tax Appeals that the subject property be assessed in accordance with this decision and order.

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-392
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Tuesday, January 9, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property for tax years 2014 and 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written argument.

The subject property consists of approximately 101 residential units ranging from one- to three-bedrooms on 18 separate parcels scattered throughout areas to the north (Weinland Park) and west (Franklinton) of

downtown Columbus. These parcels operate together as a single economic unit, providing affordable housing to its residents in exchange for low income housing tax credits ("LIHTC") and Section 8

tenant-based assistance subsidies from the Department of Housing and Urban Development ("HUD") as a result of a Housing Assistance Payments ("HAP") contract. The subject's total true value was initially assessed at $4,443,500. The appellee property owner, Network Restorations I LLC ("NR") filed a decrease complaint with the BOR seeking a reduction in value to $2,310,000. The BOE filed a countercomplaint seeking to maintain the auditor's values.

At the BOR hearing, NR presented the testimony and written report of appraiser Donald E. Miller II, MAI. Miller determined that the highest and best use of the property is "affordable residential," and indicated that because the property is encumbered by LIHTC restrictions, he relied exclusively on the income capitalization approach to value. Miller further stated that in order to remove the effect of the property's HAP subsidies, he developed his opinion based on the hypothetical condition that the subject operates solely as a LIHTC-restricted property. In order to achieve this, Miller looked at the rents of ten properties he considered comparable to the subject to determine a "LIHTC market rent" based on the number of bedrooms in each unit. Miller then multiplied the rent he determined was appropriate for each unit type by the number of that type of units, and reduced that amount by 5% to account for vacancy and credit loss. After adding $69 per unit to account for other income, Miller concluded to an effective gross income ("EGI") of $6,731 per unit ($679,797 total). Miller then deducted expenses of $3,982 per unit ($402,166 total) to derive a net operating income ("NOI") of $2,749 per unit ($277,631 total). Miller applied a capitalization rate of 8.5% plus 2.71% tax additur (11.21% total), for an indicated value of $2,480,000 (rounded). From this number, Miller deducted $30,839 as the value attributable to personal property, for a rounded value of $2,450,000 attributable to the subject real property. The BOE cross-examined Miller, but did not provide any independent evidence of value. The BOR also incorporated the record for proceedings in BOR No. 14-2372, which involved another Miller appraisal with similar methodology for another scattered-site LIHTC property. Following the hearing, the BOR issued a decision accepting Miller's appraisal and reducing the subject's value to $2,450,000. From this decision, the BOE filed the present appeal.

A hearing was convened before this board, at which the BOE offered the testimony and written report of appraiser Thomas D. Sprout, MAI, who determined that the highest and best use of the property is for "two, three, and four family units, some of which would be government sponsored." Like Miller, Sprout also relied solely on the income approach and considered the subject's restricted rents in his analysis, but unlike Miller, he did not do an independent market rent or vacancy analysis to estimate the subject's EGI. Instead, Sprout stated that such analyses were not necessary for credible results because HUD completes a rent study to determine market rent for the subject units. Sprout further indicated that he used the subject's actual income and expense data that was provided by the property owner's independent accountant's financial report. After considering the actual income for 2009 through 2014, Sprout concluded to a stabilized EGI of $940,611, consistent with the subject's actual experience in 2013. Sprout then reduced this number by expenses of $521,680 (roughly $5,165 per unit), for a NOI of $418,931. Sprout capitalized the NOI at a rate of 7.5% plus 2.83% tax additur (10.33% total), for an indicated value of $4,055,000 (rounded). Sprout reduced this amount by $30,000 to account for the value of furniture, fixtures, and equipment, resulting in $4,025,000 attributable to the value of the subject real property.

NR again offered testimony from Miller, who provided a memorandum purported to discuss the attitudes of market participants, his understanding of relevant case law,' and his appraisal methodology. Miller stated that although HUD publishes restricted rent levels, it is fairly common that LIHTC properties without subsidies are unable to achieve those maximum rents because of the competitive environment in which they operate. In his memorandum, he included a survey of six market rate (conventional) multifamily residential complexes, concluding that there was no discernable difference between the LIHTC and conventional rents for the units. Miller further asserted that this data supported his conclusion that the subject's subsidized rents exceeded market rents and the amount that it could obtain without the subsidies.

Before we reach the merits of the instant appeal, we first must address the argument raised by the BOE regarding the BOR's decision for tax year 2015, which was issued on February 9, 2016. This board has

repeatedly admonished the Franklin County BOR not to exercise jurisdiction over a year for which a complaint may be filed, since such a filing would render the earlier decision for the "open tax year" null and void. See, e.g., *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 10, 2016), BTA No. 2015-449, unreported; *Big Walnut Apartments, LLC v. Franklin Cty. Bd. of Revision(Nov.* 6, 2012), BTA No. 2012-K-767, unreported; *GnA Properties, LLC v. Franklin Cty. Bd. of Revision(May* 29, 2012), BTA No. 2012-K-688, unreported. In the instant appeal, it was again improper for the BOR to issue decisions on tax year 2015. Accordingly, we hereby remand tax year 2015 to the BOR with instructions to vacate its February 2016 decision for tax year 2015.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964). This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. Furthermore, this board must perform an independent valuation of the property. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 147 Ohio St.3d 409, 2016-Ohio-7381

At the outset, we reject the BOE's argument that Miller appraisal used an improper valuation method. The BOE asserts that an appraiser must utilize a property's actual income to calculate gross potential income during the valuation of a LIHTC property, citing to *Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision,* 121 Ohio St.3d 175, 2009-Ohio-762. This argument was expressly rejected in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-2734 *("Network Restorations"),* where the court held that *Woda* does not require an actual-rent income approach.

In *Network Restorations,* the court clarified its holding in *Woda* and commented that the valuation of government-subsidized low-income housing presents a problem in the application of the principle that a property's market value is the price at which it would sell among "'typically motivated market participants' who are acting 'in their own self-interest.' Id. at ¶14, citing *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 1, 2014-Ohio-853, ¶31, citing International Association of Assessing Officers, Property Assessment Valuation 17-19 (2d Ed.1996). The court observed that "when government subsidies (including income tax credits, which help finance construction and renovation, and rent subsidies, which help tenants pay the restricted rent) are involved, the circumstances attending the use of the property are not typical of the real-estate market generally. Additionally, a question arises as to which benefits associated with owning the real estate and running the housing complex count as real-estate value." Id. at ¶15. To address these issues, the court discussed three general rules derived from case law for valuing low-income housing:

> "The first rule is that in applying the income approach, market rents and expenses, as opposed to the actual rents of the properties at issue, are used. *Delhi Estates, Ltd. v. Hamilton Cty. Bd. of Revision,* 68 Ohio St.3d 192, 194, *** (1994). *** The second rule is a corollary to the first. The case law establishes that in valuing low-income housing using an income approach, government subsidies should not be taken into account in a way that would increase the value of the property. *** Finally, the case law disfavors a cost approach for valuing government-subsidized low-income housing, even for a newly constructed property." Id. at 11116-18.

The court again emphasized the importance of an appraisers "highest and best use" determination as the basis for the data utilized, which is consistent with the valuation of any property based on appraisal evidence, regardless of its present use. In *Woda,* supra, the court held that this board "erred by failing to consider the federally mandated use restrictions imposed in connection with the LIHTC. That erroneous exclusion led the BTA to reject the appraiser's highest-and-best-use determination, and as a result, the BTA reverted to the county's cost-based valuation." Id. at ¶5. This emphasis on the importance of the appraiser's highest and best analysis is not unique to low-income or government-subsidized properties and is at the core of all appraisals. The court has held that while "present use generally cannot be the only measure of value, in a proper case it may be considered in determining true value for tax purposes." *Johnston Coca-Cola Bottling Co., Inc. v. Hamilton Cty. Bd. of Revision,* 149 Ohio St.3d 155, 2017-Ohio-870, ¶14. For instance, an appraiser's highest and best use forms the basis for his or her choice of comparable properties, with adjustments made based on his or her professional judgment. See *NWD 300 Spring, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-7579. As such, a property's present use, which is contemplated in an appraiser's highest and best use analysis, is properly considered in the context of deciding which comparables are more analogous to a property. *Johnston Coca-Cola,* supra, at ¶16. This likewise holds true for the rental comparables chosen for the valuation of a restricted-rent property.

In the present appeal, Sprout considered the subject's actual income and expenses in his analysis. Though the court held that this approach is not *required* for low-income properties, it may potentially be appropriate where an appraiser has adequately reviewed market data for the relevant time period and determined that the subject's actual experience reflect the market. See, e.g., *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 148 Ohio St.3d 499, 2016-Ohio-7466, ¶23. Sprout indicated that the property's actual income is based on the HUD rent study, and therefore comports with relevant conditions within the low-income government-subsidized housing market. The Miller memorandum offered at the hearing, however, includes data regarding the rental rates achieved by similar conventional properties. We find that through this memorandum, Miller has shown that despite the restrictions in place, the rents received by the subject exceed conventional market rents. As such, Miller has demonstrated that the HUD subsidies received in addition to the LIHTC rents are an affirmative benefit to the subject property. Thus, utilization of the subject's actual income would be a violation of the court's holding in *Alliance Towers,* supra, which prohibits the consideration of any affirmative benefit from government subsidies. Accordingly, we find that by relying upon the subject's actual income, Sprout's appraisal takes into account the affirmative benefit of HUD subsidies and, therefore, overstates the value of the subject property. See *Network Restorations,* supra, at ¶17; *Woda,* supra, at ¶29, citing *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision,* 37 Ohio St.3d 16 (1988). Consequently, we find that Miller's appraisal best reflects the value of the subject real property as of the tax lien date because his methodology properly takes into account the use restrictions in place while it excludes the affirmative benefit of the subsidies.

Finally, because there has been no challenge to the propriety of the BOR's allocation of Miller's appraisal value, and we adopt those values determined by the BOR.

As discussed above, the BOR was not authorized to issue its decision for 2015 because it was an open year at the time the letter was mailed to the parties. As such, this board is without jurisdiction to consider that tax year. We note, however, that there is nothing disclosed in the record that would prevent the value determination for tax year 2014 from carrying forward into subsequent years. See *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision,* 127 Ohio St.3d 44, 2010-Ohio-4468.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2014, were as follows:

PARCEL NUMBER 010-000935-00

TRUE VALUE $217,600

TAXABLE VALUE $76,160

PARCEL NUMBER 010-007435-80

TRUE VALUE $253,000

TAXABLE VALUE $88,550

PARCEL NUMBER 010-007435-90

TRUE VALUE $122,500

TAXABLE VALUE $42,880

PARCEL NUMBER 010-007691-00

TRUE VALUE $78,900

TAXABLE VALUE $27,620

PARCEL NUMBER 010-009519-80

TRUE VALUE $4,300

TAXABLE VALUE $1,510

PARCEL NUMBER 010-009519-90

TRUE VALUE $31,600

TAXABLE VALUE $11,060

PARCEL NUMBER 010-012037-00

TRUE VALUE $178,400

TAXABLE VALUE $62,440

TRUE VALUE $293,700
TAXABLE VALUE $102,800

PARCEL NUMBER 010-028015-80

TRUE VALUE $193,200

TAXABLE VALUE $67,620

PARCEL NUMBER 010-028015-90

TRUE VALUE $29,400

TAXABLE VALUE $10,290

PARCEL NUMBER 010-037020-00

TRUE VALUE $198,500

TAXABLE VALUE $69,480

PARCEL NUMBER 010-037259-80

TRUE VALUE $72,900

TAXABLE VALUE $25,520

PARCEL NUMBER 010-037259-90

TRUE VALUE $40,000

TAXABLE VALUE $14,000

PARCEL NUMBER 010-041087-00

TRUE VALUE $332,200

TAXABLE VALUE $116,270

PARCEL NUMBER 010-041520-80

TRUE VALUE $3,900

TAXABLE VALUE $1,370

PARCEL NUMBER 010-041520-90

TRUE VALUE $28,800

TAXABLE VALUE $10,080

PARCEL NUMBER 010-042676-00

TRUE VALUE $79,400

TAXABLE VALUE $27,790

PARCEL NUMBER 010-042677-00

TRUE VALUE $50,600

TAXABLE VALUE $17,710

PARCEL NUMBER 010-045220-00

TRUE VALUE $55,400

TAXABLE VALUE $19,390

PARCEL NUMBER 010-045221-00

TRUE VALUE $36,600

TAXABLE VALUE $12,810

PARCEL NUMBER 010-045574-00

TRUE VALUE $1,900

TAXABLE VALUE $670

PARCEL NUMBER 010-045827-00

TRUE VALUE $1,700

TAXABLE VALUE $600

PARCEL NUMBER 010-054965-80

TRUE VALUE $91,600

TAXABLE VALUE $32,060

PARCEL NUMBER 010-054965-90

TRUE VALUE $53,900

TAXABLE VALUE $18,870

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-391
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Tuesday, January 9, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property for tax years 2014 and 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written argument.

The subject property consists of approximately 331 residential units on 53 parcels scattered throughout areas to the north (Weinland Park, Italian Village and Victorian Village neighborhoods) and east (Olde Towne East and Franklin Park) of downtown Columbus. The units range from one- to four-bedrooms, and the

buildings range from two units per building to 56 units per building. These parcels operate together as a single economic unit, providing affordable housing to its residents in exchange for low income housing tax credits ("LIHTC") and Section 8 tenant-based assistance subsidies from the Department of Housing and Urban Development ("HUD") as a result of a Housing Assistance Payments ("HAP") contract. The subject's total true value was initially assessed at $14,493,300. The appellee property owner, Community Properties Revitalization I LLC ("Community Properties") filed a decrease complaint with the BOR seeking a reduction in value to $5,780,000. The BOE filed a countercomplaint seeking to maintain the auditor's values.

At the BOR hearing, Community Properties presented the testimony and written report of appraiser Donald E. Miller II, MAI. Miller determined that the highest and best use of the property is "affordable residential," and indicated that because the property is encumbered by LIHTC restrictions, he relied exclusively on the income capitalization approach to value. Miller further stated that in order to remove the effect of the property's HAP subsidies, he developed his opinion based on the hypothetical condition that the subject operates solely as a LIHTC-restricted property. In order to achieve this, Miller looked at the rents of ten properties he considered comparable to the subject to determine a "LIHTC market rent" based on the number of bedrooms in each unit. Miller then multiplied the rent he determined was appropriate for each unit type by the number of that type of units, and reduced that amount by 5% to account for vacancy and credit loss. After adding $70 per unit to account for other income, Miller concluded to an effective gross income ("EGI") of $6,767 per unit ($2,239,900 total). Miller then deducted expenses of $4,532 per unit ($1,500,100 total) to derive a net operating income ("NOI") of $2,235 per unit ($739,800 total). Miller applied a capitalization rate of 8.5% plus 2.75% tax additur (11.25% total), for an indicated value of $6,580,000 (rounded). From this number, Miller deducted $221,502 as the value attributable to personal property, for a rounded value of $6,360,000 attributable to the subject real property. The BOE cross-examined Miller, but did not provide any independent evidence of value. The BOR also incorporated the record for proceedings in BOR No. 14-2349, which involved another Miller appraisal with similar methodology for another scattered-site LIHTC property. Following the hearing, the BOR issued a decision accepting Miller's appraisal and reducing the subject's value to $6,360,000. From this decision, the BOE filed the present appeal.

A hearing was convened before this board, at which the BOE offered the testimony and written report of appraiser Thomas D. Sprout, MAI, who determined that the highest and best use of the property is for "two, three, and four family units, some of which would be government sponsored." Like Miller, Sprout also relied solely on the income approach and considered the subject's restricted rents in his analysis, but unlike Miller, he did not do an independent market rent or vacancy analysis to estimate the subject's EGI. Instead, Sprout stated that such analyses were not necessary for credible results because HUD completes a rent study to determine market rent for the subject units. Because HUD relies on this study to set the maximum rent, the HUD subsidies the subject received in addition to the LIHTC rents would not exceed the prevailing market rates. Sprout further indicated that he used the subject's actual income and expense data that was provided by the property owner's independent accountant's financial report. After considering the actual income for 2013 ($3,453,550) and 2014 ($3,479,710), Sprout concluded to a stabilized EGI of $3,453,550. Sprout then reduced this number by $2,255,178 ($6,813 per unit) for expenses, concluding to a NOI of $1,198,372. Sprout capitalized the NOI at a rate of 7.5% plus 2.83% tax additur (10.33% total), for an indicated value of $11,600,000 (rounded). Sprout reduced this amount by $100,000 to account for the value of furniture, fixtures, and equipment, resulting in $11,500,000 attributable to the value of the subject real property.

Community Properties again offered testimony from Miller, who provided a memorandum purported to discuss the attitudes of market participants, his understanding of relevant case law, and his appraisal methodology, which was marked as Appellee's Exhibit A. Miller stated that although HUD publishes restricted rent levels, it is fairly common that LIHTC properties without subsidies are unable to achieve

those maximum rents because of the competitive environment in which they operate. In his memorandum, he included a survey of seven market rate (conventional) multifamily residential complexes, concluding

that there was no discernable difference between the LIHTC and conventional rents for the units. Miller further asserted that this data supported his conclusion that the subject's subsidized rents exceeded market rents and, therefore, exceeded the amount that it could obtain without the subsidies.

Before we reach the merits of the instant appeal, we first must address the argument raised by the BOE regarding the BOR's decision for tax year 2015, which was issued on February 9, 2016. This board has repeatedly admonished the Franklin County BOR not to exercise jurisdiction over a year for which a complaint may be filed, since such a filing would render the earlier decision for the "open tax year" null and void. See, e.g., *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 10, 2016), BTA No. 2015-449, unreported; *Big Walnut Apartments, LLC v. Franklin Cty. Bd. of Revision* (Nov. 6, 2012), BTA No. 2012-K-767, unreported; *GnA Properties, LLC v. Franklin Cty. Bd. of Revision* (May 29, 2012), BTA No. 2012-K-688, unreported. In the instant appeal, it was again improper for the BOR to issue decisions on tax year 2015. Accordingly, we hereby remand tax year 2015 to the BOR with instructions to vacate its February 2016 decision for tax year 2015.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964). This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. Furthermore, this board must perform an independent valuation of the property. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 147 Ohio St.3d 409, 2016-Ohio-7381

At the outset, we reject the BOE's argument that Miller appraisal used an improper valuation method. The BOE asserts that an appraiser must utilize a property's actual income to calculate gross potential income during the valuation of a LIHTC property, citing to *Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision,* 121 Ohio St.3d 175, 2009-Ohio-762. This argument was expressly rejected in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd of Revision,* Slip Opinion No. 2017-Ohio-2734 *("Network Restorations"),* where the court held that *Woda* does not require an actual-rent income approach.

In *Network Restorations,* the court clarified its holding in *Woda* and commented that the valuation of government-subsidized low-income housing presents a problem in the application of the principle that a property's market value is the price at which it would sell among "'typically motivated market participants' who are acting 'in their own self-interest.' Id. at ¶14, citing *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd of Revision,* 139 Ohio St.3d 1, 2014-Ohio-853, ¶31, citing International Association of Assessing Officers, Property Assessment Valuation 17-19 (2d Ed.1996). The court observed that "when government subsidies (including income tax credits, which help finance construction and renovation, and rent subsidies, which help tenants pay the restricted rent) are involved, the circumstances attending the use of the property are not typical of the real-estate market generally. Additionally, a question arises as to which benefits associated with owning the real estate and running the housing complex count as real-estate value." Id. at ¶15. To address these issues, the court discussed three general rules derived from case law for valuing low-income housing:

> "The first rule is that in applying the income approach, market rents and expenses, as opposed to the actual rents of the properties at issue, are used. *Delhi Estates, Ltd. v. Hamilton Cty. Bd of Revision,* 68 Ohio St.3d 192, 194, *** (1994). *** The second rule is a corollary to the first. The

case law establishes that in valuing low-income housing using an income approach, government subsidies should not be taken into account in a way that would increase the value

> of the property. *** Finally, the case law disfavors a cost approach for valuing government-subsidized low-income housing, even for a newly constructed property." Id. at 116-18.

The court again emphasized the importance of an appraiser's "highest and best use" determination as the basis for the data utilized, which is consistent with the valuation of any property based on appraisal evidence, regardless of its present use. In *Woda,* supra, the court held that this board "erred by failing to consider the federally mandated use restrictions imposed in connection with the LIHTC. That erroneous exclusion led the BTA to reject the appraiser's highest-and-best-use determination, and as a result, the BTA reverted to the county's cost-based valuation." Id. at ¶5. This emphasis on the importance of the appraiser's highest and best analysis is not unique to low-income or government-subsidized properties and is at the core of all appraisals. The court has held that while "present use generally cannot be the only measure of value, in a proper case it may be considered in determining true value for tax purposes." *Johnston Coca-Cola Bottling Co., Inc. v. Hamilton Cty. Bd. of Revision,* 149 Ohio St.3d 155, 2017-Ohio-870, ¶14. For instance, an appraiser's highest and best use forms the basis for his or her choice of comparable properties, with adjustments made based on his or her professional judgment. See *NWD 300 Spring, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-7579. As such, a property's present use, which is contemplated in an appraiser's highest and best use analysis, is properly considered in the context of deciding which comparables are more analogous to a property. *Johnston Coca-Cola,* supra, at ¶16. This likewise holds true for the rental comparables chosen for the valuation of a restricted-rent property.

In the present appeal, Sprout considered the subject's actual income and expenses in his analysis. Though the court held that this approach is not *required* for low-income properties, it may potentially be appropriate where an appraiser has adequately reviewed market data for the relevant time period and determined that the subject's actual experience reflect the market. See, e.g., *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 148 Ohio St.3d 499, 2016-Ohio-7466, ¶23. Sprout indicated that the property's actual income is based on the HUD rent study, and therefore comports with relevant conditions within the low-income government-subsidized housing market. The Miller memorandum offered at the hearing, however, includes data regarding the rental rates achieved by similar conventional properties. We find that through this memorandum, Miller has shown that despite the restrictions in place, the rents received by the subject exceed conventional market rents. As such, Miller has demonstrated that the HUD subsidies received in addition to the LIHTC rents are an affirmative benefit to the subject property. Thus, utilization of the subject's actual income would be a violation of the court's holding in *Alliance Towers,* supra, which prohibits the consideration of any affirmative benefit from government subsidies. Accordingly, we find that by relying upon the subject's actual income, Sprout's appraisal takes into account the affirmative benefit of HUD subsidies and, therefore, overstates the value of the subject property. See *Network Restorations,* supra, at ¶17; *Woda,* supra, at ¶29, citing *Alliance Towers, Ltd v. Stark Cty. Bd. of Revision,* 37 Ohio St.3d 16 (1988). Consequently, we find that Miller's appraisal best reflects the value of the subject real property as of the tax lien date because his methodology properly takes into account the use restrictions in place while it excludes the affirmative benefit of the subsidies.

Finally, because there has been no challenge to the proprietS· of the BOR's allocation of Miller's appraisal value, and we adopt those values determined by the BOR.

As discussed above, the BOR was not authorized to issue its decision for 2015 because it was an open year at the time the letter was mailed to the parties. As such, this board is without jurisdiction to consider that tax year. We note, however, that there is nothing disclosed in the record that would prevent the value determination for tax year 2014 from carrying forward into subsequent years. See *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision,* 127 Ohio St.3d 44, 2010-Ohio-4468.

It is therefore the order of this board that the true and taxable values of the subject property, as of January

1, 2014, were as follows:

PARCEL NUMBER 010-000223-00

TRUE VALUE $96,300

TAXABLE VALUE $33,710

PARCEL NUMBER 010-004672-00

TRUE VALUE $120,000

TAXABLE VALUE $42,000

PARCEL NUMBER 010-004753-80

TRUE VALUE $115,800

TAXABLE VALUE $40,530

PARCEL NUMBER 010-004753-90

TRUE VALUE $0

TAXABLE VALUE $0

PARCEL NUMBER 010-005878-00

TRUE VALUE $163,900

TAXABLE VALUE $57,370

PARCEL NUMBER 010-007587-00

TRUE VALUE $76,800

TAXABLE VALUE $26,880

PARCEL NUMBER 010-008841-00

TRUE VALUE $43,900

TAXABLE VALUE $15,370

PARCEL NUMBER 010-015419-00

TRUE VALUE $39,600

TAXABLE VALUE $13,860

PARCEL NUMBER 010-017787-80

TRUE VALUE $156,000

TAXABLE VALUE $54,600

PARCEL NUMBER 010-017787-90

TRUE VALUE $0

TAXABLE VALUE $0

PARCEL NUMBER 010-017825-00

TRUE VALUE $1,600

TAXABLE VALUE $560

PARCEL NUMBER 010-019282-00

TRUE VALUE $65,200

TAXABLE VALUE $22,820

PARCEL NUMBER 010-019571-00

TRUE VALUE $77,400

TAXABLE VALUE $27,090

PARCEL NUMBER 010-019574-00

TRUE VALUE $226,100

TAXABLE VALUE $79,140

PARCEL NUMBER 010-022052-80

TRUE VALUE $107,900

TAXABLE VALUE $37,770

PARCEL NUMBER 010-022052-90

TRUE VALUE $0

TAXABLE VALUE $0

PARCEL NUMBER 010-022753-00

TRUE VALUE $892,300

TAXABLE VALUE $312,310

PARCEL NUMBER 010-023616-00

TRUE VALUE $57,300

TAXABLE VALUE $20,060

PARCEL NUMBER 010-023795-80

TRUE VALUE $21,400

TAXABLE VALUE $7,490

PARCEL NUMBER 010-023795-90

TRUE VALUE $17,900

TAXABLE VALUE $6,270

PARCEL NUMBER 010-023826-
00 TRUE VALUE $218,200
TAXABLE VALUE $76,370

PARCEL NUMBER 010-024100-00

TRUE VALUE $23,100

TAXABLE VALUE $8,090

PARCEL NUMBER 010-024204-00

TRUE VALUE $8,800

TAXABLE VALUE $3,080

PARCEL NUMBER 010-025037-00

TRUE VALUE $48,200

TAXABLE VALUE $16,870

PARCEL NUMBER 010-025169-00

TRUE VALUE $93,200

TAXABLE VALUE $32,620

PARCEL NUMBER 010-026806-00

TRUE VALUE $70,700

TAXABLE VALUE $24,750

PARCEL NUMBER 010-029310-00

TRUE VALUE $45,700
TAXABLE VALUE $16,000

PARCEL NUMBER 010-031725-

80 TRUE VALUE $268,200

TAXABLE VALUE $93,870

PARCEL NUMBER 010-031725-90

TRUE VALUE $0

TAXABLE VALUE $0

PARCEL NUMBER 010-035374-

80 TRUE VALUE $363,800

TAXABLE VALUE $127,330

PARCEL NUMBER 010-035374-90

TRUE VALUE $0

TAXABLE VALUE $0

PARCEL NUMBER 010-035544-00

TRUE VALUE $48,800

TAXABLE VALUE $17,080

PARCEL NUMBER 010-036539-00

TRUE VALUE $45,100

TAXABLE VALUE $15,790

PARCEL NUMBER 010-036964-00

TRUE VALUE $4,400

TAXABLE VALUE $1,540

PARCEL NUMBER 010-037052-80

TRUE VALUE $20,000

TAXABLE VALUE $7,000

PARCEL NUMBER 010-037052-90

TRUE VALUE $32,200

TAXABLE VALUE $11,270

PARCEL NUMBER 010-037054-80

TRUE VALUE $19,900

TAXABLE VALUE $6,970

PARCEL NUMBER 010-037054-90

TRUE VALUE $31,900

TAXABLE VALUE $11,170

PARCEL NUMBER 010-038075-00

TRUE VALUE $28,000

TAXABLE VALUE $9,800

PARCEL NUMBER 010-038627-

80 TRUE VALUE $19,900

TAXABLE VALUE $6,970

PARCEL NUMBER 010-038627-

90 TRUE VALUE $31,900

TAXABLE VALUE $11,170

PARCEL NUMBER 010-038864-

00 TRUE VALUE $16,000

TAXABLE VALUE $5,600

PARCEL NUMBER 010-044171-

00 TRUE VALUE $55,500

TAXABLE VALUE $19,430

PARCEL NUMBER 010-046916-

00 TRUE VALUE $63,400

TAXABLE VALUE $22,190

PARCEL NUMBER 010-047009-

00 TRUE VALUE $139,000

TAXABLE VALUE $48,650

PARCEL NUMBER 010-047050-00

TRUE VALUE $7,700

TAXABLE VALUE $2,700

PARCEL NUMBER 010-047086-00

TRUE VALUE $139,000
TAXABLE VALUE $48,650

PARCEL NUMBER 010-047099-00

TRUE VALUE $8,100

TAXABLE VALUE $2,840

PARCEL NUMBER 010-047261-00

TRUE VALUE $59,700

TAXABLE VALUE $20,900

PARCEL NUMBER 010-047299-

00 TRUE VALUE $107,300

TAXABLE VALUE $37,560

PARCEL NUMBER 010-047301-

00 TRUE VALUE $107,300

TAXABLE VALUE $37,560

PARCEL NUMBER 010-047781-00

TRUE VALUE $68,300

TAXABLE VALUE $23,910

PARCEL NUMBER 010-048066-00

TRUE VALUE $28,000

TAXABLE VALUE $9,800

PARCEL NUMBER 010-051773-

80 TRUE VALUE $121,900

TAXABLE VALUE $42,670

PARCEL NUMBER 010-051773-90

TRUE VALUE $0

TAXABLE VALUE $0

PARCEL NUMBER 010-053248-00

TRUE VALUE $83,500

TAXABLE VALUE $29,230

PARCEL NUMBER 010-054775-

00 TRUE VALUE $195,700

TAXABLE VALUE $68,500

PARCEL NUMBER 010-057193-00

TRUE VALUE $37,200

TAXABLE VALUE $13,020

PARCEL NUMBER 010-057198-00

TRUE VALUE $37,200

TAXABLE VALUE $13,020

PARCEL NUMBER 010-063487-

00 TRUE VALUE $62,200

TAXABLE VALUE $21,770

PARCEL NUMBER 010-066693-80

TRUE VALUE $1,210,500

TAXABLE VALUE $423,680

PARCEL NUMBER 010-066693-90

TRUE VALUE $0

TAXABLE VALUE $0

PARCEL NUMBER 010-094982-00

TRUE VALUE $34,300

TAXABLE VALUE $12,010

PARCEL NUMBER 010-191467-00

TRUE VALUE $76,800

TAXABLE VALUE $26,880

OHIO BOARD OF TAX APPEALS

JOANN SWISHER, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2057

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOANN SWISHER
OWNER
13240 WALKER ROAD
ASHVILLE, OH 43103

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Friday, January 12, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the Franklin County Board of Revision ("BOR") has not issued any decision on the value of the subject property for 2017. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On November 9, 2017, the appellant filed a notice of appeal with this board. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County Board of Revision stating that there is no record of a decision issued for the subject property. It appears appellant is attempting to appeal the tentative value set by the county auditor for tax year 2017.

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." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DELILAH C. SWISHER, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2056

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DELILAH C. SWISHER
Represented by:
DELILAH SWISHER
OWNER
62 DELRAY ROAD
COLUMBUS , OH 43207

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Friday, January 12, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the Franklin County Board of Revision ("BOR") has not issued any decision on the value of the subject property for 2017. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On November 9, 2017, the appellant filed a notice of appeal with this board. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County Board of Revision stating that there is no record of a decision issued for the subject property. Instead, it appears appellant may be appealing the tentative value set by the county auditor for tax year 2017.

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." *Am.*

Restaurant & Lunch Co. v. Glander, 147 Ohio St. 147, 150(1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

AARON PAUL AND ANITA PAUL COLLINS, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s),

CASE NO(S). 2017-1841

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AARON PAUL AND ANITA PAUL COLLINS
Represented by:
AARON COLLINS
REVEREND
CHURCH OF THE GOOD SHEPHERD
2387 EDGERTON ROAD
UNIVERSITY HEIGHTS, OH 44118

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, January 17, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board•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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board

of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider this matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

1250 RIVERBED STREET LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-366, 2017-388, 2017-394

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 1250 RIVERBED STREET LLC
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Wednesday, January 17, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner and board of education ("BOE") appeal a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 003-19-007, for tax year 2015. We proceed to consider this consolidated matter based upon the notices of appeal, the statutory transcripts certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property, an apartment building, was initially assessed at $831,200. The property owner submitted a complaint **to** the BOR, which requested that the subject property be revalued at $525,000 based upon the price at which it transferred in September 2014. The BOE filed a counter-complaint, which objected to the request. At the BOR hearing on the matter, both parties appeared through counsel to submit

argument and/or evidence in support of their respective positions. In doing so, the property owner submitted the testimony of property manager, Eitan Donshik, who discussed the condition of the subject

property during the years between the sale and hearing dates. According to Donshik, the subject property was in bad condition at the time of the subject sale in September 2014 and there was "a lot of patching up" leading up to the tax lien date of January 1, 2015, continuing up to the BOR hearing on February 2, 2017. Although he made many assertions about the facts and circumstances leading up to the consummation of the subject sale, he conceded that he was not involved in the subject sale. In support of its request, the property owner submitted a number of documents, including, sale documents, photographs, unadjusted comparable sales data, and bids to perform the work necessary to rehabilitate the subject property. Donshik was cross-examined by the BOR members and BOE. He confirmed that the property owner paid $875,000 for the subject property in September 2014, not $525,000 as indicated on the complaint. The BOE asserted that the subject sale was the best indication of the subject property's value and presented a general warranty deed to substantiate the transaction. The BOR hearing worksheet notes that the BOR determined that the "[c]urrent fiscal value supported by sale recent to tax lien" date and subsequently issued a decision that retained the subject property's initially assessed value. These. appeals ensued.

The property owner first appealed to this board and its appeal was docketed as BTA No. 2017-366. The BOE filed duplicative appeals and its appeals were docketed as BTA No. 2017-388 and 2017-394. This board consolidated these appeals at the request of both parties.

This board scheduled this consolidated matter for a merit hearing; however, the parties waived the opportunity to submit additional evidence in support of their respective positions. The BOE submitted written argument, which asserted that the subject sale was the best indication of the subject property's value. Neither the property owner nor the county appellees submitted any written argument.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax* Appeals, 175 Ohio St. 410, 412 (1964).

In this matter, the sale documents in the record evidence the $875,000 transfer of the subject property to the property owner in September 2014. None of the parties dispute the minimal details of the subject sale, i.e., that it actually occurred recent to the tax lien date between parties acting in their own self-interest. However, the property owner asserts that the condition of the subject property necessitates rejection of the subject sale. Based upon our review of the record, we disagree.

To determine whether a sale is recent to the tax lien date, we consider the passage of time and any changes to market conditions, which could affect the value of real property. See, *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio 5932, at ¶32. One such factor that can include a change in the market can involve a material change to the property itself Also relevant are those conditions that are specific to the property itself See *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473; *Dearie v. Miami Cty. Bd. of Revision* (Dec. 12, 2003), BTA No. 2003-N-560, unreported; *M.H. Murphy Dev. Co. v. Franklin Cty. Bd. of Revision* (Dec. 3, 2004), BTA No. 2003-R-1177, unreported. Here, Donshik testified that no substantial work to the subject property occurred between the sale and tax lien dates, other than "a lot of patching up." No effort was made to distinguish whether such "patching up" was merely cosmetic, as the term implies, or was something more substantial. As such, we find that the subject property did not experience a substantial change to its condition that would require us to reject the subject sale.

Furthermore, although Donshik had no firsthand knowledge of the subject sale, we acknowledge his

assertion that the subject property may not have been offered on the open market, we find this argument to be equally unavailing. In *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Mar. 23, 2010), BTA No. 2008-K-202, unreported, at 8, this board observed that "merely because a property is not listed on the open market ***." Indeed, in *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶29, the Ohio Supreme Court held "the case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers."

To the extent that the property owner argued that the subject property's 40% vacancy rate requires rejection of the subject sale, we likewise reject this argument. Donshik testified that the subject property's 60% occupancy/40% vacancy rates had remained stable since the subject sale. As such, the property owner's argument fails.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that the BOE satisfied its evidentiary burden before the BOR when it submitted the general warranty deed, which demonstrated a recent, arm's-length sale of the subject property, and the property owner failed to rebut the recency of such sale. It is therefore the order of this board that the subject property's true and taxable values as of January 1, 2015 are as follows:

TRUE VALUE

$875,000

TAXABLE VALUE

$306,250

OHIO BOARD OF TAX APPEALS

WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-36, 2017-37
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

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Entered Wednesday, January 17, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These consolidated matters are now considered upon the notices of appeal, the statutory transcripts ("S.T.")

certified by the county auditor, the record of the hearing before this board ("H.R."), the parties' joint stipulation of facts, and the parties' written legal argument.

These appeals involve the valuation for tax year 2015 of five parcels, i.e., parcel numbers 080-003184, 080-003746, 080-007423, 080-007424, and 080-009903. The auditor initially valued the parcels at a total value of $9,697,100. Owner Select Westerville Plaza LLC ("Select Westerville") filed a complaint with the BOR seeking a decrease in value to $10,000,000 for all five parcels, and the Westerville City Schools Board of Education ("BOB") filed a complaint seeking an increase in value for parcel number 080-003746 to $11,477,300; the BOE also filed a countercomplaint to Select Westerville's complaint as to all five parcels.

By way of background, the five parcels make up a shopping center. As of 2014, parcel number 080-003746 was owned by Garrison Central II Westerville, LLC ("Garrison"), and was improved with an Office Max store and a Kohl's store, though the stores were not contiguous to one another. In December 2014, Garrison negotiated the transfer of the Kohl's-only portion of parcel number 080-003746 (10.223 acres) to SPMC I, LLC ("SPMC") for a price of $10,750,000; that transfer was not recorded until March 13, 2015. H.R., Exs. 4-5. Because the Kohl's sale was not recorded until March 2015, the Kohl's portion of that parcel was not officially split from the Office Max portion of the parcel until tax year 2016, when the Kohl's portion was given a new parcel number, i.e., 080-011588. In addition, Select Westerville purchased all five parcels (including the Office Max portion of parcel number 080-003746 (4.041 acres) but *not* the Kohl's portion/parcel) for $10,000,000 in February 2016. H.R., Exs. 1-2.

At the BOR hearing, counsel for the parties explained the timeline of events above. Counsel for Select Westerville also presented a closing statement as evidence of the Kohl's sale, and testified that the shopping center (less the Kohl's portion) was on the market for six months to a year, and transferred in an arm's-length sale. Counsel for the BOE argued that the two sales should be applied to the subject parcels, i.e., by increasing the Kohl's portion of parcel number 080-003746, and by decreasing the remaining four parcels based on the February 2016 sale; she presented the conveyance fee statement and limited warranty deed as evidence of the Kohl's sale. After considering the evidence presented by the parties, and after interviewing the auditor's appraisal staff, specifically in the division involved with parcel splits and combinations, the BOR determined that the parcels had changed after the December 2014 purchase of the Kohl's parcel. The auditor's representative to the BOR specifically mentioned zoning approvals by the City of Westerville and a survey done by the Franklin County Engineer that had to occur after the December 2014 purchase. Because the property had changed between the tax lien date, i.e., January 1, 2015, and the consummation of the Kohl's purchase, i.e., March 13, 2015, the BOR found that no change in value was warranted, though they indicated the parties should consider filing new complaints for tax year 2016.

The BOE thereafter appealed to this board, again arguing at this board's hearing, and through written argument, that the two sales should be used to value the subject parcels, and proposed allocating the Kohl's sale to a portion of parcel number 080-003746 and a portion of the subsequent shopping center sale to the Office Max portion of parcel number 080-003746 based on the auditor's tax year 2016 allocations of value between the parcels split therefrom, under the authority of *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision,* 125 Ohio St.3d 485, 2010-Ohio-1921. Counsel for Select Westerville argued that the February 2016 sale should only be used to value the properties as of tax year 2016. Counsel for SPMC concurred that tax year 2015 was too early to use the February 2016 value, and that the Kohl's sale was not recent to tax lien date 2015 due to the reconfiguration of the parcel. Although SPMC argued in its initial brief that this board could not rely on the sale documentation submitted because the copies were not certified, it withdrew its objection based on the court's recent holding in *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-7664; however, it maintains its objection to the closing statement as evidence of the February 2016 sale as hearsay. We hereby overrule the objection, as there is ample evidence in the record of the transfer and no dispute from the parties about the minimal details of the sale. See *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075, ¶15.

In reviewing this matter, we first address the parties' arguments regarding who bears the burden of proof on appeal. Select Westerville argues that the BOE has the burden to provide new evidence on appeal in support of its arguments for the sales, because the BOR rejected the sales below. While it is true that, in some circumstances, the BOR's value, rather than the auditor's, becomes the "default" value on appeal, *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 193, 2013-Ohio-4543, "[w]hen the central issue is whether a sale price of the subject property establishes its value, the factors attending that issue must usually be determined de novo by the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11. Further, the Supreme Court has repeatedly instructed this board to "eschew a presumption of validity of the BOR's value and instead perform its own independent weighing of the evidence in the record." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-5823. See also *Cincinnati Trophy, L.L.C. v. Norwood City School Dist. Bd. of Edn.*, 1st Dist. Hamilton No. C-120806, 2013-Ohio-5387, ¶25 ("the fact that [the owner's] case may have been going well in front of the BOR does not eliminate [the owner's] need to fully develop its evidence for review by the BTA.") Accordingly, an appellant before this board, even a board of education, may meet its burden by presenting argument about the legal sufficiency of the BOR's decision. See, e.g., *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 106 Ohio St.3d 157, 2005-Ohio-4385. We therefore proceed to consider the parties' arguments and the record before us.

Turning to the two sales presented, we are mindful of the basic principle that "[t]he best evidence of the `true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision,* 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd of Revision,* Slip Opinion No. 2017-Ohio-4415.

Once the proponent of a sale meets its initial burden to present prima facie evidence of a sale, *Utt v. Lorain Cty. Bd of Revision,* 150 Ohio St.3d 119, 2016-Ohio-8402, ¶14, the sale is presumed to be the best evidence of value unless the opponent of the sale presents evidence that the sale was either not recent or not at arm's-length. *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, ¶13. None of the parties dispute that either the Kohl's or shopping center sales occurred and were anything other than arm's-length.

The parties' main dispute is whether the sales are recent to tax lien date 2015. Apart from temporal proximity between a sale and tax lien date, recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property." *Cummins,* supra, at ¶35. In some circumstances, the subdivision/split of a parcel can constitute a change that negates the recency of a sale. See, e.g., *Richman Props., L.L.C. v. Medina Cty. Bd. of Revision,* 139 Ohio St.3d 549, 2014-Ohio-2439 (subdivision of parcels negated recency of sale because of evidence that the split increased the value of the property). In others, a split/combination may not negate recency. See, e.g., *Doss v. Champaign Cty. Bd of Revision* (Feb. 27, 2015), BTA No. 2014-2429, unreported (recombination of parcels performed to accurately reflect the ownership of the property after the sale did not negate recency).

We agree with the BOE that the split of the Kohl's and Office Max portion of parcel number 080-003746 does not negate the recency of either sale. Notably, the property owners presented no evidence that the split affected the value of the entire parcel or each separate portion. Compare *Richman,* supra. From the limited record before us, it appears that this case is more akin to that in *Doss,* supra, where the parcel split was accomplished simply to reflect the transfer of the Kohl's portion of the parcel apart from the Office Max portion. Particularly telling is the seemingly odd inclusion in a single parcel (as of tax year 2015) of non-continguous areas/improvements. H.R., Ex. A. While the BOR noted zoning approvals were required because of the sale, the record contains no such evidence. Moreover, the BOR's reference to a survey by the county engineer has no bearing on the recency of the sale; from the records included in the transcript, it appears that the survey was conducted to accurately account for the Office Max portion of the parcel (parcel number 080-003746 as of tax year 2016) as 4.041 acres, rather than 3.942. We therefore find that the Kohl's sale was recent to tax lien date and the best evidence of that property's value for tax year 2015.

We further find the subsequent February 2016 sale of the remaining 4 parcels, and the Office Max portion of parcel number 080-003746, to be recent to tax lien date 2015, in the absence of any evidence to the contrary. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588; *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059. While Select Westerville argues that this' board should also look to a separate January 2013 sale of the entire shopping center, we look to the sale closest to tax lien date, i.e., the February 2016 sale. *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, paragraph one of the syllabus. We further reject the owners' contention that a sale occurring after tax lien date is per se not indicative of its value on tax lien date. See, e.g., *Akron Ctr. Plaza, LLC v. Summit Cty. Bd. of Revision*, 128 Ohio St.3d 145, 2010-Ohio-5035, ¶21 ("An arm's-length sale may take place *after* the lien date of a prior tax year and still furnish the criterion of value for that year year."); R.C. 5713.03.

In sum, we find that best evidence of the values of the parcels on tax lien date are the $10,750,000 sale of the Kohl's portion in December 2014 (recorded March 2015), and the $10,000,000 sale of the remaining parcels comprising the shopping center in February 2016.

In allocating the value of the sales to the parcels as they existed on tax lien date, we agree with the BOE's proposed allocation. While we acknowledge Select Westerville's argument that the BOE's allocation among the portions of the Kohl's/Office Max parcel are based on the auditor's valuations for a subsequent tax year, we concur that it is the best evidence available in the record and a reasonable means of allocating value. *FirstCal*, supra. Indeed, using the auditor's tax year 2015 values, as proposed by SPMC, results in a total value for the Kohl's/Office Max parcel of $9,970,400 -[1] an amount $779,600 below the price paid for the Kohl's portion. SPMC Brief at 9. We further note that, contrary to Select Westerville's contention in its post-hearing argument, the BOE does not propose using the sale of the Kohl's portion of the parcel to value the remaining Office Max portion; it advocates use of the subsequent sale of the Office Max to value that portion of the parcel. Compare *Claycraft Road, Inc. v. Franklin Cty. Bd. of Revision* (May 10, 2002), BTA No. 2000-T-2139, unreported (rejecting use of sale of a portion of a parcel to value the entire parcel where the portions were not comparable). We therefore adopt the BOE's proposed allocation of the two sales among the five parcels.

It is therefore the order of this board that the values of the subject parcels as of January 1, 2015, were as follows:

PARCEL NUMBER 080-003746

TRUE VALUE: $12,912,600

TAXABLE VALUE: $4,519,410

PARCEL NUMBER 080-003184

TRUE VALUE: $7,383,700

TAXABLE VALUE: $2,584,300

PARCEL NUMBER 080-007423

TRUE VALUE: $12,600

TAXABLE VALUE: $4,410

PARCEL NUMBER 080-007424

TRUE VALUE: $14,400

TAXABLE VALUE: $5,040

PARCEL NUMBER 080-009903

TRUE VALUE: $426,700

TAXABLE VALUE: $149,350

OHIO BOARD OF TAX APPEALS

PHILIP C AND CYNTHIA C RICHARD, (et. al.),

Appellant(s),

vs.

LUCAS COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-372

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, January 17, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owners appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 79-74268, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the county appellees' written argument.

The subject property is improved with a single-family home that was constructed in 2014. The subject's total true value was initially assessed at $383,200. The property owners filed a decrease complaint with the BOR seeking a reduction in value to $370,000. The BOR convened a hearing, at which appellant Philip Richard appeared to testify in support of the requested reduction. Mr. Richard relayed his concern over an increase in real property taxes assessed for the subject property, noting that he had looked at the taxes paid by other owners in the area and his appeared to be excessive. The BOR members explained that they look at value and that there are a number of factors that are considered in the calculation of taxes, including a new levy that had been passed and caused the taxes assessed for the subject property to increase. The BOR further explained that the auditor's value for the subject was based on the amount listed for the building permit. Mr. Richard stated that they received a refund because the permit amount was high after the house was completed. Mr. Richard also discussed other properties that had recently sold in the neighborhood. It appears that the BOR looked at some information about ithose properties and discussed it during the hearing, though nothing was included in the transcript. The owner also mentioned that an adjacent apartment complex was a detriment to the property's value. Following the hearing, the BOR issued a

decision reducing the initially assessed valuation to $373,200. This value was based on the $43,200 purchase price for the land plus the $330,000 building costs reported by Mr. Richard. From this decision, the property owners filed the present appeal. On appeal, the property owners did not provide any additional evidence or argument, but the county appellees submitted written argument in support of the BOR's decision.

Before we reach the merits of the instant appeal, we must address the deficiency in the record received from the BOR. The BOR did not include some evidence that was considered and discussed during the BOR hearing, specifically information regarding other properties near the subject. When this board contacted the BOR in an attempt to receive this additional information, we were informed that they had no additional documents to submit. Parties and various tribunals rely upon boards of revision to fulfill their statutory duties to create and maintain a record capable of being reviewed on appeal. R.C. 5715.08; R.C. 5717.01. The BOR should take care to ensure its evidentiary record is accurate and provide all evidence considered during its proceedings in the transcript provided to this board because it defaults on its statutory obligation when it fails to transmit the record in its entirety. See *Cannata v. Cuyahoga Cty. Bd. of Revision* , 147 Ohio St.3d 129, 2016-Ohio-1094; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078. Due to its absence in the record, we are unable to review the comparable sale evidence discussed by the BOR. We find that this deficiency does not materially impact the present appeal or prejudice any party because even if it had been properly included, as described below, the evidence would not have changed the outcome of the appeal.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). An appellant must present competent and probative evidence in support of her requested reduction, and an owner is not entitled to a reduction merely because no evidence is presented against her claim. Id. See, also, *Valigore v. Cuyahoga Cty. Bd. of Revision,* 105 Ohio St.3d 302, 2005-Ohio-1733. The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. "* However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

In this case, the owners assert that they are being assessed and taxed disparately from other properties that had sold or been recently constructed near the subject property. Initially, the fallacy of reliance upon other properties' assessed values must be acknowledged, since the fundamental basis of this challenge is the erroneous nature of the subject property's value. This board has repeatedly rejected the use of an auditor's assessed values of one property as evidence of the value of another. See, e.g., *Grant v Montgomery Cty. Bd. of Revision* (Dec. 13, 2011), BTA No. 2009-W-891, unreported. Moreover, the Supreme Court has found that "[m]erely showing that two parcels of property. have different values without more does not establish that the tax authorities valued the properties in a different manner." *WIN Investments, Inc. v. Licking COL Bd. of Revision,* 76 Ohio St.3d 29, 31 (1996). Thus, the taxes or even assessed values of other properties is not competent and probative evidence upon which this board may rely to reduce the value of the subject property.

Furthermore, the testimony regarding the negative impact of an adjacent apartment complex does not support a reduction. In *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996), the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value. See, also, *Gupta v. Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397 (1997). Accordingly, in the present appeal, we find that the property owners have failed to present sufficient support for their opinion of value for the subject property, and therefore find that such opinion is not probative. See *Valigore,* supra (affirming this board's rejection of an owner's evidence that consisted solely of the owner's testimony, a list of purportedly comparable sales, the assessed

value of a neighbor, and information of the "rundown condition" of the owner's property). See, also, *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions having found that the evidence was not probative).

Accordingly, based upon our review of the record, we find the bases cited insufficient to support any further adjustment to the property's value. The property owners have offered no challenge to the propriety of the BOR's methodology, which we find is supported by the record.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

TRUE VALUE

$373,200

TAXABLE VALUE

$103,620

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2518

(REAL PROPERTY TAX)

DECISION AND ORDER

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Entered Wednesday, January 17, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 002-05-021, 002-05-022, 002-05-023, and 002-05-115, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the BOE's written argument.

[2] The subject property consists of four parcels with a single building that operates as a Burger King restaurant. The subject's total true value was initially assessed at $968,700. The BOE filed an original complaint with the BOR seeking an increase in value to $1,057,000. At the BOR hearing, the BOE asserted that the value should be increased for tax year 2015 based on a July 2012 sale, providing evidence of the transaction. No representative appeared on behalf of the owner. The BOR and BOE discussed the issue of recency, particularly with respect to the court's decision in *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. The BOE argued that the presumption that when a sale takes place more than 24 months from a tax lien date and the fiscal officer disregarded the sale during a

sexennial reappraisal did not apply to the present sale because the 2015 valuation was the result of a triennial reappraisal. The BOR issued a decision maintaining the initially assessed valuation, indicating that the sale was too remote from the tax lien date and no additional evidence was provided. From this decision, the BOE filed the present appeal. The BOE and county appellees waived the opportunity to appear at a hearing before this board, and the BOE filed written argument reiterating the arguments made before the BOR.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd of Revision,* 50 Ohio St.2d 129 (1977). 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. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. When a party successfully challenges the reliability of the sale, the burden again shifts to the proponent of the sale to show that it should nevertheless be regarded as the best evidence of the property's value. *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075. Additionally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[4] In the present appeal, it is undisputed that BK Ohio, LLC purchased the subject property in July 2012, and none of the parties has challenged the arm's-length nature of the sale. The recency of the sale, however, has been contested. Although there is no "bright line" test as to when a sale becomes too remote to be a reliable indication of value, as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property has not changed between the sale date and the lien date." *Akron City School Dist.,* supra, ¶26. In *Akron,* the court held that when a sale occurs more than 24 months before tax-lien date, it should not be presumed to be "recent" when different value has been determined for that lien date as part of six-year reappraisal. The BOE argues that this holding does not apply to the facts of the instant appeal because the 2015 revaluation was a triennial update and *Akron* is limited only to the rejection of a sale during the sexennial reappraisal. We disagree.

[5] In reaching its decision in *Akron,* supra, the court discussed the fiscal officer's duties pursuant to Ohio Adm.Code 5703-25-06:

> "In conducting the reappraisal, the sale price should be used if the sale was 'within a reasonable length of time, either before or after the tax lien date.' Ohio Adm.Code 5703-25-06(F). On the other hand, the fiscal officer also has the duty, 'when practicable, [to] increase or decrease the taxable valuation of parcels in accordance with actual changes in valuation of real property which occur in different subdivisions, neighborhoods, or among classes of real property in the county.' Ohio Adm.Code 5703-25-06(E). In other words, the fiscal officer must conduct a reappraisal that considers all relevant factors in determining the current value of the property." Id. at ¶24.

[6] The court further emphasized that absent a showing to the contrary, "the fiscal officer is presumed to carry out his statutorily prescribed duties in good faith and in the exercise of good judgment." Id. Notably, these Administrative Code sections apply equally to the fiscal officer's duties during the triennial update. Thus, we see no reason why the court's holding would not apply equally to a sale occurring more than 24 months from the tax lien date that was disregarded by the fiscal officer during the triennial update.

[7] In the present appeal, the sale took place more than 24 months before January 1, 2015, the relevant tax lien date for the first year of the new triennial. Additionally, the fiscal officer presumably considered and

rejected this sale in performing his statutory duty for tax year 2015, the first year following the triennial update. As such, in this case, the BOE was required to present additional evidence to show that the sale was indeed recent to the tax lien date, but failed to do so. Accordingly, we find that the transfer does not furnish a reliable basis to reduce the subject's value.

[8] Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

[9] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 002-05-021

TRUE VALUE

$542,500

TAXABLE VALUE

$189,880

PARCEL NUMBER 002-05-021

TRUE VALUE

$78,000

TAXABLE VALUE

$27,300

PARCEL NUMBER 002-05-021

TRUE VALUE

$342,000

TAXABLE VALUE

$119,700

PARCEL NUMBER 002-05-115

TRUE VALUE

$6,200

TAXABLE VALUE

$2,170

OHIO BOARD OF TAX APPEALS

GREG WEARSCH, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-932

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GREG WEARSCH
19760 FRAZIER DR.
ROCKY RIVER, OH 44116

For the Appellee(s) - CUAYHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

ROCKY RIVER CITY SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
DAVID A. ROSE
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Friday, January 19, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner, Greg Wearsch, appeals a decision of the board of revision ("BOR"), which dismissed the owner's complaint for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board. We acknowledge that the appellee board of education ("BOE") waived its appearance at this board's hearing and requested a briefing schedule. Based on the record before us, we find that a briefing schedule is unnecessary, noting that the BOE filed a written motion to the BOR.

[2] The record shows that on March 29, 2017, the property owners filed a complaint against the fiscal officer's value for the subject property, i.e., parcel number 301-05-006, for tax year 2016. The complaint did not indicate that the property had been sold within the last 3 years, and the owners did

not check any of the boxes on line 14 of the complaint. The BOE filed a countercomplaint in support of maintaining the fiscal officer's values. The BOR convened a hearing, at which Mr. Wearsch and counsel for the BOE appeared and discussed the value of the property. Though it was not discussed during the BOR hearing, the BOE had filed a motion to dismiss the complaint because the owners had filed a complaint for tax year 2015, which was the first year of the interim period. The BOR issued a decision dismissing the 2016 complaint, which Mr. Wearsch appealed to this board. This board also convened a hearing, at which Mr. Wearsch testified regarding the propriety of the BOR's decision and challenged the methodology used by the fiscal officer to value the subject property. Mr. Wearsch acknowledged that he had filed complaints for both 2015 and 2016, but noted that the appeal from the first complaint was ultimately dismissed by this board for a different jurisdictional issue. *Wearsch v. Cuyahoga Cty. Bd. of Revision* (Jan. 11, 2017), BTA No. 2016-1323, unreported. Mr. Wearsch also conceded that none of the circumstances listed on line 14 of the complaint applied to the subject property.

[3] "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. *Soyko Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 2014-Ohio-4511, ¶20. "The apparent purpose of the modification of R.C. 5715.19(A) was to reduce the number of filings, while still allowing new tax valuations in interim years in certain limited circumstances." *Dublin City School Dist. v. Franklin Cty. Bd. of Revision*, 79 Ohio App.3d 781, 784 (1992). 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)." *Developers Diversified Ltd. v. Cuyahoga Cty. Bd. of Revision*, 84 Ohio St.3d 32, 35 (1998).

[4] The "interim period" relevant to the instant appeal involves tax years 2015, 2016, and 2017, the first of these years having been the one in which a triennial update was completed in Cuyahoga County. See, generally, R.C. 5713.01(B), 5715.33, and 5715.34. Mr. Wearsch does not dispute that he filed a complaint for tax year 2015 and again for tax year 2016. Nor does Mr. Wearsch allege that any of the circumstances set forth in R.C. 5715.19(A)(2) apply to the subject property. Instead, Mr. Wearsch argues that it was a permitted refiling because the prior complaint resulted in a dismissal from this board for lack of jurisdiction. We disagree. In *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, 96 Ohio St.3d 170 (2002), the court explained that the ultimate outcome of 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. *Elkem Metals Co., L.P. v. Washington Cty. Bd. of Revision*, 81 Ohio St.3d 683 (1998); *Soyko*, supra, at ¶20.

[5] In the instant appeal, Mr. Wearsch failed to prove that he was entitled to file the 2016 complaint. Accordingly, upon review, we find that appellant failed to demonstrate that the BOR had jurisdiction to consider the merits of the complaint in this matter. As a result, we hereby affirm the BOR's decision to dismiss the complaint.

OHIO BOARD OF TAX APPEALS

JAMES W. TIETGE, (et. al.),

Appellant(s),

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-420

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JAMES W. TIETGE
1066 N. CLAYTON ROAD
NEW LEBANON, OH 45345

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
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MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Friday, January 19, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner, James W. Tietge, appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number G27 01605 0052, for tax year 2016. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

[2] The subject's total true value was initially assessed at $27,370. Mr. Tietge filed a decrease complaint with the BOR seeking a reduction in value to $16,950. At the BOR hearing, Mr. Tietge indicated that he purchased the subject property in 2010, and that the subject's value was ultimately reduced to his sale price and that the subsequent increases in its assessed value were not consistent with local market and economic conditions, providing a newspaper article in support of this condition. During the hearing, the BOR raised a jurisdictional issue due to a complaint Mr. Tietge filed against the value of the subject property for the prior year. Mr. Tietge did not dispute that it was filed and stated that he did not consider any of the exceptions listed on line 14 of the complaint form applicable to the subject property. Following the hearing, the BOR convened a decision hearing, at which it. voted to dismiss the complaint as the second filing within the interim period, and the BOR hearing notes likewise reflect a dismissal of the complaint. The BOR, however, issued a written decision maintaining the initially assessed valuation, which led to the present appeal. Neither Mr. Tietge nor the county appellees submitted evidence or argument on appeal.

[3] Though the BOR's written decision was one involving the value of the subject property, it is clear from the audio recording and documents within the statutory transcript that the BOR intended to dismiss the underlying complaint for lack of jurisdiction. "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. *Soyko Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 141 Ohio St.3d 43, 2014-Ohio-4511, ¶20. "The apparent purpose of the modification of R.C. 5715.19(A) was to reduce the number of filings, while still allowing new tax valuations in interim years in certain limited circumstances." *Dublin City School Dist. v. Franklin Cty. Bd. of Revision,* 79 Ohio App.3d 781, 784 (1992). 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)." *Developers Diversified Ltd. v. Cuyahoga Cty. Bd. of Revision,* 84 Ohio St.3d 32, 35 (1998).

[4] The "interim period" relevant to the instant appeal involves tax years 2014, 2015, and 2016, the first of these years having been the one in which a sexennial reappraisal was completed in Montgomery County. See, generally, R.C. 5713.01(B), 5715.33, and 5715.34. During the BOR hearing, Mr. Tietge does not dispute that he filed an earlier complaint for tax year 2015, in addition to the 2016 complaint at issue in this matter. Mr. Tietge also confirmed that none of the four circumstances set forth in R.C. 5715.19(A)(2) applies to the subject property, and specifically stated that none were relevant. Based upon the foregoing, Mr. Tietge failed to prove that he was entitled to file the 2016 complaint. Accordingly, upon review, we find that Mr. Tietge failed to demonstrate that the BOR had jurisdiction to consider the complaint in this matter. As a result, we agree with oral decision reached by the BOR and remand this matter to the BOR with instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

SUBURBAN GARDENS LLC./BEHNAM MALAKOOTI, (et. al.),	CASE NO(S). 2017-413, 2017-415
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - SUBURBAN GARDENS LLCIBEHNAM MALAKOOTI
Represented by:
BEHNAM MALAKOOTI
29350 SHAKER BLVD.
PEPPER PIKE, OH 44124

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, January 19, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Suburban Gardens LLC, appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 784-11-009 and 861-01-005, for tax year 2015. These matters are now considered upon the notices of appeal and the transcripts certified by the BOR pursuant to R.C. 5717.01.

Parcel number 784-11-009 is an auto repair shop with additional storage/warehouse space, and its total true value was initially assessed at $134,800. Parcel number 861-01-005 is a roughly 2,340-square-foot office building that looks like a house and was built in the 1950s. Its total true value was initially assessed at $149,000. Suburban Gardens filed decrease complaints with the BOR seeking reductions in value to $89,000 and $100,500, respectively. At the BOR hearing, Suburban Gardens relied on the testimony and written reports of appraiser Bailey Shelton, who opined that the subjects' values were $90,000 and $65,000, as of December 6, 2016. Shelton described his methodology regarding his reliance primarily on the sales comparison approach, along with his choices of comparable properties and the adjustments made. Suburban Gardens' sole owner also testified about the properties' income and occupancy, noting that parcel number 784-11-009 was vacant during 2013, 2014, and beginning of 2015, while parcel number 861-01-005 had been vacant for four years at the time of the BOR hearing. The BOR issued decisions maintaining the

initially assessed valuations, which led to the present appeals. Neither Suburban Gardens nor the county appellees has provided additional evidence or argument on appeal.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964). An appellant must present competent and probative evidence in support of his requested reduction, and an owner is not entitled to a reduction merely because no evidence is presented against his claim. *Columbus City School Dist.,* supra.

In the present appeals, Suburban Gardens relies on appraisals from Bailey Shelton, who opined values of the properties as of December 6, 2016, nearly two years after the January 1, 2015 tax lien date. We acknowledge that Shelton stated that he considered a range of dates going back to 2013 for his sale comparables because it was an appraisal for the 2015 valuation. However, there is no indication from the reports or his testimony that he made necessary adjustments to account for any relevant changes in market conditions. To the contrary, the market discussion included in the reports refers to the time frame from either October 2014 or October 2015 through October 2016. The Supreme Court has repeatedly held that an expert's opinion of value must be expressed "as of" the tax lien date in issue. See, e.g., *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision,* 75 Ohio St.3d 552, 555 (1996) ("We emphasize that the BTA `*** may consider pre- and post-tax lien date factors that affect the true value of the taxpayer's property on the tax lien date.' *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398, ***, paragraph two of the syllabus. However, the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question."); *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 30 (1997) ("The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. *** The real estate market may rise, fall, or stay constant between any two dates, arld the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact."). Here, we find that Shelton has failed to show that the values opined for December 6, 2016 relate back to the subjects' true values as of January 1, 2015.

We acknowledge that the court has held that even an appraisal report that is not a reliable indication of value may be utilized by this board to independently determine value based on the data therein. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 147 Ohio St.3d 503, 2016-Ohio-1485, ¶24-25. We find that the appraisals in these cases do not contain a sufficient level of reliability to allow us to independently determine value.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustments to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision,* 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 784-11-009

TRUE VALUE

$134,800

TAXABLE VALUE

$47,180

.

PARCEL NUMBER 861-01-005

TRUE VALUE

$149,000

TAXABLE VALUE

$52,150

OHIO BOARD OF TAX APPEALS

NEWARK CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2548
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
LICKING COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - NEWARK CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - LICKING COUNTY BOARD OF REVISION
Represented by:
PAULINE O'NEILL
ASSISTANT PROSECUTING ATTORNEY
LICKING COUNTY
20 SOUTH SECOND STREET
P.O. BOX 830
NEWARK, OH 43058-0830

BLESSED BUILDING LLC
Represented by:
TERRY ALLISON
520 TWENTY GRAND RD.
PATASKALA, OH 43062

Entered Friday, January 19, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 054-246870-00.000, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

As of the tax lien date, the subject property was an operating restaurant, though it was vacant at the time of the BOR hearing. The subject's total true value was initially assessed at $774,300. The appellee property owner, Blessed Building LLC, filed a decrease complaint with the BOR seeking a reduction in value to

$550,000. The BOE filed a countercomplaint in support of maintaining the auditor's value. At the BOR hearing, Blessed Building's president, Terry Allison, appeared with a realtor who was listing the subject

property for sale at the time of that hearing. Mr. Allison explained that he purchased the subject in 2011 while there was a Damon's Restaurant operating in the location. The property was first listed for sale in July 2014 at $900,000, but had dropped to $575,000 at the time of the BOR hearing. During that time, the restaurant ceased operation and the building remained vacant. The realtor indicated that they had received only one offer for $450,000. The BOE did not provide any independent evidence of value, relying on cross-examination of Mr. Allison and the realtor. The BOR issued a decision reducing the initially assessed valuation to $550,000. Although the BOR did not provide any rationale for its decision, the record contains a BOR "Appraiser's Summary" that proposed a value consistent with Blessed Building's request, reasoning "value request appears reasonable. Property currently vacant-for sale." From this decision, the BOE filed the present appeal. The BOE appeared at a hearing before this board, arguing that the BOR's value was not supported and the auditor's value should be reinstated. Neither the county appellees nor Blessed Building appeared at the hearing or provided written argument.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. We recognize that under certain circumstances, when the BOR adopts a new value based on the owner's evidence, it has the effect of "shifting the burden of going forward with evidence to the board of education on appeal to the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 193, 2013-Ohio-4543, ¶16. The court emphasized, however, that this board must "eschew a presumption of the validity of the BOR's value and instead to perform its own independent weighing of the evidence in the record." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-5823, *("Chess"),* citing *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision ("Olentangy Crossing"),* 147 Ohio St.3d 409, 2016-Ohio-7381, ¶15, 22; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, ¶13, citing *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 128 Ohio St.3d 565, 2011-Ohio-2258, ¶17, citing *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996).

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). In the present case, Blessed Building provided testimony regarding recent attempts to sell, but there is nothing in the record to show that the subject property in fact transferred. Neither the property listing nor the unaccepted offer to purchase are sufficient to support a reduction of the subject's value. The Supreme Court has held that unaccepted offers to purchase a property are not entitled to the rebuttable presumption accorded an actual sale. *Gupta v. Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397 (1997). Likewise, "a listing price, in essence an aspirational selling price, is not conclusively probative of what a willing buyer would pay for the property in an arm's-length transaction, and is therefore not conclusively probative of actual market value." *Kaiser v, Franklin Cty. Aud.,* 10th Dist. Franklin No. 10AP-909, 2012-Ohio-820, ¶12. Consequently, we cannot rely upon Blessed Building's purported asking price to adjust the value of the property.

In the absence of a recent sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964). In the present appeal, however, neither party has presented a qualifying appraisal report for this board to utilize to reach our determination. Instead, Blessed Building discussed the cessation of operations by the restaurant, which resulting in the vacancy of the building. Initially, it is important to note that this vacancy occurred after January 1, 2015 and, therefore, did not impact the subject's value as of the tax lien date. Even if it had happened prior to the tax lien date, however, Blessed Building did not offer any tangible evidence, such as a qualifying appraisal, to show the extent of the impact on the value of the subject property. See, e.g., *Throckmorton v. Hamilton Cty. Bd. of Revision, 75* Ohio St.3d 227 (1996) (emphasizing that a party must demonstrate more than the mere

existence of factors potentially affecting a property, but the impact they have upon the property's value). Accordingly, we find that negative factors alone can support a reduction to the value of the subject property.

Finally, we acknowledge that the BOE has not provided any independent evidence of value; however, this board is not required to accept this evidence as probative evidence of value simply because only one party offered evidence. See, e.g., *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's determination that an owner's opinion of value, while competent, was not probative).

Having rejected Blessed Building's evidence, we now turn the BOR's determination and the BOE's argument that the auditor's value must be reinstated. As noted above, the BOR did not provide any rationale for its decision, but the record contains a BOR "Appraiser's Summary" that proposed a value consistent with Blessed Building's request, though no individual appeared before any tribunal to testify regarding the preparation of this summary or rationale for the final conclusion. Thus, we are unable to fully review the probative value of the report. Moreover, the only basis named on this report to support the reduction, i.e. that the building was vacant and for sale, did mot exist on the tax lien date. As such, we find that the appraiser summary is not probative evidence and cannot be relied upon to establish the subject's value. Furthermore, there is no specific evidence located within the record to establish the basis for the $550,000 value requested.

The court has held that this board must reinstate the auditor's value "when the BOR's decision to reject the auditor's valuation is completely unsupported in the record" or when the BOE "presents evidence that the auditor's valuation is more accurate than the BOR's." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 144 Ohio St.3d 324, 2015-Ohio-3633, ¶44. Such as the case in the present appeal, where there is no probative evidence in the record regarding a reduced value for the subject property. Accordingly, this board may properly reinstate the auditor's values. See *S.-W. City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 14AP-729, 2015-Ohio-1780, ¶32; *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶35 ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it. This court has emphatically held that the BTA's independent duty to weigh evidence precludes a presumption of validity of the BOR's valuation."); *Olentangy Crossing*, supra, at ¶20 (where the record does not contain sufficient evidence to perform an independent valuation of the property, the auditor's value may ordinarily be reinstated, even if the auditor's valuation has been negated). Thus, based upon our independent review of the evidence in the record, we find that the true value of the subject property is best reflected by the value initially determined by the auditor.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$774,300

TAXABLE VALUE

$271,010

OHIO BOARD OF TAX APPEALS

ANDREW WOOD, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2254

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ANDREW WOOD
1370 MINNESOTA AVE
COLUMBUS, OH 43211

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
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FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Friday, January 19, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that no final decision has been issued for the subject parcel. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On December 4, 2017, the appellant filed a notice of appeal with this board, on which it was indicated that the BOR mailed a decision on December 1, 2017. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County BOR affirming that there is no record of a decision issued for the subject property.

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 decisionof 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." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

ELIZABETH W. PORTER, (et. al.),

Appellant(s),

vs.

GEAUGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s),

CASE NO(S). 2017-1883

(REAL PROPERTY TAX)

ORDER

APPEARANCES:

For the Appellant(s) - ELIZABETH W. PORTER
14143 BASS LAKE ROAD
NEWBURY, OH 44065

For the Appellee(s) - GEAUGA COUNTY BOARD OF REVISION
Represented by:
KATHERINE A. JACOB
ASSISTANT PROSECUTING 'ATTORNEY
GEAUGA COUNTY
231 MAIN STREET
SUITE 3A
CHARDON, OH 44024

Entered Friday, January 19, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss this matter for lack of jurisdiction. The county identifies several jurisdictional defects: first, that appellant failed to file notice of this appeal with the Geauga County Board of Revision ("BOR") as required by R.C. 5717.01, and second, that appellant's appeal is premature as the BOR has not considered or rendered a decision on appellant's real property tax penalty remission request. Appellant has not responded to the motion. We consider the matter upon the notice of appeal and the motion.

This board, as a creature of statute, has only the jurisdiction, power, and duties expressly given by the General Assembly. *Steward v. Evatt,* 143 Ohio St. 547 (1944); *Letphart Lincoln-Mercury, Inc. v. Bowers,* 107 Ohio App. 259 (1958). Appellant has attempted to appeal pursuant to R.C. 5717.01, the requirements of which are specific and mandatory. *Bd. of Edn. of Mentor v. Bd. of Revision,* 61 Ohio St.2d 332 (1980).When a statute confers the right of appeal, adherence to the terms and conditions set forth therein is essential to the enjoyment of the right conferred. *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147 (1946). R.C. 5717.01 requires that notice of the appeal be filed with this board *and* with the county board of revision. There is no indication in the record before us that appellant filed notice of the appeal with the Geauga County Board of Revision.

Based upon the foregoing, we find this board lacks jurisdiction over this matter. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ALIREZA KABIRIAN, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1611

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ALIREZA KABIRIAN
24750 SOUTH WOODLAND RD
BEACHWOOD, OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

BEACHWOOD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID A. ROSE
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Friday, January 19, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA

and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

EQUITY TRUST COMPANY FBO VICTORIA VALLE, (et. al.),	CASE NO(S). 2017-651
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
LUCAS COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - EQUITY TRUST COMPANY FBO VICTORIA VALLE
Represented by:
VICTORIA VALLE
3921 WRENS NEST BLVD.
MAUMEE, OH 43537

For the Appellee(s) - LUCAS COUNTY BOARD OF REVISION
Represented by:
E L A I N E B . S Z U C H
ASSISTANT PROSECUTING ATTORNEY
LUCAS COUNTY
711 ADAMS, SUITE 250
TOLEDO, OH 43604

Entered Friday, January 19, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that ."[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

EILEEN A. PLONSKI, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-562

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EILEEN A. PLONSKI
14902 JAMES AVE
MAPLE HTS, OH 44137

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, January 19, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CINCINNATI CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-2248
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CINCINNATI CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID C. DIMUZIO
ATTORNEY AT LAW
DAVID C. DIMUZIO, INC.
810 SYCAMORE STREET, SIXTH FLOOR
CINCINNATI, OH 45202

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

FOURTH AND RACE REDEVELOPMENT, LLC
1203 WALNUT STREET
4TH FLOOR
CINCINNATI , OH 45202

Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The county appellees move to dismiss this matter on the basis that the property owner first filed an appeal from the same board of revision decision with the Hamilton County Court of Common Pleas. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion and appellant's notice of appeal.

[2] On November 29, 2017, the appellant board of education filed an appeal with this board from a decision issued by the Hamilton County Board of Revision, i.e., BOR No. 2016-011871. The county appellees' motion argues that the property owner filed an appeal from the same decision with the Hamilton County Court of Common Pleas two days earlier, on November 27, 2017. Attached to the county appellees' motion

to dismiss is a copy of such appeal, captioned as *Fourth and Race Redevelopment, LLC v. Bd. of Revision of Hamilton Co.*, case no A1706157. The copy reveals that the appeal was filed by appellant with the Hamilton County Clerk of Courts on November 27, 2017.

[3] R.C. 5717.05 provides that "an appeal from the decision of a county board of revision may be taken directly to the court of common pleas of the county by the person in whose name the property is listed or sought to be listed for taxation." It further requires that "[w]hen the appeal has been perfected by the filing of notice of appeal as required by this section, and an appeal from the same decision of the county board of revision is filed under section 5717.01 of the Revised Code with the board of tax appeals, the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal."

[4] Upon review of the existing record, the county appellees' motion is well taken. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

TARAS PUTKO, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2240

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TARAS PUTKO
Represented by:
TARAS PUTKO
2325 CREEK VIEW PL
GROVE CITY, OH 43123

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that no final decision has been issued for the subject parcel. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On December 4, 2017, the appellant filed a notice of appeal with this board, on which it was indicated that the BOR mailed a decision on December 1, 2017. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County BOR affirming that there is no record of a decision issued for the subject property.

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." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

REGINA GLASS, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1407

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - REGINA GLASS
2111 NORTH TAYLOR
CLEVELAND HEIGHTS, OH 44112

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

EAST CLEVELAND CITY SCHOOLS BOARD OF EDUCATION
Represented by:
JOHN P. DESIMONE .
KADISH, HINKEL & WEIBEL
1360 EAST 9TH STREET, SUITE 400
CLEVELAND, OH 44114

Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that ."[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School*

Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board

of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider this matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

PAUL W. SPRINGER, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-994

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PAUL W. SPRINGER
12500 ELMWOOD AVE
CLEVELAND, OH 44111

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

ROCKY RIVER CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID A. ROSE
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School*

Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board

of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider this matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

RABINOWITZ LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-437

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RABINOWITZ LLC
Represented by:
BENTOLILA YOEL MOSHE
2940 NOBLE ROAD
SUITE #201
CLEVELAND HEIGHTS, OH 44121

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH.FLOOR
CLEVELAND, OH 44113

Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon an appeal by Rabinowitz LLC from a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel number 683-18-115 for tax year 2015. We proceed to consider the matter upon the notice of appeal and the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01; no party filed written argument or requested a hearing before this board.

The subject property was initially valued by the fiscal officer at $105,100 for tax year 2015. Rabinowitz LLC filed a complaint seeking a reduction in value to $35,000 to reflect its purchase of the property in April 2014 and the BOR's decision for tax year 2014 accepting the purchase price as the best evidence of the property's value. The owner waived its appearance at the hearing, and the BOR issued a decision finding no change in value was warranted. The BOR's oral hearing journal summary contains a note that "Board research indicated Subject Property was renovated acid being offered for rent at tax lien." S.T., Ex. E. Appellant thereafter appealed to this board, again advocating for reliance on the $35,000 sale.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8,*

L.L.C. v. Franklin Cty. Bd. of Revision, Slip Opinion No. 2017-Ohio-4415. Once the proponent of a sale meets its initial burden to present prima facie evidence of a sale, *Utt v. Lorain Cry. Bd. of Revision,*

150 Ohio St.3d 119, 2016-Ohio-8402, ¶14, the sale is presumed to be the best evidence of value unless the opponent of the sale presents evidence that the sale was either not recent or not at arm's-length. *Cummins Property Servs., L.L.C. v. Franklin Cry. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, ¶13. Apart from temporal proximity between a sale and tax lien date, recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property." *Cummins*, supra, at ¶35.

There appears to be no dispute that the $35,000 sale in April 2014 occurred; appellant submitted to the BOR a settlement statement and warranty deed as evidence of the details of the sale. S.T., Ex. F. Though the BOR indicated in its oral hearing journal summary that it had research indicating the property had been renovated, no such research appears in the record certified on appeal. The Supreme Court has noted that "[f]ailure to certify the entire evidentiary record may prejudice the interest of the proponents of the omitted items, and therefore, boards of revision should take care to comply with the statutory duty to certify the *entire* record." (Emphasis sic.) *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, ¶27, fn.4. See also *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094, ¶12-14. In the absence of such information, we are unable to determine, for example, whether renovations to the property were made after appellant's purchase but prior to tax lien date so as to render the sale remote, or the extent of such renovations. We therefore find the April 2014 sale of the property to be the best evidence of its value as of tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2015, were as follows:

TRUE VALUE

$35,000

TAXABLE VALUE

$12,250

OHIO BOARD OF TAX APPEALS

PISCITELLO, THOMAS M. & PISCITELLO, LINDA S. CO-TRUSTEES, (et. al.),	CASE NO(S). 2017-26
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - PISCITELLO, THOMAS M. & PISCITELLO, LINDA S. CO-TRUSTEES
Represented by:
VICTOR ANSELMO
SIEGEL JENNINGS CO., L.P.A.
23425 COMMERCE PARK DRIVE, SUITE 103
CLEVELAND, OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellants appeal a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 604-20-043, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the transcript certified pursuant to R.C. 5717.01, and the record of this board's hearing.

The subject property was initially assessed at $910,000. The appellants filed a complaint with the BOR, which requested that the subject property be revalued at $699,000. At the BOR hearing on the matter, trustee Thomas Piscitello appeared with appraiser Bailey Shelton in support of the complaint. In doing so, Piscitello testified about the subject property's prior value history and condition. Shelton testified about the data and methodologies used to derive his final conclusion of the subject property's value, $699,000, as of September 2015. The BOR members had a number of questions about the appraisal practices employed to derive the final conclusion of value. As a result, the BOR rejected the appraiser's report and testimony and voted to retain the initially assessed value. The BOR subsequently issued a written decision that retained the subject property's $910,000 value and this appeal ensued.

At this board's hearing, the appellants appeared, through counsel, to submit additional argument and evidence in support their position. In doing so, the appellants submitted the report and testimony of appraiser William J. Doyle, who opined the value of the subject property to be $725,000 as of January 1,

2015. He testified about the underlying data and methodologies used to derive his final conclusion of value. As additional support, the appellants submitted an additional appraisal report, performed by Tracey Reinecke for purposes of refinancing a mortgage, that opined the value of the subject property to be $721,000 as of February 2016; however, Reinecke did not appear to testify about the substance of the appraisal. The county appellees waived their appearance at the hearing.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Rd of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). See, also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. As the Supreme Court has pointed out, "such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Rd of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

Where, as here, a party relies upon an appraiser's opinion of value, this board may accept all, part, or none of the appraiser's opinion. *Witt Co. v. Hamilton Cty. Rd of Revision,* 61 Ohio St.3d 155 (1991); *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision,* 85 Ohio St.3d 609 (1999). Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported.

In this matter, Doyle compared the subject property to three comparable properties that actually sold, and two comparable properties that were unsold, located in the same vicinity as the subject property. He adjusted the three sold comparable properties for differences with the subject property and explained his basis for doing so. As such, we find his appraisal report to be well supported by market data.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd of Edn. v. Franklin Cty. Rd of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that the appellants satisfied their evidentiary burden before this board. It is therefore the order of this board that the subject property's true and taxable values as of January 1, 2015 are as follows:

TRUE VALUE

$725,000

TAXABLE VALUE

$253,750

OHIO BOARD OF TAX APPEALS

DOUG AND ANDREA GROW, (et. al.),

Appellant(s),

vs.

CHAMPAIGN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2618, 2016-2619

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DOUG AND ANDREA GROW
Represented by:
DONALD ANDREWS
ATTORNEY
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For the Appellee(s) - CHAMPAIGN COUNTY BOARD OF REVISION
Represented by:
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Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The above-named appellants appeal the denial of an application to allow the subject parcels, L43-12-00-53-00-016-00, L43-12-00-53-00-016-03, and L43-12-00-53-00-016-01, to participate in the current agricultural use valuation ("CAUV") program for tax year 2013 and the dismissal of its complaint filed with the board of revision ("BOR") for tax year 2014. We proceed to consider this matter based upon the notices of appeal, the transcript certified pursuant to R.C. 5717.01, the record of this board's hearing, and the motion to dismiss filed by the county appellees.

This matter emanates from an earlier proceeding before this board. In *Grow v. Champaign Cty. Bd. of Revision* (Mar. 28, 2016), BTA No. 2015-514, unreported, we remanded this matter to the board of revision ("BOR") to determine whether the property owners had filed CAUV applications for tax years 2013 and/or 2014, and, in the event that such application(s) had been filed, to determine whether the county auditor had provided the statutorily required notice(s) that the subject parcels did not qualify to participate in the program, and, in the event that such notice(s) had been given, to determine whether the subject parcels qualified for the program. By decision dated December 5, 2016, on remand, the BOR determined that, as to tax year 2013, there was no record that the county auditor had sent the statutorily required CAUV denial notice to the property owners nor that the property owners had actually filed an original or renewal CAUV application and paid the application fee. As to tax year 2014, the BOR determined that there was no record

that the property owners had filed an original or renewal CAUV application and paid the application fee. On December 5, 2016, the county auditor also issued a denial of CAUV application for tax year 2013. The appellants appealed both the BOR's and county auditor's decisions to this board on December 22, 2016. According to their notices of appeal, the decision(s) related to tax year 2013 was docketed as BTA No. 2016-2618 and the decision(s) related to tax year 2014 was docketed as BTA No. 2016-2619.

On August 15, 2017, this board held a merit hearing at which time only the appellants appeared to supplement the record with additional evidence and/or argument. The county appellees subsequently filed a motion to dismiss the appeal related to tax year 2013, BTA No. 2016-2618, which asserted that the appellants failed to follow the proper procedures to challenge the county auditor's denial of their CAUV application for tax year 2013. As a result, the county appellees argued that this board lacked jurisdiction to challenge the merits of such appeal. The appellants did not respond to the motion.

Relevant to these appeals, when land is devoted "exclusively to agricultural use," and meets certain requirements, a property owner may submit an application to the county auditor to participate in the CAUV program to avoid a real property tax assessment based on market value. Based upon the application, the county auditor determines a property's participation eligibility and the auditor's determination of eligibility may be reviewed by the BOR. R.C. 5713.31, 5713.32, 5713.38, 5715.19.

Based upon our review of the record, we must grant the county appellees' motion to dismiss the appellants' notice of appeal for tax year 2013, BTA No. 2016-2618. R.C. 5713.32 provides that:

> "Prior to the first Monday in October the county auditor shall notify, by certified mail, each person who filed an application or an amended application under section 5713.31 of the Revised Code and whose land the auditor determines is not land devoted exclusively to agricultural use, of the reason for such determination. A complaint against such determination may be made in the manner prescribed in section 5715,19 of the Revised Code."

Because the appellants failed to come forward to assert or to demonstrate otherwise, it is undisputed that they failed to file a complaint with the BOR to challenge the county auditor's denial of their CAUV application for tax year 2013. Instead, they appealed directly to this board. As such, we are constrained to find that the county appellees' motion to dismiss for lack of jurisdiction has merit and that appeal BTA No. 2016-2618 must dismissed.

Although the appellants' appeal related to tax year 2014, BTA No. 2016-2619, was not included in the county appellees' motion to dismiss, we must also conclude that we lack jurisdiction to consider that appeal but for different grounds. R.C. 5713.31 and R.C. 5713.38 provide the process by which a property owner can seek the benefits of the CAUV program. A review of these two statutes makes clear that the filing of an application, and a $25 fee in the case of an initial application, triggers the various statutory duties to evaluate whether a specific property actually qualifies to participate in the CAUV program. In this matter, the appellants failed to provide proof that they did, in fact, file the application (and $25 fee if appropriate) with the county auditor for tax year 2014. In the prior matter before this board, we noted that "[w]hile appellants allege that they filed a 2014 CAUV application, no such application is in the record." *Grow v. Champaign Cty. Bd. of Revision* (Mar. 28, 2016), BTA No. 2015-514, unreported at 2. Although the appellants provided copies of a number of CAUV applications, which they alleged to have filed with the county auditor, at this board's hearing, none of those applications were for tax year 2014. The statutory transcript also does not contain a tax year 2014 CAUV application.

We note that the appellants asserted that they attempted to file CAUV applications with the county auditor's office, which were refused. However, in *L.J. Smith, Inc. v. Harrison Cry. Bd. of Revision,* 140 Ohio St.3d 114, 2014-Ohio-2872, at ¶21, the court discussed the meaning of the word "filed" with respect to a complaint against the valuation of real property: "The 'generally accepted sense' of the word 'filed' "implies actual rather than constructive delivery *** into the official custody and control' of the relevant

official. *Fulton v. State ex rel. Gen. Motors Corp.,* 130 Ohio St. 494, 497, *** (1936)." (Parallel citation omitted.) As such, we are forced to conclude that the appellants failed to file a tax year 2014 CAUV application with the county auditor and, that we do not have jurisdiction to consider whether the subject properties qualify to participate in the CAUV program.

Based upon the foregoing, we grant the county appellees' motion to dismiss for lack of jurisdiction as to BTA No. 2016-2618 because the appellants failed to follow the proper procedure to challenge the county auditor's denial of their CAUV application for tax year 2013. On a separate but related ground, we also dismiss the appellants appeal in BTA No. 2016-2619 because they failed to follow the proper procedure seek the benefits of the CAUV program for tax year 2014, i.e., to file a tax year 2014 CAUV application with the county auditor. Therefore, these appeals are dismissed.

OHIO BOARD OF TAX APPEALS

TORSION GROUP CORP, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1888

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the bais that notice of the appeal was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider this matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1450
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the appellant board of education's ("BOE") motion to remand this matter to the Franklin County Board of Revision ("BOR") with instructions to dismiss the underlying complaint, the appellee property owner's response thereto, and the statutory transcript certified pursuant to R.C. 5717.01.

The record reveals the following. On March 14, 2017, a tax year 2016 complaint against the valuation of parcel number 040-00899-00 was filed by Midwest Southpark VIII Industrial, LLC ("Midwest") through its counsel. An "amended" complaint was filed on July 17, 2017, changing the name of the owner/complainant to Exeter 3357 Southpark, LLC ("Exeter"), but identical in all other respects. At the BOR hearing, the countercomplainant BOE moved to dismiss the complaint for lack of standing. Counsel for the BOE argued that the original complainant, Midwest, did not own the property at the time the complaint was filed; it sold the property to Exeter on February 29, 2017. The BOE therefore argued that Midwest lacked standing to file the complaint as the owner Of the property. The BOR ultimately denied the motion to dismiss, and decreased the value of the property. The BOE appealed to this board and again argues that the complaint failed to properly invoke the BOR's jurisdiction because Midwest lacked standing to file the complaint.

As the court explained in *Diley Ridge Med. Ctr. v. Fairfield Cty. Bd. of Revision,* 141 Ohio St.3d 149, 2014-Ohio-5030, ¶11, "the standing requirements incorporated into R.C. 5715.19(A)(1) run to the jurisdiction of the boards of revision." The burden is on the complainant, here, Midwest, to demonstrate its standing to file the original complaint at the time it was filed. *Soc. Natl. Bank v. Wood Cty. Bd. of Revision,* 81 Ohio St.3d 401 (1998). Under R.C. 5715.19(A)(1), Midwest must demonstrate that it owned the subject property, or other taxable real property in the county, at the time the original complaint was filed, i.e., March 14, 2017. A review of the record reveals that Midwest has not demonstrated that it had standing at the time it filed the original complaint.

Instead, Exeter argues that it substituted the proper complainant through its July 17, 2017 "amended" complaint. Such amendment, made after the statutory deadline for filing the complaint, i.e., March 31, 2017, does not cure the original defect as to standing. Despite Exeter's arguments regarding the BOR's authority to promulgate rules and allow amendments of complaints, this board has repeatedly held that "given the absence of any express statutory authority, a complainant cannot amend his or her complaint before a BOR once the complaint is filed and the March 31 deadline passes." *Bd. of Edn. of the Cleveland Mun. School Dist. v. Cuyahoga Cty. Bd. of Revision* (May 25, 2007), BTA No. 2006-T-415, unreported, citing *CP Investments Ltd. v. Cuyahoga Cty. Bd. of Revision* (Sept. 19, 1997), BTA No. 1997-T-297, unreported. See also *Bd. of Edn. of the Westerville City Schools v. Delaware Cty. Bd. of Revision* (May 17, 2011), BTA No. 2011-K-152, unreported. Therefore, the attempt to "amend" the complaint in July 2017 does not rectify the jurisdictional issue presented as to complainant's standing.

Exeter also argues that the change in the name of the complainant is akin to a typographical error that has been found not to render a complaint jurisdictionally deficient. For example, in *James Navratil Dev. Co. v. Medina Cty. Bd. of Revision,* 139 Ohio St.3d 183, 2014-Ohio-1931, the Supreme Court found that the complainant's filing of a complaint listing "James Navratil Company," rather than "James Navratil *Development* Company," on line 1 was not jurisdictionally defective. However, that case was decided based on the court's decision in *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 137 Ohio St.3d 266, 2013-Ohio-4627, holding that failure to correctly identify the property owner on the complaint was not a jurisdictional requirement. It did.not address the standing of the complainant.

We further reject Exeter's argument that Midwest had standing based on its "contractual right to continue to pursue tax appeals pursuant to a purchase agreement between itself and Exeter." Brief of Appellee in Response to Motion to Remand and Dismiss at 1. The argument that a contract can confer standing on a non-owner complainant has been repeatedly rejected by the Supreme Court and this board. See, e.g., *Diley Ridge,* supra; *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision,* 86 Ohio St.3d 181 (1999); *Soc. Natl. Bank,* supra; *Public Square Tower One v. Cuyahoga Cty. Bd. of Revision,* 34 Ohio App.3d 49 (1986). Midwest must demonstrate that it had standing to file the complaint based on the requirements of R.C. 5715.19(A)(1).

Based upon the foregoing, we find Midwest has failed to meet its burden to prove it had standing to file the March 14, 2017 complaint. *Soc. Natl. Bank*, supra. Accordingly, the BOE's motion is well taken and this

matter is hereby remanded to the BOR with instructions to dismiss the complaint, the practical effect being the reinstatement of the auditor's initial valuation for tax year 2016.

OHIO BOARD OF TAX APPEALS

MANTALINE CORPORATION, (et. al.),

Appellant(s),

vs.

PORTAGE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1099

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon a notice of appeal by Mantaline Corporation from a decision of the Portage County Board of Revision ("BOR") determining the value of parcel number 22-023-00-00-041-001 for tax year 2016. We consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01, and the board of education's written legal argument; no party requested a hearing before this board.

The subject property was initially valued by the auditor at $678,900 for tax year 2016. The Crestwood Local School District Board of Education ("BOE") filed a complaint seeking an increase in value to $1,425,000 based

on a March 16, 2016 sale of the subject property for that amount; Mantaline Corporation filed a countercomplaint seeking an increase in value to $1,100,000 based on an August 19, 2016 appraisal for that amount. At the BOR hearing, counsel for the BOE presented a conveyance fee statement and limited warranty deed as evidence of the sale. Mantaline's vice president of finance, Nancy Van Ginkel, presented an appraisal prepared for its lender, opining a value of $1,100,000 as of August 9, 2016. Ms. Van Ginkel testified that Mantaline purchased the property due to its need for further space to accommodate increased business. Though she indicated Mantaline was in a hurry to purchase the property and therefore "willing to pay a little bit more," she did not indicate that Mantaline was under any duress to purchase the property. The BOR ultimately issued a decision increasing the value of the property to the sale price ($1,425,000), and Mantaline appealed to this board, again seeking a value of $1,100,000.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision,* 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. The BOE presented evidence of such a sale. Once the proponent of a sale meets its initial burden to present prima facie evidence of a sale, *Utt v. Lorain Cty. Bd. of Revision,* 150 Ohio St.3d 119, 2016-Ohio-8402, ¶14, as the BOE did here, the sale is presumed to be the best evidence of value unless the opponent of the sale presents evidence that the sale was either not recent or not at arm's-length. *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, ¶13.

Mantaline does not argue that the sale was not recent or riot arm's-length. Instead, it advocates for its financing appraisal value in lieu of the sale. The Supreme Court has held that "[i]t is only when the purchase price does not reflect the true value that a review of independent appraisals based upon other factors is appropriate." *Pingue v. Franklin Cty. Bd. of Revision,* 87 Ohio St.3d 62, 64 (1999). See also *Cummins,* supra, at ¶23 ("[W]e erred *** when we authorized the use of appraisals to adjust the price set in a recent, arm's-length transaction. To do so places the cart (appraisal) before the horse (an actual arm's-length sale)."). Moreover, this board has previously rejected appraisals prepared for financing, rather than taxation, purposes, e.g., *Crawford v. Mercer Cty. Bd. of Revision* (Aug. 25, 2017), BTA No. 2016-1138, unreported, appraisals that fail to opine value as of tax lien date (here, January 1, 2016), e.g., *Franklin v. Cuyahoga Cty. Bd. of Revision* (Sept. 12, 2016), BTA Nos. 2015-2192, 2194, unreported, and appraisals that are not authenticated by their authors before either the BOR or this board, e.g., *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. Given these deficiencies, we are unable to rely on the opinion value within the appraisal report in valuing the property.

Even if we look at the data within the report, we find that it fails to rebut the presumption that the May 2016 sale is the best evidence of value. Initially, although the appraiser states in the report that the property was not listed for sale, S.T., Ex. F(2) at 2, a property need not be offered for sale on the open market for the sale to be the best evidence of value. *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 129 Ohio St.3d 172, 2011-Ohio-3092, ¶29; *Walters v. Knox Cty. Bd. of Revision,* 47 Ohio St.3d 23, 25 (1989). It is also notable that the appraiser used the sale of the subject property in May 2016 as a comparable within his sales comparison report, and made no adjustments to the sale. S.T., Ex. F(2) at 36. The remaining sale comparables further support the price paid for the subject property. We find nothing within the report to indicate that the May 2016 sale price did not reflect fair market value as of tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$1,425,000

TAXABLE VALUE

$498,750

OHIO BOARD OF TAX APPEALS

MAYFIELD AND GREEN LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-416

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 702-05-019, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property was initially assessed at $99,500. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $69,500 based upon market conditions, as demonstrated through comparable properties and an appraisal report, and the long-term vacancy of the subject property. The affected board of education ("BOE") filed a counter-complaint, which objected to the request.

At the hearing before the BOR, Behnam Malakooti, sole member of the property owner, appeared in support of the complaint and counsel for the BOE appeared in support of the counter-complaint. Malakooti testified about the subject property's prior history as a vehicle oil change retail space and its subsequent, ongoing history of 100% vacancy. In doing so, he submitted the report and testimony of appraiser Bailey Shelton, who opined the value of the subject property to be $55,500 as of December 6, 2016. Shelton testified about the condition of the subject property, as well as the underlying data and methodologies used to derive his opinion of value. The BOR members asked .Shelton a number of questions regarding his selection of comparable properties and market data. Malakooti also supplied federal income tax filings to demonstrate the income and/or expenses related to the subject property. Based upon Shelton's appraisal report, Malakooti amended the property owner's opinion of the subject property's value to $55,500. Counsel for the BOE cross-examined Malakooti and Shelton. Counsel specifically questioned Shelton about his knowledge of sales of similar properties located closer in proximity to the subject property than those comparable properties used in the appraisal report. According to the BOR hearing worksheet, the BOR voted to reject Shelton's appraisal report as an indicator of the subject property's value because it did not express an opinion of value as of the tax lien date of January 1, 2015, because it failed to develop an income approach to value given that the subject property was a commercial property, and because it lacked market support throughout the sales comparison approach to value. The BOR subsequently issued a decision that retained the subject property's initially assessed value and this appeal ensued.

Although the parties had an opportunity to attend a merit hearing before this board, in order to submit additional argument and/or evidence, none of the parties did so. However, the county appellees submitted written argument to assert that the property owner failed to satisfy its burden before the BOR and that this board should retain the subject property's initially assessed value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). See, also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. As the Supreme Court has pointed out, "such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

Where, as here, a party relies upon an appraiser's opinion of value, this board may accept all, part, or none of the appraiser's opinion. *Witt Co. v. Hamilton Cty. Bd. of Revision,* 61 Ohio St.3d 155 (1991); *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision,* 85 Ohio St.3d 609 (1999). Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported.

Upon review, we conclude that Shelton's appraisal report is not the best indication of the subject property's value. As an initial matter, we note that Shelton's appraisal report and conclusion of value reflect the subject property's value as of December 6, 2016, as indicated on the appraisal report's cover page, or as of December 15, 2016, as indicated in various sections of the appraisal report, nearly twenty-four months after the tax lien date of January 1, 2015. As has been repeatedly stated by both the Supreme Court and this board, while we "'may consider pre- and post-tax lien date factors that affect the true value of the taxpayer's property on the tax lien date,'" we must base our decision "on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question." *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision* 75 Ohio St.3d 552, 555 (1996), quoting *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision,* 66 Ohio St.2d 398 (1981), at paragraph two of the syllabus. See also *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 30 (1997) ("The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. *** The real estate market may rise, fall, or stay constant between any two dates, and the assumption that a change in valuation

between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact.").

Here, Shelton attempted to rehabilitate in his opinion of value and testified that his $55,500 opinion of value would be the same as of January 1, 2015. His appraisal report was a restricted-use report and, "[a]s such, it presents only summary discussions of the data, reasoning, and analysis that were used in the evaluation process to develop the evaluator's opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the evaluator's file." See Shelton Appraisal Report. He even conceded that he failed to update the appraisal report to include sales data to make the appraisal report relevant to the tax lien date. See Statutory Transcript at BOR Hearing Audio. As, such we find that Shelton failed to successfully demonstrate that the appraisal report was indicative of the subject property's value as of January 1, 2015. Furthermore, the appraisal report contains very little market data that would allow us to independently determine appropriate market adjustments to the sales comparison approach to value. *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 147 Ohio St.3d 503, 2016-Ohio-1485 (determining that a hearsay financing appraisal report provided a basis for which this board could independently determine value because the bank and property owner relied upon the appraisal to make business decisions, which gave it the "indicia of reliability"). This missing information is critical to our analysis. Because no real effort was made to make Shelton's opinion of value relevant to the tax lien date of January 1, 2015, we must reject it.

We also conclude that Shelton's appraisal report undervalued the subject property. Under the sales comparison approach, he derived a $25 price per square foot value based upon the sale of comparable properties. In doing so, he noted that he derived each comparable property's price per square foot based upon "land and building merged." For example, under comparable property 1, we discern that Shelton divided the $28,500 sale price by 3,081 square feet to determine the unadjusted value of $9.25 per square foot value for the entire site, i.e., "land and building merge." After making similar calculations to the remaining comparable properties, and allegedly making adjustments for differences with the subject property, Shelton concluded that the market information indicated that the subject property would sell for $25 per square foot. Instead of applying that $25 per square foot value to the subject property's "land and building merge," he applied the $25 per square foot value to 2,220 square feet, which we discern to be the square footage of the building (based upon Malakooti's testimony). Given that Shelton derived the $25 per square foot value based upon "land and building merged" values, it is unclear why he would apply that value only to the subject building, without include the subject land. We find Shelton failed to make an "apples to apples" comparison between the alleged comparable properties and the subject property, to derive his final conclusion of value.

We also find the substance of Shelton's appraisal report and testimony to be contradictory. For example, the appraisal report opined that "the market is declining from October 2014 to October 2016" and the "market is declining from October 2015 to October 2016." It is unclear whether the difference in date, between "October 2014" and "October 2015" was an error. Nevertheless, this information conflicts with his conclusion under the "MARKET TRENDS" section of the appraisal report that stated that the "market is steady from October 2015 to October 2016," which was consistent with Shelton's testimony at the BOR that indicated that the market was "stable." There is also conflicting and confusing information within the appraisal report about the subject property's site size and/or building size.

As another point of conflicting evidence from the property owner, we note that the subject property's condition is unclear. At the BOR hearing, Shelton testified that the subject building was in average condition and indicated that any condition issues were more cosmetic, such as rusting. However, Malakooti testified that the subject building suffered from more material condition issues such as flooding and mold.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR]

transcript"). We find that the evidence upon which the property owner relied is not competent and probative evidence of the subject property's value as of the effective tax lien date. We find the cumulative errors in Shelton's appraisal report to be detrimental to its credibility and reliability. See *Syed v. Cuyahoga Cty. Bd. of Revision* (Sept. 17, 2015), BTA No. 2014-4303, unreported (rejecting an appraisal report that contained substantial errors, including the "as of date and specious methodologies); *AMA Ventures, Inc. v. Cuyahoga Cty. Bd. of Revision* (Mar. 27, 2015), BTA No. 2014-4313, unreported, at 3 ("[W]e question the reliability of the appraisal report based upon the errors or inaccuracies contained in the report.")

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2015:

TRUE VALUE

$99,500

TAXABLE VALUE

$34,830

OHIO BOARD OF TAX APPEALS

CHAGRIN SHAKER LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-414

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CHAGRIN SHAKER LLC
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CLEVELAND, OH 44113

Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 735-25-021, for tax year 2015. We proceed to consider this matter based upon the notice of appeal and transcript certified pursuant to R.C. 5717.01.

The subject property was initially assessed at $214,500. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $165,000 based upon market conditions, as demonstrated through comparable properties, and high vacancy, as demonstrated through low rental income.

At the hearing before the BOR, Behnam Malakooti, sole member of the property owner, appeared in support of the complaint. In doing so, he submitted the report and testimony of appraiser Bailey Shelton, who opined the value of the subject property to be $112,000 as of December 6, 2016. Shelton testified about the condition of the subject property, as well as the underlying data and methodologies used to derive his opinion of value. The BOR members asked Shelton a number of questions regarding his selection of comparable properties and market data. Malakooti testified about the income and expenses related to leasing the subject property for use as a dry-cleaning business and daycare facility and submitted supporting documentation. According to the BOR hearing worksheet, the BOR voted to reject Shelton's appraisal report

as an indicator of the subject property's value because it did not express an opinion of value as of the tax lien date of January 1, 2015, because it relied upon comparable properties that were n

located in the same vicinity as the subject property, and because it lacked market support throughout. The BOR subsequently issued a decision that retained the subject property's initially assessed value and this appeal ensued.

Although the parties had an opportunity to attend a merit hearing before this board, in order to submit additional argument and/or evidence, neither the property owner nor the county appellees did so. As such, we will consider this matter based upon the evidence submitted at the BOR hearing.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). See, also *Terraza 8, LLC v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. As the Supreme Court has pointed out, "such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

Where, as here, a party relies upon an appraiser's opinion of value, this board may accept all, part, or none of the appraiser's opinion. *Witt Co. v. Hamilton Cty. Bd. of Revision* (1991), 61 Ohio St.3d 155; *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision* (1999), 85 Ohio St.3d 609. Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported.

Upon review, we conclude that Shelton's appraisal report is not the best indication of the subject property's value. As an initial matter, we note that Shelton's appraisal report and conclusion of value reflect the subject property's value as of December 6, 2016, nearly twenty-four months after the tax lien date of January 1, 2015. As has been repeatedly stated by both the Supreme Court and this board, while we "'may consider pre- and post-tax lien date factors that affect the true value of the taxpayer's property on the tax lien date', we must base our decision "on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question." *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revisio* n 75 Ohio St.3d 552, 555 (1996), quoting *Youngstown Sheer& Tube Co. v. Mahoning Cty. Bd. of Revision,* 66 Ohio St.2d 398 (1981), at paragraph two of the syllabus. See, also, *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 30 ("The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. *** The real estate market may rise, fall, or stay constant between any two dates, and the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact.").

Furthermore, no effort was made to make Shelton's conclusion of value relevant to the tax lien date. See *Bd. of Edn. of the Groveport Madison Local Schools v. Franklin Cty. Bd. of Revision* (Aug. 11, 2015), BTA No. 2014-3110, unreported (accepting an appraiser's oral amendment of his opinion of value to reflect the correct tax lien date). Shelton's appraisal report was a restricted-use report and, "[a]s such, it presents only summary discussions of the data, reasoning, and analysis that were used in the evaluation process to develop the evaluator's opinion of value. Supporting documentation concerning the data, reasoning, and analyses is retained in the evaluator's file." See Shelton Appraisal Report at 5. As, such the appraisal report contains very little market data that would allow us to independently determine appropriate market adjustments to the sales and income approaches to value. *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 147 Ohio St.3d 503, 2016-Ohio-1485. See also *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Sept. 11, 2014 BTA No. 2013-5327, unreported. Because of the foregoing issues, we do not find Shelton's appraisal report to be credible or reliable. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 148 Ohio St.3d 499, 2016-Ohio-7466.

We note that the property owner requested that the subject property be valued at $165,000 instead of

$112,000 to be consistent with Shelton's appraisal report. However, there is insufficient evidence in the record to demonstrate that the subject property should be valued at $165,000. To the extent that the property owner relied upon its income and expense information, we find such information to be insufficient basis to reduce the subject property's value. The record is void of any information regarding the market in which the subject property operated. In *Olmsted Falls Village Assn.*, supra, at 555, the court commented that "an appraiser may employ actual income as reduced by actual expenses *if both amounts conform to market."* (Emphasis added.) Continuing, the court noted that it has "required the BTA to make factual findings, supported by the record, of the appropriate market rents and expenses to be used in the income approach to value." Id.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that the evidence upon which the property owner relied is not competent and probative evidence of the subject property's value as of the effective tax lien date. It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2015:

TRUE VALUE

$214,500

TAXABLE VALUE $75,080

OHIO BOARD OF TAX APPEALS

SHELTER HAVEN, LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-393

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner, Shelter Haven, LLC ("Shelter Haven") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 113-16-028, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject property is a commercial building located in the Waterloo Arts District of Cleveland, and its total true value was initially assessed at $168,000. Shelter Haven filed a decrease complaint with the BOR seeking a reduction in value to $108,000. The appellee board of education ("BOE") filed a countercomplaint in support of maintaining the fiscal officer's value. At the BOR hearing, Thomas Bell appeared on behalf of Shelter Haven, and amended the requested value to $82,600. Bell indicated that he had purchased the subject property in April 2014 for $168,000 but believed he had overpaid for the

property. Bell testified that at the time of his purchase, there was an overall revitalization effort taking place in the area that had not come to fruition consistent with the promises made to him regarding the project's direction. Bell provided information about several other properties that had sold in the area and argued that they show that the price per square foot that he paid for the subject far exceeded the market price at which other properties were transferring. Bell also stated that he used another property he owned as collateral to obtain financing for the subject property because the lender would not use the subject alone. The BOE's representative argued that Shelter Haven had failed to show that the April 2014 sale was not a recent arm's-length transaction, and it, therefore, provides the best evidence of the subject's value. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. Bell appeared at a hearing before this board, while the BOE and county appellees waived the opportunity to present additional evidence or argument. Bell reiterated the statements made to the BOR and provided documentation regarding the promotion of the revitalization efforts in the area along with an updated list of sales, including the transfer of the property next to the subject.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 327 (1997). Additionally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[4] In the present matter, it is undisputed that Bell purchased the subject property from Project Light Switch, LLC on or about April 24, 2014 for $168,000 before he transferred it into the current ownership entity. As the party opposing the sale, Shelter Haven has the burden to show why the reported sale price is not a reliable indication of the subject's true value. Bell and Shelter Haven do not dispute that this was a recent arm's-length transaction, but instead argue that the purchase price is not a reliable indication of value because Bell had overpaid for the property. This board has consistently held, however, that "[a] negotiated purchase price is not invalidated merely because a purchaser later believes he made a bad deal." *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported, at 11. In this case, we again reject Bell's argument that we should ignore the purchase price based on a misperception of the neighborhood and the value of the property.

[5] Furthermore, even if we construe Shelter Haven's arguments to mean that the sale was no longer recent based on a change to the market condition in the neighborhood, we would likewise reject this contention. Ohio courts have refrained from setting forth a "bright line" test to establish whether a sale of property is sufficiently close to a tax lien date to be presumed to acctirately reflect its value. See, generally, *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 36, 44 (1997), overruled in part on other grounds *Cummins*, supra ("The question of how long after a sale the sale price is to be considered the best evidence of true value will vary from case to case."). Such restraint results from the recognition that whether a sale is "recent" to or "remote" from a tax lien date is not decided exclusively upon temporal proximity, but may necessarily involve a multitude of other impacts/considerations. See, e.g.,

*Cummins,*supra, at ¶35 (recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property"); *New Winchester Gardens,* supra, at 44 (recency factors include "changes that have occurred in the market"). In the present appeal, Bell stated that he realized that the 'revitalization efforts were not being achieved consistent with the promises made in 2015 and 2016, acknowledging that this insight was recognized after January 1, 2015. As such, even if it would qualify as an intervening factor that would render the sale remote, it did not take place during the time between the sale and the tax lien date and could not have impacted the subject's value at the relevant time for purposes of the instant appeal. Thus, we find this argument is unpersuasive.

[6] Finally, even if we were to disregard the sale altogether, Shelter Haven must provide competent and probative evidence for this board to reduce the subject's value. We find that Shelter Haven's presentation of the average price per square foot from unadjusted sale data was insufficient to meet its burden. See, e.g., *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported, at 9 ("We * * * find the simple averaging of the two sales to be suspect. An appraiser is to make adjustments to his sale comparables to account for differences in size, location, and other facts to bring the sales in line with what would be expected for the subject."). See, also, *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions having found that the evidence was not probative).

[7] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$168,000

TAXABLE VALUE

$58,800

OHIO BOARD OF TAX APPEALS

MARMICH, LTD, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2576

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARMICH, LTD.
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Represented by:
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Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon a notice of appeal filed by Marmich, Ltd. from a decision of the Cuyahoga County Board of Revision ("BOR") valuing parcel number 446-18-005 for tax year 2015. As all parties waived their appearances at a hearing before this board, we consider the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and appellant's written legal argument.

The fiscal officer initially valued the subject property at $307,700 for tax year 2015. Marmich, Ltd. filed a complaint seeking a decrease in value to $55,000; the appellee Parma City Schools Board of Education ("BOE") filed a countercomplaint in support of the fiscal officer's value. In support of its requested value, Marmich

presented the testimony of its sole member, Gerald Mastellone, pictures and estimates for needed repairs, two comparable sales for $115,000 and $200,000, and a letter and accompanying affidavit from a

real estate agent opining that the property would sell for $55,000. It is unclear from the record as of what date the real estate agent opined value. Mr. Mastellone and his attorney testified that the property has been mostly vacant since Mr. Mastellone purchased the property in 2000, although his insurance agency occupies one of the three existing units in the property, and that the property is in need of significant repairs to its roof, the interior of one unit, and the parking lot. In response to questioning from a BOR member about Marmich's total opinion of value being below the fiscal officer's valuation of the underlying land, Marmich's counsel argued that the value is low because of the significant repairs needed. The BOR ultimately rejected Marmich's opinion of value, but decreased the value of the property to $277,700.

On appeal to this board, Marmich again requests a reduction in value to $55,000, based largely on the needed repairs and associated estimates. In addition, Marmich argues that the opinion of real estate agent John Luke, presented to the BOR, that the property would sell for $55,000, is an expert opinion of value akin to a recent appraisal upon which this board should determine value.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2017-Ohio-4415. In the absence of a recent, arm's-length sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412 (1964). Marmich argues that the letter from real estate agent John Luke dated March 12, 2016, is an appraisal upon which this board should base its value. We disagree.

While we acknowledge that an expert opinion need not come from a professional appraiser, the letter from Mr. Luke does not rise to the level of competent evidence upon which this board can rely in determining value. First, Mr. Luke didn't testify before either this board or the BOR to authenticate the opinion of value, testify regarding his professional credentials and the methodologies used in deriving his value conclusions, or be cross-examined by counsel for the BOE or questioned by this board's attorney examiner or members of the BOR. Such deficiencies render the report hearsay. See *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997). Even without being a certified appraiser, without being able to determine Mr. Luke's qualifications and the methodology underlying his opinion of value, we find his opinion of value is not competent evidence of value. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094. See also The Appraisal of Real Estate (13th Ed.2008) 8 (real estate sales people "have training in their field but may or may not have extensive appraisal experience. *** As a group, real estate salespeople evaluate specific properties, but they typically do not consider all the factors that professional appraisers do."); *Shinkle v. Ashtabula Cty. Bd. of Revision* (Mar. 20, 2012), BTA Nos. 2008-K-1756 et seq., unreported, affirmed 135 Ohio St.3d 227, 2013-Ohio-397.

Second, the absence of such testimony is particularly notable here, where it is unclear as to what date Mr. Luke opined value. While his letter is dated March 20, 2016, the tax lien date at issue in this matter is January 1, 2015. The Supreme Court has repeatedly held that an expert's opinion of value must be expressed "as of the tax lien date in issue. See, e.g., *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996); *Freshwater*, supra, at 30. Third, we agree with the statement made by a member of the BOR that an opinion that values the entire property at a value less than the fiscal officer's value of the underlying land ($130,800) is suspect, especially in the absence of a land-only valuation indicating that the property has more value as if vacant. Based upon the foregoing, we find that Mr. Luke's opinion of value falls far short of competent and probative evidence upon which we can rely in determining value.

Marmich also cites the cost to make numerous needed repairs to the property. However, as courts have repeatedly noted, a party must do more than simply demonstrate the existence of negative factors; it must also demonstrate the impact such factors have on the property's value. See *Throckmorton v. Hamilton Cty. Bd. of*

Revision, 75 Ohio St.3d 227 (1996); *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 100830, 2014-Ohio-4086. Moreover, the cost for repairs does not necessarily correlate to a dollar-for-dollar

reduction in value. See, e.g., *Hotel Stater v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 299 (1997). Finally, as noted by the BOR, the repair estimates submitted to the BOR are dated at various dates from 2012 to late 2015. It is unclear whether such estimates relate to value as of tax lien date. Upon review of the evidence presented, we are unable to rely on the evidence of needed repairs as support for the requested decrease in value.

We therefore turn to the BOR's decision to reduce value. We find no statement in the record certified on appeal stating a basis for the BOR's decision. The Supreme Court has emphatically held that this board has an independent duty to determine value, which precludes a presumption of validity of the BOR's decision. *Sapina v. Cuyahoga Cty. Bd. of Revision,* 136 Ohio St.3d 227, 2013-Ohio-3028, ¶35; *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-5823, ¶7 ("our case law has repeatedly instructed the BTA to eschew a presumption of validity of the BOR's value and instead perform its own independent weighing of the evidence in the record."). In light of our discussion herein about the sufficiency of Marmich's evidence, we also find that the BOR's decision lacks adequate support. In the absence of any other evidence, the fiscal officer's value serves as a default. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 147 Ohio St.3d 409, 2016-Ohio-7381, ¶16.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2015, were as previously determined by the fiscal officer, as follows:

TRUE VALUE

$307,700

TAXABLE VALUE

$107,700

OHIO BOARD OF TAX APPEALS

YOUNGSTOWN CITY SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

MAHONING COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2561

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - YOUNGSTOWN CITY SCHOOLS BOARD OF EDUCATION
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Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is considered upon an appeal from the appellant Youngstown City Schools Board of Education ("BOE") from a decision of the Mahoning County Board of Revision ("BOR") determining the value of parcel number 53-187-0-003.00-0 for tax year 2015. All parties waived their appearances at a hearing before this board. We therefore proceed to consider the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the appellee property owner's written brief.

[2] The subject property was initially valued by the auditor at $11,291,740. The property owner, Equity Industrial IV LLC ("Equity Industrial"), filed a complaint seeking a decrease in value to $7,738,000. The

BOE filed a countercomplaint seeking to maintain the auditor's value. At the BOR hearing, Equity Industrial presented the appraisal report and testimony of Richard Racek, MAI, who opined a value of $8,900,000 for the subject property as of January 1, 2015. Although counsel for the BOE cross-examined Mr. Racek, the BOE presented no evidence of its own. The BOR ultimately adopted Mr. Racek's value, and decreased the value of the property to $8,900,000. In its written argument on appeal, Equity Industrial argues that the BOE failed to meet its burden to prove a value different than the BOR's value by failing to present any evidence of value.

[3] The Supreme Court recently explained the burden on an appellant board of education when appealing a decision of a county board of revision in *Dublin City Schools Bd. of Edn. v. Frankllin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025:

> "Pursuant to [the *Bedford* rule], 'when the board of revision has reduced the value of the property based on the owner's evidence, that value has been held to eclipse the auditor's original valuation,' and the board of education as the appellant before the BTA may not rely on the latter as a default valuation. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 140 Ohio St.3d 248, 2014-Ohio-3620, ***, ¶ 35 *(`Northpointe,'* after the property owner). Instead, 'the BOR's adopting a new value based on' the owner's evidence has the effect of "`shift[ing] the burden of going forward with evidence to the board of education on appeal to the BTA.'" *Id.* at ¶ 41, quoting *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 193, 2013-Ohio-4543, ***, ¶ 16 *(` East Bank,'* after the property owner)." Id. at ¶6. (Footnote and parallel citations omitted.)

[4] We find the court's decision in *Dublin,* supra, dispositive of this matter. Just as in *Dublin,* here, the owner presented an appraisal to the BOR that the BOR adopted, and the BOE appealed to this board and presented no evidence of its own. Indeed, the BOE has not even made legal argument in support of its position that the BOR's decision was in error.

[5] Based upon the foregoing, we find that the appellant BOE has failed to meet its burden on appeal. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2015, are as previously determined by the BOR, as follows:

TRUE VALUE

$8,900,000

TAXABLE VALUE

$3,115,000

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2338
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Board of Education of the Columbus City Schools ("BOE") appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, 010-004636-00, for tax year 2014. This matter is now considered upon the notice of appeal, the statutory transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and the record developed at this board's hearing.

This matter emanates from a complaint filed for tax year 2014. There is conflicting information in the record regarding the subject property's initially assessed value. According to the certified copy of the county auditor's tax list and treasurer's duplicate ("tax list") for tax year 2014, the subject property was initially assessed at approximately $81,910. However, according to the DTE-Form 3 certified by the county auditor, the subject property was initially assessed at $18,000.

On March 30, 2015, the property owner filed a complaint with the BOR, which requested that the subject property be valued at $15,000. Apparent from record, the BOR failed to provide the statutorily required

notice of the complaint to the BOE. See R.C. 5715.19(B). Instead, the property owner's complaint was diverted to the BOR's mediation program, where the property owner and county auditor agreed that the subject property would be valued at $18,000 for tax year 2044 (and presumably the remaining years of the triennial period). On August 25, 2015, the BOR subsequently voted to accept the $18,000 value as the best indication of the subject property's value.

At some point, the BOE discovered that the BOR failed to provide the BOE with notice of the property owner's complaint. As a result, on December 18, 2015, the BOE filed a motion to vacate the BOR decision to accept the settlement agreement that valued the subject property at $18,000 and filed a counter-complaint. On July 13, 2016, the BOR subsequently met and voted to vacate its August 25, 2015 oral decision.

On October 11, 2016, the BOR held a merit hearing on the matter. As the hearing commenced, the BOR noted that the hearing was being held at the BOE's request and noted that the matter had previously been diverted to the mediation program of which the proceedings were confidential. There was some discussion about the subject property's initially assessed values because the value noted by the BOR ($50,000) was different the valued on the BOE's counter-complaint ($81,900). The property owner submitted an appraisal report, which valued the subject property at $15,000 as of a date in 2011; however the appraisal report is not contained in the statutory transcript. The BOE objected to the appraisal report because it did not value the subject property as of January 1, 2014 and because the appraiser was not present to testify. The property owner proceeded to testify about the condition of the subject property.

On October 20, 2016, the BOR held a consolidated decision hearing that involved other parcels, which are not part of this appeal. The BOR voted not to retain "the auditor's current valuations," in order "to be consistent with our prior decisions," and because "the board of education presented no additional information" of the subject property's value for tax years 2014 and 2015. See S.T. at Audio 4. The BOR subsequently issued a written decision consistent with its oral vote and this appeal ensued.

On May 2, 2017, this board held a consolidated hearing, which included this appeal and another appeal associated with the same property owner; a separate decision will be issued in that matter. The BOE submitted additional argument and evidence into the record, including a copy of this board's prior decision that valued the subject property at $50,000 for tax years 2011, 2012, and 2013, *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Jan. 29, 2015), BTA No. 2014-2023, unreported. Neither the property owner nor county appellees appeared at the hearing.

Before we proceed to consider the merits of this appeal, we must first dispose of one preliminary matter. As noted above, the property owner submitted an appraisal report at the BOR hearing, which was not included in the statutory transcript certified to this board. In order to have the most complete record as possible, we issued an order to the BOR to either provide the missing appraisal report or to provide written notice to this board, as well as all other parties, that such document could not be found. See *Cannata v. Cuyahoga Cty. Bd. of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094. The BOR subsequently provided written notice that "[n]o appraisal reports were accepted as evidence by the Board of Revision." Neither the property owner nor the BOE responded to the order or stepped forward to provide the missing appraisal report. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd of Revision,* 90 Ohio St.3d 564 (2001).

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances

where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

As we review this matter, it is important to note that the burden is placed upon the complainant, in this case, the property owner, to bring forth sufficient evidence that the value is something other than that assessed by the county auditor. *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* 150 Ohio St.3d 69, 2017-Ohio-4002, at ¶9. See, also, *Fairlawn Assocs. v. Summit County Bd. of Revision,* 9th Dist. Summit No. 22238, 2005-Ohio-1951; *Weldon v. Medina Cty. Bd. of Revision* (June 7, 2011), BTA No. 2008-M-1591, unreported. It is clear that the BOR reversed the burden in this matter and instead of requiring the property owner to provide competent and probative evidence of the subject property's value, the BOR explicitly placed that burden on the BOE, the counter-complainant in this matter. Our conclusion is not only supported by the explicit language used at BOR decision hearing on October 20, 2016, it is also supported by the BOR's decision to retain "the auditor's current valuation," in order "to be consistent with our prior decisions," i.e., its prior decision that recognized an agreement between the property owner and county auditor to value the subject property at $18,000 for tax year 2014, a decision that was void and allegedly vacated. The circumstances of this matter are particularly egregious when the record is devoid of any competent and probative evidence submitted by the property owner. As such, we find that the property owner failed to satisfy his burden before the BOR and, therefore, the BOR's decision was erroneous.

To the extent that the BOR attempted to carry forward the subject property's value for tax year 2013, the last year of the prior triennial period, into to tax year 2014, the first year of a new triennial period, we find such action was impermissible. The Supreme Court has held "that a complaint properly filed in a new triennium supersedes the carryover from the earlier complaint." *Cannata v. Cuyahoga Cty. Bd. of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094, at ¶30, citing to *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 74 Ohio St.3d 639, 642 (1996). See, also *Columbus Bd. of Edn. v. Franklin Cry. Rd of Revision,* 87 Ohio St.3d 305 (1999) ("[A] fresh complaint filed by Inner City or the BOE would have halted the automatic carryover of the [previously determined] value ***."). As such, we find the property owner's filing of the underlying tax year 2014 complaint prevented the BOR from carrying forward the subject property's tax year 2013 value into tax year 2014.

We note that tax year 2014 was the triennial update year for Franklin County and the county auditor had a statutory duty to update the value of real property in the county. *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision,* 127 Ohio St.3d 44, 2010-Ohio-4468; R.C. 5713.01, 5713.03, 5715.33, and 5715.24; Ohio Admin. Code 5703-25-16(B). In the absence of any evidence from which this board may independently determine value for tax year 2014, we are mindful that the auditor is "presumed to have properly performed [his] duties and not to have acted illegally but regularly and in a lawful manner." *State ex rel. Shafer v. Ohio Turnpike Commission,* 159 Ohio St. 581, 590 (1953). Absent any evidence to the contrary, we will presume that the required update in valuation took place in Franklin County and resulted in the subject property's valuation of $81,910 as originally assessed on the tax list.

It is therefore the order of this board that the subject property's value, as of January 1, 2014 is as follows:

TRUE VALUE

$81,910

TAXABLE VALUE

$28,670

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2334
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

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Entered Monday, January 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Board of Education of the Columbus City Schools ("BOE") appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, 010-065078-00, for tax years 2014 and 2015. This matter is now considered upon the notice of appe.al, the statutory transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and the record developed at this board's hearing.

The record demonstrates that this matter emanates from a complaint filed for tax year 2014. There is conflicting information in the record regarding the subject property's initially assessed value. According to

the certified copy of the county auditor's tax list and treasurer's duplicate ("tax list") for tax year 2014, the subject property was initially assessed at approximately at $73,700. However, according to the DTE-Form 3 certified by the county auditor, the subject property was initially assessed at $18,000.

On March 30, 2015, the property owner filed a complaint with the BOR, which requested that the subject property be valued at $17,000. Apparent from record, the BOR failed to provide the statutorily required notice of the complaint to the BOE. See R.C. 5715.19(B). Instead, the property owner's complaint was diverted to the BOR's mediation program, where the property owner and county auditor agreed that the subject property would be valued at $17,000 for tax year 2014 (and presumably the remaining years of the triennial period). On August 25, 2015, the BOR subsequently voted to accept the $18,000 value as the best indication of the subject property's value.

At some point, the BOE discovered that the BOR failed to provide the BOE with notice of the property owner's complaint. As a result, on December 18, 2015, the BOE filed a motion to vacate the BOR decision to accept the settlement agreement that valued the subject property at $18,000 and filed a counter-complaint. On June 19, 2016, the BOR subsequently met and voted to vacate its oral decision of August 25, 2015.

On October 11, 2016, the BOR held a merit hearing on the matter. As the hearing commenced, the BOR noted that the hearing was being held at the BOE's request and noted that the matter had previously been diverted to the mediation program of which the proceedings were confidential. There was some discussion about the subject property's initially assessed values because the value noted by the BOR was different than the value on the BOE's counter-complaint. The property owner submitted an appraisal report, which valued the subject property at $17,000 as of a date in 2011; however the appraisal report is not contained in the statutory transcript. The BOE objected to the appraisal report because it did not value the subject property as of January 1, 2014 and because the appraiser was not present to testify. The property owner proceeded to testify about the condition of the subject property and the subsequent $40,000 transfer of the subject property via land installment contract. The BOE submitted a conveyance fee statement and deed, which memorialized the land installment contract, neither of which are contained in the statutory transcript.

On October 20, 2016, the BOR held a consolidated decision hearing that involved other parcels, which are not part of this appeal. The BOR made two different decisions regarding the subject property's value, one for tax year 2014, which allegedly retained the initially assessed value of $18,000, and another for tax year 2015, which valued the subject property consistent with the $40,000 price at which it transferred in February 2016. The BOR subsequently issued written decisions consistent with its oral vote and this appeal ensued.

This board held a consolidated hearing, which included this appeal and another appeal associated with the same property owner; a separate decision will be issued in that matter. The BOE submitted additional argument and evidence into the record. Neither the property owner nor the county appellees appeared at the hearing.

Before we proceed to consider the merits of this appeal, we must first dispose of a preliminary matter. As noted above, the property owner submitted an appraisal report at the BOR hearing, which was not included in the statutory transcript certified to this board. In order to have the most complete record as possible, we issued an order to the BOR to either provide the missing appraisal report or to provide written notice to this board, as well as all other parties, that such document could not be found. See *Cannata v. Cuyahoga Cty. Bd. of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094. The BOR subsequently provided written notice that "[n]o appraisal reports were accepted as evidence by the Board of Revision." Neither the property owner nor the BOE responded to the order or stepped forward to provide the missing appraisal report. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd of Revision,* 90 Ohio St.3d 564 (2001).

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in

value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Then, typically, "the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104. The Supreme Court has made it clear that no "bright line" test exists when establishing recency and that the mere passage of time does not, per se, render a sale unreliable. See, e.g., *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059. Compare *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St. 3d 92, 2014-Ohio-1588.

In this matter, it is undisputed that the subject property transferred for $40,000 in February 2016. The conveyance-fee statement and property owner's testimony, submitted at the BOR hearing, confirm the transaction. The record demonstrates that the BOR relied upon the subject sale to determine the subject property's value for tax year 2015 and the record is devoid of any evidence that challenges the arm's-length nature and/or recency of the sale. As such, we find that the subject sale is the best indication of the subject property's value as to tax year 2015.

However, as to tax year 2014, we find the subject sale to be too remote to the tax lien date. Ohio courts have refrained from setting forth a "bright line" test to establish whether a sale of property is sufficiently close to a tax lien date to be presumed to accurately reflect its value. See, generally, *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision,* 80 Ohio St.3d 36, 44 (1997), overruled in part on other grounds *Cummins,* supra ("The question of how long after a. sale the sale price is to be considered the best evidence of true value will vary from case to case."). Such restraint results from the recognition that whether a sale is "recent" to or "remote" from a tax lien date is not decided exclusively upon temporal proximity, but may necessarily involve a multitude of other impacts/considerations. See, e.g., *Cummins,* supra, at ¶35 (recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property"); *New Winchester Gardens,* supra, at 44 (recency factors include "changes that have occurred in the market"). As for assertions regarding adjusting market changes, general claims are typically insufficient, and instead a party advocating for the existence of intervening events must demonstrate their actual existence. Nevertheless, as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property have not changed between the sale date and the lien date." *Akron City School Dist. Bd. of Edn. v. Summit Cty. Lid of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588. Here, the property owner failed to come forward with market information to demonstrate that market conditions remained stable in the nearly twenty-six months between tax lien date of January 1, 2014 and sale date in February 2016.

Because we conclude that the subject sale is too remote from the tax lien date of January 1, 2014, we proceed to evaluate the propriety of the BOR's decision as to tax year 2014. As we do so, it is important to note that the burden is placed upon the complainant, in this case, the property owner, to bring forth sufficient evidence that the value is something other than that assessed by the county auditor. *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* 150 OHio St.3d 69, 2017-Ohio-4002, at ¶9. See, also, *Fairlawn Assocs. v. Summit County Bd of Revision,* 9th Dist. Summit No. 22238, 2005-Ohio-1951; *Weldon v. Medina Cty. Bd of Revision* (June 7, 2011), BTA No. 2008-M-1591, unreported. It is clear that the BOR reversed the burden in this matter and instead of requiring the property owner to provide competent and probative evidence of the subject property's value, the BOR explicitly placed that burden on the BOE, the counter-complainant in this matter. Our conclusion is not only supported by the explicit language used at BOR decision hearing on October 20, 2016, it is also supported by the BOR's decision to retain "the auditor's current valuation," in

order "to be consistent with our prior decisions," i.e., its prior decision that recognized an agreement between the property owner and county auditor to value the subject property at $18,000 for tax year 2014, a decision that was allegedly vacated. The circumstances of this matter are particularly egregious when the record is devoid of any competent and probative evidence submitted by the property owner. As such, we find that the BOR committed legal error in its decision to value the subject property for tax year 2014.

To the extent that the BOR attempted to carry forward the subject property's value for tax year 2013, the last year of the prior triennial period, into to tax year 2014, the first year of a new triennial period, we find such action was impermissible. The Supreme Court has held "that a complaint properly filed in a new triennium supersedes the carryover from the earlier complaint." *Cannata,* supra, at ¶30, citing to *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 74 Ohio St.3d 639, 642 (1996). See, also *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 87 Ohio St.3d 305 (1999) ("[A] fresh complaint filed by Inner City or the BOE would have halted the automatic carryover of the [previously determined] value ***."). As such, we find that the filing of the underlying tax year 2014 complaint prevented the BOR from carrying forward the subject property's tax year 2013 value into tax year 2014.

Because we have concluded that the BOR's decision for tax year 2014 is unsupported by the record, we proceed to independently determine the subject property's value for tax year 2014. We have previously noted that the property owner failed to submit competent and probative evidence of the subject property's value for tax year 2014 and that tax year 2014 was the triennial update year for Franklin County, through which the county auditor had a statutory duty to update the value of real property in the county. *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision,* 127 Ohio St.3d 44, 2010-Ohio-4468; R.C. 5713.01, 5713.03, 5715.33, and 5715.24; Ohio Admin. Code 5703-25-16(B). In the absence of any evidence from which this board may determine value for tax year 2014, we are mindful that the auditor is "presumed to have properly performed [his] duties and not to have acted illegally but regularly and in a lawful manner." *State ex rel. Shafer v. Ohio Turnpike Commission,* 159 Ohio St. 581, 590 (1953). Absent any evidence to the contrary, we will presume that the required update in valuation took place in Franklin County and resulted in the subject property's lawful valuation as originally assessed on the tax list. As such, we find that the subject property should be valued consistent with the value initially certified on the tax list for tax year 2014, i.e., $73,700. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 87 Ohio St.3d 305 (1999); *AERC Saw Mill Village. Inc. v. Franklin Cty. Bd. of Revision,* 127 Ohio St.3d 44, 2010-Ohio-4468.

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2014:

TRUE VALUE

$73,700

TAXABLE VALUE

$25,800

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2015:

TRUE VALUE

$40,000

TAXABLE VALUE

$14,000

OHIO BOARD OF TAX APPEALS

BOARD OF EDUCATION OF THE COLUMBUS CITY SCHOOLS, (et. al.),	CASE NO(S). 2014-2780
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

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Entered Wednesday, January 31, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is again before this board on remand from the Supreme Court following the issuance of its decision in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2017-Ohio-5823 ("*Chess*"). In this decision, the court held that this board failed to independently weigh the evidence, vacated the decision issued by this board on March 11, 2015, and remanded the matter for further proceeding. Upon receipt of the court's judgment, this board gave all parties an opportunity to submit written argument or present additional evidence. None of the parties has chosen to do either. Accordingly, the evidence to be considered on remand is unchanged from that previously before this board.

The subject real property consists of eighteen condominium units located within the Great North Woods Condominiums, and are identified as parcel numbers 010-189308-00, 010-189309-00, 010-189310-00,

010-189311-00, 010-189312-00, 010-189258-00, 010-189277-00, 010-189279-00, 010-189280-00, 010-189284-00, 010-189288-00, 010-189290-00, 010-189291-00, 010-189300-00, 010-189302-00, subject property for tax years 2011, 2012, and 2013. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the BOE's written argument, and the court's decision in this matter.

The subject's total true value was initially assessed at $1,066,000. The property owners Matthew R. Chess and Jerry Chess filed a decrease complaint with the BOR seeking a reduction in value to $918,000 for 2011. The BOE filed a countercomplaint in support of maintaining the auditor's values. The BOR convened a hearing, at which Matthew Chess appeared on behalf of the property owners, and provided an appraisal report that opined a value of $918,000 as of January 6, 2011. Mr. Chess also discussed the subject's income and vacancy rates, along with the sales of other properties in the condominium community. Mr. Chess stated that he had purchased another unit in the complex in 2013, but provided no details about the sale and indicated it was a short sale. The BOE also appeared before the BOR, relying on cross-examination of Mr. Chess and legal argument to challenge the owners' evidence, though it did not offer any independent evidence of value. There was also discussion regarding a subsequent complaint and the BOR's jurisdiction over tax years 2012 and 2013, but this was decided by the court and is not at issue on remand. The BOR issued a decision reducing the initially assessed valuation to $882,000 for tax years 2011, 2012, and 2013, which the BOE appealed to this board. Although the record from the decision hearing is not available due to technical oversight, the hearing worksheet shows that the basis for the BOR's decision was a gross rent multiplier ("GRM") analysis, as they applied a GRM to a $700 per month rent, for a value of $49,000 per unit.

On appeal, the BOE argued that the BOR's decision was not supported by the record and the auditor's values should be reinstated. Specifically, the BOE maintained that the owners' evidence was not sufficiently reliable to meet their burden of proof and that it was improper for the BOR to reduce values based upon the application of a GRM to the properties' actual rental rates. The BOE also argued that it was unlawful for the BOR to rely on evidence not presented during the BOR hearing or upon recommendations of persons who did not testify before the BOR, but this argument was rejected by the court, which noted that such evidence should be independently weighed by this board and not outright excluded. Neither the owners nor the county appellees offered any written argument in support of their respective positions. After considering the record before us, this board determined that the BOE had failed to meet its burden on appeal and issued a decision affirming the reduction granted by the BOR. The BOE appealed that decision to the Supreme Court, which held that we erred by failing to independently weigh the evidence, and remanded the matter to this board with instructions to "give full consideration to the BOE's arguments regarding the probative force of the evidence," and "take appropriate steps to ensure that it resolves the case on a full record in a manner that does not cause undue prejudice to any litigant." *Chess*, supra, at ¶7. In order to comply with the latter half of the court's edict, this board offered all parties an opportunity to supplement the record with additional evidence or legal argument in support of their positions. None of the parties, including the county appellees, chose to take advantage of this opportunity.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. Furthermore, the court emphasized that this board must "eschew a presumption of the validity of the BOR's value and instead to perform its own independent weighing of the evidence in the record. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision* [("*Olentangy Crossing*")], 147 Ohio St.3d 409, 2016-Ohio-7381, ***, ¶15, 22;

Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision, 130 Ohio St.3d 291, 2011-Ohio-5078, ***, ¶13, citing *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011-Ohio-2258, ***, ¶17, citing *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 *** (1996). Accordingly, we will perform a de novo review of the evidence in the instant appeals." (Parallel citations omitted.) *Chess*, supra, at ¶7

We are mindful of the Supreme Court's longstanding pronouncement holding that while a qualifying sale typically provides "[t]he best method of determining value[,] *** such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412 (1964). See, also, *LTC Properties, Inc. v. Licking Cty. Bd. of Revision*, 133 Ohio St.3d 111, 2012-Ohio-3930 (Pfeifer, J., concurring). In the present appeal, however, neither party has presented a qualifying appraisal report for this board to utilize to reach our determination. Instead, the property owners relied on Mr. Chess's testimony, a financing appraisal of the property without the testimony of its author, and an unadjusted list of sales of other units in the complex. The BOE has not provided independent evidence of value and relies on cross-examination and legal argument.

We agree that owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987), but in order for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.*, 65 Ohio St.3d 621 (1992). The weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 32 (1996). An owner's opinion must still be probative as to the value of the property on lien date. See *Amerimar Canton Office, LLC v. Stark Cty. Bd. of Revision*, 5th. Dist. Stark No. 2014CA00162, 2015-Ohio-2290. Thus, merely because Mr. Chess is an expert regarding his properties, this board is not required to accept his opinion, or the opinion of any expert, as fact and utilize it as the basis for our determination. In the present appeal, we find that the property owners have failed to present sufficient support for their stated opinion of value, and therefore find that such opinion is not probative. *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's determination that an owner's opinion of value, while competent, was not probative).

Initially, we reject the property owners' financing appraisal report for several reasons. We have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported. For that reason, the individual who developed the opinion must appear before either this board or the board of revision not only to authenticate the appraisal, but more significantly to allow the other parties and the board the opportunity to evaluate the individual's professional credentials, the methodologies utilized in developing the opinion, the data considered and relied upon, the adjustments and assumptions made, etc. In the absence of the author's testimony, we are often limited in our ability to conduct a meaningful evaluation. Compare, generally, *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 130 Ohio St.3d 230, 2011-Ohio-3362; *Vandalia-Butler City Schools*, supra. See, also, *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094, ¶19 (holding that even without an objection to the use of the appraisal from the board of education, it was plain error to rely on an appraisal report that was rejected by the board of revision because the record did not contain the appraiser's testimony and cross-examination. In reaching this conclusion, the court described that the lack of the appraiser's testimony as "the absence of potentially material portions of the record.").

We acknowledge that the court has held that even though the opinion of value in an appraisal report may not be a reliable indication of value on its own, it may be utilized by this board to independently determine value based on the data therein. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, ¶24-25. In this case, however, we find that the appraisal does not allow us to utilize the data contained therein to independently determine value because the approach taken by the appraiser is legally flawed. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 700, 2016-Ohio-8375 ("*Metro Partners*"). In *Metro Partners*, the court affirmed this board's rejection of an appraisal because the appraiser valued sixteen unsold condominium

units as an apartment complex rather than individual condominium units. In doing so, the court held that for purposes of ad valorem taxation, condominium units must be valued and assessed as units to be sold individually. Id. In the present appeal, the appraiser considered four sales in his sales comparison approach, with properties ranging from 8 units to 32 units, and utilized a capitalization rate based at least in part on national non-institutional grade apartments. Thus, it is clear that both approaches fail to value each unit as it would sell individually.

The property owners also offered a list of sales of other units in the condominium complex throughout 2012 and a purchase made in 2013, but made no adjustments for differences among the properties. The list of sales included in the record provides no information about the parties to the sale, circumstances of the transactions, or the conditions of the units when they sold. Accordingly, we are unable to determine whether any of these sales constitutes an arm's-length transaction of a truly similar property. Without a reliable analysis of the comparability of the sales to the subject units, 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, etc., and the date of sale as opposed to tax lien date, may affect a valuation determination. See, generally, The Appraisal of Real Estate (14th Ed.2013). Compare *Metro Partners*, supra, at ¶18 (holding that sales of four units within a newly-constructed condominium complex from the appellant property owner to individual owners furnished a basis for an independent valuation of the remaining unsold units).

Having rejected the owners' evidence, we now turn the BOR's determination and the BOE's argument that the auditor's value must be reinstated. While valuation determinations made by county boards of revision are not presumptively correct, see, e.g., *Vandalia-Butler City Schools*, supra, under certain circumstances, when the BOR adopts a new value based on the owner's evidence, it has the effect of "shifting the burden of going forward with evidence to the board of education on appeal to the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543, ¶16. See also *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237. The court's more recent rulings have not disturbed its earlier edict that "the *absence* of sufficient evidence requires the BTA to reverse a reduction or increase ordered by a board of revision." (Emphasis sic.) *Vandalia-Butler* , supra at ¶21. Furthermore, although this board invoked the so-called *Bedford* rule as the basis for our prior decision, the court did not discuss the issue, instead vacating this board's decision with instructions to fully consider the BOE's arguments and appropriately weigh all evidence in the record. Thus, it is clear that the *Bedford* rule does not apply.

In the present appeal, the BOR applied a GRM of 70 to a rental rate of $700, which the BOE has argued was inappropriate. The BOE maintains that not only is a GRM analysis unreliable for tax valuation purposes, but also that the BOR's GRM data appears to support the auditor's initial values. We note that the court rejected the BOE's argument that the BOR's evidence should be excluded from our consideration and argued that we must decide what weight to accord it. *Chess*, supra, at ¶9. The court issued two additional directives relevant to our consideration of this issue. First, the court ordered this board to "take appropriate steps to ensure that it resolves the case on a full record in a manner that does not cause undue prejudice to any litigant." Id. at ¶7. Second, the court indicated that if a BOE appeals a BOR reduction to this board, "the board of revision as an appellee can be called upon to account for the manner in which it determined value." Id. at ¶9. Thus, we must weigh both points as we consider the BOR's evidence.

With respect to the court's first concern, this board offered all parties an opportunity to supplement the record with evidence or argument on remand. None of the parties chose to do so. As a result, we find that none of the parties is prejudiced by this board's weighing of the evidence in the record as it exists. All

parties were on notice of the evidence to be considered by this board on remand and chose not to make any additional attempts to bolster the record in support of their respective positions. Furthermore, the court

made it clear that while this board must give appropriate weight to the BOR's GRM analysis, the BOR's decision is not accorded a preemption of validity and the basis for this decision may be called into question.

As we look to the BOR's "2012 GRM Study," we first highlight that we have no information about the individual who compiled the data or how each of the properties included in the study compares to the subject units, other than some basic data each property. This study includes the address, size and number of units sold in each of the properties, their gross monthly rent, and the GRM for eight different properties. As we discussed above, raw sales data is of little use to this board, particularly where we have no adjustments to account for differences among properties or expert testimony as to why no adjustments are necessary. Additionally, the lack of information leaves several questions with respect to the properties' expense ratios and basis for their reported rental income, not the least of which is how the BOR settled on a multiplier of 70 within a range that spanned from 43.5 to 105.8, resulting in an average of 79.8. The Appraisal of Real Estate (14th Ed. 2013) explains that a GRM may be used to determine a property's value by comparing the income-producing characteristics of properties. It goes on to caution, however, that appraisers must be careful when attempting to employ this approach because, among other reasons, "[p]roperties with similar or even identical multipliers can have very different operating expense ratios and, therefore, may not be comparable for valuation purposes." Id. at 507. Here, the BOE argued that the BOR's use of a GRM was inappropriate, in part, because the analysis in the record does not yield a reliable result. We agree. See, e.g., *Independence School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 94585, 2010-Ohio-5845 (affirming this board's rejection of an effective gross income multiplier within the sales comparison approach).

If we further consider all of the data contained within the record, including not only the GRM Study but also the financing appraisal, we agree with the BOE that the data does not serve to negate the auditor's value, and, to the contrary, supports it, noting that we have no explanation or support for the 70 GRM chosen by the BOR. Looking first to the BOE's argument regarding the GRM Study, the multipliers range from 43.5 to 105.8. The BOE argued that dividing the auditor's initial value among the 18 units and utilizing the rental rate of $700 per month results in a multiplier of 84.6, which is directly in the middle of the GRM Study's range, with four lower multipliers (43.5, 53.8, 71.1, 82.8) and four higher (85.7, 97.5, 98.2, 105.8). Even if we simply apply the average GRM (79.8) to the $700 per month income utilized by the BOR, the resulting value per unit is $55,860, for a total of $1,005,480. If we go one step further and consider the data contained within the financing appraisal, the resulting value exceeds the auditor's. The appraiser considered the market in January 2015 in addition to the range of actual rents received for the subject units, and determined that the $749 per month effective rent received by the subject was at the low end of the rent analysis but justified by the market. Applying the average GRM (79.8) to this rental rate, the indicated value per unit is $59,770 ($1,075,864), which exceeds the auditor's value. Thus, we find that even if the GRM Study were competent and probative evidence, its application does not support the BOR's value or any downward adjustment.

Accordingly, in this case, we find that the BOR's decision was not supported by the record. Additionally, we find no competent and probative evidence in the record for this board to independently determine value for the subject property, other than that first determined by the auditor. Under these circumstances, this board may properly reinstate the auditor's values. See *S.-W. City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 14AP-729, 2015-Ohio-1780, ¶32; *Sapina v. Cuyahoga Cty. Bd. of*

Revision, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶35 ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it. This court has emphatically held that the BTA's independent duty to weigh evidence precludes a presumption of validity of the BOR's valuation."); *Olentangy Crossing*, supra, at ¶20 (where the record does not contain sufficient evidence to perform an independent valuation of the property, the auditor's value may ordinarily be reinstated, even if the auditor's valuation has been negated). Thus, based upon our independent review of the evidence in the record, we find that the true value of the subject property is best reflected by the value initially determined by the auditor.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2011, 2012, and 2013, were as follows:

PARCEL NUMBER 010-189308-00

TRUE VALUE $58,800

TAXABLE VALUE $20,580

PARCEL NUMBER 010-189309-00

TRUE VALUE $58,800

TAXABLE VALUE $20,580

PARCEL NUMBER 010-189310-00

TRUE VALUE $58,800

TAXABLE VALUE $20,580

PARCEL NUMBER 010-189311-00

TRUE VALUE $58,800

TAXABLE VALUE $20,580

PARCEL NUMBER 010-189312-00

TRUE VALUE $60,700

TAXABLE VALUE $21,250

PARCEL NUMBER 010-189258-00

TRUE VALUE $58,800

TAXABLE VALUE $20,580

PARCEL NUMBER 010-189277-00

TRUE VALUE $58,800
TAXABLE VALUE $20,580

PARCEL NUMBER 010-189279-00

TRUE VALUE $60,700

TAXABLE VALUE $21,250

PARCEL NUMBER 010-189280-00

TRUE VALUE $58,800

TAXABLE VALUE $20,580

PARCEL NUMBER 010-189284-00

TRUE VALUE $60,700

TAXABLE VALUE $21,250

PARCEL NUMBER 010-189288-00

TRUE VALUE $58,800

TAXABLE VALUE $20,580

PARCEL NUMBER 010-189290-00

TRUE VALUE $58,800

TAXABLE VALUE $20,580

PARCEL NUMBER 010-189291-00

TRUE VALUE $58,800

TAXABLE VALUE $20,580

PARCEL NUMBER 010-189300-00
TRUE VALUE $58,800
TAXABLE VALUE $20,580

PARCEL NUMBER 010-189302-00
TRUE VALUE $58,800
TAXABLE VALUE $20,580

PARCEL NUMBER 010-189303-00
TRUE VALUE $58,800
TAXABLE VALUE $20,580

PARCEL NUMBER 010-189305-00
TRUE VALUE $58,800
TAXABLE VALUE $20,580

PARCEL NUMBER 010-189306-00
TRUE VALUE $60,700
TAXABLE VALUE $21,250

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2535

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
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CLEVELAND STAR REAL ESTATE INV
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Entered Thursday, February 1, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 027-32-004, for tax year 2015. We proceed to consider this matter based upon the notice of appeal and the statutory transcript certified pursuant to R.C. 5717.01.

The subject property was initially assessed at $4,560,000. The BOE filed a complaint with the BOR, which requested that it increase the subject property's value to $4,800,000 purportedly to reflect the price at which it transferred in November 2014. The property owner did not file a counter-complaint. At the BOR hearing, only the BOE appeared to submit argument and evidence into the record. The BOE submitted a general warranty deed that demonstrated that the subject property transferred from Cleveland Hotel LLC to the current property owner, Cleveland Star Real Estate Investment, LLC for $4,800,000 in November 2014, as well as a packet of other documents. The BOR subsequently issued a decision that increased the subject property's value to $4,800,000, as requested by the BOE, and this appeal ensued.

By way of its notice of appeal, the BOE asserted that the subject property should be valued at $6,000,000 based upon "[e]conomic valuation by sales, income, or cost approach to value, and to be determined." The BOE indicated that new evidence would be provided at a hearing before this board; however, it waived the hearing before this board. Neither the property owner nor county appellees appeared at the hearing before this board, which was convened As such, we will review the record to determine whether the BOE has provided competent and probative evidence to demonstrate that the subject property should be valued at $6,000,000 for tax year 2015.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. *In EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, at ¶6, the court elaborated: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another *value. Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision,* 68 Ohio St.3d 493 (1994) *** ." (Parallel citation omitted.)

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* 50 Ohio St.2d 129 (1977). Accordingly, the affirmative burden ctearry rests with the opponent of using a reported sale price to demonstrate why it does not reflect the property's value. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997). See, also *Terraza 8, LLC v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415, at ¶32 (the court recently reaffirmed that basic evidence of a sale created a rebuttal presumption that an indicated sale price reflected true value and that the opponent of using a sale had the burden of rebutting the sale.).

As we review this matter on appeal, we note that the BOE has submitted absolutely no evidence or legal argument to demonstrate that the subject property should be valued at $6,000,000, or any other value above the $4,800,000 price at which the subject property transferred in November 2014, despite requesting a total of four subpoenas from this board. We find that the BOE has failed to satisfy the evidentiary burden on appeal.

It is, therefore, the order of this board that the subject property's true and taxable values are as follows, as of January 1, 2015:

TRUE VALUE

$4,800,000

TAXABLE VALUE

$1,680,000

OHIO BOARD OF TAX APPEALS

SVETLANA OBOLENSKA, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1783

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SVETLANA OBOLENSKA
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Entered Monday, February 5, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2388

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Monday, February 5, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon an appeal by the Columbus City Schools Board of Education ("BOE") from a decision of the Franklin County Board of Revision ("BOR") determining the value of parcel number 010-029864-00 for tax years 2014 and 2015. The parties waived their appearances at a hearing before this board. We therefore consider the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the appellee property owners' written legal argument.

The appellee property owners, William E. Benua, Trustee and Polly Benua Lindeman Co-Successor Trustee, filed the underlying complaint against the valuation of the property for tax year 2014, requesting that the BOR's November 24, 2014 decision valuing the property for tax year 2012 be carried forward into tax year 2014. From information relayed at the BOR hearing, it appears that the auditor did, in fact, carry forward the 2012 decision value into tax year 2014 after a review by his appraisal staff; however, due to an issue related to the auditor's CAMA computer system, the change was not able to made on the auditor's records until after the deadline for filing tax year 2014 complaints, i.e., March 31, 2015. After learning the change had been made, the owners withdrew their complaint. However, upon receiving notification of the filing of the complaint, the BOE filed a countercomplaint, requesting the auditor's original value for tax year 2014, as certified on the tax list and duplicate ($270,000) be retained. At the BOR hearing, the owners and the BOE were represented by counsel, who made legal argument. In addition, Peter Lindeman, an individual associated with the property owners, testified that no change had occurred at the property since 2012 and that the owners continue to experience negative issues related to a large homeless population nearby. The BOR ultimately issued a decision finding value in accordance with the "revised" 2014 value (the 2012 decision value), and the BOE appealed to this board.

The issue in this appeal is virtually identical to that raised in a previous cases before this board. In *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Jan. 17, 2017), BTA Nos. 2016-251, 252, unreported, we found no error in the auditor's (and BOR's) use of the "redetermined" value for a prior tax year as the appropriate starting point for valuing property for tax year 2014 in Franklin County, i.e., the year of a triennial update. Pursuant to *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision,* 127 Ohio St.3d 44, 2010-Ohio-4468 and *Columbus Bd of Edn. v. Franklin Cty. Bd. of Revision ("Inner City"),* 87 Ohio St.3d 305 (1999), the auditor must apply his triennial update to the prior year's value as redetermined. Here, the prior year's value was determined by the BOR in its November 24, 2014 decision for tax years 2012 and 2013 to be $190,000. At the BOR hearing, a BOR member relayed that the auditor's appraisal staff had reviewed the prior years' value and agreed that it should be applied to tax year 2014. We therefore find that the auditor performed his statutory duty to update the value of the property based on its redetermined value for tax years 2012 and 2013. See *Englefield v. Franklin Cty. Bd. of Revision* (Aug. 7, 2017), BTA No. 2016-255, unreported.

In the absence of any other competent and probative evidence of value, we find that the BOE has failed to meet its burden in this matter. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2014 and January 1, 2015, were as follows:

TRUE VALUE

$190,000

TAXABLE VALUE

$66,500

OHIO BOARD OF TAX APPEALS

STEPHEN AND KYLIE JOHNSON, (et. al.),

Appellant(s),

vs.

ROSS COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1123, 2017-1820

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - STEPHEN AND KYLIE JOHNSON
Represented by:
STEPHEN JOHNSON
19 WINDSOR DRIVE
CHILLICOTHE, OH 45601

For the Appellee(s) - ROSS COUNTY BOARD OF REVISION
Represented by:
KELLEY A. GORRY
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

CHILLICOTHE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

Entered Tuesday, February 6, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter comes before this board upon a notice of appeal from a decision of the Ross County Board of Revision ("BOR") determining the value of the subject property, parcel number 30-5106120.000, for tax year 2016. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01, and the parties' written arguments. We note that appellants also filed an appraisal of the property dated September 19, 2017; however, because the appraisal was not presented at a hearing before this board, we cannot consider it as evidence in determining value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

The subject parcel is improved with a single-family home constructed in 2014. The auditor valued the property at $519,640 for tax year 2016. The appellant property owners filed a complaint requesting a decrease in value to $425,000 based on a comparison of nearby properties' assessed values. The Chillicothe City School District Board of Education ("BOE") filed a countercomplaint requesting that the

auditor's value be maintained. At the BOR hearing, owner Kylie Johnson appeared with her accountant, Nathan Baldwin. The two explained that the underlying land, encompassing two parcels, was purchased for $75,000, and the home was built in 2014, though Ms. Johnson was unable to recall the total cost of construction. Mr. Baldwin explained the difficulty in trying to value the property, given that the subdivision in which it is located is relatively new and only one home has sold. In response to questioning from counsel for the BOE, Ms. Johnson testified that a mortgage of $440,000 was taken out on the improvements only to pay for construction. The BOR ultimately issued a decision finding no change in value was warranted, and appellants appealed to this board.

In our review of this matter, we are mindful of the basic ilrinciple that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision,* 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. In the absence of a recent, arm's-length sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964). As noted above, appellants attempted to submit an appraisal of the subject property; however, because it was not presented at a hearing before this board along with its author, whom this board could question about the opinion of value in the appraisal report, we will not consider it. *Columbus Bd. of Edn.,* supra; *Cannata v. Cuyahoga Cty. Bd. of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094. Moreover, the appraisal opined value as of a date more than seventeen months removed from tax lien date. *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision,* 75 Ohio St.3d 552, 555 (1996); *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 30 (1997); *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision,* 66 Ohio St.2d 398 (1981).

Appellants appear to rely primarily on the assessed values of nearby properties in support of their opinion of value. The fallacy of such argument must be acknowledged, as the basis of this challenge is the erroneous nature of the subject property's value. Indeed, "imierely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 31 (1996). We find nothing in the assessed values of other properties that can assist us in determining the value of the subject property.

Given that the subject property was constructed recent to tax lien date, we find the information in the record about the cost of construction, corroborated by Ms. Johnson's statement about the mortgage on the improvements and the appraisal performed by appellants' lending institution in connection with such mortgage, and the price to purchase the underlying land, is the best evidence of value. Such information supports the auditor's initial valuation of the property. As the court stated in *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision,* 113 Ohio St.3d 281, 2007-Ohio-1948, at ¶12, "[t]he cost method is appropriately applied when *** a building is a new structure not substantially depreciated. The Appraisal of Real Estate (12th Ed.2001) 354 (`Because cost and market value are usually more closely related when properties are new, the cost approach is important in estimating the market value of new or relatively new construction')." We find that appellants have failed to present sufficient evidence that the auditor's initial valuation was in error.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$519,640

TAXABLE VALUE

$181,870

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-464
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CHARLOTTE, NC 28201-1017

Entered Tuesday, February 6, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 131-22-070, for tax year 2015. We proceed to consider this matter based upon the notice of appeal and the record certified pursuant to R.C. 5717.01.

[2] The subject property was initially assessed at $1,439,100. The BOE filed a complaint with the BOR, which requested that the subject property be revalued at $1,798,860 based upon the purported price at which it transferred in 2012. The property owner did not file a counter-complaint. At the BOR hearing on the matter, only an attorney for the BOE appeared to submit argument and/or evidence for the BOR' s consideration. In doing so, counsel asserted that the $1,798,859 transfer of the subject property in 2012 was the best indication of its value, which the BOR had accepted for the prior tax year, and that such value should have been carried forward into the tax year 2015, the first year of a new triennial period. Counsel argued that the fiscal officer had misapplied the "24 month rule," to determine recency/remoteness of the subject sale, from the Supreme Court's decision in *Akron City School Dist. Bd. of Edn. v. Summit Cry. Bd. of*

Revision, 139 Ohio St.3d 92, 2014-Ohio-1588, by applying such rule to the triennial update of real property values, which the court did not address, in addition to sexennial reappraisal of real property values, which the court specifically discussed. The BOR 'rejected the BOE's arguments and evidence because it determined that the sale was too remote to the tax lien date of January 1, 2015. The BOE subsequently appealed to this board.

[3] Although the parties were afforded an opportunity to submit additional evidence at a merit hearing, or written argument in lieu of a hearing, before this board, none of the parties did so. We proceed, therefore, to consider this matter based upon the record developed before the BOR.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412 (1964).

[5] We begin our analysis with the property owner's $1,798,859 purchase of the subject property in 2012, which is the basis for the BOE's requested valuation. We do not find the transaction to be a reliable indicator of the subject property's value because the transaction was too remote to the tax lien date. Ohio courts have refrained from setting forth a "bright line" test to establish whether a sale of property is sufficiently close to a tax lien date to be presumed to accurately reflect its value. See, generally, *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 36, 44 (1997) overruled in part on other grounds *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473 ("The question of how long after a sale the sale price is to be considered the best evidence of true value will vary from case to case."). Such restraint results from the recognition that whether a sale is "recent" to or "remote" from a tax lien date is not decided exclusively upon temporal proximity, but may necessarily involve a multitude of other impacts/considerations. See, e.g., *Cummins Property Servs.*, ¶35 (recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property"); *New Winchester Gardens*, supra (recency factors include "changes that have occurred in the market"). Nevertheless, as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property have not changed between the sale date and the lien date." *Akron City School Dist. Bd of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. Here, as the proponent of the subject sale, it was the BOE's responsibility to submit evidence to demonstrate that market conditions remained stable between the sale and tax lien dates. The BOE failed to provide such evidence.

[6] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). Based upon our review of the record, we find that the sale, upon which the BOE relies, was too remote to the tax lien date of January 1, 2015. As a consequence, we find that BOE failed to satisfy the evidentiary burden before the BOR and before this board.

[7] It is, therefore, the order of this board that that the subject property's true and taxable values are as follows as of January 1, 2015:

TRUE VALUE

$1,439,100

TAXABLE VALUE

$503,690

OHIO BOARD OF TAX APPEALS

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-224, 2017-328
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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1111 SUPERIOR AVENUE, SUITE 1025
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For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
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SUMMIT COUNTY
53 UNIVERSITY AVENUE, 7TH FLOOR
AKRON, OH 44308

IN MANUS DEI LLC
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, February 6, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education ("BOE") and property owner appeal a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 68-33079, for tax year 2015. We proceed to consider this matter based upon the notices of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property was initially assessed at $3,826,290. The BOE filed a complaint with the BOR, which requested that the subject property's value be increased to $4,661,500 to reflect the price at which it transferred in June 2015. In support, the BOE attached to the complaint a conveyance fee statement and

special warranty deed, which memorialized the $4,661,500 transfer of the subject property from Convenience Net Lease Portfolio DST to the property owner, In Manus Dei LLC, in June 2015. The property owner did not file a counter-complaint.

At the BOR hearing, counsel for the BOE and property owner appeared to submit argument and/or evidence in support of their respective positions. In its presentation, the BOE resubmitted the sale documents, as well as information about the sale from Co-Star, a commercial real estate resource. The BOE also provided details about prior BOR proceedings that involved the subject property. Based upon its presentation, the BOE requested that the subject property's value be increased to reflect the subject sale price of $4,661,500. In its presentation, the property owner submitted the same sale documents and information from Co-Star, in addition to providing the underlying lease in place at the time of the subject sale and copies of court decisions. Based upon its presentation, the property owner argued that the BOR should reject the subject sale as in indication of the subject property's value because it reflected the leased-fee interest. At the BOR decision hearing, the BOR members voted to reject the subject sale because they concluded that the sale price reflected the leased-fee interest and, subsequently, a written decision to retain the subject property's value was issued. Thereafter, both the BOE and property owner appealed to this board. The appeals were consolidated at the property owner's unopposed request.

Although this matter was scheduled for a merit hearing, one day prior to the hearing, the BOE and property owner waived the opportunity to submit additional evidence. Instead of submitting written argument consistent with the case management schedule established in Ohio Adm. Code 5717-1-07(A)(2), the BOE requested a briefing schedule but failed to provide any basis .for the request. The BOE eventually submitted written argument nearly five months after the briefing deadline, which asserted that it had presented basic evidence of a sale of the subject property and that the property owner had failed to rebut the presumptions accorded to the sale with testimony from someone with firsthand knowledge of the relevant facts or with appraisal evidence. The property owner, however, did timely provide written argument that asserted that it had successfully rebutted the presumption that the subject sale was the best indication of the subject property's value and requested that we affirm the BOR's decision.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and *typically* the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. However, the affirmative burden rests with the opponent of using a reported sale price to demonstrate why it does not reflect the property's value. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997).

In this matter, none of the parties dispute the arm's-length character, recency, or voluntariness of the sale. However, the property owner argued that subject sale cannot be used to value the subject property because there was a lease in place at the time of the subject sale and, therefore, the sale reflected the value of the lease, not the fee-simple interest as required by legislative changes to R.C. 5713.03. The Supreme Court recently determined that the legislative changes to R.C. 5713.03 do not require outright rejection of a sale of real property encumbered with a lease at the time of the sale as the property owner suggests. Instead, in *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415, the court reaffirmed that a recent arm's-length sale is the best evidence of real property value, though the court noted that the opponent of a sale may rebut such sale with market information that demonstrates that a lease is not reflective of market lease rates. Id. at 11131-34. Here, the property owner failed to provide any evidence that demonstrated whether the underlying lease of the subject property at the time of the subject sale was above, at, or below market rental rates. We note that counsel for the property owner made a number of representations about the subject sale and the underlying lease; however, no one with knowledge of these very important issues testified before the BOR or this board. Statements of counsel are not evidence and, in

this instance, do not rebut the presumptions accorded to the subject sale. *Sears, Roebuck & Co. v. Franklin Cty. Bd. of Revision,* 144 Ohio St.3d 421, 2015-Ohio-4522; *Corporate Exchange Bldgs. IV & V, LP v. Franklin Cty. Bd. of Revision,* 82 Ohio St.3d 297 (1998). We conclude, therefore, that, under *Terraza 8* and the record before us, the presence of a lease in place at the time of sale does not preclude us from relying upon the sale to determine the subject property's value.

To the extent that the property owner argued that the rule derived from *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 115 Ohio St.3d 449, 2007-Ohio-5237, required the BOE to come forward with evidence, other than the subject sale, of the subject property's value and/or requires this board to affirm the BOR's decision, on appeal, the Supreme Court has affirmatively rejected such assertion(s). See *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025 (noting that the *Bedford* rule does not apply when the issue of real property valuation involves a sale). See also, Terraza, supra at ¶32 ("[T]he proponent of a sale is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate.").

We are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that the BOE submitted sufficient evidence to demonstrate that the subject sale reflected the value of the fee simple interest, which the property owner failed to rebut. Absent an affirmative demonstration that the $4,661,500 transfer of June 2015 was not a qualifying sale for tax valuation purposes, we find that it was the best indication of the subject property's value as of tax lien date.

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2015:

TRUE VALUE

$4,661,500

TAXABLE VALUE

$1,631,530

OHIO BOARD OF TAX APPEALS

SHEILA A. MOORE, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-886

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SHEILA A. MOORE
OWNER
26304 TRYON RD
OAKWOOD VILLAGE, OH 44146

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, February 8, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 84 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

OHIO AND PENN STATELINE LLC, (et. al.),

Appellant(s),

vs.

MAHONING COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2282

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - OHIO AND PENN STATELINE LLC
Represented by:
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YOUNGSTOWN , OH 44512

For the Appellee(s) - MAHONING COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
MAHONING COUNTY
21 W. BOARDMAN STREET, 6TH FLOOR
YOUNGSTOWN, OH 44503

BOARDMAN LOCAL SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
CHRISTOPHER J. NEWMAN
HENDERSON, COVINGTON, MESSENGER, NEWMAN & THOMAS CO. LPA
6 FEDERAL PLAZA CENTRAL, SUITE 1300
YOUNGSTOWN, OH 44503

Entered Friday, February 9, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to Bear appeals. *" 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." See, also, *Cincinnati*

School Dist. Bd. of Edn. v. Hamilton Cry. Bd. of Revision, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Appellant responded to the motion and argued that he did notify the board and that his January 19, 2018, response to the motion also served as such notice. However, appellant did not provide documentation to demonstrate that the appeal was timely filed with the BOR, i.e., within thirty days of the BOR's November 8, 2017 decision. Accordingly, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

SVETLANA OBOLENSKA, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2334

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SVETLANA OBOLENSKA
16805 S. FRANKLIN STREET
CHAGRIN FALLS, OH 44023

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, February 9, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DONALD GREGORY PROPERTIES, LLC, (et. al.),	CASE NO(S). 2017-1976
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - DONALD GREGORY PROPERTIES, LLC
Represented by:
DONALD WILLIS
PRESIDENT
3919 WILD CHERRY TRAIL
ORANGE VILLAGE, OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, February 9, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board'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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LINDA TEUFEL, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-1

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LINDA TEUFEL
490 TUCKER DR.
WORTHINGTON, OH 43085

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Monday, February 12, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Franklin County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On January 2, 2018, the appellant filed a notice of appeal with this board, on which she indicated that the BOR mailed a decision on December 19, 2017. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion certification that there is no record of a decision issued for the subject property.

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." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter

must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MATTHEW EYEN, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-2293 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MATTHEW EYEN
4485 CENTRAL COLLEGE ROAD
WESTERVILLE, OH 43081

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Monday, February 12, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Franklin County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On December 13, 2017, the appellant filed a notice of appeal with this board, on which he indicated that the BOR mailed a decision on December 1, 2017. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion certification that there is no record of a decision issued for the subject property.

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." *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 571.7.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CLEVELAND AVENUE VALLEY EQUITY, (et. al.),	CASE NO(S). 2017-1043
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
DELAWARE COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CLEVELAND AVENUE VALLEY EQUITY
Represented by:
TODD STEVENS
9635 MAROON CIR.
SUITE 450
ENGLEWOOD, CO 80112

For the Appellee(s) - DELAWARE COUNTY BOARD OF REVISION
Represented by:
MARK W. FOWLER
ASSISTANT PROSECUTING ATTORNEY
DELAWARE COUNTY
140 NORTH SANDUSKY STREET
P.O. BOX 8006
DELAWARE, OH 43015

OLENTANGY LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
KAROL C. FOX
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, February 12, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education moves to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now

decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate

statutes is essential to confer jurisdiction upon the BTA to hear appeals. *" 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed, and the hearing scheduled for February 13, 2018 is cancelled.

OHIO BOARD OF TAX APPEALS

LAKEWOOD CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-495
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - LAKEWOOD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

LEVINE INVESTMENTS LIMITED PARTNERSHIP
2201 E. CAMELBACK RD
SUITE 650
PHOENIX, AZ 85016

Entered Monday, February 12, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant Lakewood City School District Board of Education ("BOE") appeals a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel numbers 313-22-008 and 313-22-081 for tax year 2015. Although it requested a hearing before this board, the BOE waived its appearance and submits the case on the statutory transcript ("S.T.") certified pursuant to R.C. 5715.01. We proceed to consider the matter upon the notice of appeal and the transcript; the county appellees waived their appearance at the hearing, and the appellee property owner (Levine Investments Limited Partnership) has not participated in these proceedings.

[2] The subject parcels were initially valued by the fiscal officer at a total value of $1,070,300. The BOE filed a complaint seeking an increase in value to $1,443,300, to reflect the price for which the parcels purportedly sold in December 2012. At the BOR hearing, counsel for the BOE presented a limited

warranty deed, a CoStar property print-out, a memorandum of ground lease dated May 10, 2012 between the prior owner and McDonald's USA, LLC, and a supplement to such lease acknowledging Levine Investments as the successor in interest to the prior owner. Counsel for the BOE explained that the property had previously been the site of the Lakewood Theater; the theater had been razed and prior owner and developer Zaremba Lakewood LLC entered into a ground lease agreement with McDonald's USA, whereby McDonald's constructed a restaurant on the property and retained title to the improvements. As a result of the ground lease, the sale in December 2012 to Levin Investments, counsel argued, was simply of the income stream attributable to the land. As such, the BOE amended the value requested to $2,146,700, to reflect the December 2012 sale of the land and the fiscal officer's valuation of the improvements ($703,400), which it did not challenge.

[3] After considering the evidence presented, the BOR decided that no change in value was warranted. On its oral hearing worksheet and journal entry, the BOR stated that it found "The 2012 transfer is not recent to the tax lien date and there was no testimony to verify the BOE's assumptions as to the interests being transferred." S.T., Ex. E. The BOE thereafter appealed to this board, seeking a value of $1,443,300.

[4] In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision,* 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. The Supreme Court has made clear that no "bright line" test exists for establishing recency and that the mere passage of time does not, per se, render a sale unreliable. *Cummins,* supra; *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588. However, as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property have not changed between the sale date and the lien date." *Akron,* supra, at ¶26. The BOE has presented neither. Indeed, counsel stated at the BOR hearing that market conditions *had* changed, i.e., that values had gone up. S.T. at audio. We therefore find that the sale of the property, more than 24 months prior to tax lien date, is not recent to tax year 2015.

[5] In the absence of any other evidence of value, it is the order of this board that the true and taxable values of the subject parcels as of January 1, 2015, were as previously determined by the fiscal officer, as follows:

PARCEL NUMBER 313-22-008

TRUE VALUE

$925,200

TAXABLE VALUE

$323,820

PARCEL NUMBER 313-22-081

TRUE VALUE

$145,100

TAXABLE VALUE

$50,790

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-474
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

NNE ENTERPRISE, LLC
16586 E. ELM HAVEN DRIVE
HACIENDA HEIGHTS, CA 91745

Entered Monday, February 12, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcels 131-01-023 and 132-01-011, for tax year 2015. We proceed to consider this matter based upon the notice of appeal and the record certified pursuant to R.C. 5717.01.

The subject property was initially, collectively assessed at $488,400. The BOE filed a complaint with the BOR, which requested that the subject property be revalued at $647,400. The complaint disclosed that the subject property had been the subject of a $415,000 transfer in 2014. The property owner did not file a counter-complaint. At the BOR hearing on the matter, only an attorney for the BOE appeared to submit argument and/or evidence for the BOR's consideration. In doing so, counsel asserted that the subject property's value should be derived from its $415,000 vacant land sale in 2014 plus its $232,400 building

value, as originally assessed by the fiscal officer, to total $647,400. The BOR rejected the BOE's arguments and evidence because it determined that the $415,000 vacant land sale did not reflect the subject property as it existed on the tax lien date of January 1, 2015. The BOE subsequently appealed to this board.

Although the parties were afforded an opportunity to submit additional evidence at a merit hearing, or written argument in lieu of a hearing, before this board, none of the parties did so. We proceed, therefore, to consider this matter based upon the record developed before the BOR.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

In this instance, although there exists evidence of a recent sale of the subject property, like the BOR, we do not find it to be the best evidence of value given that the property underwent a material change, i.e., the construction of the Rally's restaurant, during the intervening period between the sale date in August 2014 (per the deed) and the tax lien date of January 1, 2015. See, generally, *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-8347; *Richman Properties, L.L.C. v. Medina Cty. Bd. of Revision,* 139 Ohio St.3d 549, 2014-Ohio-2439; *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Williamsburg Court Co., LLC v. Summit Cty. Bd. of Revision* (Mar. 30, 2010), BTA No. 2006-K-1717, unreported. Compare *Beechwood G L.P. v. Clermont Cty. Bd. of Revision,* 12th Dist. Clermont. No. CA2011-04-033, 2011-Ohio-5449.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). Based upon our review of the record, we find that the sale, upon which the BOE relies, was too remote to the tax lien date of January 1, 2015 and did not reflect the subject property as it existed on such date. As a consequence, we find that BOE failed to satisfy the evidentiary burden before the BOR and before this board.

It is, therefore, the order of this board that that the subject property's true and taxable values are as follows as of January 1, 2015:

PARCEL NUMBER 132-01-023

TRUE VALUE

$469,100

TAXABLE VALUE

$164,190

PARCEL NUMBER 132-01-011

TRUE VALUE

$19,300

TAXABLE VALUE $6,760

OHIO BOARD OF TAX APPEALS

SANDRA BLAZEK, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-812

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SANDRA BLAZEK
4534 HUNTING VALLEY LANE
BRECKSVILLE, OH 44141

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, February 12, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LAKEWOOD CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-499
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - LAKEWOOD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

LAKEWOOD DETROIT INVESTORS LLC.
15305 DETROIT AVENUE
LAKEWOOD, OH 44107

Entered Monday, February 12, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant Lakewood City Schools Board of Education ("BOE") appeals a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of the subject property, parcel numbers 314-01-109, 314-01-008, and 314-01-039, for tax year 2015. We proceed to consider the matter upon the notice of appeal and the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01. The BOE and BOR waived their appearances at a hearing before this board; the appellee property owner has not participated in these proceedings.

The subject parcels were initially assessed at a total value of $1,056,000 for tax year 2015. The BOE filed a complaint requesting an increase to $1,304,200, which it later amended to $1,200,000 to reflect the sale of the property for that amount in June 2012. At the BOR hearing, counsel for the BOE argued that the sale is the best evidence of the property's value for tax year 2015, and presented a limited warranty deed as

evidence of the sale. Counsel also indicated that the property had been the subject of another sale in April 2016 for $2,545,000, as evidenced by information contained on a CoStar property printout. Notably, the

fiscal officer's property record cards only reflect the 2012 sale. S.T., Ex. C. The BOE argued that the 2016 sale, for an amount double the fiscal officer's 2015 value, is further evidence that an increase is warranted. The BOR ultimately disagreed, concluding that the 2012 sale was not recent to tax lien date, and issued a decision maintaining the fiscal officer's values. On appeal, the BOE requests an increase in value to $1,304,200.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision,* 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. Once the proponent of a sale meets its initial burden to present prima facie evidence of a sale, *Utt* v. *Lorain Cty. Bd. of Revision,* 150 Ohio St.3d 119, 2016-Ohio-8402, ¶14, the sale is presumed to be the best evidence of value unless the opponent of the sale presents evidence that the sale was either not recent or not at arm's-length. *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, ¶13.

We first turn to the sale closest to tax lien date — the alleged sale in April 2016. *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 124 Ohio St.3d 481, 2010-Ohio-687, ¶20. The proponent of a sale has a relatively light burden to provide prima facie evidence of a sale, e.g., a purchase agreement, deed, conveyance fee statement, a notation on the auditor's property record. *Utt y. Lorain Cty. Bd. of Revision,* 150 Ohio St.3d 119, 2016-Ohio-8402, ¶14. Here, the only evidence of the 2016 sale is an indication on a CoStar property printout. In the absence of any other evidence, we find that the BOE has failed to provide prima fade evidence of a sale upon which this board could rely in determining value.

We turn, then, to the June 2012 sale of the property, evidenced by a deed and notation on the fiscal officer's property record cards. The Supreme Court has made clear that no "bright line" test exists for establishing whether a sale is recent to the relevant tax lien date, and that the mere passage of time does not, per se, render a sale unreliable. *Cummins,* supra; *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588. However, as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property have not changed between the sale date and the lien date." *Akron,* supra, at ¶26. The June 2012 sale is nearly thirty months removed from tax lien date. In the absence of any indication that the market remained unchanged during that time, we find the BOE has failed to provide evidence of a sale recent to tax lien date.

In the absence of any other evidence of value, we concur with the BOR's decision to leave the values of the subject parcels unchanged from the fiscal officer's initial valuation. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2015, were as follows:

PARCEL NUMBER 314-01-109

TRUE VALUE

$942,000

TAXABLE VALUE

$329,700

PARCEL NUMBER 314-01-008

TRUE VALUE

$61,900

TAXABLE VALUE

$21,670

PARCEL NUMBER 314-01-039

TRUE VALUE

$52,100

TAXABLE VALUE

$18,240

OHIO BOARD OF TAX APPEALS

LAKEWOOD CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-495
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - LAKEWOOD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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LEVINE INVESTMENTS LIMITED PARTNERSHIP
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Entered Monday, February 12, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant Lakewood City School District Board of Education ("BOE") appeals a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel numbers 313-22-008 and 313-22-081 for tax year 2015. Although it requested a hearing before this board, the BOE waived its appearance and submits the case on the statutory transcript ("S.T.") certified pursuant to R.C. 5715.01. We proceed to consider the matter upon the notice of appeal and the transcript; the county appellees waived their appearance at the hearing, and the appellee property owner (Levine Investments Limited Partnership) has not participated in these proceedings.

The subject parcels were initially valued by the fiscal officer at a total value of $1,070,300. The BOE filed a complaint seeking an increase in value to $1,443,300, to reflect the price for which the parcels purportedly sold in December 2012. At the BOR hearing, counsel for the BOE presented a limited warranty deed, a CoStar property print-out, a memorandum of ground lease dated May 10, 2012 between the prior owner and McDonald's USA, LLC, and a supplement to such lease acknowledging Levine Investments as the successor in interest to the prior owner. Counsel for the BOE explained that the property had previously been the site of the Lakewood Theater; the theater had been razed and prior owner and developer Zaremba Lakewood LLC entered into a ground lease agreement with McDonald's USA, whereby McDonald's constructed a restaurant on the property and retained title to the improvements. As a result of the ground lease, the sale in December 2012 to Levin Investments, counsel argued, was simply of the income stream attributable to the land. As such, the BOE amended the value requested to $2,146,700, to reflect the December 2012 sale of the land and the fiscal officer's valuation of the improvements ($703,400), which it did not challenge.

After considering the evidence presented, the BOR decided that no change in value was warranted. On its oral hearing worksheet and journal entry, the BOR stated that it found "The 2012 transfer is not recent to the tax lien date and there was no testimony to verify the BOE's assumptions as to the interests being transferred." S.T., Ex. E. The BOE thereafter appealed to this board, seeking a value of $1,443,300.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2017-Ohio-4415. The Supreme Court has made clear that no "bright line" test exists for establishing recency and that the mere passage of time does not, per se, render a sale unreliable. *Cummins*, supra; *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. However, as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property have not changed between the sale date and the lien date." *Akron*, supra, at ¶26. The BOE has presented neither. Indeed, counsel stated at the BOR hearing that market conditions *had* changed, i.e., that values had gone up. S.T. at audio. We therefore find that the sale of the property, more than 24 months prior to tax lien date, is not recent to tax year 2015.

In the absence of any other evidence of value, it is the order of this board that the true and taxable values of the subject parcels as of January 1, 2015, were as previously determined by the fiscal officer, as follows:

PARCEL NUMBER 313-22-008

TRUE VALUE

$925,200

TAXABLE VALUE

$323,820

PARCEL NUMBER 313-22-081

TRUE VALUE

$145,100

TAXABLE VALUE

$50,790

OHIO BOARD OF TAX APPEALS

JOANNE WINKLER, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2280

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, February 14, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education moves to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56

Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. """ 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was filed with the BOR thirty-three days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MCDONALD'S CORPORATION, (et. al.),

Appellant(s),

vs.

LORAIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1077

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MCDONALD'S CORPORATION
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For the Appellee(s) - LORAN COUNTY BOARD OF REVISION
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LORAN COUNTY
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ELYRIA, OH 44035-5642

ELYRIA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
NEAL E. HUBBARD
HUBBARD AND HUBBARD
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SHEFFIELD VILLAGE, OH 44305

Entered Tuesday, February 20, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The property owner appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel numbers 06-26-075-000-013, 06-26-075-000-014, 06-26-075-000-015, 06-26-075-000-016, 06-26-075-000-017, and 06-26-075-000-029, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record developed at this board's hearings, and any written argument submitted by the parties.

The subject property, a McDonald's restaurant, was initially, collectively assessed at $700,000. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at

$425,000. The affected board of education ("BOE") filed a counter-complaint, which objected to the request.

The BOR held a hearing on the matter, at which time the property owner and BOE appeared through counsel to submit argument and/or evidence in support of their respective positions. The property owner presented the report and testimony of Stephen J. Weis, who opined the value of the subject property to be $370,000 as of January 1, 2015. Relying upon the appraisal report and Weis's testimony, the property owner requested that the subject property's value be reduced to $370,000. Weis was cross examined about the underlying data and methodologies used to derive his final conclusion of value. The BOE argued that Weis's appraisal report should be rejected because it mostly relied upon freestanding retail properties, instead of restaurant properties, as comparable properties. The BOR issued a decision that retained the initially assessed value and this appeal ensued.

At the hearing before this board, the property owner, BOE, and county appellees appeared to supplement the record with additional argument and evidence. In its presentation, the property owner submitted the testimony of Todd Sorg, regional property manager for McDonald's Corporation, who testified about the operations of the McDonald's restaurant, condition of the subject property, and property owner's efforts to build another McDonald's restaurant a short distance away from the subject property, which actually occurred in late 2016. The county appellees submitted the report and testimony of Thomas D. Sprout, who opined the value of the subject property to be $780,000 as of January 1, 2015. He was examined, and cross examined, about the underlying data and methodologies used to derive his final conclusion of value. Sprout also reviewed Weis's appraisal report and testified about the alleged deficiencies with such appraisal report. The parties opted not to submit post-hearing briefs.

Before we proceed to consider the merits of this appeal, we must first dispose of an outstanding objection raised at this board's hearing. The property owner submitted an excerpt from a hearing transcript in another matter, BTA No. 2015-2357, and asserted that selected portions of Sprout's testimony demonstrates that he concedes that he is not an expert in real property valuation. The attorney examiner noted the objections raised by the appellees, deferred ruling, and allowed the property owner to proffer the excerpt into evidence as "Exhibit 4." Upon review, the appellees' objections are .overruled for two reasons. First, the property owner takes Sprout's testimony out of context to make a false equivocation. He testified that he was not an expert in "cost," not "value," which are not the same concepts. See e.g., *Bratslaysky v. Warren Cty. Bd. of Revision* (Feb. 3, 2009), BTA No. 2007-T-1415, unreported, 6-7 ("Simply stated, 'cost and value are not necessarily synonymous.' The Appraisal of Real Estate, at 319."). Second, we do not find the selected portion of Sprout's testimony, in its proper context and in an unrelated matter, to be particularly relevant to determining the subject property's value. We recognize Sprout as an expert and find him well qualified to render an opinion on the subject property's value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). "However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

The record does not disclose a recent, arm's-length transfer'of the subject property; therefore, we proceed to consider the parties' arguments and appraisal evidence.

We begin our analysis with Weis's appraisal report, which developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he compared the subject property to six other restaurant properties (four or five were vacant), and one non-restaurant property, located in various Ohio counties, which sold, or were available to purchase, between 2012 and 2016. After adjusting the comparable sales for differences with the subject property, Weis concluded the subject property's value to be $370,000 as of January 1, 2015. Under the tax additur method of the income

approach, he relied upon nine properties that were leased, or available to be leased, in Lorain and Medina counties since 2006. After adjusting the comparable leased properties for differences with the subject property, Weis determined that the subject property's potential gross income to be $41,654 based upon potential rent and expense reimbursements. He then deducted $2,083, or 5% of potential gross income, for vacancy and credit loss, to conclude to an effective gross rental income of $39,571. From that number, he deducted $8,391 of expenses, which included items such as insurance, utilities, and a management fee, to conclude to a net operating income of $31,181. In doing so, he capitalized the net operating income at 8.13%, including a tax additur, to conclude the subject property's value to be $380,000 as of January 1, 2015. He reconciled the indicated values, giving equal weight to both approaches to value, and finally concluded the subject property's value to be $370,000 as of January 1, 2015.

We next consider Sprout's appraisal report, which developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he compared the subject property to five other restaurant properties, in various Ohio counties, which sold in 2013 and 2014. After adjusting the comparable sales for differences with the subject property, Sprout concluded the subject property's value to be between $775,000 and $810,000 as of January 1, 2015. Under the tax additur method of the income approach, he relied upon ten, mostly restaurant properties that were leased, or available for lease, in various northern Ohio counties. After adjusting the comparable leased properties for differences with the subject property, Sprout determined that the subject property's potential gross income to be $181,734 based upon potential rent and expense reimbursements. He then deducted $21,808, or 12% of potential gross income, for vacancy and credit loss, to conclude to an effective gross'rental income of $159,926. From that number, he deducted $81,484 of expenses, which included items such as insurance, utilities, management fees and reserves for replacement, to conclude to a net operating income of $78,442. In doing so, he capitalized the net operating income at 10.07%, including a tax additur, to conclude the subject property's value to be $780,000 as of January 1, 2015. He reconciled the indicated values, but placed the most weight on the income approach, to finally conclude the subject property's value to be $$780,000 as of January 1, 2015.

We have often acknowledged in cases where competing appraisals are offered that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported.

Here, we note that it is undisputed that the McDonald's restaurant situsedon the subject property no longer fit the needs of the property owner because of the subject property's size. It is also undisputed that the property owner closed the restaurant situsedon the subject property and built another, more modern restaurant in close proximity to the subject property. As such, we find Weis's appraisal report to be the most competent and probative evidence of value. Although we acknowledge the county appellees' argument that the subject property was still being used by its first generation user, for the purpose for which the restaurant was built, we find, in this instance, that the subject property's size greatly impacts the subject property's value. Thus, we find Weis's selection of comparable properties under the sales comparison approach, to be the most similar to the subject property as it existed on the tax lien date.

We also note that the property owner faults Sprout's conclusion that the subject property fit the definition of "special-purpose property," we find no error there given that he testified that he did not appraise the property as if it were a "special-purpose property" and none of the parties advocated that the subject property be appraised in that manner. *Johnston Coca-Cola Bottling Co., Inc. v. Hamilton Cty. Bd. of Revision*, 149 Ohio St.3d 155, 2017-Ohio-870, at ¶17 ("Because the BTA did not adopt a present-use valuation, there is no need for an exception to the general rule—and thus no need for us to decide whether the property at issue here is a special-purpose property.").

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that the property owner satisfied its evidentiary burden at the BOR and before this board. In so doing, we find that the property owner's appraisal evidence, performed by Weis, was the most competent and probative evidence of the subject property's value.

It is, therefore, the order of this board that the subject property's true and taxable values, as of January 1, 2015, are as follows:

TRUE VALUE

$370,000

TAXABLE VALUE

$129,500

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-170
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
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Entered Friday, February 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon a notice of appeal by the appellant Columbus City Schools Board of Education ("BOE") from decisions of the Franklin County Board of Revision ("BOR") determining the value of parcel numbers 010-167266-00 and 010-073791-00 for tax year 2011. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the BOE's written legal argument.

The subject properties, located at 2530 Vendome Drive (parcel number 010-167266-00) and 2692 Homecroft Drive (parcel number 010-073791-00), were initially valued by the county auditor at $54,600 and $65,000, respectively, for tax year 2011. Owner Bruce Johnson filed a complaint against valuation seeking decreases in value to $21,000 and $15,500, respectively, to reflect the amount for which each property was purchased in 2009. The BOE filed a countercomplaint requesting that the auditor's values be maintained. At the BOR

hearing, Mr. Johnson testified that both properties were purchased at auction sales; the property on Vendome was purchased in July 2009, and the property on Homecroft was purchased

in October 2009. Though no details about the auction sale of the Homecroft property were offered nor elicited through questioning, Mr. Johnson testified that there were approximately thirty other bidders at the auction sale of the Vendome property. He also indicated that approximately $4,000 was spent to repair the roof of the Vendome property in 2009 after it was purchased. Mr. Johnson also presented recent comparable sales in support of the requested decreases. After considering the evidence presented, the BOR voted to accept the sales of both properties as their values for tax year 2011, reducing the value of the Vendome property to $19,000, and the value of the Homecroft property to $15,500.

The BOE thereafter appealed to this board after being given proper notice of the BOR decisions. In its written argument, the BOE argues that auction sales are not presumed to be the best evidence of value under the Supreme Court's decision in *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision ("TaDa"),* 141 Ohio St.3d 243, 2014-Ohio-4723, and that the owner failed to present sufficient evidence to demonstrate that the sales were, nevertheless, arm's-length. The BOE further noted that it attempted to obtain more information about the sales through discovery, but the owner failed to respond to its requests. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Interim Order, July 28, 2017), BTA No. 2017-170, unreported. The BOE requests that this board find that the BOR erred in accepting the auction sale prices as the value of the subject parcels, and reinstate the auditor's original values.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision,* 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415. However, where a property sells via an auction, such sale is *not* presumed to be the best evidence of value in the absence of evidence that the sale was voluntary and at arm's length. *TaDa,* supra, at ¶40. Moreover, the court has held that where "the central issue is whether a sale price of the subject property establishes its value, the factors attending that issue must usually be determined de novo by the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11. See also *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-5823, ¶7 ("our case law has repeatedly instructed the BTA to eschew a presumption of validity of the BOR's value ***.").

We turn to the record for information about the circumstances of the auction sales. In *Walters v. Knox Cty. Bd. of Revision,* 47 Ohio St.3d 23, 25 (1989), the Supreme Court explained that "an arm's-length sale is characterized by these elements: it is voluntary, *i.e.,* without compulsion or duress; it generally takes place in an open market; and the parties act in their own self interest." The record, including the purchase contract, settlement statement, and property record card, indicates that the Vendome property sold for a total contract sale price of $15,500. At the BOR hearing, Mr. Johnson indicated that he believed the property on Vendome was sold after the prior owner passed away. He was unsure whether either sale was advertised; he testified that he became aware the properties were for sale through his relationships with realtors. However, he did testify that approximately thirty other individuals bid on the Vendome property at its auction. We find such testimony sufficient to establish that the sale of the Vendome property was arm's-length. However, such information was not presented as to the Homecroft property. In the absence of such evidence, we find that Mr. Johnson, as the proponent of the sale, failed to satisfy his "heavier burden" to prove that the auction sale of the Homecroft property is the best evidence of its value. *TaDa,* supra, at ¶43. We therefore find that the BOR erred when it accepted the sale price of the Homecroft property in valuing the property for tax year 2011.

The only other evidence of value presented to the BOR consisted of MLS listings for four purportedly comparable properties that sold in late 2012 and 2013. We do not find such information to be probative of the subject properties' values as of January 1, 2011. Initially, we note that no evidence was presented to relate the sales of the comparables to the tax lien date. Moreover, no testimony was presented, from an expert or a lay witness, about how the other properties compared to the subject properties. Typically, under a sales comparison approach, an appraiser employs qualitative or quantitative adjustments to align, and

thereby compare, such properties to the subject. In the absence of such analysis, we find the raw sales presented are not adequate support for the requested decreases. See *Moskowitz v. Cuyahoga Cty. Bd. of Revision* (Jan. 23, 2015), BTA No. 2014-1160, unreported, affirmed, 150 Ohio St.3d 69, 2017-Ohio-4002 ("the compilation of the sales was only one step in a sales-comparison approach to value that would be performed by an appraiser."); *Carr v. Cuyahoga Cty. Fiscal Officer,* 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050.

Upon review of the record before us, we find that the owner failed to present sufficient evidence in support of the requested decrease in value for the Homecroft property, and, further, that the BOR erred in decreasing the value of the Homecroft property in the absence of evidence indicating that the auction sale was voluntary and at arm's length. We do, however, find sufficient evidence supporting the BOR's decision to accept the auction sale of the Vendome property as the best evidence of its value as of tax lien date.

It is therefore the order of this board that the true and taxable values of the subject properties as of January 1, 2011, were as follows:

PARCEL NUMBER 010-167266-00

TRUE VALUE

$15,500

TAXABLE VALUE

$5,430

PARCEL NUMBER 010-073791-00

TRUE VALUE

$65,000

TAXABLE VALUE

$22,750

OHIO BOARD OF TAX APPEALS

GRANT FISHER, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2309

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GRANT FISHER
Represented by:
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OWNER
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COLUMBUS, OH 43207

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Monday, February 26, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Franklin County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On December 18, 2017, the appellant filed a notice of appeal with this board, on which he indicated that the BOR mailed a decision on December 3, 2017. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion certification that there is no record of a decision issued for the subject property.

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." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*,

56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ERIC L. AND REGINA R. SHIELDS, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1966

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ERIC L. AND REGINA R. SHIELDS
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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CLEVELAND, OH 44113

Entered Monday, February 26, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board'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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter is hereby dismissed.

OHIO BOARD OF TAX APPEALS

ROBERT E CAROLE E JACOPS, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1002

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROBERT E CAROLE E JACOPS
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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SHAKER HEIGHTS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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Entered Tuesday, February 27, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter comes before this board upon a notice of appeal from a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of the subject property, parcel number 735-18-013, for tax year 2016. We consider the matter upon the notice of appeal, the statutory transcript certified by the fiscal officer pursuant to R.C. 5717.01, and the record of the hearing before this board ("H.R.").

The fiscal officer initially valued the property for tax year 2016 at $103,400. The appellant property owner filed a complaint against the valuation, requesting a decrease in value to $25,450, and indicating that the value had increased after being reappraised the year prior (2015) and that the value should be based on his 2011 purchase price. The appellee Shaker Heights City Schools Board of Education ("BOE") filed a countercomplaint seeking to retain the fiscal officer's initial value.

At the BOR hearing, the property owner explained that the value had been increased during the countywidetriennial update in 2015, and then subsequently increased again for 2016. Upon inquiry to the county's appraisal department, he was informed that the value was 'increased for 2016 based on the pulling of a permit for improvements. He presented no other evidence of value. The BOE presented comparable sales data, though the owner argued that the sales were not of investment properties like the subject. In response to questioning from counsel for the BOE, the owner indicated that the subject property's units are rented for $700 and $975 per month, respectively. After considering the evidence and testimony presented, the BOR concluded that appellant's original purchase of the property in 2011 was not recent to tax lien date, and that no evidence was provided to support a value different from the fiscal officer's; it issued a decision retaining the initial value, and appellant appealed to this board.

On appeal, appellant and counsel for the county appellees appeared at a hearing before this board. Initially, we must address appellant's motion for reconsideration of this board's October 16, 2017 order quashing subpoenas issued at appellant's request to Diane Gottchalk, Dan Harbaugh, and William McAdams, as not having been timely served. In addition, at the hearing, counsel for the county appellees moved to quash an additional subpoena, purportedly issued to Lou Gentile, a county employee, based on lack of service; counsel also argued that the subpoena was not properly issued, as it did not appear to bear the signature of any individual authorized to issue subpoenas under R.C. 5703.03. H.R. at 10-11. In his motion for reconsideration, appellant asserts that he did serve the subpoenas, but that "the threat of violence being arrested and retribution caused the Appellant from having dOcument Notarized verifying service." Motion at 1. Following the hearing, appellant filed what is purported to be a photograph of him serving the subpoena on Diane Gottchalk; however, the contents of the photo are unidentifiable. Upon review, we find appellant has failed to sufficiently prove that the subpoenas were served in compliance with Civ.R. 45(B) and Ohio Adm. Code 5717-1-14, and therefore there is no basis for this board to reconsider our earlier order quashing the subpoenas. See *Matthews v. Matthews,* 5 Ohio App.3d 140 (1981). Moreover, the record of the filings in this matter do not indicate any request for a subpoena to be issued to Lou Gentile; accordingly, the county's oral motion to quash such subpoena is deemed moot.

At this board's hearing, appellant testified that no renovations had been made to the subject property and that no other circumstance justified the fiscal officer increasing the property's value outside the normal valuation cycle. H.R. at 16-17. Appellant also presented the testimony of a neighboring property owner and real estate agent, Martin Handfinger, who testified that he looked at sales of comparable investment properties in 2015 and 2016 for prices ranging from $20,000 to $74,000, and concluded that appellant "paid a fair market value for [the subject property] at that time." Id. at 45. Appellant advocated for valuation of the subject property based on his purchase in 2011. Counsel for the county appellees argued that appellant had failed to meet his burden of proof, and that the fiscal officer is not required to defend the initial valuation.

In challenging the valuation of real property, "[t]he burden is on the taxpayer to prove his right to a deduction." W. *Industries, Inc. v. Hamilton Cty. Bd. of Revision,* 170 Ohio St. 340, 342 (1960). "[T]he appellant must come forward and demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. Relevant to the arguments raised by appellant in this matter, the Supreme Court explained in *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 123 Ohio St.3d 268, 2009-Ohio-4975, that "the board of revision (or [fiscal officer]) bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof at the BTA." Id. at ¶ 23. Compare *Dublin City Schools Bd. of Edn. v. Franklin CO). Bd. of Revision,* 139 Ohio St.3d 193, 2013-Ohio-4543, ¶20 (acknowledging an exception to this general rule when the record affirmatively negates the validity of the county's valuation). We therefore first turn to the evidence presented in support of appellant's argument that the fiscal officer's initial valuation was incorrect.

Appellant argues that the fiscal officer acted improperly by increasing the value of the property for tax year 2016. Initially, we note that such action by the fiscal officer made the filing of the underlying complaint in

this matter permissible despite the prohibition in R.C. 5715.19(A)(2) against filing multiple complaints within a triennial period. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 10th Dist. Franklin No. 13AP-764, 2014-Ohio-2145, ¶9 (citing *JLP-Harvard Park LLC v. Cuyahoga Cty. Bd. of Revision* (Jan. 3, 2012), BTA No. 2011-K-2225, unreported). In the absence of the fiscal officer's action to increase the value for tax year 2016, generally, the value established by the fiscal officer during the tax year 2015 triennial update would carry forward to tax years 2016 and 2017; the fiscal officer must then reappraise all properties in the county pursuant to the sexennial reappraisal scheduled for 2018 in Cuyahoga County. See R.C. 5713.01. However, "the [fiscal officer] is under a standing duty to 'revalue and assess at any time all or any part of the real estate in such county *** where the [fiscal officer] finds that the true or taxable values have changed,' which "might be triggered by an arm's-length sale" or "the reporting of an improvement or casualty to the property ***." *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision,* 127 Ohio St.3d 44, 2010-Ohio-4468, ¶19, quoting R.C. 5713.01(B). See also *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, ¶43.

From notations on the property record card, it appears that the fiscal officer's increase in value for tax year 2016 was based on an inspection of the property. S.T., Ex. C. While appellant disputes that extensive renovations were made to the property, he testified that repairs were made to comply with violations found by the City of Shaker Heights Housing Inspection Department. H.R. at 17, Exs. A4, All, Al2.

In support of his requested value, appellant primarily relies on the price from his 2011 purchase of the property. The Supreme Court has made clear that no "bright line" test exists for establishing recency and that the mere passage of time does not, per se, render a sale unreliable. *Cummins,* supra; *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588. However, as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property has not changed between the sale date and the lien date." *Akron,* supra, at ¶26. The subject property sold more than four years prior to tax lien date, i.e., January 1, 2016. In the absence of any evidence indicating that market conditions remained unchanged during such an extensive time period, we find that appellant has failed to demonstrate that the sale is sufficiently recent to be the best evidence of value for tax year 2016.

The only other evidence of value in the record before us is the comparable sales data presented by the BOE at the BOR hearing. However, upon review of the limited information provided, we are unable to discern whether the sales are, indeed, comparable to the subject. Moreover, this board has repeatedly rejected the use of unadjusted comparable sales data to determine the value of a property, noting the importance of a reliable appraisal analysis of such data. See, e.g., *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. See also *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* 150 Ohio St.3d 69, 2017-Ohio-4002. In the absence of any such analysis, we are unable to rely on the comparable sales to independently determine the value of the property.

Based upon the foregoing, we find that appellant has failed to meet his burden of proof on appeal. While we acknowledge appellant's arguments regarding the fiscal officer's actions, this board's review is limited to the decision of the board of revision regarding the value of the property. *Brookledge II v. Summit Cty. Bd. of Revision* (Oct. 2, 2012), BTA No. 2011-K-3593 et seq., unreported. Compare *Sheldon Road Assoc., L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 131 Ohio St.3d 201, 2012-Ohio-581; *State ex rel. Ney v. DeCourcy,* 81 Ohio App.3d 775 (1992); *State ex rel. Nei part Ltd. Partnership v. Donofrio,* 9th Dist. Summit No. C.A. No. 25009, 2010-Ohio-2199.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as previously determined by the fiscal officer and retained by the board of revision, as follows:

TRUE VALUE

$103,400

TAXABLE VALUE

$36,190

OHIO BOARD OF TAX APPEALS

HOME DEPOT U.S.A., INC., (et. al.),

Appellant(s),

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-174

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, February 27, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon an appeal by property owner Home Depot U.S.A., Inc. ("Home Depot") from a decision of the Montgomery County Board of Revision ("BOR") determining the value of parcel numbers H33 00514 0016 and H33 00514T0016 for tax year 2015. As all parties waived their appearances at a hearing before this board, we consider the matter upon the notice of appeal and the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01.

The auditor initially valued the subject parcels at a total of $7,228,290. Home Depot filed a complaint

against valuation requesting a decrease in total value to $4,235,000, which it later amended to conform to its appraisal evidence; the appellee Trotwood Madison City School District Board of Education ("BOE") filed a countercomplaint requesting that the auditor's values be maintained. At the BOR hearing, Home Depot presented the appraisal report and testimony of Kelly Fried, MAI, who opined a value for both parcels of $4,655,000. Ms. Fried relied primarily on the sales comparison approach in opining value. She looked to six comparable sales, including two within Montgomery County, which sold for an adjusted range of $26.08 to $45.45 per square foot, to come to a value of $39.49 per square foot, for a total value conclusion of $4,660,000. Ms. Fried also performed an income capitalization approach, under which she opined a value of $4,590,000; she accorded only a 10% weight to her income approach. Counsel for the BOE cross-examined Ms. Fried, noting the lack of sale and lease comparables from within the Dayton market. Ms. Fried responded that sales of "big box" properties like the subject were difficult to find in Dayton and that she felt the Franklin and Clermont County comparables she utilized were appropriate. After considering the evidence presented, the BOR relied oh Ms. Fried's sales comparison approach and, instead of using the value derived thereunder, looked to the range of adjusted sale prices and concluded that a value toward the higher end of that range, at $44 per square foot, was more appropriate than Ms. Fried's opinion of $39.49 per square foot. The BOR therefore decreased the total value of the property to $5,184,900, and Home Depot appealed to this board.

In challenging the valuation of real property, "[t]he burden is on the taxpayer to prove his right to a deduction." *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision,* 170 Ohio St. 340, 342 (1960). "[T]he appellant must come forward and demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. In considering the evidence presented in support of a reduction in value, we are mindful of this board's duty to independently determine value. See e.g., *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-5823; *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 147 Ohio St.3d 409, 2016-Ohio-7381; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078.

The only evidence of value presented in this matter is the Fried appraisal. When a party relies on an expert opinion of value to support its claim, such opinion must be both competent and probative. See generally *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096. In *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision,* 44 Ohio St.2d 13 (1975) paragraphs two and three of the syllabus, the court held that "[t]he Board of Tax Appeals is not required to adopt the valuation fixed by any expert or witness" and that it "is vested with wide discretion in determining the weight to be given to evidence ***." Upon review of her appraisal report and testimony, we find Ms. Fried's opinion of value competent and probative.

The BOR indicated its reluctance to adopt Ms. Fried's opinion of value, opting for a value toward the higher end of her adjusted sales range. In its decision hearing audio, the BOR cited no reason for such difference of opinion; the BOR hearing notes similarly lack any explanation for its modification of Ms. Fried's opinion of value. In reviewing Ms. Fried's sales comparison approach, it is clear that Ms. Fried looked more to the middle of her adjusted sales range in determining the value for the subject at $39.49 per square foot. We agree with the BOE's contention that the sales within Montgomery County, in closest proximity to the subject property, are more probative of the property's value. Those sales, i.e., comparables 5 and 6, sold for adjusted prices of $45.45 and $32.43 per square foot, respectively. Both sold within 2015. In addition, Ms. Fried also noted two listings less than one mile from the subject property in Trotwood — a former Target of similar size and age listed at $18.35 per square foot, and a former Walmart of similar size and older age listed at $10.08 per square foot and requiring an estimated $650,000 of renovations. Although we acknowledge that a property's listing price is not conclusively probative of market value, see *Kaiser v. Franklin Cty. Aud.,* 10th Dist. Franklin No. 10AP-909, 2012-Ohio-820, ¶12, this additional data certainly explains Ms. Fried's reluctance to utilize the higher end of her adjusted sales range to opine value for the

subject. On the whole, we find Ms. Fried's valuation at $39.49 per square foot properly takes into consideration all the market data in deriving an appropriate opinion of value for the

subject property. Moreover, her opinion of value under the sales comparison approach is supported by her income capitalization analysis.

It is therefore the order of this board that the total true value of the subject parcels as of January 1, 2015 is $4,655,0000. Because these parcels are subject to a tax increment financing agreement, we hereby remand this matter to the Montgomery County Board of Revision to allocate the total value between the subject parcels.

OHIO BOARD OF TAX APPEALS

BROOKLYN CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2645
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Tuesday, February 27, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel number 432-10-001 for tax year 2015. The parties waived their appearances at a hearing before this board. We therefore proceed to consider the matter upon the notice of appeal and the statutory transcript certified pursuant to R.C. 5717.01.

The subject property was initially valued by the fiscal officer at $7,840,000 for tax year 2015. The BOE filed a complaint requesting an increase in value to $10,500,000; the appellee owner Parkview Co. Ltd./Bandera Parkview Holdings filed a countercomplaint requesting that the fiscal officer's value be maintained. At the

BOR hearing, counsel for the BOE explained that the property transferred in April 2010 for $8,000,000 and that this board valued the property in accordance with such sale for tax year 2012 in a

prior decision. The BOE presented a financing appraisal opining a value of $9,000,000 as of March 10, 2010, and $10,500,000 as of July 10, 2010 assuming that proposed renovations would be completed by that date; the addendum to such appraisal contained a copy of the purchase agreement relating to the April 2010 sale. Counsel for the owner did not dispute the 2010 sale; however, he argued that the sale and the additional information he provided, i.e., actual income and expense information, occupancy history, condition report, and unadjusted sales data, indicated that the fiscal officer's initial valuation was correct. The BOR agreed, finding no change in value warranted.

The BOE thereafter appealed to this board, but submitted no further argument or evidence in support of its appeal.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. The Supreme Court has made clear that no "bright line" test exists for establishing recency and that the mere passage of time does not, per se, render a sale unreliable. *Cummins*, supra; *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. However, as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property have not changed between the sale date and the lien date." *Akron*, supra, at ¶26. In the absence of any evidence that the market has not changed between April 2010 and January 1, 2015, we do not find the sale of the property to be recent to tax lien date.

We also reject the BOE's reliance on the financing appraisal report. Initially, we note that the report is of little value to our determination of value for a date nearly five years removed from the date of the report. The Supreme Court has repeatedly held that an expert's opinion of value must be expressed "as of the tax lien date in issue. See, e.g., *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996); *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997). Moreover, this board has rejected appraisals done for financing purposes, finding that "they are not necessarily a complete and thorough evaluation of the property." *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported. Finally, and perhaps most importantly, the appraiser did not testify before either the BOR or this board. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094; compare *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485. We therefore do not find the appraiser's opinion of value, nor the contents of his report, probative of the value of the property as of tax lien date.

Based upon the foregoing, we find the BOE has failed to meet its burden on appeal. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2015, were as previously determined by the fiscal officer and maintained by the BOR, as follows:

TRUE VALUE

$7,840,000

TAXABLE VALUE

$2,744,000

OHIO BOARD OF TAX APPEALS

NORTHRIDGE LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2553
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - NORTHRIDGE LOCAL SCHOOLS BOARD OF EDUCATION
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PAUL JACOB, RECEIVER
RECEIVER
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Entered Tuesday, February 27, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Board of Education of the Northridge Local Schools ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel E21 01103 0086, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the transcript certified pursuant

to R.C. 5717.01, and the record of this board's hearing.

The subject property, a hotel, was initially assessed at $2,018,090. Paul Jacob, in his capacity as a court-appointed receiver, filed the underlying complaint on behalf of the property owner at that time, Choa Dayton, LLC ("Choa"), which requested that the subject property be revalued at $1,200,000. The BOE filed a counter-complaint, which objected to the request.

At the BOR hearing on the matter, both parties appeared through counsel to submit argument and/or evidence in support of their respective positions. As the hearing commenced, counsel for the property owner at that time, MK Hospitality, LLC ("MK Hospitality"), gave an extensive opening statement, which detailed the subject property's history in foreclosure proceedings in 2012; the county treasurer's transfer of a $1,200,000 delinquent tax lien encumbering the subject property in 2014; the actions taken by the court-appointed receiver in an effort to sell the subject property; the actions taken by Choa in an attempt to thwart attempts to sell the subject property; the actions taken by MK Hospitality to purchase the subject property in April 2016; and the actions taken by the court overseeing the receivership. According to counsel, these efforts eventually resulted in the $1,200,000 transfer of the subject property from Jacob, as receiver, to MK Hospitality. In support of the complaint,• counsel presented the testimony of Michael Guzman, a representative of MK Hospitality, who testified about the condition of the subject property just prior to MK Hospitality's purchase in April 2016. Counsel for the BOE cross examined Guzman, who conceded that he had no firsthand knowledge of the sale and was only involved in the inspection of the subject property. Based upon Guzman's testimony, the BOE argued that MK Hospitality had failed to rebut the presumption that the April 2016 sale, conducted through a court-appointed receiver, occurred under duress. Counsel for MK Hospitality argued that the court order, which confirmed the sale of the subject property to MK Hospitality, determined that such sale was an arm's-length transaction. According to the BOR decision hearing, the BOR rejected MK's purchase of the subject property because it concluded that such sale occurred as the result of an auction. However, the BOR voted to reduce the subject property's value to $1,212,720 based upon the subject property's condition, as testified to by Guzman. It subsequently issued a written decision consistent with the oral vote. This appeal ensued.

At this board's hearing, only the BOE appeared to submit additional argument and/or evidence into the record. The BOE argued that the BOR impermissibly reduced the subject property's value based upon a forced receivership sale and further asserted that the subject property should be valued consistent with the $2,100,000 price at which it transferred subsequent to the receivership sale, in October 2016. The BOE submitted sale documents that memorialized the $2,100:000 sale of the subject property from MK Hospitality to Dayton Fun Hotels, LLC ("Dayton Fun Hotels") in October 2016 and the court order that approved the receiver sale of April 2016. None of the other interested parties appeared at the hearing.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

In this matter, the record indicates that the subject property has been the subject of two transfers that would be considered recent to the tax lien date: the $1,200,000 transfer of the subject property from receiver Jacob to MK Hospitality in April 2016 and the $2,100,000 transfer of the subject property from MK Hospitality to Dayton Fun Hotels in October 2016. In *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 124 Ohio St.3d 481,

2010-Ohio-687, the court held in paragraph one of its syllabus that "[w]hen a property has been the subject of two arm's-length sales between a willing seller and a willing buyer within a reasonable length of

time either before or after the tax lien date, the sale occurring closer in time to the tax-lien date establishes the true value of the property for taxation purposes." We proceed, therefore, to first consider the sale closest to the tax lien date, i.e., the sale of April 2016.

Although it is unclear whether the transfer to MK Hospitality occurred as the result of an auction sale, as the BOR indicated, it is clear that such sale occurred under the direction of a court-appointed receiver. As such, the sale appears to have been "forced sale" 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." This board has repeatedly found sales conducted under supervision of a court order are forced sales that are not indicative of true value. See, e.g., *Bd. of Edn. of the Kettering City School Dist. v. Montgomery Cty. Bd. of Revision* (June 6, 2013), BTA No. 2010-A-3213, unreported; *Bd. of Edn. of the Rolling Hills Local Schools v. Guernsey Cty. Bd. of Revision* (Sept. 25, 2012), BTA No. 2009-Q-3475, unreported; *Belfance, Trustee Successor in Interest to Copperweld Steel Co. v. Trumbull Cty. Bd. of Revision* (June 30, 1997), BTA Nos. 1995-M-898, 899, unreported. However, the Supreme Court has held that R.C. 5713.04 is not an absolute bar to establish a real property value. In *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723, 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. *See Fenco [(Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision)],* 127 Ohio St.3d 63, 2010-Ohio-4907 ***, at ¶ 34." (Parallel citation omitted.) Id. at ¶40.

Here, we find that the BOE satisfied its burden to show that the receivership sale, which transferred the subject property to MK Hospitality was a forced sale between atypically motivated parties. We further find that the presumption that such sale is not evidence of the property's value has not been succesfully rebutted. No one with firsthand knowledge of the receivership sale testified at the BOR hearing or this board's merit hearing. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Jan. 3, 2017), BTA No. 2016-417, unreported *(rejecting* a receivership sale where there was no testimony from someone with firsthand knowledge of the sale to demonstrate that the parties to the sale acted as typically motivated parties); *Princeton City Schools Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (Aug. 24, 2017), BTA No. 2016-1515, unreported *(accepting* a receivership sale where there was testimony from someone with firsthand knowledge of the sale to demonstrate that the parties to the sale acted as typically motivated parties). Although counsel for MK Hospitality provided an extensive rendition of the alleged efforts undertaken by the court-appointed receiver to sell the subject property and by MK Hospitality to buy the subject property, he was not sworn in as a witness and the record is devoid of any evidence that he had firsthand knowledge of any of the matters about which he spoke. We have repeatedly held that statements of counsel are not evidence upon which this board may rely to determine real property value. See e.g., *Corporate Exchange Bldgs. JV & V, L. P. v. Franklin Cty. Bd. of Revision,* 82 Ohio St.3d 297 (1998). We further find that testimony from a witness with firsthand knowledge of the receivership sale would have been vitally important given that such sale involved the release of a tax lien and delinquent real estate taxes as indicated by the settlement statement submitted to the BOR. As a consequence of this deficiency, we are unable to ascertain the impact the tax delinquencies had on the negotiations between the parties and the resultant purchase price, and to determine whether the purchase price actually reflected the fair market value of the subject property.

We acknowledge that, in an attempt to rebut the presumption that the receivership sale was not an arm's-length transfer, counsel for MK Hospitality referred to the statements in the court order that confirmed the sale of the subject property to MK Hospitality. However, this board has previously rejected such arguments, even where the court's order approving the sale described the sale as having been negotiated, or proposed and entered into from arm's-length bargaining positions and in good faith. See, e.g., *Medina City School Dist. Bd. of Edn. v. Medina Cty. Bd. of Revision* (July 16, 2015), BTA No. 2014-2987,

unreported. See, also *Warrensville Hts. City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 145 Ohio St.3d 115, 2015-Ohio-78.

We also find another aspect of the receivership sale tp be problematic. We note that Jacob, the court-appointed receiver, and MK Hospitality agreed to an overall purchase price of $1,800,000, with $1,200,000 allocated to the subject property and $600,000 allocated to "business assets" in the purchase contract submitted to the BOR. It is well established that the party advocating for a reduction below the full sale price due to an allocation of other assets bears the burden of showing the propriety of such allocation. See *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 128 Ohio St.3d 565, 2011-Ohio-2258. In this instance, however, the record is devoid of any evidence that identified the purported non-realty "business assets." See *Green Local Schools Bd. of Edn. v. Summit Cty. Bd. of Revision* (Aug. 2, 2017), BTA No. 2016-1515, unreported at 2-3 ("Not only are we troubled by the lack of evidence of any allocation to non-realty items, we are concerned that there was no specificity in the non-realty items that allegedly transferred. For example, Grossman testified that the subject sale included fuel and furniture. But how much fuel and what furniture were transferred and how were they valued?"). Accordingly, we find the record devoid of any "corroborating indicia" or other evidence in support of allocating any portion of the sale price to items other than realty that may have been transferred. *Hillard City Schools Board of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 1, 2014-Ohio-853. See, also, *Sapina v. Cuyahoga Cty. Bd. of Revision,* 136 Ohio St.3d 188, 2013-Ohio-3028, at ¶18, quoting *St. Bernard Self-Storage LLC v. Hamilton Cty. Bd. of Revision,* 115 Ohio St.3d 365, 2007-Ohio-5249, at ¶17.

Because we have concluded that the receivership sale of April 2016 is not the best indication of the subject property's value, we proceed to consider the subsequent sale of the subject property, the $2,100,000 transfer of the subject property from MK Hospitality to Dayton Fun Hotels in October 2016. The BOE submitted a conveyance fee statement and general warranty deed, which memorialized such sale. Absent an affirmative demonstration that such sale was not a recent, arm's-length transaction, we find that it is the best indication of the subject property's value. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript").

By virtue of our decision to value the subject property consistent with the $2,100,000 sale of October 2016, it is unnecessary for us to discuss the impropriety of the BOR's decision to reduce the subject property's value by approximately 40%, based upon uncorroborated testimony that 60 hotel rooms (of the 230 or 240 total hotel rooms) had a water and mold problem, without first conducting a field check, or other independent investigation, to confirm the condition of the subject property. See e.g., *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (May 11, 2016), BTA No. 2015-1200, unreported at 3 ("[W]e now consider the BOR's decisions to reduce the subject properties' values. As previously noted, in reaching its decisions, the BOR applied a 40% depreciation factor [based upon condition] to the subject properties. However, the record is void of any evidence that such factor was appropriate. There is no indication that the BOR conducted a field check to determine the condition of the subject properties. Such information is notably absent from the property record card, the place where the county auditor should "record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property." See, also *Cannata v. Cuyahoga Cty. Bd. of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094.

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, are as follows:

TRUE VALUE

$2,100,000

TAXABLE VALUE

$735,000

OHIO BOARD OF TAX APPEALS

LAKE LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-91
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

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Entered Tuesday, February 27, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant Lake Local Schools Board of Education ("BOE") appeals a decision of the Stark County Board of Revision ("BOR") determining the value of parcel number 2202573 for tax year 2015. As the parties waived their appearances at a hearing before this board, we consider the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the parties' written arguments. Although the appellee property owner attached many photographs and an affidavit to its written argument, to the extent such evidence was not previously submitted during the BOR proceedings, it is hereby stricken from the record and will not be considered in our determination. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13 (1996).

[2] The auditor initially valued the subject property at $1,268,500 for tax year 2015. The appellee property owner, Uniontown-Apache LLC, filed a complaint seeking a decrease in value to $750,000; the BOE filed a countercomplaint in support of the auditor's valuation. At the BOR hearing, Terry Moore, a member of the ownership entity, testified that the property was purchased for the amount of delinquent taxes ($291,000) in 2013. At the time of purchase, the property was in substantial disrepair and the owner has been working since its purchase to make improvements, including repairs to the parking lot required pursuant to its lease with major tenant Sherwin-Williams. In support of its complaint, the owner presented the appraisal report and testimony of Charles G. Snyder, MAI, who opined a value of $1,125,000 as of January 1, 2015, from which he then deducted $150,000 for the cost to resurface and restripe the parking lot, for a final value conclusion of $975,000. The BOR ultimately accepted Mr. Snyder's opinion of value and decreased the value of the property to $975,000.

[3] The BOE thereafter appealed to this board. In its written argument, the BOE argues that Mr. Snyder's deduction of $150,000 for parking lots repairs from his opinion of value was improper under established case law. For its part, the owner argues that the BOE has failed to meet its burden to provide evidence in support of rejecting the BOR's value, and that Mr. Snyder's deduction for the cost of parking lot repairs was appropriate.

[4] The Supreme Court recently explained the burden on an appellant board of education when appealing a decision of a county board of revision, i.e., the *"Bedford* rule," in *Dublin City Schools Bd. of Edn. v. Frankllin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025:

> "Pursuant to [the *Bedford* rule], 'when the board of revision has reduced the value of the property based on the owner's evidence, that value has been held to eclipse the auditor's original valuation,' and the board of education as the appellant before the BTA may not rely on the latter as a default valuation. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 140 Ohio St.3d 248, 2014-Ohio-3620, ***: ¶ 35 *(`Northpointe,'* after the property owner). Instead, 'the BOR's adopting a new value based on' the owner's evidence has the effect of `"shift[ing] the burden of going forward with evidence to the board of education on appeal to the BTA.'" *Id.* at ¶ 41, quoting *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 193, 2013-Ohio-4543, ***, ¶ 16 *(` East Bank,'* after the property owner)." (Footnote and parallel citations omitted.) Id. at ¶6.

[5] We find the court's decision in *Dublin,* supra, dispositive of this matter. Just as in *Dublin,* here, the owner presented an appraisal to the BOR that the BOR adopted, and the BOE appealed to this board and presented no evidence of its own.

[6] While we acknowledge the BOE's argument that Mr. Snyder's reduction for costs of repairs was improper, we find no legal error in the BOR's conclusion that the reduced value was appropriate. The Supreme Court addressed a similar issue in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 144 Ohio St.3d 324, 2015-Ohio-3633. There, as here, an appellant board of education challenged a board of revision's adoption of an appraisal that used a dollar-for-dollar, "bottom line" deduction for the cost to cure deferred maintenance issues. The court found the deduction appropriate where there was evidence that the cost to cure had an effect on value. Id. at ¶40. Here, Mr.' Moore testified that a major tenant (Sherwin Williams) would likely take action against the owner or depart if the parking lot repairs were not made in accordance with its lease agreement. We therefore find sufficient evidence in support of deducting the $150,000 to repair the subject's parking lot.

[7] Based upon the foregoing, we find the BOE has failed to meet its burden on appeal. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2015, were as follows:

TRUE VALUE

$975,000

TAXABLE VALUE

$341,250

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2601
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Tuesday, February 27, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant Cleveland Municipal School District Board of Education ("BOE") appeals a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel number 005-13-001 for tax year 2015. Although it requested a hearing before this board, the BOE waived its appearance and submits the case on the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01 and its written argument.

The subject parcel was initially valued by the fiscal officer at a total value of $7,025,000. The BOE filed a complaint seeking an increase in value to $11,385,900, noting that the property had sold for $7,250,000 in December 2012. At the BOR hearing, only counsel for the BOE appeared. He provided documents relating to

the leasing history of the property and a mortgage involving multiple properties (including the subject); however, the mortgage amount was not specifically allocated to each of the properties involved.

The BOR ultimately issued a decision finding no change in value was warranted, and the BOE appealed to this board. In its written argument on appeal, the BOE advocates for reliance on the December 2012 sale, though it incorrectly cites the sale price as $7,025,000 (the fiscal officer's initial valuation) rather than $7,250,000.

In our review of this Matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision,* 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415. The Supreme Court has made clear that no "bright line" test exists for establishing recency and that the mere passage of time does not, per se, render a sale unreliable. *Cummins,* supra; *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588. However, as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property have not changed between the sale date and the lien date." *Akron,* supra, at ¶26. The BOE has presented neither. While the BOE argues that *Akron* is inapplicable to the subject case, because the county merely updated values between the date of sale and tax lien date, rather than conducted a full sexennial reappraisal, we find insufficient evidence in the record to justify reliance on a sale more than twenty-four months removed from tax lien date.

In the absence of any other evidence of value, it is the order of this board that the true and taxable values of the subject property as of January 1, 2015, were as previously determined by the fiscal officer and retained by the BOR, as follows:PARCEL NUMBER 005-13-001

TRUE VALUE

$7,025,000

TAXABLE VALUE

$2,458,750

OHIO BOARD OF TAX APPEALS

NWW LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1506

(REAL PROPERTY TAX)

DECISION AND ORDER

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Entered Tuesday, February 27, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 003-33-011, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, the record of hearing ("H.R.") before this board, and any written argument submitted by the parties.

The subject is commercial property, improved with "a single story and partial basement" building, "currently configured for two tenants and an owner storage area." H.R., Appellant's Exhibit ("Ex.") A at 3. The subject's total true value was initially assessed at $551,100. A decrease complaint was filed on behalf of the property owner with the BOR, seeking a decrease in value to $175,200. S.T., Ex. A. A counter complaint was filed on behalf of the Board of Education for the Cleveland Municipal School District ("BOE") requesting to maintain the subject's initially assessed value. S.T., Ex. B. At the BOR's hearing, counsel for the property owner and counsel for the BOE appeared. In support of the decrease sought, owner's counsel submitted an owner's valuation pro forma and offered testimony from Mr. Tom Gillespie, managing member of the ownership entity. Mr. Gillespie testified that he purchased the subject in January 2012 for $151,500 and put approximately twenty-five thousand dollars into the property. Later, in 2013, a tenant obtained new construction permits from the county to reconfigure the leased space. Mr. Gillespie contends that the tenant's build-out of the leased space did not increase the subject's value. Counsel for the BOE conducted a brief cross examination of Mr. Gillespie, but submitted no independent evidence of value. Id.

Thereafter, based upon information available to it, the BOR issued a decision maintaining the subject's initially assessed valuation. Dissatisfied with the BOR's decision, the property owner timely filed an appeal with this board.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). As the court stated in *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, ***. The appellee also has a choice to do nothing." (Parallel citation omitted.) Id. at ¶5-6. A party's election not to present its own evidence of value, however, is not without risk, as another party's evidence may be found to be competent, probative, and sufficiently persuasive. See, e.g., *Westhaven, Inc. v. Wood Cty. Bd. of Revision*, 81 Ohio St.3d 67 (1998).

It is well settled that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be supported with reliable tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.*, 65 Ohio St.3d 621 (1992). The weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained

within the record and found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 77 Ohio St.3d 402, 405 (1997).

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). In the absence of a recent arm's-length sale, as in the case before us, an appraisal or other relevant evidence is necessary to determine the subject's true value. *First Union Real Estate Equity & Mtge. Investments v. Cuyahoga Cty. Bd. of Revision*, 53 Ohio St.3d 236 (1990); *State ex rel. Park Investment Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412 (1964).

On appeal, owner's counsel and counsel for the BOE appeared at the hearing before this board. In support of the decrease requested, owner's counsel offered the appraisal and testimony of Mr. Lawrence A. Kell, ASA, a state-certified general real estate appraiser in Ohio. In his report, Mr. Kell employed both the sales comparison and income capitalization approaches to value and upon reconciling the two approaches, he primarily relied upon the income approach, and opined to a final value of $200,000 for the subject property, as of January 1, 2015. H.R., Appellant's Ex. A. at 19. For its part, the BOE contends the owner's appraisal report undervalues the property by employing below market rental rates under the income approach. In addition, the BOE advances a modified version of Mr. Kell's income approach pro forma through written argument, but submits no independent evidence of value.

When, as here, parties rely on an appraiser's opinion of value, this board may "accept all, part or none of the testimony of any appraiser"; there is no requirement for this board to adopt the valuation fixed by any expert appraiser. *Witt Co. v. Hamilton Cty. Bd. of Revision*, 61 Ohio St.3d 155 (1991). See also *Cardinal Federal*, supra, at paragraphs three and four of the syllabus; *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997). Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported. In determining value herein, we must look to all aspects of the record before us in our independent review of the subject property. *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 114 Ohio St.3d 493, 2007-Ohio-4641, at ¶24.

Upon consideration of the owner's appraisal evidence, we find the value derived pursuant to the income approach to be unavailing as there is no supporting market data for the conclusions reached in the appraiser's analysis; specifically, the report lacks any supporting information regarding market rental rates, market expenses, market vacancies for comparable properties, or a market-driven capitalization rate. H.R. Appellant's Ex. A. See *Witt Co.*, supra; *Cardinal Federal*, supra, at paragraphs three and four of the syllabus; *Freshwater*, supra.

Turning to the rental rates employed under the income approach to value, the appraiser testified at hearing that he used the subject's contract rents and slightly reduced such rates to reflect what the owner reported as collectable. In support of such actions he referenced a "CoStar" survey, see H.R., at 24; however, the record is completely devoid of any such information. See H.R., Appellant' Ex. A, at 17-18. Moreover, this board was not provided with any specific information regarding the comparable rental rates selected by the appraiser. See H.R., at 24-26. This board has previously elaborated upon the importance of using market data to confirm the reliability of a property's historic performance, in order to ensure that an analysis of the property's success or failure is not due exclusively to the business acumen of the operator. Further, as this board has previously stated in *North Canton City School Dist. Bd. of End. v. Stark Cty. Bd. of Revision* (Jan. 25, 2011), BTA No. 2008-M-42, unreported:

> "The evidence of actual income, while the beginning point of any valuation finding, see Ohio Adm. Code 5703-25-07(D)(2) (contract rent of a given property is to be considered), is not, in

itself, determinative of value. The contract rents must reflect the market in which that property is found. The record before this board contains no market survey, so this board cannot compare the rents collected from the subject with market rents."

See also *Wentwood Laurel Lakes I LP v. Franklin Cty. Bd. of Revision* (April 8, 2008), BTA No. 2006-V-859, unreported ("While this board may ultimately be persuaded that the subject's actual rental rates are representative of market after relevant comparables are identified, discussed, and adjusted, the board is unable to rely on the fact that the foundation of an appraisal report is consistent with the market based upon this appraiser's sweeping comment."). Here, in the absence of supporting market evidence, we are not convinced by Mr. Kell's sweeping comments that the subject's actual rental rates, as reduced, have a basis in the market.

Similarly, this board was not provided with any specific information regarding the comparable properties used for the appraiser's determination of expenses or the vacancy and capitalization rates. H.R., at 28-30. Turning to the appraiser's use of a mix of actual and estimated expenses, we find no market support for such action contained in the record. See *Olmsted Falls Village Assn v. Cuyahoga County Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996) ("an appraiser may employ actual income as reduced by actual expenses if both conform to the market."). As to the vacancy rate, it is well established that to derive an appropriate figure, "[a]n appraiser should survey the local market to support the vacancy estimate"; however, in this instance, no such survey is contained in the record. The Appraisal of Real Estate 484 (13th Ed.2008) . See also H.R., Appellant's Ex. A, at 17-18. Instead, the appraiser simply testified, apparently based solely upon his experience, that a 10%, vacancy rate is reasonable because the subject was vacant when it sold in 2012. H.R., at 29. Finally, the record contains no market support for the 10% capitalization rate selected by the appraiser. See H.R., Appellant's Ex. A, at 17-18. While we acknowledge that the appraiser referenced a "RealtyRates" publication, which he contends reflected a "cap rate of about 9.3, 9.5 percent[,]" see H.R., at 29-30, no such publication is contained in the record. Even if it was, such information does not appear to support the appraiser's 10% capitalization rate. Given the deficiencies noted herein, we are unable to conclude that the appraiser's opined value under the income approach was premised upon competent and probative evidence of the market, as of tax lien date and, thus, we find the appraiser's opined value thereunder to be unreliable. As such, we also find the BOE's proposed modifications to the appraiser's income approach pro forma, especially in light of the absence of any supporting market data, to be moot.

Having found no support for the appraiser's income approach to value, we now turn to the record to determine whether this board may independently determine value. *Colonial Village*, supra, at ¶24. Upon review, we find the sales comparison approach contained within the report provides a satisfactory basis upon which this board may determine value. Pursuant to the sales comparison approach, the owner's appraiser selected five comparable sales on the subject's street (including the subject's 2012 transfer), made qualitative adjustments, selected a value of $25 per square foot of gross building area, and concluded to a value of $220,000 for the subject property, as of January 1, 2015. H.R., Appellant's Ex. A, at 16, 19. Upon consideration, we find the value derived under the sales comparison approach to be reasonable, supported, and sufficiently persuasive.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 003-33-011

TRUE VALUE

$220,000

TAXABLE VALUE

$77,000

OHIO BOARD OF TAX APPEALS

NWW LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1506

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NWW LLC
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CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
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Entered Tuesday, February 27, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 003-33-011, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, the record of hearing ("H.R.") before this board, and any written argument submitted by the parties.

The subject is commercial property, improved with "a single story and partial basement" building, "currently configured for two tenants and an owner storage area." H.R., Appellant's Exhibit ("Ex.") A at 3.

The subject's total true value was initially assessed at $551,100. A decrease complaint was filed on behalf of the property owner with the BOR, seeking a decrease in value to $175,200. S.T., Ex. A. A counter complaint was filed on behalf of the Board of Education for the Cleveland Municipal School District ("BOE") requesting to maintain the subject's initially assessed value. S.T., Ex. B.At the BOR's hearing, counsel for the property owner and counsel for the BOE appeared. In support of the decrease sought, owner's counsel submitted an owner's valuation pro forma and offered testimony from Mr. Tom Gillespie, managing member of the ownership entity. Mr. Gillespie testified that he purchased the subject in January 2012 for $151,500 and put approximately twenty-five thousand dollars into the property. Later, in 2013, a tenant obtained new construction permits from the county to reconfigure the leased space. Mr. Gillespie contends that the tenant's build-out of the leased space did not increase the subject's value. Counsel for the BOE conducted a brief cross examination of Mr. Gillespie, but submitted no independent evidence of value. Id.

Thereafter, based upon information available to it, the BOR issued a decision maintaining the subject's initially assessed valuation. Dissatisfied with the BOR's decision, the property owner timely filed an appeal with this board.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). As the court stated in *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, ***. The appellee also has a choice to do nothing." (Parallel citation omitted.) Id. at ¶5-6. A party's election not to present its own evidence of value, however, is not without risk, as another party's evidence may be found to be competent, probative, and sufficiently persuasive. See, e.g., *Westhaven, Inc. v. Wood Cty. Bd. of Revision*, 81 Ohio St.3d 67 (1998).

It is well settled that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be supported with reliable tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.*, 65 Ohio St.3d 621 (1992). The weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record and found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 77 Ohio St.3d 402, 405 (1997).

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). In the absence of a recent arm's-length sale, as in the case before us, an appraisal or other relevant evidence is necessary to determine the subject's true value. *First Union Real Estate Equity & Mtge. Investments v. Cuyahoga Cty. Bd. of Revision*, 53 Ohio St.3d 236 (1990); *State ex rel. Park Investment Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412 (1964).

On appeal, owner's counsel and counsel for the BOE appeared at the hearing before this board. In support of the decrease requested, owner's counsel offered the appraisal and testimony of Mr. Lawrence A. Kell, ASA, a state-certified general real estate appraiser in Ohio. In his report, Mr. Kell employed both the sales comparison and income capitalization approaches to value and upon reconciling the two approaches, he primarily relied upon the income approach, and opined to a final value of $200,000 for the subject property, as of January 1, 2015. H.R., Appellant's Ex. A. at 19. For its part, the BOE contends the owner's appraisal report undervalues the property by employing below market rental rates under the income approach. In

addition, the BOE advances a modified version of Mr. Kell's income approach pro forma through written argument, but submits no independent evidence of value.

When, as here, parties rely on an appraiser's opinion of value, this board may "accept all, part or none of the testimony of any appraiser"; there is no requirement for this board to adopt the valuation fixed by any expert appraiser. *Witt Co. v. Hamilton Cty. Bd. of Revision,* 61 Ohio St.3d 155 (1991). See also *Cardinal Federal*, supra, at paragraphs three and four of the syllabus; *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 30 (1997). Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported. In determining value herein, we must look to all aspects of the record before us in our independent review of the subject property. *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 114 Ohio St.3d 493, 2007-Ohio-4641, at ¶24.

Upon consideration of the owner's appraisal evidence, we find the value derived pursuant to the income approach to be unavailing as there is no supporting market data for the conclusions reached in the appraiser's analysis; specifically, the report lacks any supporting information regarding market rental rates, market expenses, market vacancies for comparable properties, or a market-driven capitalization rate. H.R. Appellant's Ex. A. See *Witt Co.,* supra; *Cardinal Federal*, supra, at paragraphs three and four of the syllabus; *Freshwater*, supra.

Turning to the rental rates employed under the income approach to value, the appraiser testified at hearing that he used the subject's contract rents and slightly reduced such rates to reflect what the owner reported as collectable. In support of such actions he referenced a "CoStar" survey, see H.R., at 24; however, the record is completely devoid of any such information. See H.R., Appellant' Ex. A, at 17-18. Moreover, this board was not provided with any specific information regarding the comparable rental rates selected by the appraiser. See H.R., at 24-26. This board has previously elaborated upon the importance of using market data to confirm the reliability of a property's historic performance, in order to ensure that an analysis of the property's success or failure is not due exclusively to the business acumen of the operator. Further, as this board has previously stated in *North Canton City School Dist. Bd. of End. v. Stark Cty. Bd. of Revision* (Jan. 25, 2011), BTA No. 2008-M-42, unreported:

> "The evidence of actual income, while the beginning point of any valuation finding, see Ohio Adm. Code 5703-25-07(D)(2) (contract rent of a given property is to be considered), is not, in itself, determinative of value. The contract rents must reflect the market in which that property is found. The record before this board contains no market survey, so this board cannot compare the rents collected from the subject with market rents."

See also *Wentwood Laurel Lakes I LP v. Franklin Cty. Bd. of Revision* (April 8, 2008), BTA No. 2006-V-859, unreported ("While this board may ultimately be persuaded that the subject's actual rental rates are representative of market after relevant comparables are identified, discussed, and adjusted, the board is unable to rely on the fact that the foundation of an appraisal report is consistent with the market based upon this appraiser's sweeping comment."). Here, in the absence of supporting market evidence, we are not convinced by Mr. Kell's sweeping comments that the subject's actual rental rates, as reduced, have a basis in the market.

Similarly, this board was not provided with any specific information regarding the comparable properties used for the appraiser's determination of expenses or the vacancy and capitalization rates. H.R., at 28-30. Turning to the appraiser's use of a mix of actual and estimated expenses, we find no market support for such action contained in the record. See *Olmsted Falls Village Assn v. Cuyahoga County Bd. of Revision*, 75

Ohio St.3d 552, 555 (1996) ("an appraiser may employ actual income as reduced by actual expenses if both conform to the market."). As to the vacancy rate, it is well established that to derive an appropriate

figure, "[a]n appraiser should survey the local market to support the vacancy estimate"; however, in this instance, no such survey is contained in the record. The Appraisal of Real Estate 484 (13th Ed.2008) . See also H.R., Appellant's Ex. A, at 17-18. Instead, the appraiser simply testified, apparently based solely upon his experience, that a 10%, vacancy rate is reasonable because the subject was vacant when it sold in 2012. H.R., at 29. Finally, the record contains no market support for the 10% capitalization rate selected by the appraiser. See H.R., Appellant's Ex. A, at 17-18. While we acknowledge that the appraiser referenced a "RealtyRates" publication, which he contends reflected a "cap rate of about 9.3, 9.5 percent[,]" see H.R., at 29-30, no such publication is contained in the record. Even if it was, such information does not appear to support the appraiser's 10% capitalization rate. Given the deficiencies noted herein, we are unable to conclude that the appraiser's opined value under the income approach was premised upon competent and probative evidence of the market, as of tax lien date and, thus, we find the appraiser's opined value thereunder to be unreliable. As such, we also find the BOE's proposed modifications to the appraiser's income approach pro forma, especially in light of the absence of any supporting market data, to be moot.

Having found no support for the appraiser's income approach to value, we now turn to the record to determine whether this board may independently determine value. *Colonial Village*, supra, at ¶24. Upon review, we find the sales comparison approach contained within the report provides a satisfactory basis upon which this board may determine value. Pursuant to the sales comparison approach, the owner's appraiser selected five comparable sales on the subject's street (including the subject's 2012 transfer), made qualitative adjustments, selected a value of $25 per square foot of gross building area, and concluded to a value of $220,000 for the subject property, as of January 1, 2015. H.R., Appellant's Ex. A, at 16, 19. Upon consideration, we find the value derived under the sales comparison approach to be reasonable, supported, and sufficiently persuasive.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 003-33-011

TRUE VALUE

$220,000

TAXABLE VALUE

$77,000

OHIO BOARD OF TAX APPEALS

MCDONALD'S USA, LLC, (et. al.),

Appellant(s),

vs.

LORAIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1429

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MCDONALD'S USA, LLC
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Represented by:
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ELYRIA, OH 44035-5642

Entered Tuesday, February 27, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The property owner appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 03-00-011-102-139, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record developed at this board's hearings, and any written argument submitted by the parties.

[2] The subject property, a McDonald's restaurant, was initially assessed at $1,323,110. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $1,030,000. No counter-complaint was filed.

[3] At the BOR hearing, the property owner appeared through counsel to present argument and evidence in support of its complaint. In doing so, the property owner submitted the report and testimony of appraiser Stephen J. Weis, who concluded that the subject property should be valued at $715,000 as of January 1, 2015. Weis was examined, and cross-examined, about the underlying data and methodologies that supported his final conclusion of value. During his testimony, Weis noted that his measurements of the subject property differed from the measurements contained in the county auditor's records. After a

field review was conducted and square footage information was corrected, the BOR subsequently voted to reduce the subject property's value to $1,311,630. Although the BOR did not explicitly reject Weis's appraisal report as the best indication of the subject property's value, it is apparent that the BOR did so. This appeal ensued.

[4] At the hearing before this board, the property owner and county appellees appeared through counsel to supplement the record with additional argument and evidence. In its presentation, the property owner submitted the testimony of Todd Sorg, regional property' manager for McDonald's Corporation, who testified about his educational and work experience, as well as the operations of the McDonald's restaurant and condition of the subject property. The county appellees cross examined Sorg on these issues as well. In its presentation, the county appellees submitted the report and testimony of Thomas D. Sprout, who opined the value of the subject property to be $1,930,000 as of January 1, 2015. He was examined, and cross examined, about the underlying data and methodologies used to derive his final conclusion of value. Sprout also reviewed Weis's appraisal report and testified about alleged deficiencies with such appraisal report. On rebuttal, Weis testified about his review of Sprout's appraisal report and alleged deficiencies with such appraisal report.

[5] Subsequent to the hearing, the parties submitted written argument to more fully explain their respective positions. Each party argued the relative strength of its own appraiser's report and testimony compared to the weaknesses of the opposing party's appraiser's report and testimony.

[6] Before we consider the merits of this appeal, we must first address an outstanding objection raised at this board's hearing. The county appellees objected to the property owner's submission of a hearing transcript from another matter, *McDonald's Corp. v. Lorain Cty. Bd. of Revision,* BTA No. 2016-1077; the attorney examiner deferred ruling. Upon review, the objection is overruled. However, we do not find the hearing transcript, in another matter, relevant to this matter and further conclude that it does not undermine Sprout's credibility.

[7] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). "However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

[8] The record does not disclose a recent, arm's-length transfer of the subject property; therefore, we proceed to consider the parties' arguments and appraisal evidence. We begin our analysis with Weis's appraisal report, which developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he compared the subject property to five other current or former restaurant properties (two or three were vacant) in Cuyahoga and Lorain counties, which sold, or were listed, between 2012 and 2016. After adjusting the comparable sales for differences with the subject property, Weis concluded the subject property's value to be $720,000 as of January 1, 2015. Under the tax additur method of the income approach, he relied upon nine restaurant and retail properties that were leased, or available for lease, in Lorain and Medina counties. After adjusting the comparable leased properties for differences with the subject property, Weis determined the subject property's potential gross income to be $73,700 based upon potential rent and expense reimbursements. He then deducted $3,685, or 5% of potential gross income, for vacancy and credit loss, to conclude to an effective gross rental income of $70,015. From that number, he deducted $12,207 of expenses, which included items such as insurance, utilities, and a management fee, to conclude to a net operating income of $57,808. He then capitalized the net operating income at 8.13%, including a tax additur, to conclude the subject property's value to be $710,000 as of January 1, 2015. He

reconciled the indicated values, giving significant weight to the sales comparison approach to value, and finally concluded the subject property's value to be $715,000 as of January 1, 2015.

[9] We next consider Sprout's appraisal report, which developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he compared the subject property to five other, current restaurant properties in various Ohio counties, which sold between 2013 and 2014. After adjusting the comparable sales for differences with the subject property, Sprout concluded the subject property's value to be between $1,915,000 and $1,965,000 as of January 1, 2015. Under the tax additur method of the income approach, he relied upon ten restaurant properties that were leased, or available for lease, in various northern Ohio counties. After adjusting the comparable leased properties for differences with the subject property, Sprout determined that the subject property's potential gross income to be $315,215 based upon potential rent and expense reimbursements. He then deducted $15,761, or 5% of potential gross income, for vacancy and credit loss, to conclude to an effective gross rental income of $299,454. From that number, he deducted $115,697 of expenses, which included items such as insurance, utilities, management fees and reserves for replacement, to conclude to a net operating income of $183,758. He then capitalized the net operating income at 9.52%, including a tax additur, to conclude the subject property's value to be $1,930,000 as of January 1, 2015. He.reconciled the indicated values, but placed the most weight on the income approach to value, to finally conclude the subject property's value to be $1,930,000 as of January 1, 2015.

[10] We have often acknowledged in cases where competing appraisals are offered that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported.

[11] Here, the appraisers differed on how broadly, or how narrowly, to define the subject property's highest and best use, which led to the divergence in their selection of comparable properties under the sales comparison and income approaches to value, and their reliance upon opposing approaches to derive final conclusions of value. Upon review of the appraisal reports and the appraisers' testimony, we find that Sprout's analysis of the subject property's value on the tax lien date to be the most credible, competent, and probative evidence of value.

[12] As we consider the appraisers' highest and best use analysis, we find Sprout's conclusion most appropriate. The Supreme Court recently held that this board may accept an appraisal report that considers the present use of real property as long as the appraisal report's highest and best use analysis is consistent with the property's present use and the appraisal report does not exclude "other factors relevant to exchange value." *Johnston Coca-Cola Bottling Co., Inc. v. Hamilton Cty. Bd. of Revision,* 149 Ohio St.3d 155, 2017-Ohio-870, ¶15. Sprout considered the unique physical nature of the subject property in his highest and best use analysis, in which he determined that the physical components of the property make it most suitable for continued use consistent with its original purpose as a national fast-food restaurant. While this may not be as broad as "restaurant," as Weis concluded, it is not so narrow as to limit it to one user, as in the case of a specific meatpacking company or a particular big box store. Compare *Steak 'n Shake, Inc. v. Warren Cty. Bd. of Revision,* 145 Ohio St.3d 244, 2015-Ohio-4836 (holding that a property whose highest and best use is as a restaurant was not shown to come within the special-purpose doctrine). Also in *Johnston Coca-Cola,* the court noted that this board properly relied upon the present use of the property at issue to determine "which comparables identified by the appraisers were 'more analogous' under the sales-comparison approach." Id. at ¶16. Similarly, we find Sprout's selection of comparable properties, under both the sales comparison and income approaches to value, best represented the market in which the subject property would operate. For example, Sprout mostly' relied upon comparables that were operating fast-food restaurants and that continued to operate as fast-food restaurants after their transfer. Weis, on the other hand, relied upon

comparables that were dissimilar from the subject property, i.e., former "sit-down" restaurants that were vacant at the time of sale and subsequently converted to "alternative restaurant use[s]," one freestanding retail property, and one property that had been converted from a restaurant use to a used car dealership. We find this difference crucial and conclude that Weis's approach actually undervalued the subject property.

[13] In addition, Weis's capitalization rate raises concerns given that it was derived from properties that were dissimilar from the subject property, i.e., general retail, instead of restaurant or fast-food restaurant properties. As such, we cannot confirm that his capitalization rate appropriately captures the market in which the subject property would operate. However, Sprout=s capitalization rate was based upon fast-food restaurants and, therefore, reflective of the subject property's most likely use.

[14] The property owner faulted Sprout for relying upon comparable properties outside of Lorain County. However, in this instance, we find no error in Sprout doing so. We note that Sprout's comparable properties mirror the use of the subject property on the tax lien date, as a fast food restaurant. It was more appropriate to use similar properties, and make locational adjustments if necessary, instead of using dissimilar properties that were located in close proximity to the subject property.

[15] The property owner further faulted Sprout for using qualitative adjustments to adjust the comparable properties in his appraisal report, instead of quantitative adjustments like Weis used. This board has repeatedly recognized the permissibility of qualitative adjustments, rather than quantitative adjustments, and find no fault with Sprout's adjustments. See, e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd of Revision* (Feb. 27, 2015), BTA No. 2014-2022, unreported.

[16] Additionally, although the property owner faults Sprout's conclusion that the subject property fit the definition of "special-purpose property," we find no error given that he testified that he did not appraise the property as if it were a "special-purpose property" and the prbperty owner is not advocating that the subject property be appraised in that manner. *Johnston Coca-Cola,* supra at ¶17 ("Because the BTA did not adopt a present-use valuation, there is no need for an exception to the general rule—and thus no need for us to decide whether the property at issue here is a special-purpose property.").

[17] We note that the property owner repeatedly attempted to impugn Sprout's qualifications and claims that he misled this board about his qualifications. We find no merit with this argument and recognize Sprout as an expert qualified to render an opinion on the subject property's value.

[18] We further note the property owner's attempt to rely upon Sorg's inactive appraisal assistant license, from the state of Indiana, to further impugn Sprouts' qualifications and/or methodologies. While Sorg was qualified to express the property owner's opinion of value, as its employee, he was not qualified as an expert with sufficient education and training to critique Sprout's appraisal and testimony. To the extent that Sorg provided such testimony, we accord it no weight.

[19] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that the county appellees satisfied their evidentiary burden on appeal. In so doing, we find that the county appellees' appraisal evidence, performed by Sprout, was the most credible, competent, and probative evidence of the subject property's value. It is, therefore, the order of this board that the subject property's true and taxable values, as of January 1, 2015 and January 1, 2015, are as follows:

TRUE VALUE

$1,930,000

TAXABLE VALUE

$675,500

OHIO BOARD OF TAX APPEALS

ELLWOOD-R[TCHIE CATHY A & RITCHIE GLENN D, (et. al.),	CASE NO(S). 2017-2333
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION_ (et. al.).	
Appellee(s)..	

APPEARANCES:

For the Appellant(s) - ELLWOOD-RITCHIE, CATHY A & RITCHIE, GLENN D
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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COLUMBUS, OH 43215

Entered Wednesday, February 28, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellants did not file an initial complaint with the Franklin County Board of Revision ("BOW') and thus no final decision has been issued. Appellants did not respond to the motion. This matter is now decided upon the motion and appellants' notice of appeal.

On December 27, 2017, the appellants filed a notice of appeal with this board; however, they did not include a copy of a BOR decision. The county appellees attached to their motion certification that there is no record of a decision issued for the subject property. 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." *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990). Strict compliancewith R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellants have not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

NEXUS REALTY LLC. (et. al.),

Appellant(s).

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-13

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NEXUS REALTY LLC
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DAYTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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Entered Wednesday, February 28, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel R72 09901 0017, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

[2] The subject property was initially assessed at $640,550. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $174,000 purportedly to reflect the price at which it transferred in June 2015. The affected board of education ("BOE") filed a counter-complaint, which objected to the request.

[3] At the BOR hearing on the matter, both parties appeared through counsel to submit argument and/or vidence in support of their respective positions. As the property owner's counsel commenced his

presentation, he requested that the underlying complaint be amended to include an additional parcel that was purportedly part of the $174,000 transfer in June 2015. He also provided the BOR and BOE with copies of a purchase agreement, alleged to have underpinned the subject property's transfer in June 2015, for their perusal during the hearing and noted that it was subject to a confidentiality agreement and could not be retained. En its presentation, the property owner submitted the testimony of Ron Burns, president of Pro Line Collision and Paint, LLC ("Pro Line"), the buyer in the alleged sale. Burns explained the facts and circumstances of Pro Line's purchase of the subject property, along with other non-realty items, from a subsidiary of White Castle Systems, Inc. ("White Castle"). According to Burns, the parties negotiated the allocation of the overall 51,000,000 purchase price to various items of personal and real property. In support of the allocations, specifically that the parties agreed to allocate 5174,000 of the S 1,000,000 to the subject property, the property owner submitted an allocation sheet prepared by Burns at the request of counsel, which was purported to reflect the agreement of the parties to the purchase contract. Bums also testified that Pro Line incorporated a separate entity, the property owner in this matter (Nexus Realty LLC), specifically to own the subject property.

[4] In its presentation, the BOE objected to the property owner's attempt to amend the complaint because the deadline for doing so, i.e., March 31, 2016, had long since passed. The BOE cross-examined Bums about the existence of sale documents, conveyance-fee and settlement statements, which would corroborate the subject sale. Bums acknowledged the existence of such documents but conceded that he did not have them available for review at the hearing. The BOE also cross-examined Bums about the alleged personal property included in the subject sale and the method by which the parties valued such property. At the BOR decision hearing, the BOR members rejected the property owner's attempt to amend its complaint to include an additional parcel and questioned whether the subject sale actually took place, consistent with the testimony of Bums, because the property owner failed to provide any documents that demonstrated such sale. As such, the BOR subsequently issued a decision that retained the subject property's initially assessed value and this appeal ensued.

[5] On appeal, the property owner and BOE opted to forgo the opportunity to supplement the record with additional evidence at a hearing before this board. Instead, they submitted written argument to more fully explain their respective positions. In its brief, the property owner amended its opinion of value to $199,000 to reflect the additional $25,000 allegedly allocated to a parking lot. It also argued that the subject property was the subject of a recent, arm's-length sale in which the parties allocated $199,000 to items considered real property, i.e., land, building and parking lot, and that neither the BOE nor the county appellees had come forward with evidence to demonstrate that such sale was not an arm's-length transaction. In its brief, the BOE conversely argued that the property owner had neither demonstrated that the subject property had, in fact, transferred nor demonstrated that the various allocations of the alleged $1,000,000 sale price were proper.

[6] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Ctv. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax* Appeals, 175 Ohio St. 410, 412 (1964).

[7] In this matter, a review of the property record card demonstrates two transfers of the subject property, a $174,000 transfer and a $0 transfer, on June 3, 2015. Based upon our review of the record, neither of these transfers are competent and probative evidence of the subject property's value. Here, the property owner's request to revalue the subject property is essentially based upon Burns' uncorroborated testimony. Although there was discussion about sale documents, particularly the conveyance-fee and settlement statements, at the BOR hearing, the property owner failed to submit any competent and probative documentary evidence that demonstrates that Pro Line purchased the subject property for $199,999 (or $174,000) in June 2015.

Although it was unnecessary for the property owner to provide the troika of a conveyance-fee statement, deed and purchase agreement, see *Worthington City Schools Bd. of Edn. v. Franklin Ctv. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932, the property owner was required to provide some basic documentation of the alleged subject sale because the BOE, at the BOR merit hearing, and the BOR, at the BOR decision hearing, questioned whether the subject property was actually the subject of a transfer and whether the property owner actually paid $199,000 (or $174,000) for the subject property. In *Lunn v. Lorain Ctv. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075, and *Litt* v. *Lorain Ctv. Bd. of Revision,* 150 Ohio St.3d 119, 2016-Ohio-8402, the court determined that minimal evidence of a sale is acceptable in those circumstances when an opponent of such sale fails to dispute whether the sale actually occurred or whether the property owner paid the claimed amount in a recent sale. See, *Lunn,* supra at !ill 14-15; *Utt,* supra at [1]!1[1],', 2, 6. Compare *1192 Group Partnership LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 18, 2013), BTA No. 2010-Y-651. unreported (although the property owner did not appear before the BOR or this board to provide testimony regarding the sale, the record contained a purchase agreement and settlement statement as evidence that there was no apparent relationship between the parties involved in the transaction). The court recently affirmed that "'less documentary evidence' of a sale is required if there is no real dispute about the basic facts of the sale.¯ *Huber Hts. City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-8819, at ¶13. In this matter, because the opponents of the alleged sale objected to the use of such sale, specifically whether the property owner paid the claimed $199,000 (or $174,000), the property owner was required to provide documentation to substantiate that the subject property actually transferred for that amount.

[8] The lack of sale documents was a topic at the BOR hearing and, despite having an opportunity to submit this vitally important documentation at a hearing before this board, the property owner opted not to do so. As a result, we are unable to determine whether the alleged sale, upon which the property owner relies, actually occurred consistent with the terms that Burns alleged, specifically that the subject property transferred for $199,000 (or $174,000). We note that instead of submitting the deed involved in the White Castle to Pro Line transfer, the transfer upon which the property owner relies, the property owner submitted the deed demonstrating the transfer from Pro Line to Nexus Realty LLC. However, given the related party nature of that transfer, we do not find it to be probative of the subject property's value. We further acknowledge that the property owner provided a copy of the purchase agreement to the BOE and BOR at the BOR hearing, but the purchase agreement was returned to the property owner, at its behest, and never made a part of the record. As a result, the purchase agreement is not available for our review and, therefore, we accord it no weight. See *Bay Mechanical & Elec. Corp. v. Testa,* 133 Ohio St.3d 423, 2012-Ohio-4312, ¶37. Additionally, as noted above, there is a notation on the property record card, certified in the statutory transcript, of a $174,000 transfer in June 2015; however, the parties to the transfer are not provided. This board has previously rejected a sale notated on the property record card when the parties to such sale were not notated on the property record card. See, *Bowman v. Franklin Cty. Bd. of Revision* (June 28, 2013), BTA No. 2013-409, unreported, at fn. 1. Although the property owner provided a document that does provide a $174,000 transfer of the subject property from White Castle to Pro Line, this unworn document is no substitute for the underlying sale documents because the proponents of the alleged sale have disputed that the subject property actually transferred for $174,000. See, *Lunn,* supra; *Utt,* supra.

[9] We also find the property owner's claimed allocation of $199,000 (or $174,000) to real property, of the alleged $1,000,000 purchase price to be unpersuasive. The court recently reaffirmed in *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-7650, at ¶9, that "`[a]n owner who favors the use of an allocated bulk-sale price to reduce the value assigned to real property must bear the burden of proving the propriety of the allocation.' *RNG Properties, Ltd. v. Summit Cty. Bd. of Revision,* 140 Ohio St.3d 455, 2014-Ohio-4036, ***, at ¶36." (Parallel citation omitted.) The Supreme Court has instructed this board that "if the record clearly establishes that a portion of a sale price pertains to

personal property, the BTA should subtract that portion from the stated sale price to arrive at the amount of consideration paid for the realty." *Olentangy Local Schools. Bd. of Edn. v. Delaware Ctv. Bd. of Revision,* 125 Ohio St.3d 103, 2010-Ohio-1040. 4122. To satisfy that burden, the proponent of using an allocated bulk-sale price must provide "corroborating indicia" of such allocation. *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St.3d 1, 2014-Ohio-853. As the court further pointed out in *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Ctv. Bd. of Revision,* 125 Ohio St.3d 485, 2010-Ohio-1921, at ¶25, it is the purchaser of the property who performs the allocation provided to the auditor and possesses the information necessary to demonstrate the relationship of value to the real property. Here, in an apparent attempt to provide evidence to corroborate the claimed allocation to the subject property, the property owner submitted an allocation sheet that was prepared by Burns at some point *alter* the alleged sale took place but before the BOR hearing date, at the request of the property owner's counsel. There is no way for this board to confirm that the items listed, and only the items listed, were actually included in the alleged sale particularly when we do not have the purchase agreement. We note that the property owner in this matter has access to all of the relevant information related to the allocation of the alleged 51,000,000 transfer and, therefore, the property owner had the responsibility to produce sufficient evidence to demonstrate the claimed allocation and the propriety of the allocations. Furthermore, we have previously rejected the reliance upon an allocation to real property when such allocation was documented *after* a sale in an attempt to provide "corroborating indicia." See, *Giant Oil Inc. v. Ashland Ctv. Bd. of Revision* (Apr. 14, 2016), BTA No. 2015-930, unreported, at 4 ("We recognize that the list contains several items that would be considered equipment and properly valued separate from the realty. Exhibit 1, however, does not meet the standard of 'corroborating indicia' of Giant Oil's allocation. Instead, Exhibit 1 is merely a written statement meant to supplement Mr. Ali's testimony and not a contemporaneous document from the time of the sale. Additionally, it is unclear whether the items in the list are even an accurate representation of the personal property that transferred at the time of the sale."). We also question the propriety of the claimed allocations to the personal property items, based upon Burns' knowledge of value, because there was no demonstration that such allocations were, in fact, based upon some objective means of determining value. See, *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Apr. 1, 2015), BTA No. 2014-1220, unreported ("While we recognize the property owner's representatives' experience buying, selling and operating gas stations, we simply cannot allocate value to personal property based upon their opinion."). See, also *Columbus City Schools. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Apr. 9, 2015), BTA No. 2014-1231, unreported. Therefore, based upon the property owner's failure to provide "corroborating indicia" of an allocation to real property of the alleged $1,000,000 sale price, with evidence created contemporaneous with the alleged sale, we are constrained to find that the record does not support the claimed allocation.

[10] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that not only is the record void of competent and probative evidence that the subject property was the subject of a recent, arm's-length sale, the record is equally void of sufficient evidence to demonstrate that the parties to such alleged sale allocated $199,000 (or $174,000) to the subject property. In doing so, we find that the property owner failed to satisfy its evidentiary burden before the BOR and this board.

[11] It is therefore the order of this board that the subject property's true and taxable values as of January 1, 2015 are as follows:

TRUE VALUE

$640,550

TAXABLE VALUE

$224,190

OHIO BOARD OF TAX APPEALS

CLARK-SHAWNEE LOCAL SCHOOLS BOARD OF EDUCATION. (et. al.).

Appellant(s).

vs.

CLARK COUNTY BOARD OF REVISION. (et. al.),

Appellee(s).

CASE NO(S). 2016-1522

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CLARK-SHAWNEE LOCAL SCHOOLS BOARD OF EDUCATION
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Entered Wednesday, February 28, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 330-06-00011-201-075, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and the record of hearing before this board ("H.R.").

[2] The subject consists of 1.67 acres of land and is improved with a single story building, previously operated as a restaurant. S.T., Exhibit ("Ex.") C. The subject's total true value was initially assessed at $848,370. The property owner filed a decrease complaint with the BOR, seeking a reduction in value to $500,000. S.T., Ex. A. The Board of Education of the Clark-Shawnee Local Schools ("BOE") filed a counter complaint requesting to maintain the subject's initially assessed value. S.T., Ex. B.

[3] At the BOR's hearing, Mr. Steve Konstaneen, a representative of the ownership entity, and counsel for the BOE appeared. In support of the decrease requested, Mr. Konstaneen provided testimony regarding listings

of real property for sale on the subject's street; specifically, he identified two unoccupied restaurants and a Target store that had gone dark. Mr. Konstaneen further alleged that the closing of Target had a negative impact on the ability to lease the subject. Based upon such information, Mr. Konstaneen argued that the subject's market had declined and a decrease in the subject's value was warranted. On cross examination, BOE's counsel asked Mr. Konstaneen how he arrived at the value sought; Mr. Konstaneen replied that the value was derived from the listing prices discussed. S.T., Ex. E. The BOE presented no independent evidence of value.

[4] Thereafter, upon consideration of the information available to it, the BOR issued a decision decreasing the subject's initially assessed valuation to 5550,000. S.T., Ex. G. Dissatisfied with the result, the BOE timely filed an appeal with this board.

[5] "When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Ctv. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Ctv. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. An appellant may meet this burden of proof by showing that the BOR erred when it reduced a property's value from the amount first determined by the auditor. *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Ctv. Bd. of Revision,* 106 Ohio St.3d 157, 2005-Ohio-4385. Nevertheless, a party's election not to present its own evidence of value is not without risk, as another party's evidence may be found to be competent, probative, and sufficiently persuasive. See, e.g., *Westhaven, Inc. v. Wood Cty. Bd. of Revision,* 81 Ohio St.3d 67 (1998).

[6] It is well settled that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be supported with reliable tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992). The weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record and found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997).

[7] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). In the absence of a recent arm's-length sale, as in the case before us, an appraisal or other relevant evidence is necessary to determine the subject's true value. *First Union Real Estate Equity & Mtg. Investments v. Cuyahoga Cty. Bd. of Revision,* 53 Ohio St.3d 236 (1990); *State ex rel. Park Investment Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

[8] On appeal, the BOE offers no independent evidence of value at hearing. Instead, the BOE asserts the BOR lacked sufficient probative evidence to decrease the subject's value and requests this board to reinstate the subject's initially assessed value. H.R. at 6-7. The property owner, on the other hand, seeks to maintain the reduction determined by the BOR. At this board's hearing, Mr. Steve Constantinou, a representative of the ownership entity, offered testimony, fact witnesses, and the subject's 2015 and 2016 income and expense reports; essentially, the testimony before this board was the same as the testimony provided to the BOR. H.R., Appellee's Ex. A. Finally, we also note, although BOE's counsel requested and was provided a briefing schedule at hearing, no written argument was ultimately forthcoming.

[9] We now turn to the owner's testimonial and documentary evidence. As before the BOR, on appeal, the owner contends the subject should be valued at or below the listing prices of other real property on the subject's street; however, upon consideration of such position, this board cannot agree. Rather. "[t]his board has held on many occasions that the price at which property is 'listed* is not necessarily indicative of market value and

also does not constitute the 'outer limit' at which the property would sell. See *Soc., Natl. Bank v. Carroll Ctv. Bd. of Revision* (Apr. 19, 1996), BTA No. 1994-M-454, unreported" *il/fo/oney v. Montgomery Cty. Bd. of Revision* (Aug. 10, 2010), unreported. See also *Kaiser v. Franklin Cty. Aud.,* 10th Dist. Franklin No. 10AP-909, 2012-Ohio-820, at ¶12 ("a listing price, in essence an aspirational selling price, is not conclusively probative of what a willing buyer would pay for the property in an arm's-length transaction, and is therefore not conclusively probative of actual market value."). As such, the fact that listings for real property on the subject's street remain unsold at their respective asking prices is not persuasive in determining a lower value for the subject property. See *Gupta v Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397, 400 (1997); *Jones v, Montgomery Ctv. Bd. of Revision* (June 24, 2005), BTA No. 2004-J-804, unreported; *Soc. Natl. Bank,* supra. Based upon the foregoing, this board finds the property owner failed to demonstrate that the decrease in value sought has any basis in the market. See *WJJK inve.s.tments,* supra.

[10] Furthermore, to the extent the owner also argues that negative conditions, e.g., the closing of Target and the subject's lack of frontage, affect the subject's value, we are not persuaded. While numerous factors may affect the utility/desirability of a property, it is the *effect* of such factors upon the value of real property that an advocate of change must demonstrate. See *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996); *Zanetos v. Franklin Ctv. Bd. of Revision* (Mar. 30, 2010), BTA No. 2008-V-775, unreported. Moreover, the owner's income and expense statements, alone, do not provide a basis upon which this board may rely to determine value. See *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision,* 75 Ohio St.3d 552, 555 (1996).

[11] Having found no probative support for the valuation sought by the owner, we now consider the propriety of the BOR's decrease in value. At the outset, we are mindful that "decisions of boards of revision should not be accorded a presumption of validity." *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 114 Ohio St.3d 493, 2007-Ohio-4641, at ¶23. "To be sure, if a board of revision makes a valuation change that is completely unsupported in the record, the BTA may not affirm or adopt it. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 567, *** (2001) (the BTA errs by affirming a board of revision's reduced or increased valuation if 'there is no evidence or other information in the statutory transcript to explain the action taken by the BOR.')." (Parallel citaiton omitted.) *Worthington City Schools Bd. of Edn. v. Franklin Ctv. Bd. of Revision,* 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶38. See also *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶30 ("A legal error in the BOR's determination prevents affirmance of the BOR's determination."); *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 123 Ohio St.3d 268, 2009-Ohio-4975, at ¶31, citing *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision,* 113 Ohio St.3d 281, 2007-Ohio-1948.

[12] This board has a duty to independently weigh the evidence presented and not merely "rubber stamp" a board of revision's finding from which the appeal is taken. *Consolidated Freightways, Inc. v. Summit Cty. Bd. of Revision,* 21 Ohio St.3d 17 (1986). See also *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078. In performing our "duty to independently weigh the evidence provided," we recognize that it is not enough for a proponent of a change in value to simply come forward with some evidence of value. Neither is it sufficient to grant the requested increase or decrease merely because no evidence is offered to challenge the claim. W. *Industries, Inc. v. Hamilton Cty. Bd. of Revision,* 170 Ohio St. 340 (1960).

[13] Here, the BOR's hearing minutes contain a general assertion indicating its decision was based solely upon the "market[,]" see S.T., Ex. E; however, upon a close review, the record contains no specific information explaining the BOR's decrease in value. Absent more specific information regarding the actions taken by the BOR, we are unable to replicate the reduction granted by the BOR on appeal. *Sapina v. Cuyahoga Cty. Bd. of Revision,* 136 Ohio St.3d 188, 2013-Ohio-3028, ¶35; *Columbus City School Dist. Bd. of Edn.,* 90 Ohio St.3d 564 (2001). While we acknowledge that the owner attempted to demonstrate the subject's market through testimony relating to the listing prices for other properties, as discussed above, it is improper to rely upon listing prices when determining the real property tax valuation of property. Given the deficiencies noted herein, we are unable to conclude that the BOR's decrease in the subject property's value was premised upon competent and probative evidence.

[14] We now turn to the record to determine whether this board may independently determine value. Upon review, we find insufficient probative evidence upon which we may rely to independently determine value. To be sure, absent sufficient probative evidence, we simply cannot engage in conjecture in deriving our own value. See *Howard 1•. Cuyahoga Ctv. Bd. of Revision,* 37 Ohio St.3d 195, 197 (1988) ("We now require [the BTA] to state what evidence it considered relevant in reaching its value determinations."). See also *Lakota Local School Dist. Bd. of Edn. v. Butler Ctv. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059, at g:26 ("Mere speculation is not evidence."). Based upon the foregoing, we are constrained to reinstate the auditor's initially assessed value for the tax lien date at issue. *Vandalic-Butler,* supra, at [1][21, 24; *Olentangy Local Schools Bd. of Echi. v. Delaware County Bd. of Revision,* 147 Ohio St.3d 409, 2016-Ohio-7381, at ¶20: *Sophia,* supra, at 95; *Shinkle,* supra. at ¶28. See also *Cannata v. Cuyahoga Ctv. Bd. of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094, at !;13-14.

[15] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 330-06-00011-201-075

TRUE VALUE

$848,370

TAXABLE VALUE

$296,930

OHIO BOARD OF TAX APPEALS

YONG CHA KWON, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2105

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - YONG CHA KWON
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Monday, March 5, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and, thus, no final decision has been issued by the Cuyahoga County Board of Revision from which appellant could appeal to this board. Appellant did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

On November 3, 2017, appellant filed an application for remission with this board. Appellant did not include a copy of a BOR decision. The DTE Form 3 contains a statement that there are no documents or records pertaining to an application for remission for the subject property.

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." *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147, 150 0946); *Hope v. Highland Cty. Bd. of Revision,*

56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

HARLOW III AND JENNIFER AKINS, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1968

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HARLOW III AND JENNIFER AKINS
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CLEVELAND, OH 44113

Entered Monday, March 5, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued. Appellants did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

On October 30, 2017, appellants filed an application for remission with this board. Appellants did not include a copy of a BOR decision. The DTE Form 3 contains a statement that there are no documents or records pertaining to an application for remission for the subject property.

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." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellants have not appealed from a BOR decision and thus this matter is premature. Accordingly, this

matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CITY OF DUBLIN, OHIO, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2160

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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DALE DR. ACQUISITION, LLC
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Entered Monday, March 5, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 273-008998, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified by the BOR pursuant to R.C. 5717.01, andthe record of this board's hearing.

[2] On the tax lien date, the subject property was a 1.678 acre parcel with land and improvements, which was initially assessed at $595,300. The board of education ("BOE") filed a complaint with the BOR, which requested that the subject property be revalued at $2,500,000 to reflect the price at which it purportedly transferred in February 2015. The City of Dublin filed a counter-complaint, which objected to the request.

[3] At the BOR hearing on the matter, both parties appeared through counsel to submit argument and/or evidence in support of their respective positions. In its presentation, counsel for the BOE presented sale documents that demonstrated the $2,500,000 transfer of the subject property from FHIT, LLC to 4351 Dale Dr. Acquisition, LLC in January 2015. Based upon its presentation, the BOE requested that the subject property's value be increased to reflect the sale price. In its presentation, counsel for the property owner initially moved to dismiss the BOE's increase complaint, alleging that the BOE failed to accurately identify the current property owner and appellant in this matter, City of Dublin. The BOR noted the motion to dismiss and continued with the hearing. Counsel for the property owner proceeded to detail the circumstances of the subject sale, specifically, that subsequent to the transaction, the subject property was divided into three parcels, i.e., two new parcels and the remnants of the subject property, which changed the subject property's characteristics. Based upon the parcel sctlits, counsel asserted that the subject property was no longer a 1.678 acre parcel but a 0.055 acre parcel. Counsel submitted a quit-claim deed, which memorialized the transfer of the subject property, as a 0.057 parcel, from 4351 Dale Dr. Acquisition, LLC to the City of Dublin in June 2015. As additional support for its arguments, the City of Dublin submitted the testimony of Matt Stifler, an employee in its finance department, who testified about the circumstances by which the City of Dublin obtained ownership of the subject property, as a 0.057 acre parcel, in June 2015. Counsel for the BOE cross-examined Stifler, who conceded that he had no knowledge of the $2,500,000 transfer of January 2015. Before the hearing ended, BOR member Kimbol Stroud noted that the two parcel splits of 0.776 and 0.847 occurred subsequent to the $2,500,000 transfer in January 2015 but prior to the transfer of the 0.057 acre remnants of the subject property in June 2015. At the BOR decision hearing, the BOR members acknowledged the changes to the subject property but noted that such changes occurred subsequent to the tax lien date and sale in January 2015. The BOR proceeded to accept the $2,500,000 sale price as the best indication of the subject property's value for tax year 2015 and subsequently issued a written decision to that effect. Thereafter, the property owner appealed to this board.

[4] This board held a brief merit hearing on this matter, at which time counsel for property owner, Dale Dr. Acquisition, LLC, and BOE appeared to supplement the record with additional argument and/or evidence. Counsel for Dale Dr. Acquisition LLC supplemented the record with a letter demonstrating that the subject property was placed on the county auditor's list of exempt real property for tax year 2016. Counsel for the BOE supplemented the record with additional sale documents, a purchase agreement and settlement statement, which memorialized the $2,500,000 sale of January 2015, and a certified copy of the county auditor's tax list and duplicate, which provided the subject property's characteristics, ownership information, and value as of the tax lien date of January 1, 2015.

[5] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* 50 Ohio St.2d 129 (1977). Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997). See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, at ¶32 (reaffirming that basic evidence of a sale creates a rebuttable presumption that an indicated sale price reflects true value and that the opponent of using a sale has the burden of rebutting the sale.). However, several factors may render a sale an unreliable

indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964). We begin our analysis with the transfer of the subject property that occurred closest to the tax lien date, i.e., the $2,500,000 transfer that occurred just twenty-nine days after the tax lien date in January 2015. See, *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 124 Ohio St.3d 481, 2010-Ohio-687. We note that none of the parties dispute that such sale was conducted between parties acting at arm's-length and Stifler had no firsthand knowledge of such sale. However, appellant argued that the sale was not recent to the tax lien date because the subject property changed from a 1.678 acre parcel to a 0.057 acre parcel (per the property record card and quit-claim deed) subsequent to the sale date, which materially or substantially changed its character.

[6] To determine whether a sale is recent to the tax lien date, we consider the passage of time and any changes to market conditions, which could affect the value of real property. See, *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio 5932, at ¶32. One such factor that can include a change in the market can involve a material change to the property itself. Also relevant are those conditions that are specific to the property itself. See *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473; *Dearie v. Miami Cty. Bd. of Revision* (Dec. 12, 2003), BTA No. 2003-N-560, unreported; *M.H. Murphy Dev. Co. v. Franklin Cty. Bd. of Revision* (Dec. 3, 2004), BTA No. 2003-R-1177, unreported.

[7] In this instance, we find the property owner's argument to be unpersuasive. Although parcel splits may change the character of a property such that a prior sale may be too remote from a subsequent tax lien date, see *Richman Properties, L.L.C. v. Medina Cty. Bd. of Revision,* 139 Ohio St.3d 549, 2014- Ohio-2439, that is not the case here. The sequence of events in this matter occurred in this manner: first, the tax lien date of January 1, 2015; second, the $2,500,000 sale on or about January 30, 2015; and third, two separate parcels split from the subject property's original 1.678 acres leaving 0.057 acre remaining in June 2015. Because the parcel splits occurred several months *after* the tax lien and sale dates, we find that they had no impact on the subject property's value as of January 1, 2015. We'note that the property record card provides a notation that an improvement and pavement located on the subject property were demolished in June 2015; however, the demolition occurred after the tax lien and sale dates and, similarly, does not negate the utility of the sale of January 2015. As such, we find the $2,500,000 sale of January 2015 was recent to the tax lien date.

[8] We acknowledge that the parcel split may certainly impact the subject property's value for tax year 2016 and also acknowledge that the subject property was placed on the county auditor's list of exempt of real property for tax year 2016. However, this appeal concerns only the BOR's tax year 2015 decision.

[9] As we review this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to provide competent and probative evidence that would rebut the presumption that the $2,500,000 sale of the subject property in January 2015. Absent an affirmative demonstration that the subject sale was not a recent, arm's-length transaction, we find that such sale is the best indication of the subject property's value.

[10] It is, therefore, the order of this board that the subject property's true and taxable values as of January 1, 2015 only are:

TRUE VALUE

$2,500,000

TAXABLE VALUE

$875,000

OHIO BOARD OF TAX APPEALS

WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2167
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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RCS-CROSSGATES (MAPLE), LLC AND EAT-1517, LLC
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Entered Tuesday, March 6, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The Board of Education of the Worthington City Schools ("BOE") appeals a decision, which determined the value of the subject property, parcel 610-201411-00, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the record of this board's hearing.

The subject property, a two-story office building, was initially assessed at $4,400,000. The property owner, EAT-1517, LLC (now known as RSC-Crossgates (Maple), LLC), filed a complaint with the BOR, which

requested that the subject property be revalued at $3,379,000, purportedly to reflect the price at which it transferred in January 2016. The BOE filed a counter-complaint, which objected to the request.
The BOR held a hearing on the matter, at which time both the property owner and BOE submitted argument and/or evidence in support of their respective positions. In its presentation, the property owner submitted sale documents, which demonstrated a two-step transaction that culminated in the $3,379,000 transfer of the subject property to the property owner in January 2016. Based upon its presentation, the property owner requested that the BOR reduce the subject property's value accordingly. In its presentation, the BOE raised doubt as to the true price at which the subject property transferred to the property owner based upon the sale documents and asserted that the property owner had a responsibility to submit testimony from someone with firsthand knowledge of the sale to answer questions. As additional support for its assertion that the $3,379,000 purchase price did not reflect the subject property's value, the BOE submitted the appraisal report and testimony of appraiser Thomas Sprout, who opined the value of the subject property to be $4,960,000 as of the tax lien date. Sprout was examined, and cross-examined, about the underlying data and methodologies utilized to derive his conclusion of value. He conceded that he was not provided an opportunity to inspect the subject property or to review its financial information. The BOR determined that the subject sale occurred recent to the tax lien date of January 1, 2015 and was, therefore, the best indication of the subject property's value. It subsequently issued a written decision that valued the subject property at $3,379,000 and this appeal ensued.

This board held a brief hearing on the matter, at which time both parties supplemented the record with additional argument and/or evidence in support of their respective positions.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997). See, also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St. 527, 2017-Ohio-4415, at ¶32 (reaffirming that basic evidence of a sale creates a rebuttable presumption that an indicated sale price reflects true value and that the opponent of using a sale has the burden of rebutting the sale.). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412 (1964).

We begin our consideration with the property owner's $3,379,000 purchase of the subject property in January 2016. As the proponent of such sale, we find that the property owner met its burden, through the settlement statement, special warranty deed, and conveyance fee statement submitted at the BOR hearing, to demonstrate that the subject property was the subject of a recent, arm's-length sale. *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075, at ¶ 14-15; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402, at ¶ 2, 6. As such, the burden shifted to the BOE, as the opponent of the subject sale, to submit evidence that demonstrated that such sale was not an arm's-length transaction, not recent to the tax lien date, or not reflective of fair market value. *Terraza* 8, supra at ¶32. The BOE attempted to meet this burden through Sprout's appraisal report and testimony, which we consider next.

In his appraisal report, Sprout developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he compared the subject property to seven other office properties that sold in various areas of Franklin County, Ohio between 2012 and 2016. He specifically did not rely upon the subject sale as a comparable sale, because, as a consequence of his inability to verify the circumstances of the subject sale and its financials, he determined that it was not an arm's-length transaction. After making adjustments to the comparable properties to account for differences with the subject property,

he concluded to an indicated value between $4,625,000 and $5,050,000 as of January 1, 2015. Under the income approach, he relied upon thirteen stabilized office properties that were leased, or available for lease, in Franklin County, Ohio. After adjusting the comparable leased properties for differences with the subject property, Sprout determined the subject property's potential gross income to be$1,320,369 based upon all sources of income. He then deducted $158,444, or 12% of potential gross income, for vacancy and credit loss, to conclude to an effective gross income of $1,161,925. From that number, he deducted $491,639 of expenses, which included items such as insurance, utilities, management fees and reserves for replacement, to conclude to a net operating income of $670,286. He capitalized the net operating income at 13.51%, including a tax additur, to conclude the subject property's value to be $4,965,000 as of January 1, 2015. He reconciled the indicated values, but placed primary weight on the income approach to value, to finally conclude the subject property's value to be $4,960,000 as of January 1, 2015.

Upon review of the record developed in this matter, we find that the BOE has failed to satisfy its burden to rebut the presumptions accorded to the subject sale. The BOE argued that the parties to the subject sale were not typically motivated market participants because the subject property's vacancy rate far exceeded market level vacancy rates. In support of its contention, the BOE relied upon an excerpt from the financing appraisal that was performed contemporaneous with the subject sale, submitted at this board's hearing, which noted that "[t]he subject is not at stabilized occupancy with a vacancy rate at 64% while the submarket vacancy rate is approximately 15%," Hearing Record at Exhibit A, at page 71, as well as Sprout's appraisal report to demonstrate market sales and income and expenses. Neither the financing appraisal report performed contemporaneous with the subject sale nor Sprout's appraisal report performed subsequent to the subject sale necessitate rejection of such sale.

Although the BOE relied on the court's decision in *Emerson v. Erie Cty. Bd. of Revision*, 149 Ohio St. 3d 148, 2017-Ohio-865, to argue that subject sale should be disregarded, we find such reliance misplaced. In *Emerson*, the court specifically held "that a certified appraisal, such as the one that Emerson presented to the BOR, can be used to show that the purchase price in a sale between related parties reflected fair market value." Id. at ¶14. Thus, the court's decision related to the use of an appraisal report to determine *fair market value* to demonstrate that parties were not acting in concert to depress real property value. Here, the BOE used the appraisal report not to demonstrate fair market value but for the truth of the matter asserted in the text of the appraisal report, i.e., that the subject property was not stabilized at the time of the subject sale. Because the appraiser who authored the financing appraisal did not testify at the BOR hearing or at this board's hearing, we are limited in our ability to evaluate the conclusion that the subject property was not stabilized at the time of the subject sale. As such, we find the excerpt from the appraisal report to be unreliable hearsay. See, e.g., *Dellick v. Eaton Corp.*, 7th Dist. Mahoning No. 03-MA-246, 2005-Ohio-566, ¶25. ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). *** Generally, hearsay is inadmissible. Evid.R. 802."). We also note that the record is devoid of any evidence that the parties to the subject sale were related parties or otherwise had common ownership.

We also find that the BOE has failed to demonstrate whether the subject property's purported high vacancy rate was the result of unique properties of the subject property or the result of mismanagement. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 129 Ohio St.3d 3, 2011-Ohio-2316; *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 132 Ohio St.3d 371, 2012-Ohio-2844. To the extent that the subject property suffered from negative characteristics, there is no indication that the subject sale price did not reflect such characteristics.

We also do not find Sprout's appraisal report and testimony to be evidence that sufficiently rebuts the presumptions accorded to the subject sale. He confirmed that he was unable to review the financial information related to the subject property and was unable to conduct an interior inspection. As such, Sprout

was unable to determine whether the subject property operated at market levels or whether the underperformance of the subject property was related to its negative characteristics or to mismanagement.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that that the property owner provided sufficient evidence to create a rebuttable presumption that the property owner's $3,379,000 purchase of the subject property was the best indication of its value. Although the BOE presented a financing appraisal report performed contemporaneous with the subject sale and a tax-lien dated appraisal report performed by Sprout, such evidence failed to rebut the presumptions accorded to the subject sale. As a consequence, we find that the BOE failed to satisfy its burden on appeal.

It is, therefore, the order of this board that the subject property's true and taxable values, as of January 1, 2015, are as follows:

TRUE VALUE

$3,379,000

TAXABLE VALUE

$1,182,650

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-476
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
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Entered Tuesday, March 6, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant Cleveland Municipal Schools Board of Education ("BOE") appeals a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel numbers 101-36-049 and 101-36-054 for tax year 2015. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the appellee property owner's motion to dismiss for lack of jurisdiction.

[2] By way of history, this matter emanates, originally, from a tax year 2014 complaint filed by the BOE seeking an increase in value. At that time, the subject parcels were owned by The R. House, Inc. ("R. House"). R. House filed a countercomplaint for tax year 2014, and the BOR ultimately found that a reduction in value was warranted, issuing a decision on September 23, 2015 determining the value to be $518,200. While the complaints were pending with the BOR, the subject property transferred to Downtown Investment Group, LLC ("Downtown Investment"), the appellee property owner in this matter. Downtown Investment claims that it did not receive notice of the BOR hearing, or the BOR's decision. The BOE appealed the BOR's tax year 2014 decision to this board on October 23, 2015. The parties to that appeal, i.e., the BOE, R. House, and the county appellees, entered into a stipulation of value for $1,400,000. This board issued an order remanding the matter to the BOR to implement the parties' settlement agreement on September 14, 2016.

[3] On August 26, 2016, prior to this board issuing a decision remanding the tax year 2014 matter to implement the parties' settlement agreement, the BOE asked that the BOR take continuing complaint jurisdiction over tax year 2015 pursuant to R.C. 5715.19(D). The BOR held a hearing on the matter, at which counsel for the BOE and counsel for Downtown Investment appeared. Although Downtown Investment initially indicated it was withdrawing its countercomplaint, counsel later indicated that the countercomplaint would not be withdrawn. Counsel for Downtown Investment moved to dismiss the BOE's complaint for lack of jurisdiction and argued that the BOE had not met its burden to prove the value of the property should be $2,500,000 as it asserted. The BOR issued a decision finding the total value of the parcels for tax year 2015 to be $1,500,000, consistent with the fiscal officer's initial valuation for that year, and the BOE appealed to this board.

[4] Downtown Investment has moved to dismiss this matter for lack of jurisdiction, asserting that the 2015 complaint, i.e., the BOE's request for continuing complaint jurisdiction for tax year 2015, was either late, as having been filed after the statutory deadline of March 31 in R.C. 5715.19(A), or premature, as having been requested prior to final disposition of the tax year 2014 complaint by this board on September 14, 2016. In addition, Downtown Investment argues that continuing complaint jurisdiction is not properly invoked when the prior tax year was in a different interim period, and when the current owner was not a party to the prior tax year's proceedings. The BOE did not respond to the motion within the time prescribed by this board's rules, Ohio Adm. Code 5717-1-13(B), and did not file written argument prior to the date of the merit hearing, at which all parties waived their appearances.

[5] Initially, we note that Downtown Investment argues that the BOE's tax year 2015 complaint was improper due to notice issues in the 2014 proceedings, i.e., that it was not notified of the BOR hearing or the BOR decision. We find that any notice issues that existed with regard to the prior proceedings have no bearing on the validity tax year 2015 proceedings before us in this matter. Compare *Sheldon Rd. Assoc., L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 131 Ohio St.3d 201, 2012-Ohio-581. Each tax year stands alone, and the fact that value has been modified in another year is not competent and probative evidence that a different year's value should be changed. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 122 Ohio St.3d 134, 2009-Ohio-2461; *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26 (1997). Moreover, no issue of collateral estoppel has been raised in these proceedings. See *Olmsted Falls,* supra; *Bd. of Edn. of the Kettering City Schools v. Montgomery Cty. Bd. of Revision* (Jan. 20, 2016), BTA No. 2014-4889, unreported. As there appear to be no notice issues with regard to the present 2015 proceedings, we will consider the remaining jurisdictional issues raised by Downtown Investment in its motion.

[6] Ordinarily, a complaint must be filed between October 1 of the current tax year and March 31 of the ensuing tax year. See R.C. 5715.19(A); *Sheldon Rd.,* supra; *Mr. Gasket Co. v. Cuyahoga Cty. Bd. of Revision* (May 12, 1995), BTA No. 1994-B-785, unreported. After the filing of a complaint, if the board of revision does not reach its determination within ninety days, see R.C. 5715.19(C), such complaint is deemed "continuing" for subsequent tax years until it is finally determined by the board of revision or on appeal. R.C. 5715.19(D) states that "[i]n such case, the original complaint shall continue in effect without

further filing by the original taxpayer, the original taxpayer's assignee, or any other person or entity authorized to file a complaint under this section." This provision "thereby [obviates] the need for the complainant to file a fresh complaint for the later year" until a decision on such complaint is finally rendered. *1495 Jaeger L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 132 Ohio St.3d 222, 2012-Ohio-2680, ¶10. As Justice Cook explained in his concurring opinion in *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision ("Inner City")*, 87 Ohio St.3d 305, 309 (1999), R.C. 5715.19 "suggest[s] a legislative intent to avoid unnecessary burdens to both the taxpayer and the BOR by eliminating redundant complaints."

[7] Related to this "continuing complaint" provision is the "carry forward" of value from one year into subsequent years. Typically, a value determination for one year will carry forward into subsequent years until one of the following occurs: 1) a new, jurisdictionally valid complaint is filed; 2) a change occurs in the property such that the auditor/fiscal officer must revalue the property; 3) the auditor/fiscal officer makes a clerical change; or 4) the auditor/fiscal officer is under a statutory duty to revalue the property. On the latter, the Supreme Court has held that:

> "[T]he carryover does properly apply to a subsequent year in which the auditor has *not* performed a new valuation of the property pursuant to his statutory duties. But to allow the carryover to displace a new valuation both defeats the purposes of the valuation statutes and thwarts the constitutional mandate that `[1]and and improvements thereon' be 'taxed by uniform rule according to value.' Section 2, Article XII, Ohio Constitution." *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, ¶22.

[8] In Cuyahoga County, the fiscal officer performed a triennial update of values in 2015. The *AERC* court also addressed the carry forward of value through a triennial 'update, in explaining its prior decision in *Inner City*, supra: "The significant aspect of *Inner City* for this case is that the auditor was permitted to perform the update in spite of the carryover provision — the only effect of the earlier complaint being that the update percentage must be applied to the value of the earlier year as redetermined." Id. at ¶30. See, also, *Inner City*, supra, at 307.

[9] Initially, we address Downtown Investment's arguments that the BOE's tax year 2015 complaint, i.e., its request for continuing complaint jurisdiction for that year, was filed after the statutory deadline. As explained above, R.C. 5715.19(D) provides an exception to the usual March 31 statutory filing deadline for complaints. Because the prior (tax year 2014) complaint was not decided by the BOR within 90 days, the prior (tax year 2014) complaint was continued "as a valid complaint for any ensuing year until such complaint is finally determined by the board or upon any appeal from a decision of the" BOR. R.C. 5715.19(D). The BOE was therefore not required to file a new complaint for tax year 2015 by the March 31, 2016 statutory filing deadline.

[10] This board has previously addressed the *outer* deadline for seeking continuing complaint jurisdiction. See, e.g., *Life Path Partners, Ltd. v. Cuyahoga Cty. Bd. of Revision* (Apr. 17, 2015), BTA No. 2015-39, unreported, pending on appeal, S.Ct. No. 2015-0759. Here, Downtown Investment argues that the BOE sought continuing complaint jurisdiction too early — that it had to wait for this board's September 14, 2016 order remanding the 2014 matter to implement the parties settlement of the tax year 2014 matter. We disagree. The BOR did not conduct proceedings on tax year 2015 until February 27, 2017, well after the tax year 2014 matter was finalized. S.T., Ex. E. Moreover, unlike situations where a complaint was filed prior to the tax list being finalized and certified, see *Mr. Gasket*, supra, here, the valuation of the subject property had already been set by the fiscal officer and certified on the tax list. Based upon the foregoing, we find that the BOE requested that the BOR take jurisdiction over tax year 2015 neither too early nor too late. We therefore proceed to the merits of the value of the subject property for tax year 2015.

[11] In its notice of appeal to this board, the BOE seeks an increase in value to $2,500,000, as it previously did through its 2015 complaint. During the BOR proceedings, counsel for the BOE argued that the sale of the

property in June 2015, though reported on the recorded conveyance fee statement to be for a total price of $1,500,000, was actually for a total price of $2,500,000, as reflected in the purchase agreement attached to an appraisal of the property performed for financing purposes. Although counsel for the owner objected to consideration of the appraisal as hearsay, he noted that the appraiser's statement in the appraisal report that the $2,500,000 amount included a $1,000,000 ground lease termination fee and that the purchase agreement was later amended. Following the BOR hearing, the owner provided the BOR with a copy of the final purchase agreement, which indicated a purchase price of $1,500,000. Based upon that information, the BOR found the value of the property to be $1,500,000 for tax year 2015.

[12] At the outset of our determination of the subject property's value, we reject the owner's contention that the tax year 2014 value should carry forward to tax year 2015. As discussed above, pursuant to the triennial update in Cuyahoga County, the 2014 value does not carry forward into tax year 2015. *AERC,* supra. The fiscal officer's initial valuation of $1,500,000, therefore, is the default value in the absence of any evidence to the contrary. *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 123 Ohio St.3d 268, 2009-Ohio-4975; compare *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025. We further note that, although the owner submitted to this board valuations of other allegedly comparable properties, such information was not submitted at a hearing before this board and will therefore not be considered in our determination. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13 (1996). See also *Benedict v. Bd. of Revision,* 170 Ohio St. 62, 63 (1959); *Meyer v. Cuyahoga Cty. Bd. of Revision,* 58 Ohio St.2d 328, 335 (1979); *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 31 (1996).

[13] As the appellant, the BOE bears the burden to prove its right to the value asserted. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. The record, including the purchase agreement and lease documents provided by the owner following the BOR hearing, affirms the BOE's contention that, despite the recorded sale price of $1,500,000, $2,500,000 of consideration was involved in the June 2015 transfer — a purchase price for the real property of $1,500,000, and a lease termination fee of $1,000,000. This board must therefore determine whether the lease termination fee is properly included in the sale price for the property based on corroborating indicia of such allocation. *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-8817; *St. Bernard Self Storage, L.L.C. v. Hamilton Cty. Bd. of Revision,* 115 Ohio St.3d 365, 2007-Ohio-5249; *Sapina v. Cuyahoga Cty. Bd. of Revision,* 136 Ohio St.3d 188, 2013-Ohio-3028.

[14] In its post-hearing submission to the BOR, the owner in this matter explained that "Buying out the leasehold interest gave the buyer the right to develop the property as it had anticipated instead of becoming the landlord and receiving rental income." It further stated that "The $1,000,000 was not paid to the property owner." The amended purchase and sale agreement, dated June 25, 2015, and the buyer's closing statement, included within the owner's post-hearing submission confirm such statements. Upon review of the record before us, we find sufficient corroborating indicia of the allocation of only $1,500,000 to the purchase of the subject real property in the June 2015 transfer.

[15] Based upon the foregoing, we find the $1,500,000 sale price to be the best evidence of the subject property's value. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2015, were as follows:

PARCEL NUMBER 101-36-049

TRUE VALUE

$175,700

TAXABLE VALUE

$61,500

PARCEL NUMBER 101-36-054

TRUE VALUE

$1,324,300

TAXABLE VALUE

$463,510

OHIO BOARD OF TAX APPEALS

MAC'S CONVENIENCE STORES LLC, (et. al.),

Appellant(s),

vs.

MEDINA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1520

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MAC'S CONVENIENCE STORES LLC
Represented by:
DEBORAH J. PAPUSHAK
SIEGEL JENNINGS CO., L.P.A.
23425 COMMERCE PARK DRIVE, SUITE 103
CLEVELAND, OH 44122

For the Appellee(s) - MEDINA COUNTY BOARD OF REVISION
Represented by:
DENNIS E. PAUL
ASSISTANT PROSECUTING ATTORNEY
MEDINA COUNTY
72 PUBLIC SQUARE
MEDINA, OH 44256

Entered Tuesday, March 6, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 040-20D-01-012, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, the record of hearing ("H.R.") before this board, and, by agreement of the parties, portions of the hearing record from BTA No. 2016-1519 relating to the appraiser's testimony regarding the methodology employed in the report, the county's objections thereto, and all parties' exhibits submitted are hereby incorporated into the record. ("H.R.I.")

The subject is situated on approximately 0.73 acres, improved with a single story brick building, and currently operated as a Circle K gas station and convenience store. S.T., Exhibit ("Ex.") C; H.R., Ex. 4 at 27. The subject's total true value was initially assessed at $984,240. A decrease complaint was filed on behalf of the property owner with the BOR, seeking a decrease in value to $650,000, which amount was amended at hearing to $535,800. S.T., Exs. A, E. No counter complaint was filed.

At the BOR's hearing, counsel appeared on behalf of the property owner. In support of the decrease sought, counsel offered an owner's valuation pro forma which contained information relating to three comparable

sales of real property. A BOR member noted, however, none of the comparable properties were located in the same county as the subject and no market analysis was provided. S.T., Ex. E. Thereafter, based uponinformation available to it, the BOR issued a decision maintaining the subject's initially assessed valuation. S.T., Ex. G. Dissatisfied with the BOR's decision, the property owner timely filed an appeal with this board.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). As the court stated in *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, ***." (Parallel citation omitted.) Id. at ¶6.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). In the absence of a recent arm's-length sale, as in the case before us, an appraisal or other relevant evidence is necessary to determine the subject's true value. *First Union Real Estate Equity & Mtge. Investments v. Cuyahoga Cty. Bd. of Revision,* 53 Ohio St.3d 236 (1990); *State ex rel. Park Investment Co. v. Bd of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

On appeal, owner's counsel and counsel for the county appellees appeared at the hearing before this board. In support of the decrease requested, owner's counsel offers the appraisal and testimony of Mr. Andrew Lorms, a state-certified general real estate appraiser in Ohio. In his report, Mr. Lorms employed the cost approach to value, determined a land value of $220,000, and opined to a final value of $750,000 for the subject property, as of January 1, 2015. H.R., Appellant's Ex. 4 at 60. For its part, the county appellees contend the subject's value should be increased to $970,000 and offer information relating to two comparable sales and testimony from the county auditor in support. H.R. at 6. We also note, at the hearing incorporated into the record, this board's hearing officer reserved ruling on appellant's objection to the admission of the county appellees' exhibits (i.e., Exhibits A, B, and C) on the basis that they were untimely disclosed, H.R.I. at 64, and further, reserved ruling on the county appellees' objections to both the appraiser's testimony regarding the subject's lease and the admission of the owner's appraisal report. H.R.I. at 13-15. Upon consideration of the arguments advanced by the parties, we hereby overrule the above-stated objections, levied by the appellant and by the county appellees, respectively. We now turn to the record before this board.

At the outset, to the extent that the county relies upon inforthation relating to two comparable sales and Mr. Kovack's testimony in relation thereto to increase the value, we are not persuaded. While we acknowledge Mr. Kovack's status as the county auditor, we are also mindful that he is not a licensed real estate appraiser, trained to opine real property values. In fact, Mr. Kovack did not attest to his education, training, certifications, or, to any significant degree, his experience in appraising real property. As this board stated in *Copp v. Franklin Cty. Bd. of Revision* (Sept. 8, 2009), BTA No. 2007-Z-692, unreported, "[b]y not developing a sufficient foundation to establish an appropriate expertise in appraisal methods and the deviation of true value for a particular piece of real property, this board does not find the analyses particularly probative and does not accord them much weight." See generally The Appraisal of Real Estate (14th Ed.2013); *Witt Co. v. Hamilton Cty. Rd of Revision,* 61 Ohio St.3d 155 (1991).

We now turn to the owner's appraisal report. When, as here, a party relies on an appraiser's opinion of value, this board may "accept all, part or none of the testimony of any appraiser"; there is no requirement

for this board to adopt the valuation fixed by any expert appraiser. *Witt Co.,* supra. See also *Cardinal Federal S. & L. Assn. v. Cuyahoga Cty. Rd of Revision,* 44 Ohio St.2d 13 (1975), at paragraphs three and four of the syllabus; *Freshwater v. Belmont Cty. Rd of Revision,* 80 Ohio St.3d 26, 30 (1997). This board is charged with the responsibility of determining value based upon evidence properly contained within therecord and found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997). As such, we look to all aspects of the record before us in conducting our independent review of the subject property. *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 114 Ohio St.3d 493, 2007-Ohio-4641, at ¶24.

Upon review of the owner's appraisal evidence, which provides an opinion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find the report to be sufficiently probative as to value. While the county appellees may not agree with the appraiser's methodology, regional/local geographic analyses, or land sales utilized, we are not persuaded by such criticisms. As this board has often commented, the valuation derived through any appraisal report is but an expert opinion, the reliability of which is determined based upon the basic competence, skill and ability demonstrated by the witness and the probative quality of the expert testimony. *Brown v. Hamilton Cty. Bd. of Revision* (Feb. 1, 2008), BTA No. 2006-K-764, unreported, at 9, citing *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported. In this instance, we find that the appraiser provided sufficient responses to the issues raised by the county at this board's hearing, see H.R.I. at 34-35, 45-47, 52-55, as did supporting information contained in his report. While we acknowledge the county's evidence submitted on appeal, as discussed above, such evidence fails to rebut the valuation analysis and conclusion presented in the owner's appraiser. Thus, we find the owner's report provides sufficient competent and probative evidence of the subject's value for tax year 2015. *Wynwood Apartments v. Bd. of Revision,* 59 Ohio St.2d 34, 35 (1979) (this board is given broad discretion in attaching what weight it will assign to expert testimony); *Cardinal Federal S. & L Assn.,* supra.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 040-20D-01-012

TRUE VALUE

$750,000

TAXABLE VALUE

$262,500

OHIO BOARD OF TAX APPEALS

SPIRIT CK PORTFOLIO VIII, LLC SUCCESSOR IN INTEREST TO COLE CK PORTFOLIO VIII, LLC, (et. al.),	CASE NO(S). 2016-1519
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MEDINA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - SPIRIT CK PORTFOLIO VIII, LLC SUCCESSOR IN INTEREST TO COLE CK PORTFOLIO VIII, LLC
Represented by:
DEBORAH J. PAPUSHAK
SIEGEL JENNINGS CO., L.P.A.
23425 COMMERCE PARK DRIVE, SUITE 103
CLEVELAND, OH 44122

For the Appellee(s) - MEDINA COUNTY BOARD OF REVISION
Represented by:
DENNIS E. PAUL
ASSISTANT PROSECUTING ATTORNEY
MEDINA COUNTY
72 PUBLIC SQUARE
MEDINA, OH 44256

Entered Tuesday, March 6, 2018

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Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 012-21A-02-001, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and the record of hearing ("H.R.") before this board.

The subject is situated on approximately 1.54 acres, improved with a single story brick building, and currently operated as a Circle K gas station and convenience store. S.T., Exhibit ("Ex.") C; H.R., Ex. 1 at 27. The subject's total true value was initially assessed at $1,199,700. A decrease complaint was filed on behalf of the property owner with the BOR, seeking a decrease in value to $800,000, which amount was amended at hearing to $794,500. S.T., Exs. A, E. No counter complaint was filed.

At the BOR's hearing, counsel appeared on behalf of the property owner. In support of the decrease sought, counsel offered an owner's valuation pro forma which contained information relating to three comparable sales

of real property. A BOR member noted, however, none of the comparable properties were located in the same county as the subject and no market analysis was'provided. S.T., Ex. E. Thereafter, based upon

information available to it, the BOR issued a decision maintaining the subject's initially assessed valuation. S.T., Ex. G. Dissatisfied with the BOR's decision, the property owner timely filed an appeal with this board.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). As the court stated in *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, ***." (Parallel citation omitted.) Id. at ¶6.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). In the absence of a recent arm's-length sale, as in the case before us, an appraisal or other relevant evidence is necessary to determine the subject's true value. *First Union Real Estate Equity & Mtge. Investments v. Cuyahoga Cty. Bd. of Revision,* 53 Ohio St.3d 236 (1990); *State ex rel. Park Investment Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

On appeal, owner's counsel and counsel for the county appellees appeared at the hearing before this board. In support of the decrease requested, owner's counsel offers the appraisal and testimony of Mr. Andrew Lorms, a state-certified general real estate appraiser in Ohio. In his report, Mr. Lorms employed the cost approach to value, determined a land value of $420,000, and opined to a final value of $975,000 for the subject property, as of January 1, 2015. H.R., Appellant's Ex. 1, at 60. For its part, the county appellees contend the subject's value should be increased to $1,400,000 and offer information relating to two comparable sales and testimony from the county auditor in support. We also note, at hearing, this board's hearing officer reserved ruling on appellant's objection to the admission of the appellees' exhibits (i.e., Exhibits A, B, and C) on the basis that they were untimely disclosed, H.R. at 64, and further, reserved ruling on the county appellees' objections to both the appraiser's testimony regarding the subject's lease and the admission of the owner's appraisal report. H.R. at 13-15. Upon consideration of the arguments advanced by the parties, we hereby overrule the above-stated objections levied by the appellant and by the county appellees, respectively. We now turn to the record before this board.

At the outset, to the extent that the county relies upon information relating to two comparable sales and Mr. Kovack's testimony in relation thereto to increase the value, we are not persuaded. While we acknowledge Mr. Kovack's status as the county auditor, we are also mindful that he is not a licensed real estate appraiser, trained to opine real property values. In fact, Mr. Kovack did not attest to his education, training, certifications, or, to any significant degree, his experience in appraising real property. As this board stated in *Copp v. Franklin CV. Bd of Revision* (Sept. 8, 2009),'BTA No. 2007-Z-692, unreported, "[b]y not developing a sufficient foundation to establish an appropriate expertise in appraisal methods and the deviation of true value for a particular piece of real property, this board does not find the analyses particularly probative and does not accord them much weight." See generally The Appraisal of Real Estate (14th Ed.2013); *Witt Co. v. Hamilton Cty. Bd. of Revision,* 61 Ohio St.3d 155 (1991).

We now turn to the owner's appraisal report. When, as here, a party relies on an appraiser's opinion of value, this board may "accept all, part or none of the testimony of any appraiser"; there is no requirement for this board to adopt the valuation fixed by any expert appraiser. *Witt Co. v. Hamilton Cty. Bd. of Revision,* 61 Ohio St.3d 155 (1991). See also *Cardinal Federal S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision,* 44 Ohio St.2d 13 (1975), at paragraphs three and four of the syllabus; *Freshwater v. Belmont CO). Bd. of Revision,* 80 Ohio St.3d 26, 30 (1997). This board is charged with the responsibility of determining value based upon evidence

properly contained within the record and found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. q, (Revision, 77* Ohio St.3d 402, 405 (1997). As such, we look to all aspects of the record before us in conducting our independent review of the subject property. *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 114 Ohio St.3d 493, 2007-Ohio-4641, at 1124.

Upon review of the owner's appraisal evidence, which provides an opinion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find the report to be sufficiently probative as to value. While the county appellees may not agree with the appraiser's methodology, regional/local geographic analyses, or land sales utilized, we are not persuaded by such criticisms. As this board has often commented, the valuation derived through any appraisal report is but an expert opinion, the reliability of which is determined based upon the basic competence, skill and ability demonstrated by the witness and the probative quality of the expert testimony. *Brown v. Hamilton Cty. Bd. of Revision* (Feb. 1, 2008), BTA No. 2006-K-764, unreported, at 9. See also *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported. In this instance, we find that the appraiser provided sufficient responses to the issues raised by the county at this board's hearing, see H.R. at 34-35, 45-47, 52-55, as did supporting information contained in his report. While we acknowledge the county's evidence submitted on appeal, as discussed above, such evidence fails to rebut the valuation analysis and conclusion presented in the owner's appraiser. Thus, we find the owner's report provides sufficient competent and probative evidence of the subject's value for tax year 2015. *Wynwood Apartments v. Bd. of Revision,* 59 Ohio St.2d 34, 35 (1979) (this board is given broad discretion in attaching what weight it will assign to expert testimony); *Cardinal Federal S. & L Assn.,* supra.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 012-21A-02-001

TRUE VALUE

$975,000

TAXABLE VALUE

$341,250

OHIO BOARD OF TAX APPEALS

SOUTH EUCLID LAND REUTILIZATION PROGRAM, (et. al.),	.	CASE NO(S). 2017-1501
Appellant(s),		(REAL PROPERTY TAX)
vs.		DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),		
Appellee(s).		

APPEARANCES:

For the Appellant(s) - SOUTH EUCLID LAND REUTILIZATION PROGRAM
Represented by:
SALLY MARTIN
HOUSING DIRECTOR
1349 SOUTH GREEN ROAD
SOUTH EUCLID, OH 44121

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, March 19, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of

revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

NORTH WAYNE PROPERTIES LLC, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2230

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NORTH WAYNE PROPERTIES LLC
Represented by:
HUI LI
3209 CARRIER AVE
KETTERING, OH 45429

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

LOCKLAND LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
JONATHAN T. BROLLIER
BRICKER & ECKLER, LLP
100 SOUTH THIRD STREET
COLUMBUS, OH 43215-4214

Entered Wednesday, March 21, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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."See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MOMENTUM REALTY LLC, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-30

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MOMENTUM REALTY LLC
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
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DUBLIN, OH 43017

Entered Wednesday, March 21, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education moves to dismiss this matter on the basis it was not timely filed with this board and was not filed at all with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record demonstrates that appellant never filed such notice with the BOR, and filed its notice of appeal with this board more than four months after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider this matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

WILMINGTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-901
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CLINTON COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - WILMINGTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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LANE, ALTON, HORST LLC
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COLUMBUS, OH 43215

For the Appellee(s) - CLINTON COUNTY BOARD OF REVISION
Represented by:
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CLINTON COUNTY
103 EAST MAIN STREET
WILMINGTON, OH 45177

NATIONAL RETAIL PROPERTIES, LP
Represented by:
CHRISTOPHER P. FINNEY
FINNEY LAW FIRM, LLC
4270 IVY POINTE BOULEVARD, SUITE 225
CINCINNATI, OH 45245

Entered Monday, March 26, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1]The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 290-17-01-26-0000-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written argument.

[2] The subject property is improved with a commercial building operating as a Frisch's restaurant. The subject's total true value was initially assessed at $516,810. The BOE filed a complaint with the BOR seeking to increase the subject's value to $2,154,300. The appellee property owner, National Retail

Properties, LP ("NRP"), filed a countercomplaint in support of maintaining the auditor's value. At the BOR hearing, the BOE presented evidence of an September 2015 transfer of the property, arguing that the reported sale price of $2,154,285.70 is the best evidence of the subject's value and should provide a basis to increase the subject's assessed value. Although no representative appeared on behalf of NRP, counsel for the BOE acknowledged that the countercomplaint indicated that the September transaction was a "sale-lease back arrangement." Counsel stated that "it very well may have been" a sale-leaseback, but noted that no one was there to testify about the transaction. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

[3] A hearing was convened before this board, during which multiple properties located in several different counties and school districts were discussed, including the subject property. During that hearing, the BOE again advocated for increasing the value of the property consistent with the sale price, though it argued an even higher sale price should be attributed to the subject property according to a document offered by NRP. NRP, for its part, offered multiple documents and testimony from Jim Horwitz, the Vice President of Real Estate Development for Frisch's. The BOE objected to the presentation of Horwitz's testimony and all of NRP's evidence on multiple grounds, including R.C. 5715.19(G) and hearsay. At that time, the attorney examiner reserved ruling on the objections and directed parties to further argue the issues through post-hearing written argument. Even if we were to admit this evidence into the record, we would give it no weight in our analysis. Accordingly, we hereby deny all objections as moot and note that none of the evidence that was offered would alter the outcome of this decision. Additionally, we will not address NRP's arguments related to notice of the BOR's hearing because it prevailed on appeal and the arguments are likewise moot.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, the affirmative burden rests with the opponent of using a reported sale price to demonstrate why it does not reflect the property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. When a party successfully challenges the reliability of the sale, the burden shifts back to the proponent of the sale to show that it should nevertheless be regarded as the best evidence of the property's value. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Additionally, because the central issue in this appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[5] In the present appeal, it is undisputed that NRP purchased the subject property in September 2015 from Frisch Ohio, LLC, and none of the parties has challenged the recency of the sale. NRP argues, however, that because the transaction was a sale-leaseback, it was not at arm's-length and cannot provide a basis to increase the subject's value. It is particularly relevant that at no point during the proceedings has the BOE challenged whether the transaction was a sale-leaseback.

[6] The court has recently held that the sale price in a sale-leaseback transaction is not indicative of a property's value. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 100, 2017-Ohio-7578 ("*State Farm*"). See, also, *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2017- Ohio-8817, ¶16 ("Our conclusion in this appeal is consistent with our recent decision in [*State Farm*], in which we held that the sale price from a sale/leaseback transaction does not furnish a conclusive criterion of the property's value, id. at ¶19."). In the present appeal, the BOE has offered

no evidence to show that despite the circumstances of the transaction, the sale price should be regarded as the best evidence of the subject's value. We acknowledge that *State Farm* was issued after both the BOR and this board's evidentiary hearings, but the BOE has made no attempt to provide additional evidence or provide additional argument to distinguish the facts of this appeal. Accordingly, we find that the BOE has failed to meet its burden and further find that the sale is not reliable evidence of value.

[6] Neither party has offered any additional evidence upon which this board may rely to independently determine value. Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

[7] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$516,810

TAXABLE VALUE

$180,880

OHIO BOARD OF TAX APPEALS

231-239 RYBURN AVENUE LLC, (et. al.),

Appellant(s),

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1523

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 231-239 RYBURN AVENUE LLC
Represented by:
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PEPZEE REALTY INC.
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For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
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MONTGOMERY COUNTY
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DAYON CITY SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
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ENNIS BRITTON, CO. L.P.A.
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CINCINNATI, OH 45239

Entered Tuesday, March 27, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education ("BOE") moves to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate

statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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 andwith the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The BOE attached to its motion a copy of the DTE Form 3 certified by the county auditor, which reveals that that appellant's notice of appeal was not filed with the Montgomery County Board of Revision. Upon consideration, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

J&K AMERICAN ENTERPRISE, INC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2669, 2016-2671, 2016-2672

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - J&K AMERICAN ENTERPRISE, INC
Represented by:
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CLEVELAND, OH 44113

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
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CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, April 2, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] These matters come before this board upon notices of appeal filed on behalf of the appellant property owner, J&K American Enterprise, Inc., from decisions of the Cuyahoga County Board of Revision ("BOR") determining the value of three parcels for tax year 2015. We proceed to consider the matters upon the notices of appeal, the statutory transcript ("S.T.") certified by the fiscal officer, and the record of the hearing ("H.R.") before this board.

[2] Appellant challenges the valuation of three parcels, which were initially valued by the fiscal officer for tax year 2015 as follows: parcel number 673-21-033 (2067 Taylor Road) - $67,000, parcel number 113-13-012 (15809 Damon Avenue) - $58,800, and parcel number 113-14-018 (205 E. 156th Street) - $144,000. Appellant filed complaints with the BOR requesting decreases in value to $45,000, $45,000, and $120,000, respectively. At the BOR hearing, Kaller McKay, president of the corporate property owner, testified regarding the conditions of the properties, their rental rates (if any), and presented evidence of comparable sales. For each property, Ms. McKay indicated that significant repairs to both the interior and exterior are needed. After considering appellant's evidence, the BOR found that no change in value was warranted for any of the three subject parcels.

[3] Appellant thereafter appealed to this board, requesting decreases in value to $38,000 for the Taylor Road property, $45,000 for Damon Avenue, and $85,000 for E. 156th Street. Ms. McKay again testified aboutthe conditions of the properties and the numerous repairs needed. See also H.R., Exs. 1-3. She again presented comparable sales data and information about the assessed values of other properties. H.R., Exs. 4-5.

[4] In challenging the valuation of real property, "[t]he burden is on the taxpayer to prove [its] right to a deduction." *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision*, 170 Ohio St. 340, 342 (1960). "[T]he appellant must come forward and demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. The Supreme Court explained in *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, that "the board of revision (or [auditor]) bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof at the BTA." Id. at ¶ 23.

[5] We are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision,* 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. The record indicates that none of the properties were the subject of a recent, arm's-length transfer: Ms. McKay testified that she purchased the property on Taylor Road for $4,667 in 2012; the property on Damon Avenue for $145,000 in August 2005; and the property on East 156th Street for $54,000 in February 2012. H.R. at 20; S.T., Ex. C. We therefore turn to the evidence provided by appellant.

[6] Appellant primarily relies on the negative characteristics of the subject properties in support of its requested decreases in value. As the Supreme Court stated in *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397, "[a]s a general matter, '[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.' *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 288, *** (1996)." (Parallel citation omitted.) Id. at ¶27. As this board has repeatedly stated, a party must do more than simply demonstrate the existence of negative factors; it must also demonstrate the impact such factors have on the property's value. In the absence of an appraisal(s) quantifying the effect of any negative factors on the values of the properties, we find appellant's evidence insufficient to support reductions in value.

[7] Appellant has also presented comparable sales and comparable assessed values. Initially, we must acknowledge the fallacy of any argument relying the assessed values of other properties in support of a requested reduction in value, as the basis of this challenge is the erroneous nature of the subject properties' values. Indeed, "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 31 (1996).

[8] We likewise find the comparable sales data presented by appellant insufficient to support a reduction in value. This board has repeatedly stated that, without a reliable analysis of such data, i.e., an appraisal, the submission of raw sales information is normally insufficient to demonstrate value since the trier of fact is left to speculate as to common differences, e.g., location, size, quality of construction of improvements, nature of amenities, etc., and the date of sale as opposed to tax lien date, may affect a value determination. See generally The Appraisal of Real Estate (14th Ed.2013); *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002.

[9] Based upon the foregoing, we find appellant has failed to satisfy its burden to present competent and probative evidence in support of the requested decreases in value.

It is therefore the order of this board that the true and taxable values of the subject properties as of January 1, 2015, were as follows:

PARCEL NUMBER 673-21-033

TRUE VALUE

$67,000

TAXABLE VALUE

$23,450

PARCEL NUMBER 113-13-012

TRUE VALUE

$58,800

TAXABLE VALUE

$20,580

PARCEL NUMBER 113-14-018

TRUE VALUE

$144,000

TAXABLE VALUE

$50,400

OHIO BOARD OF TAX APPEALS

LUTHERAN SOCIAL SERVICES OF CENTRAL OHIO VILLAGE HOUSING, INC., (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2012-386, 2012-387

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LUTHERAN SOCIAL SERVICES OF CENTRAL OHIO VILLAGE HOUSING, INC.
Represented by:
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
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SOUTH-WESTERN CITY SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
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6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Tuesday, April 3, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These matters are before the Board of Tax Appeals upon remand from the Supreme Court of Ohio, which issued a decision and judgment entry in *Lutheran Social Servs. of Cent. Ohio Village Hous., Inc. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 125, 2017-Ohio-900, vacating this board's May 23, 2014 decision and order. This board had determined that the subject properties should be valued consistent with appraisal evidence submitted by the property owner for tax year 2008 (and the remaining years of the triennial period, tax years 2009 and 2010). On appeal, however, the Supreme Court determined that this board erred by failing "to consider and weigh conflicting evidence in the course of justifying its reliance on certain evidence as

opposed to contravening evidence. *** Under this case law, the BTA erred by adopting the appraisal valuations in this case without explicitly addressing the negative appraisal review offered by" the board of education's appraiser at this board's hearing. Id. at ¶12-13. As a consequence, the court vacated this board's decision and remanded the matter for further consideration of the merits of these appeals. On remand, the parties were allowed to, and ultimately did, submit additional written argument in support of their respective positions. We proceed, therefore, to consider these matters based upon the notices of appeal, the transcript certified pursuant to R.C. 5717.01, the record of this board's hearing, and any written argument submitted by the parties.

The subject properties were initially assessed at $1,250,000 for parcel number 570-242616 and $1,456,400 for parcel number 570-170045. The property owner filed separate complaints with the board of revision ("BOR), which requested reductions to the subject properties' values for tax year 2008. The affected board of education ("BOE") filed counter-complaints, which objected to the requests.

The BOR held separate hearings on each of the complaints. Although missing from the statutory transcript certified prior to the Supreme Court's decision, we note that the BOR supplemented the record with the missing hearing audio related to BTA No. 2012-387 following the remand from the court. At each of the BOR hearings, the property owner submitted the report and testimony of appraiser Donald E. Miller, II. Miller explained that each of the subject properties "operates as an affordable, age restricted (62+) property. The subject receives [U.S. Housing and Urban Development] subsidized rents as part of the capital advance program." Statutory Transcript for BTA Nos. 2012-386 et seq., at BOR Hearing Audio and Appraisal Reports at page 3. As a result, he ignored the subsidized rents received and appraised the subject properties under the hypothetical assumption that the subject properties received market rents. Miller was examined, and cross examined, about the underlying data and methodologies used to derive his final conclusions of value, i.e., $810,000 for parcel 570-242616 and $700,000 for parcel 570-170045 as of January 1, 2008. At the BOR decision hearings, the BOR members voted to reject Miller's appraisal reports and testimony because he relied upon comparable properties that were significantly older than the subject properties, which negatively impacted his final conclusions of value and undervalued the subject properties. As a result, the BOR issued decisions, which retained the subject properties' initially assessed values for tax years 2008, 2009 and 2010. These appeals ensued.

At the hearing before this board, both parties appeared through counsel to submit additional argument and evidence into the record. The property owner relied upon the evidence that it presented to the BOR. The BOE presented the testimony of appraiser Thomas D. Sprout, who reviewed Miller's appraisal reports and testified about perceived shortcomings with Miller's appraisal reports, specifically that Miller's reports relied upon poor market information, which led to faulty analyses and conclusions, even though better market information was available. In support of Mr. Sprout's testimony, the BOE submitted market information that it asserted better reflected the market in which the subject properties would have operated in on the tax lien date. Subsequent to the hearing, the parties submitted written argument to more fully explain their respective positions.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). "However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964).

The record does not disclose recent, arm's-length transfers of the subject properties; therefore, we proceed to consider Miller's appraisal reports and testimony, submitted by the property owner, and Sprout's appraisal review testimony, submitted by the BOE.

We begin our analysis with Miller's appraisal reports, which developed the income and sales comparison approaches to valuing real property. In the appraisal report for parcel 570-242616, under the income approach, Miller relied upon rental rates from six other apartment properties located in the same vicinity as the parcel. After making qualitative adjustments to account for differences between the comparable properties and the parcel, he determined a market rental rate of $450 per month, which he then applied to the parcel's 44, one-bedroom units. In doing so, he concluded to annual potential rental revenue of $237,600. He then deducted $23,760, or 10% of potential rental revenue, for vacancy and credit loss to arrive at $213,840 of annual effective rental revenue. Next, he added 1% of the effective income, $2,200, to conclude to an effective gross rental income of $216,040. From that number, he deducted $121,242 of expenses, which included a number of items such as payroll, utilities, and insurance, to conclude to a net operating income of $94,798. He proceeded to capitalize the net operating income at 11.6%, which includes a 2.35% tax additur, to preliminarily conclude the parcel's value to be $820,000. After deducting $12,999 for the personal property associated with the apartment units, Miller concluded the value of the parcel to be $810,000 as of January 1, 2008. Under the sales comparison approach, he compared the parcel to five other apartment communities located in the same vicinity, which sold between January 2005 and February 2010. After making qualitative adjustments to account for differences between the comparable properties and the parcel, he concluded the value of the parcel to be $780,000 as of January 1, 2008. Miller reconciled the indicated values, giving primary weight to the income approach to value, and finally concluded the value of parcel 570-242616 to be $810,000 as of January 1, 2008.

In the appraisal report for parcel 570-170045, under the income approach, Miller relied upon rental rates from five other apartment properties located in the same vicinity as the parcel. After making qualitative adjustments to account for differences between the comparable properties and the parcel, he determined a market rental rate of $430 per month for the parcel's 45, one-bedroom units and $499 for the parcel's one, two-bedroom unit. He then applied the market rental rates to the parcel's 46 units and concluded to annual potential rental revenue of $238,188. He then deducted $23,819, or 10% of potential rental revenue, for vacancy and credit loss to arrive at $214,369 of annual effective rental revenue. Next, he added 1% of the effective income, $2,070, to conclude to an effective gross rental income of $216,439. From that number, he deducted $126,282 of expenses, which included a number of items such as payroll, utilities, and insurance, to conclude to a net operating income of $90,157. He proceeded to capitalize the net operating income at 11.6%, which includes a 2.35% tax additur, to preliminarily conclude the parcel's value to be $780,000. After deducting $45,170 for the personal property associated with the apartment units, Miller concluded the value of the parcel to be $730,000 as of January 1, 2008. Under the sales comparison approach, he compared the parcel to five other apartment communities located in the same vicinity, which sold between January 2005 and February 2010. After making qualitative adjustments to account for differences between the comparable properties and the parcel, he concluded the value of the parcel to be $740,000 as of January 1, 2008. Miller reconciled the indicated values, giving primary weight to the income approach to value, and finally concluded the value of parcel 570-170045 to be $730,000 as of January 1, 2008.

Next, we consider Sprout's appraisal review testimony, which highlighted perceived shortcomings with Miller's appraisal reports. According to Sprout, Miller's selection of market information, which undergirded his income and sales comparison approaches to value, led to erroneous determinations of market rents, which Sprout asserted were below market rates, and capitalization rates, which Sprout asserted were above market rates. As an example, Sprout testified that Miller relied upon comparable properties that were, in fact, dissimilar than the subject properties in age and condition.

As we consider these matters, we note that when a party relies on an opinion of value to support its claim, such opinion must be both competent and probative. See, generally, *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096. Such conditions are typically sought to be met through the submission of a written appraisal, prepared and attested to under oath, by a qualified expert who opines a

value for tax purposes "as of" the effective tax lien date. Even though only one party may submit a written appraisal, such submission, like all evidence, is subject to this board's independent review under the preceding standards. See, generally, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*,76 Ohio St.3d 13, 15 (1996). Moreover, when parties rely on an appraiser's opinion of value, this board my accept all, part, or none of that appraiser's opinions. *Witt Co. v. Hamilton Cty. Bd. of Revision*, 61 Ohio St.3d 609 (1991). Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported.

At the outset, we agree with the appraisers and find the income approach to value to be the most appropriate and reliable methodology to utilize when valuing income-producing property. Accordingly, our analysis will focus on the income approach to determine the value of the subject properties.

Upon review, we find merit to the criticisms of Miller's appraisal reports, though, not to the point where we completely disregard their probative nature. We agree that the comparable properties upon which Miller relied, under the income and sales comparison approaches to value, were of older vintages and conditions than the subject properties. Although parcel 570-242616 was built in 2000 and parcel 570-170045 was built in 2002, it is unclear why Miller selected considerably older comparable properties when there were newer comparable properties within the same vicinity as the subject properties. See Hearing Record at Exhibits 1-2. As just one example, Eaglecrest Apartments, built in 1993, is located within very close vicinity to parcel 570-170045; however, it was not selected as a comparable property.

We are further troubled by Miller's failure to account for the common areas in the improvements sitused on each of the subject properties given that such space accounts for approximately 30% of the total square footage of each of the improvements. A review of the appraisal reports demonstrate that Miller only looked at individual rental units and no value was attributed to common areas (or similar amenities). Although he was questioned about his failure to value the common areas at the BOR hearing, and asserted that he did value the space, there is no evidence, either in his appraisal reports or in his testimony, that Miller actually attributed any value to the common areas. Thus, it appears that Miller's income approach to value, in both appraisal reports, failed to value the subject properties as they existed on the tax lien date. See *Eastland Manor Apartments, LLC v. Franklin Cty. Bd. of Revision* (May 3, 2017), BTA No. 2016-537, unreported, appeal pending S.Ct. No. 2017-0743.

We note that the BOE raised other issues with the income approach to value in Miller's appraisal reports, we do not find those arguments persuasive.

Although we find that these enumerated shortcomings negatively impacted Miller's income approach to value and, therefore resulted in value conclusions that undervalued the subject properties, we do not find it appropriate to completely disregard his appraisal reports. Instead, we find it most appropriate to utilize the evidence provided by the BOE at this board's hearing and to reconstitute the income approach to value with market rental rates derived from comparable properties that were more similar to the subject properties. Because Miller failed to account for the common areas, which comprised approximately 30% of the improvements, we find it appropriate to conclude to a higher a monthly rental rate. In doing so, we will apply Sprout's determination of market monthly, rental rate of $519 to the one bedroom units, in both 570-242616 and 570-170045, and apply the average of the utilized comparables in the appraisal report for 570-170045, $635, for the single two-bedroom unit.

The pro-forma operating statements shall be adjusted as follows:

Parcel 570-242616 (44 one-bedroom units)

Potential rental revenue:	$274,032
Less 10% vacancy/credit loss:	($27,403)
Other Income:	$2,200
Effective gross income:	$248,829
Less total operating expenses:	($122,881)
Net operating income:	$125,947
Capitalized at 11.6%:	$1,085,753
Less personal property deduction:	($12,999)
Value indication (rounded):	**$1,072,750**

It should be noted that the expenses include a reconfigured 5% management fee of $12,441.

Parcel 570-170045 (45 one-bedroom units and one two-bedroom unit)

Potential rental revenue:	$287,880
Less 10% vacancy/credit loss:	($28,788)
Other Income:	$2,070
Effective gross income:	$261,162
Less total operating expenses:	($128,518)
Net operating income:	$132,644
Capitalized at 11.6%:	$1,143,482
Less personal property deduction:	($45,170)
Value indication (rounded):	**$1,093,310**

It should be noted that the expenses include a reconfigured 5% management fee of $13,058.

In reviewing this matter, we are mindful of our duty to independently determine the subject properties' values. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find merit to the property owner's appraisal evidence, however, with the adjustments as noted above to better reflect market rents.

It is therefore the order of this board that the subject properties' true and taxable values as of January 1, 2008, are as follows:

PARCEL NUMBER 570-242616

TRUE VALUE

$1,072,750

TAXABLE VALUE

$375,460

PARCEL NUMBER 570-170045

TRUE VALUE

$1,093,310

TAXABLE VALUE

$382,660

OHIO BOARD OF TAX APPEALS

JOEL HORVATH, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2209

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOEL HORVATH
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CLEVELAND, OH 44113

Entered Tuesday, April 3, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

KRAMER BROTHERS HOBBIES, LONG ISLAND, INC., (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2173

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KRAMER BROTHERS HOBBIES, LONG ISLAND, INC
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BALTIMORE, MD 21211

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, April 3, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

[2] R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

[3] The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ALEX & LARISA MOULTANOVSKY, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2162

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ALEX & LARISA MOULTANOVSKY
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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BEACHWOOD CITY SCHOOLS BOARD OF EDUCATION
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Entered Tuesday, April 3, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis notice of the appeal was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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."
See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

KEN SUTTER, (et. al.),

Appellant(s),

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1466

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KEN SUTTER
5239 SOLDIERS HOME MIAMISBURG ROAD
MIAMISBURG, OH 45342

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
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P.O. BOX 972
DAYTON, OH 45422

Entered Tuesday, April 3, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals from a decision of the Montgomery County Board of Revision determining the value of parcel number K45 02511 0164 for tax year 2016. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the county auditor, and the record of the hearing before this board ("H.R."), at which only appellant appeared.

The subject property was initially assessed by the auditor for tax year 2016 at $180,310. Appellant filed a complaint against the valuation requesting a decrease in value to $120,000 based on the auditor's valuation of nearby comparable properties. At the BOR hearing, appellant argued that the auditor's valuation of the subject property has increased far more than other similar properties nearby. Appellant specifically noted two other properties and indicated his opinion of value was based on comparison to those two properties. Upon consideration of the evidence presented, the BOR found that no change in value was warranted.

At this board's hearing, appellant again presented a comparison of the subject property's valuation over the years with the valuation of similar, nearby properties. He testified about negative conditions affecting the subject property due to its age, including disintegrating mortar on the residence, foundation issues with the barns, and the negative effect from collection of aluminum siding on a neighboring property. H.R. at 9-10, 17-18. He further indicated that the county auditor incorrectly reflected the number of outbuildings on the property; he indicated that the auditor had corrected the number of outbuildings to four as of tax year 2017, but had not made the correction for tax year 2016. Id. at 5-6.

In challenging the valuation of real property, "[t]he burden is on the taxpayer to prove his right to adeduction." *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision*, 170 Ohio St. 340, 342 (1960). "[T]he appellant must come forward and demonstrate that the value [he] advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6.

Appellant primarily relies on the auditor's valuation of other similar properties in support of his request for a reduction in the subject property's value. The fallacy of reliance upon other properties' assessed values must be acknowledged, since the fundamental basis of this challenge is the erroneous nature of the subject property's value. Indeed, "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). See also *Meyer v. Bd. of Revision*, 58 Ohio St.2d 328, 335 (1979). We do not find such evidence probative of the subject property's value.

Appellant also notes several negative attributes of the subject property which he argues demonstrates the auditor's overvaluation. However, appellant has provided no evidence tying the defects to the value of the property. In *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, the court noted "[t]here was no evidence or testimony submitted that established how those defects might have impacted the property value such that it warranted a *** reduction. Without such evidence, the list of defects are simply variables in search of an equation." Id. at ¶7, citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228 (1996). See also *Bardshar Apts., Inc. v. Erie Cty. Bd. of Revision* (Mar. 15, 2016), BTA No. 2015-1451, unreported. We therefore find appellant's argument unavailing in support of the requested value reduction.

Based upon the foregoing, we find that appellant has failed to meet his burden to prove his right to the reduction in value requested. We do, however, find merit in appellant's assertion that the auditor has incorrectly reflected the number of barns/outbuildings on the property, particularly in light of his credible representation that the number of barns/outbuildings was changed during an informal review of the 2017 valuation of the property. We therefore remand this matter to the Montgomery County Board of Revision to determine whether the number of barns/outbuildings reflected on the auditor's records for tax year 2016 is accurate and to make any necessary adjustments to the value of the subject property based on such determination, i.e. by reducing the total value of the property by the value of any barns/outbuildings that are determined to be incorrectly included in the auditor's records for the subject parcel for tax year 2016.

OHIO BOARD OF TAX APPEALS

WILLIAM S. JOHNSON, (et. al.),

Appellant(s),

vs.

GREENE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-945

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WILLIAM S. JOHNSON
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For the Appellee(s) - GREENE COUNTY BOARD OF REVISION
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Entered Tuesday, April 3, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, William S. Johnson, appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number B42-0005-0012-0-0200-00, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01 ("S.T."), and the record of the hearing before this board.

The subject is a single-family residential property and its total true value was initially assessed at $115,730. Mr. Johnson filed a decrease complaint with the BOR seeking a reduction in value to $75,250 based on the prior year's value. At the BOR hearing, Mr. Johnson explained that when the auditor performed the countywide reappraisal (for tax year 2014), he appealed that value, which resulted in an on-site inspection and ultimately a valuation of $75,250, which carried through 2015. Mr. Johnson then asserted the auditor increased the value for 2016 despite a lack of renovation or repairs to the property. Following the hearing, the BOR issued a decision maintaining the $115,730 valuation, which led to the present appeal. Mr. Johnson appeared at a hearing before this board to reiterate the arguments made to the BOR, providing documentation regarding the history of the subject's assessed values to confirm the mid-triennial change. The BOR included a letter of explanation in the transcript regarding the basis for its decision, though no representative appeared before this board to provide additional evidence or argument on behalf of the county appellees.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). In this case, Mr. Johnson did not present any independent evidence of value, but rather challenges the initially-assessed value for the property, asserting that the auditor improperly cut off the carry-forward during the interim period, of which 2014 was the first year. The county appellees have not directly responded to this argument, but the BOR included a letter explaining the basis for retaining the auditor's 2016 values after considering the sales of two properties in the subject's "immediate vicinity" and the probative nature of the evidence Mr. Johnson provided regarding the subject's condition.

In *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, the court described the auditor's duties to value and asses taxes against real property in the county pursuant to R.C. 5713.01(B) and 5713.03. These duties instruct the auditor reappraise property values once every six years and perform an update at the three-year interim point. Id. at ¶19; R.C. 5713.01, 5713.03, 5715.33, and 5715.24; Ohio Admin. Code 5703-25-16(B). The court acknowledged that R.C. 5713.01(B) directs an auditor to "'revalue and assess at any time all or any part of the real estate in such county *** where the auditor finds that the true or taxable values thereof have changed.'" *AERC Saw Mill*, supra, at ¶19. The court explained that "[t]his duty might be triggered by an arm's-length sale" or "the reporting of an improvement or casualty to the property," for example. Id. The court clarified that "[t]ypically, the auditor does carry over the value from the first year of a triennium to the next year, unless some event that triggers a need to change the valuation." Id. at ¶32.

In the present appeal, there is nothing in the record to reflect any interceding event that would trigger the auditor's duty under R.C. 5713.01(B). Mr. Johnson testified that there have been no improvements or renovations made to the property, nor is there any evidence that the subject has sold. Instead, the only explanation for the change in value came from the auditor during the BOR hearing: "Because when a valuation is overridden, we only leave that override on it for so long before we take it off in order to verify that, what is the condition of the property currently?" S.T., Ex. E at 94. There is no indication that the auditor's decision to increase the subject's value from $75,250 in 2014 and 2015 to $115,730 in 2016 was based on a finding its true or taxable values had changed from one year to the next as described in R.C. 5713.01(B), but rather a decision to remove an override that was put in place after Mr. Johnson successfully challenged an earlier year's valuation.

We recognize that the auditor has the authority, if not the duty, to adjust a property's values whenever he or she finds that its true or taxable values have changed even within an interim period. Because an auditor is presumed to have acted consistent with Ohio law when he or she certifies a value on the tax list and duplicate, it is not a high bar to show that he or she properly exercised this authority. In this case, however, the auditor has not made any attempt to show that he considered a change in the subject's value prior to increasing it when he certified the tax list and duplicate. Because the auditor has not shown that he acted in compliance with R.C. 5713.01(B), we will not accord the 2016 valuation any presumption it was done correctly. See *Johnson v. Clark Cty. Bd. of Revision*, 2nd Dist. Clark No. 2013 CA 32, 2014-Ohio-329 (remanding a matter to the BOR where the record did not include any reliable and probative support that the auditor's initial calculation of the current agricultural use value of a property correctly applied relevant statutory authority). See, also, *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543 (holding that this board could not reinstate the auditor's value where it was clearly negated because the record showed it based on an incorrect completion percentage).

Finally, we emphasize that the BOR is a party to the instant appeal and "can be called upon to account for the manner in which it determined value." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2017-Ohio-5823, ¶9. Though it was included to explain the basis for the BOR's decision, the letter included in the transcript was drafted after the appeal had been filed and was not a part of the BOR's deliberation process. No representative for the BOR, including the auditor, appeared to

authenticate this letter or confirm the veracity of the statements therein. Even if we consider it to be an accurate representation of the basis for BOR's decision, which was purportedly based on the sales of two properties in the neighborhood, we note that it does not include any information about those properties, including any similarities to or differences from the subject, or any information about the sales themselves, including a purchase price or transaction date. Thus, we are unable to consider this information in our determination and will not abdicate our independent fact-finding authority to the BOR. Id. at ¶7. For that reason, we accord no weight to the BOR's decision. Furthermore, since the purported consideration of these two sales was done after the BOR hearing took place, it could not have been the basis for the auditor to change the value of the property before the tax list and duplicate was filed and would not support a finding that the auditor properly increased the subject's value for tax year 2016, the third year in the triennial.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

TRUE VALUE

$75,250

TAXABLE VALUE

$26,340

OHIO BOARD OF TAX APPEALS

JEFFREY J. LOTT, (et. al.),

Appellant(s),

vs.

SUMMIT COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-604

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JEFFREY J. LOTT
OWNER
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AKRON, OH 44308

Entered Tuesday, April 3, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 68-10057, for tax year 2016. We proceed to consider this matter based upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of this board's hearing.

[2] The subject property was initially assessed at $53,920. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $14,000 based upon the alleged price at which it transferred in October 2016. At the BOR hearing on the matter, the property owner submitted documentary and testimonial evidence in support of the complaint. There was some discussion about the circumstances of the subject sale and the condition of the subject property before and after such sale. The BOR subsequently issued a decision to reduce the subject property's value to $48,000, based upon the condition of the subject property, and this appeal ensued. At the hearing before this board, the property owner supplemented the record with additional details about the subject sale.

[3] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*,50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-

length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The affirmative burden rests with the opponent of using a reported sale price to demonstrate why it does not reflect the property's value. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 327 (1997). See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, at ¶32 (reaffirming that basic evidence of a sale creates a rebuttable presumption that an indicated sale price reflects true value and that the opponent of using a sale has the burden of rebutting the sale.).

[4] In this matter, the record indicates that the property owner purchased the subject property for $14,000 from Federal National Mortgage Association (more commonly known as "Fannie Mae") in October 2016. There is no indication that the BOR actually considered the sale in its decisionmaking process. We note that there was some discussion at the BOR hearing that identified the seller in the subject sale as the federal Department of Housing and Urban Development (more commonly known as "HUD"); however, the settlement statement provided to the BOR indicated that Fannie Mae was the actual seller. Although a transfer of real property from HUD is presumptively invalid, see, *Schwartz v. Cuyahoga Cty. Bd. of Revision*, 143 Ohio St.3d 496, 2015-Ohio-3431, a transfer of real property from Fannie Mae is presumptively valid unless the opponent of such sale comes forward with evidence to demonstrate that the parties acted atypically, see *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St. 3d 119; 2016-Ohio-8402. Absent an affirmative demonstration that the subject sale was not a recent, arm's-length transaction, we find that the October 2016 sale is the best indication of the subject property's value.

[5] As we review this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner provided competent and probative evidence of the subject property's value.

[6] It is, therefore, the order of this board that the subject property's true and taxable values, as of January 1, 2016, are as follows:

TRUE VALUE

$14,000

TAXABLE VALUE

$4,900

OHIO BOARD OF TAX APPEALS

BRYAN DOTY, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-86

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BRYAN DOTY
414 SIX PENCE CIRCLE
WESTERVILLE, OH 43081

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Thursday, April 5, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal for lack of jurisdiction. The county appellees assert that the appellant did not file an initial complaint with the Franklin County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On February 5, 2018, the appellant filed a notice of appeal with this board, on which it was indicated that the BOR mailed a decision on December 1, 2017. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion certification that there is no record of a decision issued for the subject property.

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." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision. Accordingly, this matter must be, and hereby is,
Dismissed.

OHIO BOARD OF TAX APPEALS

GAYLE J. RULLO, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2312

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GAYLE J. RULLO
Represented by:
LAURA MCGRATH
POA
7745 EAST LINDEN LANE
PARMA, OH 44130

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, April 5, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of theexisting record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ERIC FREEMAN, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2305, 2017-2306, 2017-2307

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ERIC FREEMAN
255 KING STREET
SAN FRANCISCO , CA 94107

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, April 5, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These consolidated matters are now considered upon the Cuyahoga County Board of Revision's ("BOR") motions to dismiss. Specifically, the BOR asserts that this board lacks jurisdiction over the decisions of the BOR related to foreclosure proceedings. Appellant did not respond to the motions.

Appellant filed three separate notices of appeal with this board, to which were attached an order of the BOR denied an Amended Motion to Dismiss and Motion to Continue and an order for sheriff's sale of parcel number 124-03-008. The BOR asserts that appellant is attempting to appeal from tax foreclosure proceedings, over which this board has no jurisdiction, and moves to dismiss the matters.

In lieu of utilizing the judicial foreclosure proceedings, a county board of revision may foreclose on a lien for real estate taxes upon abandoned land in the county. R.C. 323.66(A). The procedural aspects of this process are governed by R.C. 323.65 to 323.99. Of particular significance to this matter, R.C. 323.79 states that an appeal from a county board of revision's proceedings under these provisions may be taken by an aggrieved party *in the court of common pleas*. In contrast, this board's jurisdiction is limited to board of revision decisions emanating from complaints filed under R.C. 5715.19 and certified pursuant to R.C. 5715.20. See R.C. 5717.01. When a statute confers the right of appeal, adherence to the terms and conditions set forth in the statute is essential to the enjoyment of the right conferred. *Am. Restaurant &*

Lunch Co. v. Glander, 147 Ohio St. 147 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990).

The county's motion is well taken, as it appears this board lacks jurisdiction over the actions of the BOR in foreclosure proceedings. Accordingly, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

JOHN LARICHE, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2270

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHN LARICHE
9825 TUTTLE ROAD
OLMSTED, OH 44138

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND MUNICIPAL SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Thursday, April 5, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of

the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369(2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JULIA RIELINGER, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1713

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JULIA RIELINGER
SARA MELLOTT REAL ESTATE DEV LLC
6100 OAK TREE BLVD.
SUITE 200
INDEPENDENCE, OH 44131

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

MAPLE HEIGHTS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MEGAN D. MAURER
PEPPLE & WAGGONER, LTD.
5005 ROCKSIDE ROAD, SUITE 260
CLEVELAND, OH 44131

Entered Thursday, April 5, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

FRANK MURPHY, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2253

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FRANK MURPHY
Represented by:
TERESA EADER
ASSISTANT
561 LEEDS GATE
WADSWORTH, OH 44281

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, April 9, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss and appellant's response thereto. Through the motion, the county asserts the appellant failed to file a copy of the notice of appeal with the Cuyahoga County Board of Revision ("BOR"), as required by R.C. 5717.01. See also DTE Form 3. At this board's telephone conference, appellant concedes that a copy of the notice of appeal was not filed with the BOR. Further, although we acknowledge the additional information submitted by the appellant subsequent to the telephone conference, such information fails to demonstrate that a copy of the notice of appeal was filed with the BOR.

R.C. 5717.01 allows for a decision of a county board of revision to be appealed to this board, provided that such appeal is filed with both this board and the BOR, within thirty days after notice of the BOR decision is mailed. See also R.C. 5715.20. The requirements set forth in R.C. 5717.01 are specific and mandatory in nature. When, as here, a statute confers the right of appeal, adherence to the terms and conditions set forth therein is essential to the enjoyment of the right conferred. *American Restaurant and Lunch Co. v. Glander,* 147 Ohio St. 147 (1946). See also *Cincinnati School Dist. Bd. ofEdn. v. Hamilton Cty. Bd. ofRevision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner."). In this instance, as indicated above, appellant admits the required notice was not filed with the BOR and the informationprovided subsequent to the telephone conference fails to demonstrate otherwise. As strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board, we must conclude that we do not have jurisdiction to consider the merits of the instant appeal. See *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990).

Accordingly, the county appellees' motion to dismiss is well taken and the present appeal is hereby dismissed.

OHIO BOARD OF TAX APPEALS

BIG SKY INVESTMENTS OF WESTLAKE, LLC, (et. al.),	CASE NO(S). 2017-1775
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - BIG SKY INVESTMENTS OF WESTLAKE, LLC
Represented by:
BRIAN G. DATTILO
ATTORNEY AT LAW
5750 COOPER FOSTER PARK ROAD W., SUITE 102
LORAIN, OH 44053

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

NORTH OLMSTED CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT A. BRINDZA
BRINDZA MCINTYRE & SEED LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Monday, April 9, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' to dismiss for lack of jurisdiction. The county asserts that appellant failed to file notice of the appeal with the county board of revision within thirty days of the board of revision's decision as required by R.C. 5717.01. We proceed to decide the matter upon the notice of appeal, the statutory transcript certified by the fiscal officer, the motion, and the parties' responses thereto.

The Cuyahoga County Board of Revision ("BOR") mailed the underlying decision by certified mail on September 15, 2017. R.C. 5715.20. Pursuant to R.C. 5717.01, notice of an appeal of such decision was required to be filed with *both* this board and the BOR within thirty days, i.e., by October 16, 2017. The

record indicates that notice of the appeal was timely filed with this board on October 10, 2017; however,

notice of the appeal was not filed with the BOR until October 19, 2017. It is therefore clear that the thirty-day filing deadline requirement ofR.C. 5717.01 was not met.

Appellant initially argues that the county appellees failed to timely raise the jurisdictional issue now presented. While it is true that this board's case management schedule requests that dispositive motions be filed within ninety days of the filing of the appeal, this board's subject matter jurisdiction may be raised at any time. As the Supreme Court acknowledged in *Gates Mills Invest Co.* v. *Parks,* 25 Ohio St.2d 16, 19-20 (1971), "[t]he failure of a litigant to object to subject matter-jurisdiction at the first opportunity is undesirable and procedurally awkward. But it does not give rise to a theory of waiver, which would have the force of investing subject-matter jurisdiction in a court which has no such jurisdiction." See also *Merriweather* v. *Cuyahoga Cty. Bd. of Revision* (Dec. 7, 2015), BTA No. 2015-456, unreported; *E. 56 LLC* v. *Cuyahoga Cyt. Bd. of Revision* (Dec. 18, 2017), BTA No. 2017-1190, unreported. We therefore find the issue is properly raised.

Appellant also argues that the county appellees had notice of the filing of this appeal, given their filing of the statutory transcript pursuant to R.C. 5717.01 and the assistant prosecuting attorney's filing of entry of appearance. The Supreme Court has rejected such argument, finding the requirement to file *with the county board of revision* is a jurisdictional requirement. The court has specifically rejected the notion that notification by this board to the BOR, i.e., by our docketing letters, replaces an appellant's duty to file notice of an appeal with the BOR. *Austin Co.* v. *Cuyahoga Oy. Bd. of Revision,* 46 Ohio St.3d 192 (1989).

Finally, appellant details in its response the unfortunate personal circumstances experienced by counsel at the time of the statutory filing deadline in this matter. While this board is sympathetic to counsel's situation, the requirements of R.C. 5717.01 are specific, mandatory, and jurisdictional in nature. *Bd. of Edn. of Mentor* v. *Bd. of Revision,* 61 Ohio St.2d 332 (1980). "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147, 150 (1946). See also *Columbus Southern Lumber Co.* v. *Peck,* 159 Ohio St. 564 (1953) (the BTA has no express or implied equity jurisdiction).

Based upon the foregoing, the county appellees' motion is well taken and this matter is found to be jurisdictionally deficient. The matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DONALD GREGORY PROPERTIES, LLC, (et. al.),	CASE NO(S). 2017-2276
Appellant(s),	(REAL PROPERTY TAX)
vs.	ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - DONALD GREGORY PROPERTIES, LLC
Represented by:
DONALD WILLIS
PRESIDENT
3919 WILD CHERRY TRAIL
ORANGE VILLAGE, OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, April 5, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(8). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner."). The record does not demonstrate that appellant filed such

notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MENGALAM FAMILY LLC, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-76

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MENGALAMFAMILYLLC
Represented by:
LATHAJOHNSON
4319 VAUX LINK
NEW ALBANY, OH 43054

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Friday, April 6, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the BOR did not issue a decision regarding appellant's application for remission prior to the filing of this appeal. Appellant did not respond to the motion. This matter isnow decided upon the motion and appellant's notic of appeal.

On January 30, 2018, the appellant filed an application for remission with this board. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion certification that the decision issued by the BOR was subsequent to the appeal filed with this board. A copy of the decision issued on February 21, 2018, was also attached to the motion.

R.C. 5703.02 grants the this board the authority to hear and determine appeals from decisions of county boards ofrevision. 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 board of revision 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." *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JAMES & JENNIFER MANOS, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2315

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JAMES & JENNIFER MANOS
Represented by:
JAMES MANOS
OWNER
5973 MACEWEN CT
DUBLIN, OH 43017-9417

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Friday, April 6, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellefs' motion to dismiss the present appeal as premature. The county appellees assert that the BOR did not issue a decision regarding appellants' application for remission prior to the filing of this appeal. Appellants did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On December 20, 2018, the appellants filed an application for remission with this board. Appellants did not include a copy of any BOR decision(s). The county appellees attached to their motion certification that decisions on appellant's application were issued by the BOR was subsequent to the appeal filed with this board. A copy of the decisions issued on February 7, 2018 were attached to the motion.

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 board of revision 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." *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board. appellants have not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

BUCKEYE IV HOMEBUILDERS, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2313

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BUCKEYE IV HOMEBUILDERS
Represented by:
STEVE LUKE
OWNER
812 BLUFFVIEW DRIVE
COLUMBUS , OH 43235

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Friday, April 6, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the board of revision ("BOR") did not issue a decision regarding appellant's application for remission prior to the filing of this appeal. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On December 19, 2018, the appellant filed an application for remission with this board. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion certification that the decision issued by the BOR was subsequent to the appeal filed with this board. A copy of the decision issued on February 7, 2018 was attached to the motion.

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 board of revision 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." *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision ,* 56 Ohio St.3d 68 (1990). Strict compliance with R'.C. 5717.01 is essential to vest jurisdiction with

this board. Appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JUAN ALEJANDRO CEDENO BASTTARDO, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2288

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JUAN ALEJANDRO CEDENO BASTTARDO
Represented by:
JUAN CEDENO
996 EAST 79TH ST.
CLEVELAND, OH 44103

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, April 6, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

THOMAS AND DENISE KRONHOLZ TRUST, (et. al.),	CASE NO(S). 2017-2086, 2018-128
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - THOMAS AND DENISE KRONHOLZ TRUST
Represented by:
THOMAS KRONHOLZ
8444 METROPOLITAN BLVD.
OLMSTED FALLS, OH 44138

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, April 12, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these matters on the basis they were not filed with the county board of revision. These matters are now decided upon the motions, the statutory transcripts certified by the county board ofrevision ("BOR"), and appellants' response.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See also R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in these matters indicates that appellants filed a notice of appeal with this board on November 13, 2017, which was docketed as BTA No. 2017-2086. Then on February 21, 2018, appellants filed a

second notice of appeal with this board, docketed as BTA No. 2018-128. The record does not demonstrate that the appellants filed notices of appeal with the BOR for, either of the appeals pending with this board, and as such, failed to meet the requirement set forth in R.C. 5717.01. Accordingly, we must conclude that this board does not have jurisdiction to consider the instant matters. Upon consideration of the existing record, and for the reasons stated in the motions, these matters must be and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

KAREN S. VARGO, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-26

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KAREN S. VARGO
Represented by:
KAREN VARGO
1146 E PARKAVEN DR.
SEVEN HILLS, OH 44131

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, April 12, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the BOR* with.u.1 tl1irty days after notice of the decision of the county BOR is mailed. See also R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals.*** 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." See also *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have

jurisdiction to consider this matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GOLDFINGER, HINDY, TRS, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2285, 2018-17

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GOLDFINGER, HINDY, TRS
Represented by:
MARK AND HINDY GOLDFINGER
OWNERS
2409 BEACHWOOD BLVD
BEACHWOOD, OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, April 12, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these matters on the basis they were not filed with the county board of revision. These matters are now decided upon the motions, appellants' response thereto, and the statutory transcripts certified by the county board of revision ("BOR").

R.C. 5717.01 allows for an appeal to be taken to this board 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. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notices with the BOR. In response, appellants submitted a copy of a certified mail receipt, arguing that a notice of appeal was indeed filed with the BOR.

This same certified mail receipt is attached to the notice of appeal filed with this board and docketed as BTA No. 2018-17. The envelope to which the certified mail receipt was attached was addressed to the "Cuyahoga County Court of Common Pleas." Appellants did not provide documentation to demonstrate that the appeals were timely filed with the Cuyahoga County Board of Revision as required by statute.

Upon consideration of the existing record, and for the reasons stated in the motions, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

DAN KECKAN, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2303

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DANKECKAN
705 ELMWOOD ROAD
ROCKY RIVER, OH 44116

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, April 12, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See also R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* , 8'7 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ZINGENUITY NORTH CREEK, LLC, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2318

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ZINGENUITY NORTH CREEK, LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

NORTH COLLEGE HILL CITY SCHOOLS BOARD OF EDUCATION
Represented by:
GARY T. STEDRONSKY
ENNIS BRITTON, CO. L.P.A.
1714 WEST GALBRAITH ROAD
CINCINNATI, OH 45239

Entered Wednesday, April 18, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner, zingenuity North Creek LLC, moves this board to remand this matter to the Hamilton County Board of Revision ("BOR") with instructions to vacate its decision and conduct a new hearing, arguing that it was not provided with proper notice of the hearing under R.C. 5715.19(C). The matter is considered upon the motion, the BOR's response, and the statutory transcript ("S.T.").

[2] The underlying complaint was filed by the North College Hill City School District Board of Education ("BOE") seeking an increase in the value of parcel number 595-0004-0027-00 and no change in value for 595-0004-0312-00. S.T., Ex. A. In accordance with R.C. 5715.19(C), the BOR sent notice of the complaint by certified mail to the tax mailing address on his records for parcel number 595-0004-0027-00: 8359 Beacon Blvd., Suite 308, Ft. Myers, Florida 33907. S.T., Ex. D. That notice came back undeliverable. The BOR then re-sent the notice by regular mail to 311 Howell Ave., Cincinnati, Ohio 45220 - the tax

mailing address for parcel number 595-0004-0312-00. No one appeared at the BOR hearing on behalf of the owner, and the BOR issued a decision increasing the value of parcel number 595-0004-0027-00 to $4,600,000 for tax year 2016. The owner thereafter appealed to this board and filed the present motion to remand.

[3] R.C. 5715.19(C) provides that "[e]ach board of revision shall notify any complainant and also the property owner, ***, when a complaint is filed by one other than the property owner, by certified mail, not less than ten days prior to the hearing, of the time and place the same will be heard." In addressing this statute, and R.C. 5715.12, the Supreme Court, in *Knickerbocker Properlies, Inc. XLII v. Delaware Cty. Bd. of Revision,* 119 Ohio St.3d 233, 2008-Ohio-3192, i[l 7, observed that "neither section specifies which address ought to be used." The court went on to state: "Under such circumstances, we have held that the constitutional due process principle supplies the rule: the owner may be served at an address that is reasonably calculated to give notice to the owner." Id., citing *Regional Airport Auth. v. Swinehart,* 62 Ohio St.2d 403, 406 (1980).

[4] The circumstances of this matter are similar to those presented in *Knickerbocker.* There, the BOR originally sent certified notice of the hearing to the address indicated on the board of education's increase complaint- the same address that had, at some point, served as the property's tax mailing address. However, the property had transferred prior to the filing of the complaint, and a new, different address was indicated on the deed and conveyance fee statement. Id. at i[l-4. The *Knickerbocker* court held that, because the auditor's own records showed a new address for the property owner, the use of the tax mailing address "was not reasonably calculated to give notice of the hearing to Knickerbocker." Id. at i[l 8. Because of this "failure of notice under R.C. 5715.12 and R.C. 5715.19(C)," the court found the BOR's order to be invalid, and remanded the matter with instructions that the order be vacated and a new hearing held on the matter. Id. at i[20.

[5] Here, the complaint filed by the BOE was premised on a transfer of the subject property in December 2015. S.T., Ex. A. The Statement of Reason for Exemption from Real Property Conveyance Fee form indicated the address of zingenuity North Creek, LLC as "311 Howell Avenue, Cincinnati, Ohio 45220" relevant to the transfer of parcel number 595-0004-0027-00. (We note that the form also contains a handwritten note indicating that the transfer involved two parcels.) S.T., Ex. E. The auditor was therefore in possession of information indicating that zingenuity's address was the Ohio address. Moreover, as the BOR acknowledges in its response to the motion, the tax mailing address for parcel number 595-0004-0312-00 had apparently already been changed to the Ohio address. Because the auditor had notice of a different address, "notice to the tax mailing address [for parcel number 595-0004-0027-00] would not be "'reasonably calculated" to reach the taxpayer."' *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 149 Ohio St.3d 706, 2017-Ohio-1428, i[l 8. We therefore find that the BOR failed to comply with R.C. 5715.19(C) to provide certified mail notice of its hearing.

[6] Though the BOR argues that the motion should be denied in the interest of judicial economy, as the court acknowledged in *Knickerbocker,* "under the statutory scheme, the hearing at the BTA is not a full substitute for the opportunity to be heard at the BOR." *Knickerbock<'!r,* supra, at i[23. Compare *Washington Court Family Apartments, LLC v. Fayette Cty. Bd. of Revision* (Interim Order, Nov. 1, 2017), BTA No. 2017-876, unreported (denying motion to remand where notice sent to proper address but was not received until after the BOR hearing).

[7] Based upon the foregoing, appellant's motion is well taken. This matter is hereby remanded to the Hamilton County Board of Revision with instructions to dismiss its October 31, 2017 decision and conduct a new hearing on the value of the subject parcels. In light of our decision, the county appellees' motion to compel is hereby denied as moot.

OHIO BOARD OF TAX APPEALS

SAM & JAY COMPANY LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2284

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SAM & JAY COMPANY LLC
Represented by:
JAY AMIN
15516 INDUSTRIAL PARWAY
CLEVELAND, OH 44135

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Wednesday, April 18, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the county appellees' motion to dismiss for failure to timely file notice of the appeal with the county board of revision ("BOR") as required by R.C. 5717.01. Appellant did not respond to the motion.

The record indicates that the BOR issued the decision from which appellant appeals on November 2, 2017. Appellant filed its notice of appeal with this board by certified mail on November 30, 2017. The statutory transcript certified by the fiscal officer contains a copy of a second certified mailing, also on November 30, 2017, to the Cuyahoga County Court of Common Pleas. It appears that mailing was forwarded by the court to the BOR on December 6, 2017. The county appellees argue that the BOR did not receive notice of the appeal until more than thirty days from the date it mailed its decision, i.e., November 2, 2017, and that, therefore, this appeal is jurisdictionally defective.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715°.20. In *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68, the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the property owner both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363, 369 ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record indicates that the BOR did not receive notice of the appeal until December 6, 2017, i.e., thirty-four days after the mailing of its decision. Appellant therefore failed to comply with the requirement of R.C. 5717.01 to file notice with the BOR within thirty days. The motion to dismiss is well taken and this matter must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

MARKO SEGET, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1863

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARKO SEGET
643 BUSHY CREEK ROAD WOODRUFF, SC 29388

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK ASSISTANT PROSECUTING ATTORNEY CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, April 18, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 114-05-076, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is a two-family home that is occupied•solely by appellant as his personal residence. The subject's total true value was initially assessed at $67,800. Appellant filed a decrease complaint with the BOR seeking a reduction in value to $5,000. At the BOR hearing, appellant argued that the property's value was overstated, relying on a BOR decision for tax year 2014 and his purchase of the property for $5,000 in 2013. Appellant described the circumstances of that transaction and changes to the property since the May 2013 sale. Appellant also discussed other sales in the neighborhood, including a similar property nearby that transferred in June 2017 for $10,000. Appellant further described negative conditions experienced by the neighborhood in which the subject is located, indicating that the subject is essentially surrounded by vacant properties and rentals with frequent turnover. When the BOR provided a list of comparable sales, appellant noted that the sale to which he referred was first on the list and most similar to the subject property of any listed. The BOR indicated that it no longer considered the sale of the subject as being recent to the tax lien date, and discussed the list of sales it provided with appellant. Following the hearing, the BOR issued a decision reducing the initially assessed valuation to $38,400, which led to the present appeal. At this board's hearing, appellant again discussed his purchase, the 2014 decision, and the $10,000 sale on the list provided by the BOR.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564,566 (2001). An appellant must present competent and probative evidence in support of her requested reduction, and an owner is not entitled to a reduction merely because no evidence is presented against her claim. Id. The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

In the present appeal, appellant relies on his purchase of the subject property in 2013 as a basis for his requested reduction. The BOR found that this sale was too remote to provide a reliable indication of value as of the tax lien date. Although there is no "bright line" test as to when a sale becomes too remote to be a reliable indication of value, we find that appellant failed to show that his May 2013 purchase was sufficiently recent to establish the value of the respective subject property as of January 1, 2016. See *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588, 26 (holding that as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property has not changed between the sale date and lien date").

In lieu of an appraisal of the subject property, the record contains information that is typically utilized by appraisers, specifically information regarding sales, the property's condition, and the subject's location. In the absence of an appraisal which analyzes such data, however, 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 an1enities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. See, generally, The Appraisal of Real Estate (14th Ed.2013). Although appellant indicated that the property on the list that sold in June 2017 is comparable to the subject both physically and in terms of location, it is unclear whether any other adjustments may be necessary, for instance for the time or circumstances of that sale. Thus, this data alone provides little utility to establish the value of the subject.

Testimony about the condition of the subject property and its neighborhood likewise provides no reliable basis to reduce the value of the subjects without an appraisal to translate them to an influence on value. In *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996), the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but also the impact they have upon the property's value. See, also, *Gupta v. Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397 (1997). Accordingly, in the present appeal, we find that appellant has failed to present sufficient support for his opinion of value for the subject property, and therefore find that such opinion is not probative. *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions having found that the evidence was not probative).

Finally, we reject the tax year 2014 value as evidence to support the requested reduction. The Ohio Supreme Court has consistently rejected the argument that a property's valuation from one tax year, resulting from either an agreement among the affected parties or a finding by a tribunal, is competent and probative evidence of value for another tax year. *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 29 (1997); *TBC Westlake, Inc. v. Hamilton Cty. Bd. of Revision,* 81 Ohio St.3d 58 (1998); *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 122 Ohio St.3d 134, 2009-Ohio-2461, 20-21. Indeed, the court stated in *Fogg-Akron Assoc., L.P. v. Summit Cty. Bd. of Revision,* 124 Ohio St.3d 112, 2009-Ohio-6412, 15, that "when determining the true value of real property for the current tax year, the assessor should not accord presumptive or prima facie validity to an earlier year's valuation."

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

TRUE VALUE

$38,400

TAXABLE VALUE

$13,440

OHIO BOARD OF TAX APPEALS

SEAN MCCANN, (et. al.),

Appellant(s),

vs.

SUMMIT COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-996

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SEAN MCCANN
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For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY SUMMIT COUNTY
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Entered Wednesday, April 18, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant property owner, Sean McCann, appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 11-10712, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board. We note that the county appellees waived the opportunity to appear before this board and attached some sale information to the waiver. Because this document was not properly admitted during a hearing, it will not be considered in our value determination. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

[2] The subject property consists of roughly 3.16 acres of land improved with a single-family home utilized by McCann as his personal residence. The subject's total true value was initially assessed at $297,240. McCann filed a decrease complaint with the BOR seeking a reduction in value to $200,000. At the BOR hearing, McCann explained that he purchased the subject property in August 2016 for $230,000, but, after the sale had closed, he discovered there were numerous undisclosed defects with the property. Most of the defects were related to water damage, which emanated from damaged drains that were intended to divert water that would naturally flow through the property and windows that leaked and caused water damage inside the walls, and a roof leak. McCann stated that the interior issues were not readily apparent because they had been covered up and were hidden by the walls, conceding that he did not obtain a professional inspection prior to his purchase. McCann also acknowledged that he obtained an appraisal for financing purposes that opined the property's value was $293,000, though he stated the appraiser did not perform any interior review of the house. McCann provided quotes for roof replacement, window replacement, repairs to the drainage system and foundation, and replacement of the damaged driveway. The BOR issued a

decision reducing the initially assessed valuation to $230,000, based on the sale and the property's condition. From this decision, McCann filed the present appeal. At this board's hearing, McCann reiterated those arguments made before the BOR, offering photographs of the damage and quote for the window replacement. McCann also presented printouts from Zillow.com containing information about the sale and listing history for the subject property and several others, highlighting the taxes assessed on each.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' ofreal property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing sellef and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.*C. *v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at 13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, 14, stating "[t)he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997). Additionally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, 11.

[4] In the present matter, it is undisputed that McCann purchased the subject property from Theodore J. Melencheck on or about August 22, 2016 for $230,000. Because he opposes the sale and seeks further reduction, McCann has the burden to show why the reported sale price is not a reliable indication of the subject's true value. McCann does not dispute that this was a recent arm's-length transaction, but instead argues that the purchase price is not a reliable indication of value because he overpaid for the property. This board has consistently held, however, that "[a] negotiated purchase price is not invalidated merely because a purchaser later believes he made a bad deal." *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported, at 11. In this case, we again reject McCann's argument that we should ignore the purchase price based on a misperception about the true physical condition of the subject property.

[5] Furthermore, even if we were to consider McCann's evidence regarding the subject's defects, we find that the estimates offered to repair those conditions are not sufficient to support either a new value or decrease from the sale price. Ohio courts have pointed out in a number of contexts that dollar-for-dollar costs do not necessarily directly correlate to value. See, e.g., *Throckmorton, v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996); *Gupta v. Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397 (1997). In *Throckmorton,* supra, the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but also the impact they have upon the property's value.

[6] Finally, even if we disregard the sale altogether, the burden remains with McCann to provide competent and probative evidence for this board to reduce the subject's value. Although he offered information about other properties that had sold or were listed for sale, we find that McCann failed to meet this burden. In the absence of a sale or 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. See, generally, The Appraisal of Real Estate (14th Ed.2013). Additionally, information about the assessed values of other properties does not allow this board to ascribe a new value to the subject, and "[m]erely showing that two parcels of

property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 31 (1996). See, also, *Meyer v. Bd. of Revision,* 58 Ohio St.2d 328, 335 (1979). See, also, *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions having found that the evidence was not probative).

[7] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

TRUE VALUE

$230,000

TAXABLE VALUE

$80,500

OHIO BOARD OFT AX APPEALS

MARYE SOLOMON, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-940

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARYE SOLOMON
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Wednesday, April 18, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner, Mary Solomon, appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 247-0001-0113-00, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject property is a single-family home and Solomon's personal residence. The subject's total true value was initially assessed at $195,330. Solomon filed a decrease complaint with the BOR seeking a reduction in value to $159,000. At the BOR hearing, Solomon testified and offered cost estimates in support of her requested reduction. Solomon explained that she based her opinion of value on the amount she initially paid for the property in 1989, and that a realtot told her that the property would not be listed for that amount. Solomon described the property's condition, which included water intrusion and required replacement of a slate roof, plaster walls, windows, and furnace, along with numerous other repairs, such as the foundation. Solomon provided estimates for the work, asserting that it would cost more than $100,000 to make necessary repairs. Randall P. Cain, an appraiser from the auditor's Real Estate Department, also appeared at the hearing and provided a report opining that the auditor's value should be maintained. Cain discussed a list of comparable sales and said that the condition issues discussed by Solomon had already been taken into consideration. Cain further noted that other properties near the subject that had been updated were selling for amounts higher than the subject's assessed value despite being nearly half the size. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

[3] At the hearing before this board, Solomon again relied on evidence and testimony about the property's condition, presenting photographs and evidence of water intrusion into the basement. Solomon further expanded that the water issues prevent her use of the garage and basement, and preclude her from entertaining guests in her home. Penni Vanessa, Solomon's daughter who has a real estate background and runs a real estate company, also appeared to testify in support of the requested reduction. Vanessa indicated that the property's value is further diminished due to its location in a neighborhood with violent crime. Vanessa also challenged the comparability of those sales provided by Cain during the BOR hearing.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). An appellant must present competent and probative evidence in support of her requested reduction, and an owner is not entitled to a reduction merely because no evidence is presented against her claim. Id. The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. ill<** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

[5] In lieu of an appraisal of the subject property, Solomon offered information regarding the property's condition and location, and challenged the sales set forth by the auditor's appraiser. The evidence provided, however, is not sufficient to support an adjustment to the subject's value. Ohio courts have pointed out in a number of contexts that dollar-for-dollar costs do not necessarily directly correlate to value. See, e.g., *Throckmorton, v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996); *Gupta v. Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397 (1997). In *Throckmorton,* supra, the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but also the impact they have upon the property's value. In this case, we find it particularly relevant that the auditor's appraiser stated that the conditions listed by Solomon had already been taken into consideration in the initially-assessed value. Accordingly, despite Solomon's opposition to those sales provided by the auditor's appraiser, she has not provided competent and probative evidence of another value.

•

[6] Finally, we find that the appraiser's sales data, which was challenged by Solomon through Vanessa's testimony, does not provide this board with sufficient information to independently determine the value of the property. 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. See, generally, The Appraisal of Real Estate (14th Ed. 2013). Although Cain indicated that the properties are located near the subject, he also noted that they were both smaller and in better condition that the subject property. It is unclear as to how these and any other differences among the properties should be properly taken into consideration. Thus, this raw sales data alone provides little value to establish the value of the subject.

[7] Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision,* 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board ofrevision's valuation, without the board ofrevision's presenting any evidence.").

[8] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

TRUE VALUE

$195,330

TAXABLE VALUE

$68,370

OHIO BOARD OF TAX APPEALS

HENRY, LORRAINE TAYLOR, (et. al.),

Appellant(s), vs.

CHAMPAIGN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-925

(REAL PROPERTY TAX) DECISION AND ORDERAPPEARANCES:

For the Appellant(s)

For the Appellee(s)

- HENRY, LORRAINE TAYLOR
  Represented by:
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  4011 BRIARWOOD RD.
  URBANA, OH 43078

- CHAMPAIGN COUNTY BOARD OF REVISION
  Represented by:
  JANE A. NAPIER
  ASSISTANT PROSECUTING ATTORNEY CHAMPAIGN COUNTY
  200N. MAIN STREET URBANA, OH 43078

Entered Wednesday, April 18, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellants Henry and Lorraine Taylor appeal the decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers K48-25-11-03-38-040-00, K41-1 l-11-13-00-002-00, K41-1 l-11-19-00-032-02, and K41-11-11-19-00-032-00, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The present appeal challenges the valuation of four parcels that constitute two separate properties. On the tax lien date, parcel number K48-25-11-03-38-040-00 was a 0.989 acre lot improved with a vacant single-family home situated on Julia Street. The total true value of this parcel was initially assessed at $41,350. The remaining parcels formed the Briarwood property, which consists of roughly 90.962 acres of land improved with two single-family homes, a pole barn, and a swimming pool. Though most of the land benefits form commercial agricultural use valuation ("CAUV"), Briarwood's total true value was initially assessed at $1,085,890.

[3] Appellants filed decrease complaints with the BOR seeking reductions in value to $14,306.95 and $847,770, respectively. The BOR convened hearings, at• which Henry Taylor appeared on behalf of appellants to testify in support of the requested reductions. For both properties, Mr. Taylor relied heavily on his purchases of the properties in 2012, arguing that the respective sale prices provided the best evidence of their value. Mr. Taylor

also provided a copy of a decision from this board finding value for theBriarwood parcels based on the 2012 sale price for tax year 2014. See *Taylor* v. *Champaign Cty. Bd. of Revision* (Apr. 7, 2016), BTA No. 2015-758, unreported. Mr. Taylor also spoke extensively about the poor condition of the Julia Street property and about the sale of another property on the street. With respect to the Briarwood property, Mr. Taylor stated that he did not challenge an increase in value attributable to the addition of a pool (apparently $17,780 for tax year 2015), but maintained that it increased roughly an additional 30% from 2015 to 2016. Mr. Taylor argued tliat this increase was inconsistent with market conditions and disparate from the increase experienced by his neighbors. Mr. Taylor acknowledged that some increase in the taxable value related to increases in the CAUV rates and questioned the calculations providing the basis for these rates, though he provided no evidence that these rates were improper in substance or as applied to the subject property. The BOR issued decisions reducing the value of the Julia Street property to $25,450 and maintaining the value of the Briarwood parcels. From these decisions, appellants filed the present appeal. At the hearing before this board, Mr. Taylor again appeared on behalf of appellants to argue in support of the requested reductions, primarily reiterating contentions made to the BOR. Mr. Taylor added that since the BOR hearing, they had sold the Julia Street property for $15,000, providing a settlement statement and deed as evidence of the transaction.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn.* v. *Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' ofreal property is an actual, recent sale of the property in an arm's-length transaction." *Conalco* v. *Bd. of Revision,* 50 Ohio St.2d 129 (1977). In order to benefit from the rebuttable presumption that a sale price '"has met all the requirements that characterize true vaiue,' *** the proponent of a sale must satisfy a relatively light initial burden and need not 'definitive[ly] show[]*** that no evidence controvert[s] the*** arm's-length character of the sale."' *Lunn* v. *Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-0hio-8075, ,it 4, quoting *Cincinnati School Dist. Bd. of Edn.* v. *Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997); and *Cummins Property Servs., L.L.*C. v. *Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, i\41.

[5] In the present appeal, it is undisputed that the Julia Street property transferred from Henry and Lorraine Taylor to Paul Dwayne Caryl-Ropp on or about August 3, 2017 for $15,000. There has been no challenge to the reliability of this sale. 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 parcel number K48-25-l 1-03-38-040-000's value as of tax lien date.

[6] It is likewise undisputed that the Briarwood property was the subject of a 2012 sale that this board previously found was arm's-length and a reliable basis to reduce the value for tax year 2014. Appellants rely on this sale to establish the value of these parcels, despite the passage of an additional two years between the transaction and the tax lien date. Although there is no "bright line" test as to when a sale becomes too remote to be a reliable indication of value, we find that appellants failed to show that their January 2012 purchase was sufficiently recent to establish the value of the respective subject property as of January 1, 2016. See *Akron City School Dist. Bd. of Edn.* v. *Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588, i\26 (holding that as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property has not changed between the sale date and lien date").

[7] Appellants argue that the 2016 value following the triennial update represented an unfair increase that was disparate from those new values established for nearby properties. Generally, the argument of disparate treatment is one that has been repeatedly rejected. See, e.g., *WJJK Investments, Inc.* v. *Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 31 (1996). A different issue is presented here, however, because this board issued a decision in 2016 that redetermined the subject's value for 2014, resulting in new values for both 2014 and 2015. It is clear from the record that the auditor did not consider these redetermined values when she performed the triennial update for 2016.

[8] The court has discussed the role a redetermined value plays when an auditor has performed a countywide update. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision ("Inner City")*, 87 Ohio St.3d 305 (1999). Although the primary issue in *Inner City* was whether the BOR retained jurisdiction over the relevant tax year as a continuing complaint, the court has further clarified the effect of its holding. In *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, at if30, the court explained that "the only effect of the earlier complaint [is] that the update percentage must be applied to the value of the earlier year as redetermined." Thus, the proper valuation in the present case for 2016 involves the application of the update percentage to the parcel's 2015 value as redetermined.

[9] First, we consider the property values for 2015, to which we must apply the proper update percentage. The property record cards reflect values without the incorporation of this board's tax year 2014 decision, though the notes provide insight into the auditor's valuation process. These notes show that the auditor valued all three parcels consistent with our decision for 2014, but increased the value of parcel number K41-11-11-13-00-00 2-00 for 2015 to add the vah1e of a pool that-was installed. As noted above, the values listed on the property record card for th.is parcel reflect an'increase of $17,780 between 2014 and 2015, with the only explanation being the addition of the pool. If we add this same $17,780 to the redetermined value for 2014 of $744,510, it results in a value of $762,290. Mr. Taylor acknowledged that the value of pool was included when the value was redetermined for 2015 following our decision and that he did not challenge its propriety at that time. Indeed, it appears that when appellants filed the complaint for 2016, they sought to carry forward the auditor's redetermined values for 2015.

[10] Next, we tum to the property record cards to ascertain the appropriate update percentage for each property. In doing so, we round each value to the nearest $10. See R.C. 5715.26(A)(l). The value of parcel number K41-11-11-13-00-002-00 increased from $904,270 to $974,730, a difference of $70,460 or 7.79%. Applying this update percentage to the redetermined value of $762,290, results in a value of $821,670. The value of parcel number K41-11-11-19-00-032-02 increased 10.27% (from $1,850 to $2,040), resulting in a value of $1,710 (beginning with $1,550 as redetermined for 2014 and 2015). Finally, parcel number K41-11-11-19-00-032-00 increased 9.19% (from $99,940 to $109,120), resulting in a value of $91,640 (beginning with $83,930 as redetermined for 2014 and 2015). It is important to emphasize that these adjustments apply only to the market values of the subject parcels and do not reflect any change to the CAUV rates for the property. Though Mr. Taylor raised ·the issue of the determination of these rates, appellants have not challenged any particular aspect of the calculations or their application to the subject property.

[11] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

PARCEL NUMBER K41-11-11-13-00-002-00

TRUE VALUE: $821,670

TAXABLE VALUE: $287,580

PARCEL NUMBER K41-11-11-19-00-032-

02 TRUE VALUE: $1,710

TAXABLE VALUE: $600

PARCEL NUMBER K41-1 l-11-19-00-032-00

TRUE VALUE: $91,640

TAXABLE VALUE: $32,070

PARCEL NUMBER K48-25-11-03-38-040-

00 TRUE VALUE: $15,000

TAXABLE VALUE: $5,25

OHIO BOARD OF TAX APPEALS

DAVID T WALTERS & PATRICIA M WALTERS, (et. al.),	CASE NO(S). 2017-1926
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - DAVID T WALTERS & PATRICIA M WALTERS
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BAY VILLAGE, OK 44140

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, April 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant taxpayers challenge a decision issued by the board of revision ("BOR") denying their request for remission of a real property tax late payment penalty for the second half of tax year 2016. As the appellants, the taxpayers have the burden to show that their request was improperly denied by the BOR. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). Because the parties have elected not to present additional evidence at a hearing before this board, we perform a de novo review of the evidence in the record. See *Black v. Cuyahoga Cty. Bd. of Revision,* 16 Ohio St.3d 11 (1985).

[2] Appellant Patricia Walters applied for remission of the penalty alleging that the tax was not timely paid citing two reasons: because of serious injury, death, or hospitalization of the taxpayer, and that their failure to make timely payment was due to reasonable cause and not willful neglect. Ms. Walters asserted that the payment was made one day past the due date because she was with her father who had been hospitalized. The BOR denied her request, citing a prior late payment, indicating that the taxpayers did not timely pay the tax for the second half of 2014 and that late payment p,enalty was remitted. The taxpayers appealed, maintaining that the prior late payment was a result of the tax bill being sent to the previous owner because the deed was not properly recorded when they purchased their home. The taxpayers claim that they paid the tax immediately after they discovered the issue.

[3] Upon review, this board finds that the taxpayers have failed to show their situation qualifies for remission under R.C. 5715.39, which outlines the circumstances under which real property tax late payment penalties shall be remitted. Initially, we find that the taxpayers have failed to show that the circumstances enumerated in R.C. 5715.39(B)(3) apply, because it refers to death, serious injury, or hospitalization *of the taxpayer* , not simply a member of the taxpayer' s family. *Purdue v. Zaino* (Sept. 21, 2001), BTA No. 200 l-R-349, unreported, at 4. We further find that the BdR properly determined that the circumstances described by the taxpayer do not satisfy the requirement under R.C. 5715.39(C) that "the taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." A taxpayer's habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late filing occurred. See, e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, umeported; *Patel v. Testa* (Apr. 29, 2014), BTA No. 2014-261, umeported. Here, the taxpayers do not dispute that they did not timely pay the second half of 2014, regardless of the circumstances around that late payment. While we are sympathetic to the circumstances that led to multiple late payments, the taxpayers have failed to demonstrate that they satisfied the prerequisites for remission ofreal property tax penalties set forth in R.C. 5715.39(C).

[4] Accordingly, the decision of the BOR denying the taxpayers' request for remission of the late payment penalty for the second half of 2016 is hereby affirmed.

OHIO BOARD OF TAX APPEALS

PATRICIA K. GROOMS, (et. al.),

Appellant(s),

vs.

BUTLER COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1908

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PATRICIA K. GROOMS
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FAIRFIELD, OH 45014

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by: DAN
L. FERGUSON
ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
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Entered Monday, April 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant taxpayer challenges a decision issued by the board of revision ("BOR") denying her request for remission of a real property tax late payment penalty for the second half of tax year 2016. As the appellant, the taxpayer has the burden to show that her request was improperly denied by the BOR. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Because the parties have elected not to present additional evidence at a hearing before this board, we perform a de novo review of the evidence in the record. See *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985).

[2] The taxpayer requests remission of the penalty alleging that her failure to make timely payment was due to reasonable cause and not willful neglect. The BOR denied her request, citing a late payment within the prior three years. The taxpayer indicated that prior to her husband's sudden death in December 2016, the property tax payments were automatically withdrawn from his checking account, which closed after he passed away. Apparently, notice was sent to his email that the payment for the first half of 2016 did not go through because the account was closed. The taxpayer asserts that when she was notified, she paid the tax and changed the method of automatic payment, and, eventually, the late payment penalty was remitted. When the second half of 2016 came due, the taxpayer was again notified that the payment was unsuccessful because the account was closed. The taxpayer asserts that she was advised that although there were two accounts listed, her husband's account was used.

[3] Upon review, this board finds that the taxpayer has failed to show she qualifies for remission under R.C.

5715.39, which outlines the circumstances under which real property tax late payment penalties shall be remitted. The BOR properly determined that the circumstances described by the taxpayer do not satisfy the requirement under R.C. 5715.39(C) that "the taxpayer's faih1re to make timely payment of the tax is due to reasonable cause and not willful neglect." A taxpayer's habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late filing occurred. See, e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported; *Patel v. Testa* (Apr. 29, 2014), BTA No. 2014-261, unreported. Here, while we are sympathetic to the circumstances that led to multiple late payments, the taxpayer has failed to demonstrate that she satisfied the prerequisites for remission of real property tax penalties set forth in R.C. 5715.39(C).

[4] Accordingly, the decision of the BOR is hereby affirmed to deny the taxpayer's request for remission of the late payment penalty for the second half of 2016.

OHIO BOARD OF TAX APPEALS

FENG LI AND ALAN CHAN, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1904

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FENG LI AND ALAN CHAN
Represented by:
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Monday, April 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant taxpayers challenge a decision issued by the board of revision ("BOR") denying their request for remission of a real property tax late payment penalty for the second half of tax year 2016. As the appellants, the taxpayers have the burden to show that their request was improperly denied by the BOR. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Because the parties have elected not to present additional evidence at a hearing before this board, we perform a de novo review of the evidence in the record. See *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985). We note that the taxpayers have submitted written argument on appeal and attached several documents. The Supreme Court has held that this board must consider an appeal upon the transcript certified by the board of revision and evidence properly submitted and accepted during our own proceedings. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996). Accordingly, we give no weight to the documents attached to the taxpayers' written argument and will not consider them in our determination.

[2] The taxpayers requested remission of the penalty, alleging that they did not receive a correct tax bill and that their failure to make timely payment was due to reasonable cause and not willful neglect. The taxpayers explained that an overseas vacation was extended an extra week due to family issues, and they returned after the date the taxes were due. The taxpayers asserted that they mailed it the second day after they had returned home. The taxpayers' request was denied by the BOR due to a late payment for the first half of tax year 2014. On appeal, the taxpayers assert that they did not have an earlier late payment. The

taxpayers maintain that the payment was due before they moved into the home and there was a miscommunication between them and the builder, but they paid it as soon as they were told they needed to do so.

[3] Upon review, this board finds that the taxpayers have failed to show they qualify for remission under R.C. 5715.39, which outlines the circumstances under which real property tax late payment penalties shall be remitted. Although the taxpayers allege that they qualify because they did not receive a tax bill, see R.C. 5715.39(8)(2), it appears that the only reason for this is because they were on vacation when it was delivered. Notably, the taxpayers have not alleged that their lack of timely receipt of the tax bill was due to the failure of an officer to perform a statutory duty. To the contrary, they admitted to sending the payment immediately upon their return.

[4] Furthermore, we find that the BOR properly determined that the circumstances described by the taxpayers do not satisfy the requirement under R.C. 5715.39(C) that "the taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." A taxpayer's habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonablt cause, even when only one prior incidence of late filing occurred. See, e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported; *Patel v. Testa* (Apr. 29, 2014), BTA No. 2014-261,unreported. Here, the taxpayers insist that they have not had a prior late payment, and the late payment noted by the county officials was improperly attributed to them. The taxpayers assert that the taxes for the first half of 2014 were the responsibility of their home's builder because they did not live in the property until February 2015, and the taxes were due January 30, 2015. The record shows that the most recent transfer occurred on August 4, 2014, several months prior to that payment's due date. Though the property record card also shows that the dwelling was 90% complete on January 1, 2015, this does not alleviate the owners of the property from the responsibility to pay the tax, regardless of whether they contract with another party to make the payment on their behalf. Furthermore, even if we consider those documents attached to the taxpayer's written argument, which include evidence of payment for an insurance premium and what purports to be proof that gas service was started in February 2015, they fall short of demonstrating that the taxpayers were not responsible for the 2014 taxes, due January 2015.

[5] Accordingly, the decision of the BOR is hereby affirmed to deny the taxpayers' request for remission of the late payment penalty for the second half of 2016.

OHIO BOARD OF TAX APPEALS

DARRELL MAKUPSON, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1825

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DARRELL MAKUPSON
14006 BECKET
SHAKER HEIGHTS, OH 44120

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK ASSISTANT PROSECUTING ATTORNEY CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, April 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner, Darrell Makupson, appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 144-03-033, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject property is a vacant single-family home, and its total true value was initially assessed at $79,800. The property owner filed a decrease complaint with the BOR seeking a reduction in value to $10,000. At the BOR hearing, Mr. Makupson appeared in support of the requested reduction. Mr. Makupson testified that he purchased the property for $30,545, but indicated he believed that he overpaid after he underestimated the amount of work the property would require. Mr. Makupson described the property's poor condition, noting that it needed the roof and electric replaced. Following the hearing, he provided property information from Estately.com regarding his November 23, 2016 purchase and the property's listing at that time. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

[3] This board convened a hearing, at which Mr. Makupson again appeared to testify in support of the requested reduction, while the county appellees waived such an opportunity. At this board's hearing, Mr. Makupson further elaborated on the conditions of the sale, stating that he first discovered the property was available after seeing a realtor's sign in the yard. Mr. Makupson stated that it was initially listed on the multiple listings service ("MLS") for $15,000 and was not an auction sale. Mr. Makupson explained that he made an offer on the property with the understanding that several other offers had already been made,

and that he had overpaid because he did not fully appreciate the amount of work required to rehabilitate the property. Mr. Makupson indicated that his initial opinion of value of $10,000 was based on another property he purchased for $10,000 which was on the same street as the subject property and was in arguably better condition than the subject because the BOR had reduced the value of that property to $10,000.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' ofreal property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). In order to benefit from the rebuttable presumption that a sale price '"has met all the requirements that characterize true value,' *** the proponent of a sale must satisfy a relatively light initial burden and need not 'definitive[ly] show[] *** that no evidence controvert[s] the*** arm's-length character of the sale.'" *Lunn v. Lorain tty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075, if14, citing *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d at 327 (1997); *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, if41. Accordingly, 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. *Cincinnati Bd. of Edn.,* supra. Additionally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ifl 1.

[5] In the present appeal, it is undisputed that Mr. Makupson purchased the subject property on November 23, 2016 from an unrelated party after it was listed on the MLS and was subject to offers from multiple bidders. During the BOR hearing, BOR members stated that they were reviewing documents, including the deed and property's listing on the MLS, but these documents were not included in the transcript certified to this board. As such we are unable to consider them in our analysis and stress that when the BOR fails to transmit the record in its entirety, it defaults on its statutory obligation. See *Cannata v. Cuyahoga Cty. Bd. of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 201l-Ohio-5078. While they were reviewing those documents, however, they did not challenge the veracity of the statements made by Mr. Makupson regarding the facts of the sale. The county appellees likewise did not participate in the present appeal through either an appearance at the hearing or written argument to expressly challenge the utility of the sale. Additionally, the documents provided by Mr. Makupson corroborate his testimony.

[6] We recognize that Mr. Makupson argues that the purchase price is not a reliable indication of value because he overpaid for the property. This board has consistently held, however, that "[a] negotiated purchase price is not invalidated merely because a purchaser later believes he made a bad deal." *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported, at 11. In this case, we again reject Mr. Makupson's argument that we should ignore the purchase price based on a misperception about the true physical condition of the subject property. Furthermore, even if we were to consider Mr. Makupson's evidence regarding the subject's defects, discussion of those conditions alone are not sufficient to support either a new value or decrease from the sale price. See, e.g., *Throckmorton, v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996); *Gupta v. Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397 (1997). In *Throckmorton,* supra, the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value.

[7] Accordingly, 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.

[8] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

TRUE VALUE

$30,550

TAXABLE VALUE

$10,690

OHIO BOARD OF TAX APPEALS

CONNEAUT DEVELOPMENT COMPANY, (et. al.),	CASE NO(S). 2017-1824
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
ASHTABULA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CONNEAUT DEVELOPMENT COMPANY
Represented by:
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GRAYTON ROAD
CLEVELAND, OH 44135

For the Appellee(s) - ASHTABULA COUNTY BOARD OF REVISION
Represented by:
CORYC.FUNK SPECIAL
COUNSEL ASHTABULA
COUNTY
25 WEST JEFFERSON STREET
JEFFERSON, OH 44047

Entered Monday, April 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant, Conneaut Development Company ("Conneaut"), appeals a decision of the board of revision ("BOR") which dismissed the underlying tax year 2014 complaint, relating to the subject real property which consists of twenty-six parcels, for lack of standing. This is the second occasion this board has considered this issue. For context, in *Conneaut Dev. Co. v. Ashtabula Cty. Bd. of Revision ("Conneaut I")* (July 26, 2016), BTA No. 2015-1888, unreported, Conneaut appealed the BOR's previous dismissal of the underlying complaint, without a hearing, on the basis that the complainant lacked standing. At a hearing convened by this board, appellant's counsel appeared and offered testimony from a representative of the owner and submitted sale documentation in support of such testimony. Based upon the record in that case, this board ultimately found, "the BOR improperly determ ned that Conneaut lacked standing to file the underlying complaint" and the matter was remanded to the BOR for further proceedings. Id.

On remand, the BOR convened a hearing, appellant offered essentially the same evidence and testimony as was presented to this board, and the BOR issued a second decision dismissing the underlying complaint for lack of standing. It is this decision from which the present appeal emanates. Accordingly, we now proceed, once again, to consider the issue of appellant's standing to file the underlying tax year 2014 complaint upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties. For the reasons set forth below, we find Conneaut had standing to file

the underlying complaint and we remand this matter to the BOR with instruction to proceed on the merits of Conneaut's valuation request.

Before proceeding to the merits of this appeal, however, we first address appellant's contention that our decision in *Conneaut I* already resolved the issue of Conneaut' s standing and that the county is "collaterally estopped from arguing the issue and the matter is res judicata." Brief of Appellant in Opposition to Motion to Dismiss and Request for Decision on Merits. Initially, we acknowledge that Ohio does permit the use of collateral estoppel in tax proceedings. *Superior's Brand Meats, Inc. v. Lindley, Tax Commissioner,* 62 Ohio St.2d 133, 135 (1980). Further, we acknowledge, as indicated above, that there has been prior litigation regarding Conneaut's standing in *Conneaut I;* however, a close review of our decision in that case reveals that we made no ultimate finding as to Conneaut's standing. Rather, we were unable to determine a basis for the BOR's dismissal and found "the BOR improperly determined that Conneaut lacked standing" and remanded the matter to the BOR for further proceedings. Accordingly, while we understand appellant's position, as our decision in *Conneaut I* made no ultimate finding as to Conneaut's standing, collateral estoppel is not applicable herein and thus, it follows that such decision cannot constitute res judicata as to the instant appeal.

We now turn to the procedural history of this matter. A decrease complaint was filed with the BOR, on February 9, 2015, seeking a reduction in value of the subject property to an aggregate amount of $200,000, for tax year 2014. S.T., Exhibit ("Ex.") A. The complaint identified Conneaut as both the complainant and property owner. Further, Mr. Sean Berney, Esq., is identified on the complaint as the complainant's agent and Mr. Berney also signed the complaint in his capacity as attorney for the complainant. No counter complaint was filed.

As indicated above, on remand from this board's decision in *Conneaut I,* the BOR convened a hearing. Appellant's counsel offered the testimony of Gerald Sadlowski, a tax director for the corporate entity that owns Conneaut and submitted a copy of a partnership interest purchase agreement, deed, and conveyance fee statement. Mr. Sadlowski indicated the following: (i) Conneaut existed for the sole purpose of owning the subject property and had no other going concern value, (ii) General Aluminum Manufacturing ("General Aluminum"), who had no prior affiliation with Conneaut, acquired 100% of Conneaut' s partnership interest in January 2015, for $200,000, and (iii) subsequent to General Aluminum's acquisition of Conneaut, Conneaut continued to exist and retain legal title to the subject real property, until such time as its business affairs were wound up and the real propetty was transferred to General Aluminum, in August of 2016. S.T., Ex. E at 9-10, 12. Finally, Mr. Sadlowski also stated, General Aluminum owned other property in the county at the time the underlying complaint was filed. S.T., Ex. E at 21. A BOR member requested "minutes of the partnership that - - that would indicate who was hired to represent the partnership and transfer this property to General Aluminum"; however, Mr. Sadlowski did not have such information. S.T., Ex. Eat 20. In addition, a BOR member also questioned Mr. Berney as to whether he represented the former owners of Conneaut and Mr. Berney replied in the negative.

Thereafter, the BOR issued a decision dismissing the underlying complaint for lack of standing, attached a five-page explanatory memorandum to its decision, and the present appeal ensued. Notably, the BOR's five-page decision memorandum was incorporated into the county's written argument submitted on appeal to this board. It is clear that the county appellees dispute Mr. Berney's representation on the complaint that he filed the complaint on behalf of Conneaut. Instead, the county avers that General Aluminum was behind the filing of the complaint and that it lacked standing to do so.

At the outset, this board rejects the county's position that it is appropriate to look beyond the attorney's representation on the face of the complaint when determtning a complaint's jurisdictional sufficiency. Rather, as the court stated in *T. Ryan Legg Irrevocable Trust v. Testa,* 149 Ohio St.3d 376, 2016-Ohio-8418, **115,** "'[w]hen an attorney files an appeal, it is presumed he has the requisite authority to do so.' *State ex rel. Gibbs v. Zeller,* 2d Dist. Montgomery No. 9170, 1985 WL 7625, *1 (Jan. 24, 1985); *see also FIA Card Servs., NA. v. Salmon,* 180 Ohio App.3d 548, 2009-Ohio-80, * * * ,1 13 (3d Dist.) (" 'there

is a presumption that a regularly admitted attorney has authority to represent the client for whom he appears'") * * *." See also *Kohl's Illinois, Inc. v. Marion Cty. Bd. of Revision,* 140 Ohio St.3d 552, 2014-Ohio-4353, **123;** *River View Local Schools Bd. of Edn. v. Coshocton Cty. Bd. of Revision* (December 13, 2016), BTA Nos. 2016-731, et al., unreported. Accordingly, we also reject the county's theory that General Aluminum was actually behind the filing of the complaint. See *ARCP LO Hilliard OH, LLC v. Franklin Cty. Bd. of Revision ("ARCP")* (Interim Order Nov. 6, 2017), BTA No. 2016-2133, unreported. See generally *NASCAR Holdings, Inc. v. Testa,* Slip Opinion No. 2017-Ohio-9118.

The Supreme Court has set forth a two-step process for a board of revision to make a jurisdictional determination upon the filing of a complaint. "First, the board of revision must examine the complaint to determine whether it meets the jurisdictional requirements set forth by the statutes. Second, if the complaint meets the jurisdictional requirements, then the board of revision is empowered to proceed to consider the evidence and determine the true value of the property." *Elkem Metals Co. v. Washington Cty. Bd. of Revision,* 81 Ohio St.3d 683, 686 (1998). See also *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 137 Ohio St.3d 266, 2013-Ohio-4627; *Ginter v. Auglaize Cty. Bd. of Revision,* 143 Ohio St.3d 340; 2015-Ohio-2571.

Standing is determined at the commencement of the action. *Fed. Home Loan Mtge. Corp. v. Schwartzwald,* 134 Ohio St.3d 13, 2012-Ohio-5017; *Victoria Plaza, Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision,* 86 Ohio St.3d 181, 183 (1999). In relevant part, R.C. 5715.19(A) authorizes "[a]ny person owning taxable real property in the county * * * " to file complaints against the valuation of real property with boards of revision. For real property tax valuation purposes, an "owner" of real property has been determined to be the one who holds legal title at the time the complaint is filed. *Bloom v. Wides,* 164 Ohio St. 138, 141 (1955); *Victoria Plaza,* supra. In this instance, it is undisputed that Conneaut was the legal title holder of the subject property on the date the subject complaint was filed. Accordingly, we find Conneaut had standing and was properly identified as the complainant/property owner on the underlying complaint. R.C. 5715.19(A); R.C. 5715.13.

In so finding, we note with importance, the county cites to no authority, nor do we find any authority set forth in the BOR statutes, which allows for a board of revision to make a jurisdictional determination regarding the sufficiency of a complaint based upon a partnership purchase agreement and/or by questioning the representation made by an attorney on the face of a complaint. Moreover, the partnership statutes referenced by the county do not acknowledge any prohibitions against challenging real property valuations. Quite simply, here, it appears that General Aluminum purchased Conneaut through a recent arm's-length transaction and, upon the filing of the underlying complaint, Conneaut still retained legal title to the subject real property. Moreover, even if we considered General Aluminum to be the actual complainant, which we do not, the county does not dispute that General Aluminum owned other property in the county as of the date of the complaint's filing, which would satisfy the requirements set forth in R.C. 5715.19(A). Upon a close review, the record does not demonstrate any defect in the complaint which raises a question as to Conneaut's standing or that constitutes a violation of the enabling statutes for the BOR.

Turning to R.C. 5715.13, we reject the county's argument that the disjunctive provisions set forth therein must be read conjunctively pursuant to case law. In fact, despite the county's sweeping assertion that such statute was modified by case law, it does not cite to one case or to any other authority in support of its position, and we can find no support for such position. Motion to Dismiss, BOR decision memorandum. See also *In re Application of Columbus Southern Power Co.,* 129 Ohio St.3d 271 (it is not generally the proper role of this board to develop a party's arguments). Rather, as this board has previously commented, it could be argued that the language found in R.C. 5715.13 regarding a "'party affected' * * * lost effect when that statute was modified to add the language permitting decrease complaints by those persons authorized to file complaints under R.C. 5715.19. *Lewell, LLC v. Montgomery Cty. Bd. of Revision* (Jan. 16, 2004), BTA No. 2002-V-1613 ***,unreported. Therefore, the amendment to R.C. 5715.13 returns one to the list of persons the General Assembly deemed to be acceptable complainants, as, it could be argued those persons could be 'affected by' a decrease in value." *Bd. of Edn. for the Maumee City Schools v. Lucas County Bd. of Revision* (Nov. 17, 2009), BTA No. 2007-M-1726, unreported.

Based upon the foregoing, we must once again conclude, the BOR improperly determined that Conneaut lacked standing to file the underlying valuation complaint. To be clear, we find both the partnership purchase agreement between General Aluminum and Conneaut and their resulting ownership structure to be irrelevant in the determination of the jurisdictional sufficiency of the underlying complaint. See *Groveport Madison,* supra; *Ginter,* supra; *Kohl's Illinois, Inc.,* supra. See also *River View Local Schools Bd. of Edn,* supra; *T Ryan Legg,* supra; *ARCP,* supra. Further, to be exceedingly clear, we find Conneaut had standing to file the underlying complaint and we remand this matter to the BOR with instruction to determine value for the subject property based upon Conneaut's complaint and we note, it appears that the record contains evidence of a recent, arm's-length sale.

OHIO BOARD OF TAX APPEALS

ORANGE CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-127
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - ORANGE CITY SCHOOLS BOARD OF EDUCATION
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CUYAHOGA COUNTY
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30050 CHAGRIN BOULEY ARD LLC
Represented by:
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Entered Monday, April 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant Orange City School District Board of Education ("BOE") appeals a decision of the Cuyahoga County Board of Revision determining the value of parcel numbers 872-36-001, 872-36-002, and 872-36-003, for tax year 2015. We proceed to determine the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the fiscal officer, the record of the hearing before this board ("H.R."), and the parties' written arguments.

The subject parcels, listed under "parent" parcel 876-36-001, are improved with two three-story office buildings commonly known as "Corporate Circle." The fiscal officer valued the parcels at $11,529,900 for tax year 2015. The BOE filed a complaint against valuation requesting an increase in value to $16,000,000, purportedly to reflect the amount for which the property transferred in February 2015. While owner 30500

Chagrin Boulevard LLC did not file a countercomplaint, its counsel attended the BOR hearing. At that hearing, counsel for the BOE presented a limited warranty deed and affidavit indicating that on February 9, 2015, the subject property transferred to LSREF2 OREO 2 SUB, LLC which, at the same time, merged with and into 30050 Chagrin Boulevard, LLC, thereafter ceasing to exist. S.T., Ex. F. The BOE also presented a closing statement and purchase agreement as further evidence of the transfer, an appraisal of the property for financing purposes of $16,900,000 as of December 23, 2014, and documents illustrating the valuation history of the property. Id. After considering the evidence presented, the BOR found that no change in value was warranted, commenting on its oral hearing journal and worksheet: "The Board reviewed the complainant submission and find[s] that the true consideration cannot be ascertained by the documents provided. No consideration was shown on the deed, and the purchase agreement indicates consideration/interest for non realty items." S.T., Ex. E.

The BOE then appealed to this board. The BOE subpoenaed a member of the ownership entity, Joseph Greenberg, to testify at this board's hearing. Mr. Greenberg authenticated the documents evidencing the sale that the BOE had previously presented to the BOR, including the deed, affidavit, purchase agreement and amendments, and closing statement. H.R., Exs. 1-7. He explained that the property was not on the market for sale when he began to pursue its acquisition. He contacted the prior owner about purchasing the property based on the tenants in the building, and was told that the prior owner would accept a price of $16,000,000 for the property, without negotiation. H.R. at 30-31, 34. Mr. Greenberg was unable to testify about the reason(s) for the structure of the transfer, i.e., the requirement that the buyer and seller cooperate to set up a limited liability company (30050 Chagrin Boulevard LLC) to hold title to the subject property, H.R., Ex. 3 at 9; however, he stated that he believed it was driven by the fact that the seller acquired the property in a bulk transaction involving a bundle of debt and could not simply sell the property by way of transferring the title. H.R. at 28.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision,* 50 Ohio St.2d 129 0977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415; R.C. 5713.03. The parties in this matter dispute whether a sale has, in fact, occurred here. For its part, the BOE argues that the purchase of the membership interest in the ownership entity, i.e., 30050 Chagrin Boulevard LLC, which holds only a single asset, i.e., the subject property, is a sale of the property. The owner argues, on the other hand, that the only transfer was of personal property, i.e., the membership interest, and that such transfer is akin to a sale of stock, which has been found not to be a sale of real property. *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision,* 82 Ohio St.3d 193 (1998).

In *Salem,* the property owner, a corporation, argued that the purchase of all its stock constituted the sale of real property, its only asset. The court rejected the argument: "Stock value represents the *company's* value. The many variables associated with a going concern combine to make up a company's value. The sale price of all the shares of stock of a company, therefore, does not establish the value of that company's real property." (Emphasis sic.) Id. at 195. The court subsequently followed the same reasoning in holding that the purchase of a partnership interest "was the purchase of *personal* property." (Emphasis added.) *Gahanna-Jefferson Public Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 89 Ohio St.3d 450, 453 (2000).

However, as the BOE notes, in several instances, this board has found that the transfer of interest in an entity that holds only the subject real property is a sale for purposes of real property valuation. In *Parkland Assoc. LTD v. Cuyahoga Cty. Bd. of Revision* (June 25, 2015), BTA Nos. 2011-3893, 4060, unreported, this board distinguished the facts presented in the *Salem* and *Gahanna* cases, finding that, because "the function of the owner partnership is solely to own the subject property, with no other going concern value," the sale of the partnership interests of the owner was a sale of the real property for purposes of valuation. We followed the same reasoning in *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* (Mar. 6, 2015), BTA No. 2014-4328, unreported, in holding that the sale of all interest in a limited liability company

formed only to hold the subject property was a sale for purposes of R.C. 5715.19(A)(2). Our prior cases indicate a willingness to find a sale of all the interest in an entity holding title to real property to be a sale of the real property itself where the entity has no other assets or going concern value.

In this matter, the purchase and sale agreement clearly indicates that the transfer of membership interest was done solely to transfer title to the subject property. Unlike the facts presented in *Salem,* supra, it is clear that there is no other going concern value associated with 30500 Chagrin Boulevard LLC, as it was specifically formed to hold the subject real property in accordance with the requirements of the purchase agreement. H.R., Ex. 3 at 9-10. We therefore find the February 2015 transfer to be a sale of the subject real property for purposes of R.C. 5713.03.

The owner further disputes that, if a sale did occur, it was not at arm's length. Specifically, the property was not listed on the open market for sale and the purchase price was not negotiated. H.R. at 30, 34. However, the Supreme Court has held that being offered on the open market is not dispositive of whether a sale is arm's-length. *N Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 129 Ohio St.3d 172, 201 l-Ohio-3092, ,r29-30. In addition, this board has repeatedly held that a sale need not be rejected merely because it is offered at a "take it or leave it" selling price. See, e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Mar. 23, 2010), BTA No. 2008-K-202, unreported. There is no indication in the record that either party to this sale was under pressure to sell/buy or that they were not acting in their own self-interests. We therefore find the sale to be arm's-length in nature.

We further note that there has been no challenge to the recency of the transaction to tax lien date. See *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, ,r35.

The owner also argues that more than real property was purchased in the February 2015 transaction, including the existing leases and the goodwill associated with the name of the building. While we acknowledge a leased fee sale may not be the best evidence of value, there is no indication in this matter that leases are not at market rates. *Terraza 8,* supra, at ,r34. Indeed, the appraisal report submitted by the BOE at the BOR hearing indicates that the lease rates were "market based and supported." S.T., Ex.Fat Appraisal at 7. Thus, although the subject sold subject to the existing leases, there is no evidence in the record before us that those leases were at or below market rates. The owner has therefore failed to meet its burden to show that the encumbrances, i.e., the existing leases, constitute a reason to disregard the sale price. *Terraza 8,* supra, at ,r32, citing *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325 (1997); and *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 118 Ohio St.3d 45, 2008-Ohio-1588.

To the extent the owner argues that the $16,000,000 sale price should be allocated, we note that the owner, as the proponent of an allocation of value to real property below the total sale price, bears the burden of proving the propriety of such allocation. *RNG Properties , Ltd. v. Summit Cty. Bd. of Revision,* 140 Ohio St.3d 455, 2014-Ohio-4036, , citing *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision,* 125 Ohio St.3d 485, 2010-Ohio-1921. However, no evidence has been introduced to support any allocation of the $16,000,000 purchase price to anything other than real property. In the absence of such showing, "either the full sale price constitutes the property value or, in a proper case, 'complexities of the sale' may justify looking to appraisal evidence rather than the sale price to value the property." *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 151 Ohio St.3d 109, 2017-Ohio-7650, ,r11. There appears to be nothing "complex" about this sale that would cause us to disregard the sale price entirely. Compare *Conalco,* supra. Moreover, although the owner focuses on the goodwill associated with the name of the property, i.e. Corporate Circle, it has failed to demonstrate that such goodwill is "a separable asset that is distinct from the realty." *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 128 Ohio St.3d 565,201 l-Ohio-2258, ,r33.

Indeed, the record contains additional evidence supporting an allocation of the full purchase price to the real property. The BOE submitted to the BOR an appraisal of the property performed for financing purposes, indicating that the value of the property as of December 23, 2014, was $16,900,000. S.T., Ex. F at Appraisal. The owner objects to our consideration of such appraisal as hearsay. While we agree with the owner that consideration of the appraisal in valuing the property would not be appropriate in the absence of the appraiser's testimony, see *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported, here it merely supports the sale price. See *Emerson v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 148, 2017-Ohio-865. We further reject the owner's contention that the appraisal is not properly before us, as the document was submitted by the BOE to the BOR prior to its hearing and was included in the transcript certified to this board.

Based upon the foregoing, we find that the subject real property sold in a recent, arm's-length transaction in February 2015 for $16,000,000, and that such sale is the best evidence of the subject property's value as of tax lien date. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2015 were as follows:

TRUE VALUE

$16,000,000

TAXABLE VALUE

$5,600,000

OHIO BOARD OF TAX APPEALS

LAKE LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2313
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

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Entered Monday, April 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 2300436, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and the record of hearing before this board ("H.R."). For the reasons set forth below, we find the property owner failed to meet its burden to provide competent and probative evidence in support of the reduction requested, the BOR erred in relying solely upon an unattested "county appraisal" report to reduce value, and, as a result, the subject's initially assessed value must be reinstated.

The subject's total true value was initially assessed at $831,600. S.T., Exhibit ("Ex.") C. The property owner filed a decrease complaint with the BOR asserting the subject's value was "over priced" and upon

such basis, sought a reduction in value to $612,000. S.T., Ex. A. The Lake Local School District Board of Education ("BOE") filed a counter complaint requesting to maintain the subject's initially assessed value. S.T., Ex. B.

At the BOR's hearing, counsel for the BOE appeared in support of the counter complaint. The property owner elected not to attend the hearing and did not submit any evidence in support of the reduction requested. BOE's counsel argued, in the absence of any evidence supporting the reduction sought by the owner, the initially assessed valuation should be retained. In addition, BOE's counsel also referenced a report from the county recommending a reduction in value; however, in the absence of any testimony from its author, BOE's counsel argued that such information could not provide a reliable basis for a reduction. S.T., Ex. E. Notably, beyond counsel's reference, there was no discussion or testimony provided in relation to any report at the hearing. Thereafter, based solely upon n unattested county report, the BOR issued a decision decreasing the subject's initially assessed valuation to $770,000. BOR decision audio recording; S.T., Ex. G. Dissatisfied with the result, the BOE timely filed an appeal with this board.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. Typically an appellant employs tangible evidence and corroborating testimony to satisfy such burden of proof; however, as in the case before us, an appellant may elect to meet its burden by showing that the BOR erred when it reduced a property's value from the amount first determined by the auditor. *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* l 06 Ohio St.3d 157, 2005-Ohio-4385. See also *Snavely v. Erie Cty. Bd. of Revision,* 78 Ohio St.3d 500, 503 (1977) ("How a party seeking a change in valuation attempts to meet its burden of proof* * * is a matter for that party's judgment."). Yet, a party's election not to present its own evidence of value is not without risk, as another party's evidence may be found to be competent, probative, and sufficiently persuasive. See, e.g., *Westhaven, Inc. v. WoodCty. Bd. of Revision,* 81 Ohio St.3a'67 (1998).

On appeal, at the hearing before this board, the BOE contends that the property owner failed to meet its initial burden before the BOR as it presented no evidence, the county's unattested report constitutes an insufficient basis upon which to decrease value, and the BOR erred when it relied solely upon such report to reduce the subject's value. As such, the BOE requests this board to reinstate the auditor's initially assessed value. Neither the property owner nor county appellees elected to participate on appeal.

At the outset, we acknowledge as a general rule, the initial burden is on the taxpayer/complainant to provide competent and probative evidence in support of the reduction sought before the BOR. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision,* 170 Ohio St. 340, 342 (1960); *Dayton-Montgomery Cty. Port. Auth. v. Montgomery Cty. Bd. of Revision,* 113 Ohio St.3d 281, 2007-Ohio-1948, if15. In this instance, it is undisputed that the property owner did not submit any tangible evidence of value and did not appear at the BOR's hearing. As such, absent any evidence in support of the valuation sought on the complaint, there can be no doubt that the owner failed to meet its initial burden before the BOR.

Having found no probative support for the reduction sought *by* the owner, we now consider the propriety of the BOR's decrease in value. In so doing, we are mindful that "decisions of boards of revision should not be accorded a presumption of validity." *Colonial Village Ltd. v. Washington Cty. Bd. of Revision,* 114 Ohio St.3d 493, 2007-Ohio-4641, if23. "To be sure, if a board of revision makes a valuation change that is completely unsupported in the record, the BTA may not affirm or adopt it. *See Columbus City School Dist. Bd. ofEdn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564,567 *** (2001) (the BTA errs by affirming a board of revision's reduced or increased valuation if 'there is no evidence or other information in the statutory transcript to explain the action taken by the BOR.')." (Parallel citation omitted.) *Worthington City School Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 140 Ohio St.3d 248, 2014-Ohio-3620, if38. See also *Copley-Fairlawn City School Dist. Bd. of End. v. Summit Cty. Bd. of Revision,* 147 Ohio St.3d 503,

2016-Ohio-1485, 30 ("A legal error in the BOR's determination prevents affirmance of the BOR's determination."). Ultimately, this board recognizes its duty to independently weigh the evidence presented and not merely "rubber stamp" a board of revision's finding from which the appeal is taken. *Consolidated Freightways, Inc. v. Summit Cty. Bd of Revision,* 21 Ohio St.3d 17 (1986). See also *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-0hio-5078.

Upon review, it is clear from the BOR's decision audio recording that the BOR reduced the subject's value based solely upon a one-page, "county appraisal" report. Mindful of the court's holding in *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd of Revision,* 147 Ohio St.3d 409, 2016-Ohio-7381, 15, which found this board "erred in failing to evaluate the probative character of the deputy auditor's report before accepting as a basis for the BOR's reductions[,]" we now consider the report. As discussed more fully below, we find the report to be an insufficient basis upon which to reduce value as the report lacks an effective date for the recommended value and the record contains no testimony from the report's author relating to the author's professional credentials, the contents of the report, and what, if any, valuation methodology was employed to determine value.

We first turn to the report's lack of an effective date for the recommended value contained therein. Upon consideration, we find such deficiency to be significant as the Supreme Court of Ohio has repeatedly cited to the importance of an expert's opinion of valuation being "as of' the tax lien date at issue when determining the value of real property for purposes of ad v::ilorem taxation. *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd of Revision,* 75 Ohio St.3d 552 (1996); *Freshwater v. Belmont Cty. Bd of Revision,* 80 Ohio St.3d 26, 30 (1997) ("The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time."). In the absence of an effective date of the value recommended, we question whether the facts and circumstances relied upon by the report's author were present and considered as of the tax lien date at issue.

Turning to the lack of testimony from the report's author, we also find this deficiency to be significant. Initially, it is important to note that the report merely states: "Report prepared by Matt Myers" and provides no indication as to whether Mr. Myers is a licensed appraiser trained to opine real property valuations. Moreover, we can find no indication in the record that Mr. Myers is a licensed real estate appraiser. As such, this board is left with several unanswered questions relating to Mr. Myers education, experience, and professional credentials. Such information is of importance as the appraisal of real property is not an exact science, but instead, it is but an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by an expert appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported. Moreover, based upon the limited information in the report, we question what, if any, valuation methodology Mr. Myers employed to determine his recommended value. Further, we are unable to discern th basis upon which he made the adjustments referenced in the report. This board relies on the fundamental proposition that "[a]n expert's opinion of value in a tax valuation case is oflittle help to the trier of fact if the expert does not explain the basis for the opinion." *Freshwater,* supra, at 30. Here, "[b]y not developing a sufficient foundation to establish an appropriate expertise in appraisal methods and the derivation of true value for a particular piece of real property, this board does not find [such] analyses particularly probative and does not accord them much weight." *Copp v. Franklin Cty. Bd. of Revision* (Sept. 8, 2009), BTA No. 2007-Z-692, unreported, at 9. See generally The Appraisal of Real Estate (14th Ed.2013); *Witt Co. v. Hamilton Cty. Bd. of Revision,* 61 Ohio St.3d 155 (1991); *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision,* 44 Ohio St.2d 13 (1975).

Accordingly, given the deficiencies noted above, we find the BOR erred in its straightforward reliance on the report's recommended opinion of value, and, as such, we are unable to conclude that the BOR's decrease in the subject property's value was premised upon competent and probative evidence. See *Copley-Fairlawn,* supra, at 30. See also *Cannata v. Cuyahoga Cty. Bd. of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094.

Having found no support for the BOR's reduction in value, e now turn to the record to determine whether

this board may independently determine value. While we acknowledge that testimony from the report's author or an expert familiar with such report, in conjunction with the information contained in the report, may have provided a sufficient basis for this board to determine value, see generally *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 130 Ohio St.3d 230, 201 l-Ohio-3362, no such testimony is contained in the record. See also *AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Revision,* 118 Ohio St.3d 343, 2008-Ohio-2565; Cannata, supra, at ifl 9 (describing the lack of appraiser testimony as "the absence of potentially material portions of the record."). Upon a careful review, we find insufficient probative evidence upon which we may rely to independently determine value. In the absence of sufficient competent and probative evidence to support a reduction value, we simply cannot engage in conjecture in deriving our own value. See *Howard v. Cuyahoga Cty. Bd. of Revision,* 37 Ohio St.3d 195, 197 (1988) ("We now require [the BTA] to state what evidence it considered relevant in reaching its value determinations."). See also *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059, at if15 ("Mere speculation is not evidence."). Based upon the foregoing, we find it appropriate in this instance to reinstate the auditor's initially assessed value for the tax lien date at issue. *Vandalia-Butler,* supra, at if21, 24; *Olentangy Local Schools,* supra, at if20; *Sapina,* supra, at if35; *Shinkle,* supra, at if28. See also *Cannata,* supra.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 2300436

TRUE VALUE

$831,600

TAXABLE VALUE

$291,060

OHIO BOARD OF TAX APPEALS

SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-390
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

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Entered Monday, April 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The board of education ("BOE") appeals decisions of the board of revision ("BOR") which determined the value of the subject real property, parcel numbers 240-004909-00 and 240-005190-00, for tax years 2014 and 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, written argument submitted by the parties, and any motions and associated responses.

The subject property, a freestanding retail property, was initially collectively assessed at $5,972,000 for tax year 2014. The property owner at the time, Eyes North Columbus, LLC ("Eyes North") filed a complaint with the BOR, which requested that the subject property• be revalued at $1,500,000; the BOE filed a counter-complaint, which objected to the request. While the matter was pending for hearing, the subject

property transferred from Eyes North to WSFG WG Columbus OH, LLC ("WSFG") for $7,713,700 in July 2015.

The BOR held a hearing on the matter, at which time Eyes North and the BOE appeared through counsel to submit argument and evidence in support of their respective positions. As the hearing commenced, Eyes North conceded that the subject property had transferred in excess of $7,000,000 in July 2015 and that no one was available to testify on its behalf about the sale; however, it asserted that such sale was not the best indication of the subject property's value. In its preseniation, Eyes North submitted the report and testimony of appraiser Curtis Hannah, who opined the value of the subject property to be $1,400,000 as of January 1, 2014. He testified about the data and methodologies underpinning his analysis and opinion of value. The BOE objected when Hannah began discussing Eyes North's motives for purchasing the subject property as hearsay. Eyes North asserted that various rules allowed Hannah to relay hearsay information. The BOR noted the objection, and response, and allowed him to continue to testify about Eyes North's motives for purchasing the subject property. The BOE cross-examined Hannah about the underlying data and methodologies used to derive his conclusion of value.

In its presentation, the BOE submitted the conveyance fee statement and limited warranty deed that memorialized the transfer in July 2015 and objected to any consideration of Hannah's report and testimony. Based upon its presentation, the BOE amended its opinion of value and requested that the subject property's value be increased to $7,713,700. As the hearing ended, a BOR member asked why a representative from Eyes North could not attend the hearing and it was represented that there was no specific reason but that he lived out of state.

Subsequent to the hearing, the BOE filed a motion to strike'I--Iannah's report and testimony, to which Eyes North responded. At the BOR decision hearing, the BOR members noted that the BOE requested that the subject property be valued consistent with the transfer of July 2015 but that they lacked testimony from someone knowledgeable about the sale and thought that the subject sale may be more reflective of the subject property's value for tax year 2015. They also acknowledged that the BOE intended to file a complaint against the subject property's value, based upon the subject sale, for tax year 2015. Instead, the BOR voted to accept Hannah's report and testimony as the best indication of the subject property's value and later issued written decisions that collectively valued the subject property at $1,400,000 for tax years 2014 *and* 2015. This appeal ensued.

Both parties waived the opportunity to supplement the record with additional argument and/or evidence. Instead, the parties opted to submit written argument. By way of its written submissions, the BOE asserted that the BOR erred when it issued a decision to reduce the subject property's value for tax year 2015 before the deadline for filing complaints against the value of real property for tax year 2015, i.e., March 31, 2016, when the BOE did, in fact, file such complaint. In that matter, the BOE asserted, the BOR voted *to accept* the subject sale as the best indication of the subject property's value for tax year 2015, which is currently pending before this board as BTA No. 2016-2449. The BOE also argued that because Eyes North had not challenged the recency or arm's-length nature of the subject sale, it could not be disregarded because the subject property may have been subject to a lease at the time of such sale. In support, the BOE cited a number of cases from this board and the Supreme Court. By way of its written submissions, Eyes North asserted that there were a number of cases that supported Hannah's ability to testify about the circumstances of the subject sale although he had no firsthand knowledge. It also argued that R.C. 5713.03 precludes the use of the subject sale because it reflected the leased-fee value, not the fee simple value, and that valuing the subject property consistent with the subject sale would violate the Ohio Constitution. Eyes North also argued that the BOE failed to satisfy its burden to submit affirmative evidence of the subject property's value.

Before we proceed to the merits of this matter, we must first dispose of three preliminary issues. First, we agree with the BOE that the BOR exceed its jurisdiction when it issued decisions on the subject property's value for tax year 2015. The BOR issued its decision on February 9, 2016; the deadline to file complaints

against real property value, for tax year 2015, was March 31, 2016 and the BOE did, in fact, file such complaint before such deadline. This board has repeatedly admonished the Franklin County BOR not to exercise jurisdiction over a year for which a complaint may be filed, since such a filing would render the earlier decision for the "open tax year" null and void. See, e.g., *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 10, 2016), BTA No. 2015-449, unreported; *Big Walnut Apartments, LLC v. Franklin Cty. Bd. of Revision* (Nov. 6, 2012), BTA No. 2012-K-767, unreported; *GnA Properties, LLC v. Franklin Cty. Bd. of Revision* (May 29, 2012), BTA No. 2012-K-688, unreported. Accordingly, we remand the tax year 2015 decisions, dated February 9, 2016, to the BOR with instructions to vacate.

Second, Eyes North filed a motion to strike the BOE's reply brief, with supporting affidavit, and alleged that the BOE's brief was not filed according to the briefing schedule provided by this board; the BOE filed a response. The motion to strike is denied because Eyes North was provided an opportunity to file a reply brief and any confusion about the briefing schedule was the result of a malfunction of this board's case management system. We also give no weight to the affidavit provided by Eyes North because it is hearsay but also because the affidavit misidentified a member of the board's staff, i.e., there are two members of the staff with the same first name but different duties.

Third, despite waiving the opportunity to supplement the record with new information at this board's hearing, Eyes North nevertheless attached documents to its reply brief. We take this time to remind parties that this board cannot consider evidence submitted outside the hearing context and, as such, the documents will be stricken. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* 76 Ohio St.3d 13 (1996); *Bd. of Edn. of the South Euclid-Lyndhurst City School Dist. v. Cuyahoga Cty. Bd. of Revision* (Oct. 28, 2008), BTA No. 2007-V-99, unreported. Compare *Emerson Network Power Energy Sys., N Am., Inc. v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 369, 2016-Ohio-8392. See also *Krehnbrink v. Testa,* 148 Ohio St.3d 129, 2016-Ohio-3391, at ,r39 (Kennedy, J., concurring in judgment only) ("'Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation[]' [to] 'prevent unfair surprise and the secreting of evidence by ensuring the free flow of information.' *Hickman v. Taylor,* 329 U.S. 495,507, *** (1947).").

It has long been held by the Supreme Court that "the best evidence of 'true value in money' ofreal property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and *typically* the only rebuttal lies in challeiiging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at ,r13. The Supreme Court recently held that a party may rebut a sale price of real property encumbered by a lease at the time of the sale with information about market lease rates. See, *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2017-Ohio-4415. Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997).

We begin our analysis with the subject sale. Neither party disputes the arm's-length character, recency or voluntariness of the sale. However, Eyes North argued that subject sale cannot be used to value the subject property because it was a sale of the leased-fee interest, not the fee-simple interest, due to legislative changes to R.C. 5713.03. We disagree.

Recent revisions to R.C. 5713.03, which requires real property to be valued in the "fee simple un encumber ed" in terest, do not require us to reject the sub)ect sale , in toto, because the subject property may have had a lease in place at the time. Instead, "[t]he statutory amendment thus allows taxing authorities to consider non-sale price evidence-particularly evidence of encumbrances and their effect on sale price-in determining the true value of property that has been the subject of a recent arm's-length sale." *Terraza 8,* supra at ,r27. Here we cannot conclude that the lease had an effect on the sale price

because no one with firsthand knowledge of the subject sale, specifically the motivations of the parties and negotiations, testified before the BOR and because the underlying lease is not in the record for our review.

We note that Hannah testified about information relayed to him by someone with knowledge of the subject sale and/or underlying lease. However, he did not have firsthand knowledge of the facts and circumstances surrounding the subject sale and, therefore, his testimony on those issues was unreliable hearsay. As an administrative entity, the Ohio Rules of Evidence do not strictly apply to our proceedings, yet they may serve to guide our hearings and determinations. See, e.g., *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 74 Ohio St.3d 415 (1996j; *Dublin Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 80 Ohio St.3d 450 (1997). Pursuant to the Ohio Rules of Evidence, "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted," is inadmissible hearsay, unless it meets one of the exceptions. Evid.R. 801, 802. Typically, when an appraiser testifies regarding the circumstances of a sale or lease of other properties as part of the investigation for her/his report, this testimony is offered as support for the appraiser's analysis and ultimate conclusion of value. In this case, however, Hannah's statements were offered for the truth of the matter asserted, i.e., that Eyes North purchased the subject property for its income generating ability. Although Eyes North cites to various provisions of the Rules of Evidence and to *Columbus City Schools,* supra, to support its assertion that Hannah's statements were not hearsay, we do not agree. The facts and circumstances of the subject sale do not require expert knowledge or experience, see Evid.R. 702-704, and the inability to ask detailed questions raises issues of credibility and trustworthiness, see Evid.R. 803(6). Further, we note that there was no good cause shown for Eyes North's failure to provide testimony from someone with knowledge of the subject sale and/or underlying lease before the BOR, which also inhibited the BOR and BOE's ability to fully explore the facts and circumstances of the subject sale. Moreover, if we were to accept Hannah's conclusions about the subject sale and/or underlying lease, without having the supporting evidence available for our review, we would effectively be delegating this board's role as the fact finder.

We also find *Columbus City Schools,* supra, to be inapposite. In that case, the court held that an appraisal report could be used rebut the presumptions accorded to a sale of real property and, in that instance, the court affirmed our decision to rely upon an appraisal report that demonstrated changing market conditions, i.e., that declining market conditions rendered a sale too remote from the tax lien date.

Although Eyes North cites to the Appraisal of Real Estate to argue that fee-simple ownership cannot be encumbered by another estate, e.g., lease-fee estate, this board and the Supreme Court have already addressed and rejected such argument. We have held that the right to lease real property to another, and give up the right of occupancy, is just one of the "bundle of rights" of fee-simple ownership. E.g., *ARCP RL Portfolio VIIL LLC v. Stark Cty. Bd. of Revision* (May 18, 2016), BTA No. 2015-1206, unreported at 3, settled on appeal, S.Ct. No. 2016-0901. Indeed, the court has recognized "[t]he distinction between 'fee simple' and 'leased fee' is one drawn in the context of appraisal practice. See Appraisal Institute, The Appraisal of Real Estate (13th Ed. 2008) 114. The appraisal industry uses the term 'fee simple' to refer to unencumbered property -- or to property appraised as if it were unencumbered. Id. This distinction is not one recognized by the law, however. 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. Black's Law Dictionary (8th Ed.2004) 648-649." *Meijer Stores L.P. v. Franklin County Bd. of Revision,* 122 Ohio St.3d 447, 2009-Ohio-3479, at ,23, fn.4. Most recently, the Supreme Court addressed this very issue, rejecting the argument that the sale of property subject to a lease can *never* be the best evidence of the property's value. *Terraza 8,* supra.

Eyes North claimed that our acceptance of the subject sale would violate the Ohio Constitution. While the Ohio Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that we have no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach,* 35 Ohio St.3d 229 (1988); *MCI Telecommunications Corp. v. Limbach,* 68 Ohio St.3d 195, 198 (1994). Therefore, we make no finding on Eyes North's constitutional claim.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that Eyes North failed to rebut the presumptions accorded to the $7,713,700 transfer in July 2015 and that the BOR erred when it rejected such 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.

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2014:

TRUE VALUE

$7,713,700

TAXABLE VALUE

$2,699,800

As noted above, as to tax year 2015, this matter is remanded to the BOR to vacate its decisions, dated February 9, 2016.

It is the order of the Board of Tax Appeals that the property be assessed in conformity with this decision and order.

OHIO BOARD OF TAX APPEALS

ERIC YAHNEY , (el. al.),

Appellant(s),

vs.

SUMMIT COUNTY BOARD OF REVISION, (et. al.),

Appe llee(s) .

CASE NO(S). 2018-155

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEA RANCES :

For the Appellant(s) - ERIC YAHNEY
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For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
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53 UNIVERSITY AVE., 7TH FLOOR
AKRON, OH 44308

Entered Wednesday, April 25, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On March 5, 2018, the appellant filed an application for remission of real property tax late-payment penalties with this board. Appellant did not include a decision rendered by the Summit County Board of Revision on any such application for remission. See R.C. 5715.39(C). The county appellees attached to their motion a certification that there is no record of a decision issued on an application from appellant for the penalty sought to be remitted.

In the absence of any decision, this board lacks authority to consider this matter. 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. 5717.0 l requires that an appeal " may be taken to the BTA within thirty days *after notice of the decision* of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) See also *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a county board of revision decision and thus this matter is premature

Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GEORGE & DENISE ZEMBAR, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-140 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s)
- GEORGE & DENCSE ZEMBAR
  206 OWOSSO AVE.
  FAIRLAWN, OH 44333

For the Appellee(s)
- SUMMIT COUNTY BOARD OF REVISION
  Represented by:
  MARRETT HANNA
  ASSISTANT PROSECUTING
  ATTORNEY SUMMIT COUNTY
  53 UNIVERSITY AVE., 7TH FLOOR
  AKRON, OH 44308

Entered Wednesday, April 25, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the county appellees' motion to dismiss the appeal as premature, indicatin that the Summit County Board of Revision ("'BOR") has not issued a decision on the value of the subject property, i.e., parcel numbers 02-12978, 02-12979, and 02-12980, for tax year 2017. Upon review of the filings with this board, the motion is well taken.

Appellants filed with this board a copy of a complaint against the valuation of real property, which we docketed as a notice of appeal. Under R.C. 5715.19(A), a complaint may be filed with a county board of revision by March 31 of the ensuing tax year. It appears from the county's motion that appellant's mistakenly filed their complaint with this board rather than the BOR.

Appellants' appeal to this board is therefore premature. 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 board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) Until such a decision is issued, this board is without authority to consider the value of the subject property. See also *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990).

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellants have not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MAHA INVESTMENT, (et. al.),

Appellant(s

), vs.

CUYAHOGA COUNTY BOARD OF REVISION,

(et. al.),

Appellee(s

).

CASE NO(S). 2017-2219

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- MAHA INVESTMENT
  Represented by:
  NOUREDDINE
  CHEHADE MANAGING
  MEMBER 5804
  SKYLINE DRIVE
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For the Appellee(s)

- CUYAHOGA COUNTY BOARD OF REVISION
  Represented by:
  MARK R. GREENFIELD
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  1200 ONTARIO STREET, 8TH FLOOR
  CLEVELAND, OH 44113

  CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
  Represented by:
  DAYID H.
  SEED
  BRINDZA MCINTYRE & SEED, LLP
  1111 SUPERIOR AVENUE, SUITE
  1025
  CLEVELAND, OH 44114

Entered Wednesday, April 25, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter

is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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. See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* , 87 Ohio St.3d 363, 369 (2000) ("'Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions , and even they can review decisions only where the appeals have been filed in a timely [and correct] manner .'}

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DB CHASE LLC FKA JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, SUCCESSOR BY MERGER TO BANK ONE, ET AL., (et. al.),

Appellant(s),

vs.

COSHOCTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-916

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DB CHASE LLC FKA JPMORGAN CHASE BANK, NATIONAL ASSOCIATION, SUCCESSOR BY MERGER TO BANK ONE, ET AL.
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
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CLEVELAND, OH 44113

For the Appellee(s) - COSHOCTON COUNTY BOARD OF REVISION
Represented by:
JASON W. GIVEN
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COSHOCTON COUNTY
318 CHESTNUT ST.
COSHOCTON, OH 43812-1116

Entered Monday, April 30, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcels 020-00000131-00, 020-00000132-00, and 020-00000133-00, for tax year 2016. We proceed to consider this matter based upon the notice of appeal, the statutory transcript and any written argument submitted by the parties.

The subject property, a bank, was initially, collectively assessed at $291,640. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $26,100. At the BOR hearing, counsel for the property owner appeared to submit argument and evidence in support of the complaint. In doing so, he submitted a packet of documents, which included sale documents that memorialized the $26,072 transfer of the subject property from JP Morgan Chase Bank, National Association ("JP Morgan Chase") to the property owner in December 2016. The BOR members asked a number of questions and counsel explained the circumstances of how JP Morgan Chase obtained ownership

to the subject property, as well as the circumstances of the subject sale. In a very detailed decision issued subsequent to both hearings, the BOR noted the various reasons for denying the property owner's requested value and retained the subject property's initially assessed value. This appeal ensued.

Although this matter was initially scheduled or merit hearing, the property owner waived the opportunity to submit additional evidence into the record. Instead, as part of its waiver of hearing, the property owner disputed the BOR's assertion that the parties to the subject sale may have been related. The county appellees did not appear at the scheduled hearing or submit written argument.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' ofreal property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, such sale is deemed to be the value of the property and the affirmative burden rests with the opponent of using a reported sale price to demonstrate why it does not reflect the property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415.

We begin our analysis with the subject sale. None of the parties dispute the basic details of such sale. However, the BOR decision indicates that the BOR questioned whether the subject sale was conducted at arm's-length because "the property was not listed on the open market, had a limited pool of buyers, was included in a large portfolio of properties amounting to $60 million plus price and was 74 properties in 25 states, and the sale price was allocated between multiple properties." We disagree with the BOR's decision for two primary reasons.

First, in *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Mar. 23, 2010), BTA No. 2008-K-202, unreported, this board observed that "merely because a property is not listed on the open market*** does not, per se, mandate the rejection of a sale." Indeed, in *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Ed. of Revision,* 129 Ohio St.3d 172, 201 I-Ohio-3092, **129,** the Ohio Supreme Court held "the case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers."

Second, we are mindful that the Supreme Court has recognized "that the bulk sale differs from the situation in which a single parcel is the subject of a sale because the. issue of proper allocation stands between the stated sale price and its character as reflecting the value of any one particular parcel. See generally *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Ed. of Revision,* 115 Ohio St.3d 365, 2007-Ohio-5249, ***, 115 (in a bulk-sale case, a 'question arises beyond the basic pronouncement of *Berea* [City *School Dist. Ed. of Edn. v. Cuyahoga Cty. Ed. of Revision,* 106 Ohio St.3d 269, 2005-Ohio-4979]: whether the proffered allocation of bulk sale price to the particular parcel of real property is "proper," which is the same as asking whether the amount allocated reflects the true value of the parcel for tax purposes')." *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Ed. of Revision,* 125 Ohio St.3d 485, 2010-Ohio-1921, **116.** Indeed, "the validity of using the allocated sale price depends upon the propriety of the allocation" and the party advocating for an alternate allocation has the burden to rebut the propriety of such allocation, and must also provide support for the alternate allocation. *Bedford Ed. of Edn. v. Cuyahoga Cty. Ed. of Revision,* 132 Ohio St.3d 371, 2012-Ohio-2844, 119. See also *Consolidated Aluminum Corp. v. Ed. of Revision,* 66 Ohio St.2d 410 (1981); *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Ed. of Revision,* 128 Ohio St.3d 565, 201l-Ohio-2258. Here, as the opponent of the subject sale, the BOR failed to satisfy its burden to rebut the $26,072 price allocated to the subject property.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revis-ion,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that the property owner satisfied its evidentiary burden before the

BOR when it submitted sale documents, which demonstrated a recent, arm's-length sale of the subject property, and the BOR failed to rebut the presumption that such sale was recent and arm's-length in nature.

It is therefore the order of this board that the subject property's true and taxable values as of January 1, 2016 are as follows:

PARCEL NUMBER 020-00000131-00

TRUE VALUE: $350

TAXABLE VALUE: $120

PARCEL NUMBER 020-00000132-00

TRUE VALUE: $24,650

TAXABLE VALUE: $8,630

PARCEL NUMBER 020-00000133-00

TRUE VALUE: $1,080

TAXABLE VALUE: $380

OHIO BOARD OF TAX APPEALS

ERIC AND KELLY CLARKE, (et. al.),

Appellant(s)

, vs.

TRUMBULL COUNTY BOARD OF REVISION,

(et. al.),

Appellee(s)

CASE NO(S). 2017-1890

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- ERIC AND KELLY CLARKE
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For the Appellee(s)

- TRUMBULL COUNTY BOARD OF REVISION
Represented by:
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TRUMBULL COUNTY
160 HIGH STREET
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Entered Monday, April 30, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is now considered by the Board of Tax Appeals upon a notice of appeal filed by the above-named appellants. Said appeal is taken from the Trumbull County Auditor's denial of appellants' Application for the Remission of Real Property and Manufactured Home Late-Payment Penalties ("Application"), relating to tax year 2016. Through the application, appellants requested that the penalty assessed to real property for the first and second half of 2016 be remitted on the basis that such late payments were due to reasonable cause and not willful neglect. For the reasons set forth below, we remand this matter to the board ofrevision for further proceedings consistent with R.C. 5715.39(C).

[2] The procedural history of this matter is helpful in understanding this board's finding. On or about August 28, 2017, appellants filed an application for the remission of late payment penalties with the county treasurer. Upon review, the treasurer indicated that taxes were delinquent the first and second half and recommended the denial of appellants' application. Thereafter, appellants' application was reviewed by the county auditor. On September 8, 2017, the auditor issued a determination denying the application "due to past delinquency." On October 17, 2017, appellants filed a notice of appeal with this board contesting the auditor's denial of the application.

[3] Applications for the Remission of Real Property and Manufactured Home Late-Payment Penalties are governed by R.C. 5715.39. At the time the auditor denied appellants' application, R.C. 5715.39 provided that county boards of revision, rather than county auditors, had authority to review applications for penalty remission based on "reasonable cause and not willful neglect." As of September 29, 2017, however, the same statute now requires boards of revision to additionally review an auditor's determination that a requested remission is not required.

[4] In this instance, the auditor determined that remission was not required for appellants' application; however, the record before this board does not contain any indication that the application was then presented to the board of revision for review. R.C. 5715.39(C). Rather, it appears that appellants appealed the auditor's determination to deny their requested remission directly to this board.

[5] Accordingly, based upon the foregoing, we hereby remand this matter to the Trumbull County Board of Revision for further proceedings consistent with the provisions set forth in R.C. 5715.39(C).

OHIO BOARD OF TAX APPEALS

DAWN CHAPEL, (et. al.),

Appellant(s),

vs.

BUTLER COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1477

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DAWN CHAPEL
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For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
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Entered Monday, April 30, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.
Appellant appeals from a decision of the Butler County Board of Revision ("BOR") determining the value of the subject parcel, i.e., parcel number C1800-009-310-088 for tax year 2016. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the county auditor, and the record of the hearing before this board ("H.R.").

The subject property is a single-family residence built in 2015. The auditor valued the property at $437,210 for tax year 2016. Appellant filed a complaint against valuation requesting a decrease in value to
$283,000, explaining that "[t]he cost to build the house is not fair market value, we knew this would be the case when we built. House is of similar style and size for the development." S.T., Ex. A. Appellant attached sales of similar homes in the same subdivision in support of her request. At the BOR hearing, appellant explained that she built the subject home on the last available lot in its subdivision. Although she knew she overpaid for the lot, she did so based on her personal desire to build in that specific subdivision. When financing the construction of the home, the lender indicated that its appraisal of the property indicated a value not supported by the market. As a result, appellant was forced to put down a significant portion of the total purchase price to obtain a mortgage of $345,000. She also provided an appraisal of the property indicating a value of $283,000 as of March 3, 2017 based on a sales comparison approach utilizing sales of properties less than 0.3 miles from the subject that occurred in August and October 2016. Following the BOR hearing, appellant provided the BOR with a copy of the lender's financing appraisal. Based upon the financing appraisal value of $460,000, the BOR determined that no change in the auditor's initial valuation was warranted.

Only appellant appeared at this board's hearing. She again argued that the subject property was built at a cost that she knew, and her lender and appraiser confirmed, was above market value for the area. She presented information about recent sales of other similar homes in the same subdivision. H.R., Ex. A.

In challenging the valuation of real property, "[t]he burden is on the taxpayer to prove [her] right to a deduction." *W. Industries, Inc. v. Hamilton Cty. Ed. of Revision,* 170 Ohio St. 340, 342 (1960). "[T]he appellant must come forward and demonstrate that the value [she] advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Ed. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, iJ6. Although the auditor's initial value serves as the "default" value, this board may not adopt the auditor's value when presented with clear evidence negating that valuation. *Copley-Fairlawn City School Dist. Ed. of Edn. v. Summit Cty. Ed. of Revision,* 147 Ohio St.3d 503, 2016-Ohio-1485, iJ18. In addition, we are mindful that this board must independently weigh the evidence in the recC,rd and must accord no presumption of validity to the BOR's value. *Columbus City Schools Ed. of Edn. v. Franklin Cty. Ed. of Revision,* Slip Opinion No. 2017-Ohio-5823, iJ7.

The record before us contains evidence of several different values for the subject property, in addition to the auditor's initial valuation. First, the total cost of construction including the purchase of the underlying land was $487,783 as reflected by appellant's July 2015 purchase of the property from the developer. Second, the financing appraisal opined a value of $460,000 as of May 30, 2015 based on sales of properties approximately 2.5 miles away that sold in 2014. Third, the mortgage obtained on the property is for
$345,000. Fourth, the appraisal submitted with appellant's complaint, upon which her opinion of value is based, opined a value of $283,000 as of March 3, 2017.

Although the owner argues that we determine value based on the March 3, 2017 appraisal report, we find that such report constitutes hearsay in the absence of any testimony from its author. *Freshwater v. Belmont Cty. Ed. of Revision,* 80 Ohio St.3d 26, 30 (1997); *Evenson v. Erie Cty. Ed. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. The same is true of the May 30, 2015 appraisal report prepared for financing purposes. Moreover, neither report opines value as of the January 1, 2016 tax lien date. *Olmsted Falls Village Assn. v. Cuyahoga Cty. Ed. of Revision,* 75 Ohio St.3d 552, 555 (1996); *Freshwater,* supra, at 30. We therefore tum to the evidence relating to the cost of construction.

The Appraisal of Real Estate recognizes that "cost and market value are usually more closely related when properties are new ***. The Appraisal of Real Estate 566 (14th Ed.2013). Here, appellant argues that the cost to the construction bears little relation to the market, based on sales of similar properties within the same subdivision. Specifically, she indicates that the initial land sale was above market and reflected her atypical motivation to purchase property in the subject's subdivision. However, appellant has presente,d no other evidence of comparable vacant land sales in support of her assertion. Moreover, although sales of similar, improved properties in the subject's neighborhood occurred at prices admittedly lower than the valuation of the subject property, the subject is considerably newer than those properties, which were built in 2004-2007.
Giving consideration to the entirety of the record before us, we find appellant has failed to meet her burden to prove a value different from that originally determined by the auditor and retained by the BOR.
It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE
$437,210

TAXABLE VALUE

$153,020

OHIO BOARD OF TAX APPEALS

MICHAEL J. TOWARNICKY, (et. al.),

Appellant(s)

, vs.

CUYAHOGA COUNTY BOARD OF REVISION,

(et. al.),

Appellee(s)

.

CASE NO(S). 2017-1969

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

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For the Appellee(s)

- CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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Entered Monday, April 30, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter is now considered by the Board of Tax Appeals upon a notice of appeal filed by the above-named appellant, the statutory transcript ("S.T.") certified by the board of revision pursuant to R.C. 5717.01, and any written argument submitted by the parties. Said appeal is taken from the Cuyahoga County Fiscal Officer's denial of appellant's Application for the Remission of Real Property and Manufactured Home Late-Payment Penalties ("Application"), relating to tax year 2016. Through the application, appellant requested that the penalty assessed to real property for the second half of 2016 be remitted on the basis that such tax payment was mailed on or before the due date, and, in support, appellant attached evidence of timely mailing. For the reasons set forth below, we remand this matter to the board ofrevision for further proceedings consistent with R.C. 5715.39(C).

[2] The procedural history of this matter is helpful in understanding this board's finding. On or about August 4, 2017, appellant filed an application for the remission of a late payment penalty with the county treasurer. Upon review, the treasurer indicated prior delinquent tax payment(s) and recommended the denial of appellant's application. Thereafter, appellant's application was reviewed by the county fiscal officer. On August 24, 2017, the fiscal officer issued a determination denying the application due to past delinquent payments relating to the first and second half of tax year 2013. On October 30, 2017, appellant filed a notice of appeal with this board contesting the fiscal officer's denial of the application.

[3] Applications for the Remission of Real Property and Manufactured Home Late-Payment Penalties are governed by R.C. 5715.39. At the time the fiscal officer denied appellant's application, R.C. 5715.39 did not provided authority for county boards of revision to review an auditor's/fiscal officer's denial of anapplication for remission, when, as here, such denial was based upon the provisions set forth in (B)(l) to(5) of the statute. As of September 29, 2017, however, the same statute now requires boards of revision to review the fiscal officer's determination that a requested remission is not required, including, when such denial is based upon the provisions set forth in R.C. 5715.39(8)(1) to (5).

[4] In this instance, it is clear that the fiscal officer's determination that remission was not required for appellant's application was not reviewed by the board of revision as the record contains a statement to that affect, which reads, "[t]he Application for the Remission of Real Property Late-Payment Penalties (DTE 23A) was never presented to the Cuyahoga County Board of Revision and [t]herefore, was not decided by this board." S.T. Instead, it appears that appellant appealed the fiscal officer's determination to deny the requested remission directly to this board. See *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St.3d 147 (1946) (when a statute confers the right of appeal, adhenmce to the terms and conditions set forth in the statute is essential to the enjoyment of the right conferred).

[5] Accordingly, based upon the foregoing, we hereby remand this matter to the board of revision for further proceedings consistent with the provisions set forth in R.C. 5715.39(C).

OHIO BOARD OF TAX APPEALS

DAVID BEAMER, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-602, 2017-617

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DAVID BEAMER
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
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COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
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Entered Monday, April 30, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.
These consolidated appeals come before us upon two notices of appeal, filed by property owner David Beamer and the Columbus City Schools Board of Education ("BOE"), from a decision of the Franklin County Board of Revision determining the value of parcel number 010-292702 for tax year 2016.

The auditor initially valued the subject property at $801,800 for tax year 2016. Mr. Beamer filed a complaint seeking a decrease in value to $625,000 based on an analysis of the auditor's valuation of comparable properties in the subject's condominium development. In an attached letter, Mr. Beamer explained that the property was built to include "items, materials and options valuable to [him], but with a realization that the general market may not recognize the same value." Statutory Transcript ("S.T.") at Ex. A. The BOE filed a countercomplaint seeking to maintain the auditor's initial value.

At the BOR hearing, Mr. Beamer reiterated the property was built not with a view to its value at resale, but, rather, for its value to the owners. In addition to the comparable values previously submitted, he also submitted comparable sales in the same development. Counsel for the BOE presented the general warranty deed and conveyance fee statement reflecting the sale of the property in March 2014 for $856,218.50.

At the BOR's decision hearing, the auditor's representative recommended the auditor's initial value be maintained, in light of the sale amount and in the absence of an appraisal, and the BOR ultimately issued a decision to that effect. Both Mr. Beamer and the BOE appealed to this board. On appeal, Mr. Beamer essentially reiterated the arguments previously made and advocated for a reduction in value. For its part, the BOE advocated for valuation of the property in accordance with the March 2014 sale.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2000). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Cana/co v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). See also *Terraza 8,*
L.L.C. v. Franklin Cty. Bd. of Revision, 150 Ohio St.3d 527, 2017-Ohio-4415; R.C. 5713.03. Once evidence of such a sale is submitted, the opponent of valuing the property in accordance with the sale has the burden to prove that the sale was not at arm's length, was not recent to tax lien date, or otherwise does not reflect the property's true value. *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, i!13; *Terraza 8,* supra, at i!32.

•

The parties do not dispute that the subject property sold less than two years prior to tax lien date for $856,218 in an arm's-length transaction. There further appears to be no dispute that the transaction was recent to tax lien date. Mr. Beamer argues that the sale does not reflect market value because of the upgrades made to the home, and in light of neighboring and nearby properties' sale prices and assessed values. However, he did not submit an appraisal of the subject property analyzing its unique attributes and the comparable sales data. Without such analysis, this board is left to speculate about the comparability of such properties to the subject, and the circumstances of the comparable sales. As the Eighth District Court of Appeals noted in *Carr v. Cuyahoga Cty. Fiscal Officer,* 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, at ill 1, "[t]here has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning." See also, generally, The Appraisal of Real Estate (14th Ed.2013); *LTC Properties, Inc. v. Licking Cty. Bd. of Revision,* 133 Ohio St.3d 111, 2012-Ohio-3830, ,r2s (Pfeifer, J., concurring) ("the best way to challenge a valuation is with a proper appraisal ***."). We therefore find that the comparable sales data is not probative of the subject property's value.

We likewise are unable to rely on the auditor's valuation of other properties in the subject's development. Initially, the fallacy of reliance on other properties' assessed values must be acknowledged, since the fundamental basis of this challenge is the erroneous nature c1fthe subject property's value. This board has repeatedly rejected the use of the auditor's assessed values of one property as evidence of the value of another. See, e.g., *Grant v. Montgomery Cty. Bd. of Revision* (Dec. 13, 2011), BTA No. 2009-W-891, unreported. Moreover, the Supreme Court has stated that "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 31 (1996).

Based upon the foregoing, we find that the owner has failed to rebut the presumption that the purchase price paid in the March 2014 sale of the property is the best evidence of its value as of tax lien date. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$856,220

TAXABLE VALUE
$299,680

OHIO BOARD OF TAX APPEALS

COX PAUL W. & SARALEE, (et. al.),

Appellant(s), vs.

CUYAHOGA COUNTY BOARD OF REVISION,

(et. al.), Appellee(s).

CASE NO(S). 2017-175

(REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:
For the Appellant(s)

For the Appellee(s)

- COX PAUL W. & SARALEE
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  SHAKER HEIGHTS, OH 44120

- CUYAHOGA COUNTY BOARD OF REVISION
  Represented by:
  SAUNDRA CURTIS-PATRICK ASSISTANT PROSECUTING
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  1200 ONTARIO STREET, 8TH FLOOR CLEVELAND, OH
  44113

Entered Monday, April 30, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellants appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 732-26-021, for tax year 2015. •This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject property is a single-family home used as appellants' personal residence. The subject's total true value was initially assessed at $176,900. Appellants filed a decrease complaint with the BOR seeking a reduction in value to $128,000. Appellants did not appear at the BOR hearing, but provided evidence that they had entered into a stipulated value of $118,000 with the county appellees for tax years 2012-2014 following an appeal to this board. The order from this board remanding the matter to the fiscal officer to implement the parties' settlement was entered on August 5, 2015. The BOR reviewed the stipulation, along with the results of its own independent research, which included an October 2014 mortgage for $297,000 and comparable sales in the neighborhood. The BOR indicated that it had questions regarding condition issues, and found that the fiscal officer's value was justified. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

[3] At the hearing before this board, appellant Paul W. Cox appeared on behalf of the appellant property owners in support of their requested reduction. Cox discussed the earlier settlement, stating that the $118,000 value took into consideration a number of repairs that needed to be done to the property, both internally and externally. Cox stated that given the property's current status, the reduced value should carry forward into 2015. Cox acknowledged that he had completed some of those external repairs, but asserted that the contractor had improperly installed the roof, which caused additional issues. Cox listed the internal repairs that needed to be made, including the walls (plaster and paint), floors, windows, basement (sealed and painted), and kitchen, including both the floor and ceiling. Cox provided photographs of these items. Cox also provided a list of properties that he maintains were in better condition than the subject property and had recently sold for less than the auditor's value.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). An appellant must present competent and probative evidence in support of her requested reduction, and an owner is not entitled to a reduction merely because no evidence is presented against her claim. Id. The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

[5] Initially, we reject the independent evidence of value presented by appellants in support of a reduction of the subject's value. In lieu of an appraisal of the subject property, appellant relied on information that is typically utilized by appraisers, specifically sales of other property's and evidence of the property's condition. In the absence of an appraisal which analyzes such data, however, 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. See, generally, The Appraisal of Real Estate (14th Ed.2013). This is particularly true in the present appeal, where Cox indicated that the comparable properties were in superior condition to the subject property. It is likewise unclear whether any other adjustments may be necessary, for instance the time or circumstances of that sale. Thus, this raw sales data alone is insufficient to establish the value of the subject.

[6] Appellants' evidence of the condition of the subject property similarly provides no reliable basis to reduce the value of the subjects without an appraisal to translate their effect on the property's value. In *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996), the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value. See also *Gupta v. Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397 (1997).

[7] Central to appellants' arguments is that the value increase experienced by the property for tax year 2015 following the triennial update was inconsistent with the lack of positive changes to the property. Generally, the argument that a property' s valuation frnm one tax year, •resulting from either an agreement among the affected parties or a finding by a tribunal, is competent and probative evidence of value for another tax year, has been repeatedly rejected. See, e.g., *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 29 (1997); *TBC Westlake, Inc. v. Hamilton Cty. Bd. of Revision,* 81 Ohio St.3d 58 (1998); *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 122 Ohio St.3d 134, 2009-Ohio-2461, i]20-21. A different issue is presented here, however, because this board issued an order in 2015 following a stipulation of value for tax years 2012-2014, which resulted in new values for 2014. It is clear from the record that the fiscal officer did not consider the redetermined value when he performed the triennial update for 2015 because the property record card shows that the value date for tax year 2015

was July 23, 2015, nearly two weeks *before* this board ordered the fiscal officer to give effect to the parties' settlement agreement.

[8] The court has discussed the role a redetermined value plays when an auditor has performed a countywide update. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 87 Ohio St.3d 305 (1999) *("Inner City*"). Although the primary issue in *Inner City* was whether the BOR retained jurisdiction over the relevant tax year as a continuing complaint, the court has further clarified the effect of its holding. In *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision,* 127 Ohio St.3d 44, 2010-Ohio-4468, at ,r30, the court explained that "the only effect of the earlier complaint [is] that the update percentage must be applied to the value of the earlier year as redetermined." Thus, the proper valuation in the present case for 2015 involves the application of the update percentage to the parcel's 2014 value as redetermined after agreement by the parties, i.e., $118,000.

[9] The BOR indicated that it did not utilize the 2014 stipulated value because it had questions regarding condition issues that, it indicated, appeared to have been corrected from the earlier hearings in order to obtain the October 2014 mortgage. The BOR further indicated that it researched comparable sales in the neighborhood, which supported the fiscal officer's value. Despite these arguments, we find that the court's holding in *Inner City* applies to the present appeal. Contrary to the BOR's conclusion, which we acknowledge was made without the benefit of testimony from appellants or photographs of the property, Cox testified that most repairs had not yet been made. Additionally, the BOR's reliance on a mortgage or unadjusted sales are not sufficient to support a change in value because they do not amount to a qualifying sale or appraisal of the property relating those factors to value. As such, we find that they do not support disregarding the court's instruction to utilize the redetermined value for the triennial update.

[10] Finally, we tum to the property record card to ascertain the appropriate update percentage for the subject property. According to the value history, the value was increased from $160,800 for 2014 to $176,900 for 2015, an increase of $16,100 or 10%. Thus, we add $11,800 to the $118,000 redetermined value to establish the subject's value for tax year 2015.

[11] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$129,800

TAXABLE VALUE

$45,430

OHIO BOARD OF TAX APPEALS

SOLON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s)

, vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s)

.

CASE NO(S). 2016-2596

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

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For the Appellee(s)

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BSD SOLON PARK, LLC 30559 PINETREE ROAD PEPPER PIKE, OH 44124

Entered Monday, April 30, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant, Solon City Schools Board of Education ("BOE"), appeals a decision of the Cuyahoga County Board of Revision ("BOR"), determining the value of the subject property, parcel number 952-21-041, for tax year 2015. This matter is now considered upon the notice of appeal, statutory transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and the record of hearing ("H.R.") before this board. For the reasons set forth below, we find the BOE was required, but failed, to provide sufficient competent and probative evidence in support of the increase in value sought and as such, we affirm the BOR's retention of the subject's initially assessed value.

The subject is a multi-story, multi-tenanted, commercial property, operated as Solon Park Place. For tax year 2015, the subject's total true value was initially assessed by the fiscal officer at $1,562,800. S.T., Exhibit ("Ex.") C. The BOE filed a complaint with the BOR, seeking an increase in value to $2,025,000, alleging the subject transferred on February 24, 2016 for such amount. S.T., Ex. A. No counter complaint was filed and the property owner elected not to participate at the BOR's hearing.

At the BOR's hearing, in support of the transfer alleged, BOE's counsel offered a deed with conveyance fee stamp, marketing brochure, and news release. S.T., Ex. F. The BOR, itself, also entered a copy of the conveyance fee exemption fonn with an affidavit attached ("conveyance exemption") into the record. After considering the evidence, however, the BOR issued a decision maintaining the subject's initially assessed value and commented on its oral hearing journal, "[t]his tran•sfer appears to be a sale of a corporate interest * * * [h]owever, the board does not have sufficient evidence of the actual transfer price to find that an increase is warranted * * *." S.T., Exs. E, G. Dissatisfied with the result, the BOE timely filed an appeal with this board.

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

In reviewing this matter, we are mindful of the Supreme Court's longstanding principle that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Ed. of Revision,* 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Ed. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, 133; R.C. 5713.03.

On appeal, this matter presents a question of whether a rec nt arm-length transfer of the subject property has indeed occurred.

At this board's hearing, the BOE endeavors to prove that the subject property transferred on February 24, 20 I 6 for $2,025,000 and offers the testimony of Emily L. Braman, MAI, SRA, a state-certified general real estate appraiser in Ohio, and submits Ms. Braman's qualifications and a letter summarizing her research, an offering memorandum, news release, and emails. H.R., Appellant's Exs. 1, 2. No appraisal report of the subject property was submitted. Instead, Ms. Braman testifies, by researching and piecing together the infonnation contained in the evidence submitted, she was able to conclude that the subject property transferred through an ann's-length, entity-to-entity transaction on February 24, 2016 for $2,025,000 and further, that the subject property was the only asset of the entity that transferred. H.R. at 11-15, 17.

Turning to the deed with conveyance fee stamp and conveyance exemption affidav it, it appears the subject property transferred between related parties, on February 24, 2014, from Solon Park Place, LLC, to BSD Solon Park, LLC, and no purchase price is indicated. S.T., Ex. F; H.R., Appellant's Ex. 2. See also *N. Royalton City School Dist. Ed. of Edn. v. Cuyahoga Cty. Ed. of Revision,* 129 Ohio St.3d 172,
201l-Ohio-3092, 133.

Although we acknowledge that this board has previously found a transfer of interest in an entity that holds only the real property at issue, with no other going concern of value, to be a valid an ann's-length sale for real property valuation purposes, see, *Akron City School Dist. Ed. of Edn. v. Summit Cty. Ed. of Revision* (Mar. 6, 2015), BTA No. 2014-4328, unreported, the facts of this matter are clearly distinguishable. See also *Parkland Assoc. LTD v. Cuyahoga Cty. Ed. of Revision* (June 25, 2015), BTA Nos. 2011-3893, 4060, unreported. Compare *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Ed. of Revision,* 82 Ohio St.3d 193 (1998) (the sale of interest in an ownership entity is not equivalent to the sale of the real property); *Gahanna-Jefferson Pub. Schools Ed. of Edn. v. Franklin Cty. Ed. of Revision,* 89 Ohio St.3d 450 (2000). In *Akron City,* supra, the record before this board contained the purchase and sale agreement of the entities involved in the transfer and the terms of such document clearly indicated that the transfer of the entity's member interests was done solely to transfer title to the real property at issue; here, however, the record is devoid of a purchase and sale agreement relating to the subject transfer and no one associated with any of

the involved entities has provided testimony regarding the alleged transfer or the purpose(s) of the ownership entities. See generally *Lakewood City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Sept. 12, 2016), BTA No. 2016-177, unreported.

While we acknowledge the testimony of the appraiser, beyond the appraiser's assertions, the record is devoid of competent and probative tangible evidence establishing that the subject property transferred through an arm's-length transaction on February 24, 2016 for$ 2,025,000. Rather, as discussed above, the documentary evidence before this board appears to merely demonstrate a related party transfer. Furthermore, we find the appraiser's testimony contains unreliable statements of hearsay. See, e.g., *Dellick*
v. Eaton Corp., 7th Dist. Mahoning No. 03-MA-246, 2005-Ohio-566, i/25; *Teamster Hous. v. McCormack,* 8th Dist. Cuyahoga No. 69583, 1996 Ohio App. LEXIS 1880 (May 9, 1996). Given the deficiencies noted above, we are unable to conclude that the appraiser's determination that the subject transferred through an arm's-length, entity-to-entity transaction on February 24, 2014 for $2,025,000 is premised upon sufficiently reliable evidence and thus, we assign it no probative weight.

In the absence of sufficiently reliable evidence to support the increase in value requested, we simply cannot engage in conjecture in deriving our own value. See *Howard v. Cuyahoga Cty. Bd. of Revision,* 37 Ohio St.3d 195, 197 (1988) ("We now require [the BTA] to state what evidence it considered relevant in reaching its value determinations."). Based upon the foregoing, we find the BOE was required, but failed to provide competent and probative evidence in support of the requested increase in value and therefore, we affirm the BOR's retention of the subject's initially assessed value. See *Simmons v. Cuyahoga Cty. Bd. of Revision,* 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 952-21-041

TRUE VALUE

$1,562,800

TAXABLE VALUE

$546,980

OHIO BOARD OF TAX APPEALS

GEORGE J. OWENS AND JONI BABKA, (et. al.),

Appellant(s)

, vs.

LUCAS COUNTY BOARD OF REVISION, (et. al.),

Appellee(s)

.

CASE NO(S). 2017-1899

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

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For the Appellee(s)

- LUCAS COUNTY BOARD OF REVISION
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Entered Monday, May 7, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant taxpayers challenge a decision to assess a 10% late payment penalty for delayed payment of real property tax for the second half of tax year 2016. The county appellees have filed what we interpret as a motion to dismiss for premature filing. By way of its motion, the county appellees assert that the taxpayers failed to first file an application with the county treasurer to determine whether remittance of the late payment penalty was appropriate. See R.C. 5715.39. The taxpayers have not come forward with to dispute the county appellees' assertions.

[2] R.C. 5715.39 lays out the process by which a taxpayer may challenge a late payment penalty for real property taxes. A taxpayer must first file an application with the county treasurer who consults with the county auditor to determine whether the taxpayer has satisfied any of the five circumstances enumerated in the statute to justify remission of the late payment penalty. See R.C. 5715.39(B)(l)-(B)(5). If the county auditor determines that remission of the penalty is not warranted, the county auditor must submit the application to the county board of revision for further consideration. See R.C. 5715.39(C). If the county board of revision denies the application for remission of the late payment penalty, it must provide notice to the taxpayer by certified mail. See R.C. 5715.20. The taxpayer may then appeal the decision to this board, but such appeal must be filed *after* notice of the decision of the county board of revision is mailed and must be filed with this board *and* the board ofrevision within thirty days. R.C. 5717.01.

[3] Based upon the foregoing, we find that the taxpayers failed to follow the proper process to challenge the assessment of the late payment penalty for delayed payment of real property tax. The record is devoid of any evidence to suggest otherwise. As such, we find that this appeal is premature and grant the county appellees' motion to dismiss.

OHIO BOARD OF TAX APPEALS

WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2115

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:
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For the Appellee(s)

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- FRANKLIN COUNTY BOARD OF REVISION
  Represented by: WILLIAM J. STEHLE
  ASSISTANT PROSECUTING ATTORNEY FRANKLIN COUNTY
  BOARD OF REVISION 373 SOUTH HIGH STREET, 20TH FLOOR
  COLUMBUS, OH 43215

  6525 DOUBLETREE LLC
  Represented by: CHARLESL.BLUESTONE BLUESTONE
  LAW GROUP, LLC 141 EAST TOWN STREET SUITE 100
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Entered Monday, May 7, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant, Worthington City Schools Board of Education ("BOE"), appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 610-104639-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, the record of hearing ("H.R.") before this board, and any written argument submitted by the parties. For the reasons set forth below, we find the BOE failed to submit competent and probative evidence proving a new value on appeal and further, that the owner's appraisal evidence constitutes sufficient competent and probative evidence of value.

[2] The subject is industrial property, situated on approximately 2.95 acres, and is improved with a single storybrick building. S.T., Exhibits ("Exs.") C, F appraisal at I, 40-41. The subject's total true value was initially assessed at $2,450,000. S.T., Ex. C. The property owner filed a decrease complaint with the BOR, seeking a reduction in value to $1,920,000, which amount was amended at hearing to $1,400,000 to conform to appraisal evidence. S.T., Exs. A, E. The BOE filed a counter complaint requesting to maintain the subject's initially assessed value. S.T., Ex. B.

[3] At the BOR's hearing, owner's counsel offered the appraisal and testimony of Mr. Trevor L. Miller, MAI, a state-certified general real estate appraiser in Ohio. In his report, Mr. Miller employed both the sales comparison and income capitalization approaches to valua. Upon reconciling the resulting values, Mr. Miller primarily relied upon the sales comparison approach and opined to a value of $1,400,000 for the subject property, as of January 1, 2015. S.T., Ex. F appraisal at 79. Counsel for the BOE cross-examined the owner's appraiser regarding the sales comparables utilized under the sales approach and the rental rate and net operating income employed under the income approach, but did not offer any independent evidence of value. S.T., Ex. E. Thereafter, the BOR elected to rely upon the owner's appraisal evidence to determine value and issued a decision decreasing the subject's initially assessed valuation to $1,400,000. S.T., Ex. G. Dissatisfied with the BOR's decision, the BOE timely filed an appeal with this board.

[4] While we acknowledge that determinations made by the BOR are not presumptively correct, see, e.g., *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 201 l-Ohio-5078, when, as in the case before us, the BOE is the appellant on appeal, the property owner filed an underlying complaint, and the BOR relied upon the owner's appraisal evidence to determine value, the Supreme Court has carved out an applicable rule, which is narrowly construed and known as the *Bedford* rule. See *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 115 Ohio St.3d 449, 2007-Ohio-5237. See also *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, at ,J9, 11; *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 123 Ohio St.3d 268, 2009-Ohio-4975, at **,i**24.

[5] Pursuant to the *Bedford* rule, "as long as the evidence of value that the owner presented to the board of revision was competent and at least minimally plausible, the board of education may not invoke the auditor's original valuation as a default - with the result that it is not enough for the board of education at the BTA to find fault with the evidence that the owner presented before the board of revision. In other words, for the board of education, the board of revision's reduced valuation is the new default valuation of the property, and the burden lies on the board of education to prove a new value (be that the auditor's valuation or some other value)." *Dublin,* supra, at ,J7. See also *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 147 Ohio St.3d 503, 2016-Ohio-1485, at ,Jl7 (quoting *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision,* 113 Ohio St.3d 281, 2007-Ohio-1948, at ,J27).

[6] On appeal, the BOE offers the testimony of Mr. Thomas D. Sprout, MAI, CPA, a state-certified general real estate appraiser in Ohio, to satisfy its burden to prove a new value. While Mr. Sprout did not prepare an appraisal report opining to a value for the subject property as of tax lien date, he explained, he was retained to provide "benchmarks" based upon his review of information contained in the owner's appraisal report. H.R. at 43, 50. In performing his review of Mr. Miller's report, Mr. Sprout disagrees with Mr. Miller's primary reliance upon the sales comparison approach to determine value, finds the income methodology to be more applicable, and focuses the majority of his review testimony on Mr. Miller's income approach to value. Id. at 19-20, 22-35. In so doing, Mr. Sprout highlights three components of Mr. Miller's income approach, i.e., the rental rate, vacancy rate and expense reimbursements, and contends that modification of each component is appropriate. Mr. Sprout then suggests an alternate rental rate, alternate vacancy rate, and modified reimbursements and, based upon such changes, proposes an alternate pro forma from which he arrives at a "benchmark" value of $1,970,000 for the subject property. Id. at 25-28, 34-35. On cross-examination, Mr. Sprout admits he had not visited the subject within the last five years and merely relies upon his experience and information contained in Mr. Miller's report to arrive at the benchmark value proposed. Id. at 50, 52, 61-62.For its part, the appellee property owner relies upon the appraisal evidence submitted to the BOR and offers the testimony of Mr. Mark Swepston, a partner of the ownership entity. Mr. Sweptson provides testimony regarding the subject's leases and explains the need to reconfigure the subject's space, as it was previously occupied by one tenant pursuant to a long term lease.

[7] We now tum to the owner's appraisal evidence. When, as here, a party relies on an appraiser's opinion of value, this board may "accept all, part or none of the testimony of any appraiser"; there is no requirement for this board to adopt the valuation fixed by any expert appraiser. *Witt Co. v. Hamilton Cty. Bd. of Revision,* 61 Ohio St.3d 155 (1991). See also *Cardinal Fed. S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), at paragraphs three and four of the syllabus; *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 30 (1997). This board is charged with the responsibility of determining value based upon evidence properly contained within the record and found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997). As such, we look to all aspects of the record before us in conducting our independent review of the subject property. *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 114 Ohio St.3d 493, 2007-Ohio-464 l, at if24.

[8] Upon review of the owner's appraisal, which provides an opjnion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find the report to be competent and sufficiently probative as to value. While the BOE may not agree with the methodology

employed by Mr. Miller or the rental rate, vacancy rate, and expense reimbursements he utilized, we are not persuaded by such criticisms. In this instance, there is no dispute that the rental rate selected by Mr. Miller falls within the range of the market data provided in the report. Further, the data in the report supports Mr. Miller's vacancy rate, whereas the vacancy rate suggested by Mr. Sprout is unsupported and apparently based upon nothing more than his experience. H.R. at 61-62. As to the expense reimbursements, it is implicit in the appraisal process that an appraiser must make subjective judgments in selecting, evaluating, and adjusting the data upon which to rely in opining to an opinion of value. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported. Additionally, we find that the Mr. Miller's testimony before the BOR provided sufficient responses to the issues raised by the BOE on appeal, see S.T, Ex. E, as does supporting information contained in his report, as discussed above. S.T., Ex. F. As to the alternate pro forma suggested by Mr. Sprout, without more support for his assumptions, we are unable to conclude that his modified calculations and resulting benchmark valuation are entitled to probative weight. See generally *Lakota Local Schools Dist. Bd. of Edn.v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059, ifl5 ("Mere speculation is not evidence."). See also *Brown v. Hamilton Cty. Bd. of Revjsion* (Feb. 1, 2008), BTA No. 2006-K-764, unreported, at 9, citing *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported. Moreover, Mr. Sprout provided no effective date of valuation for the benchmark value provided. See *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision,* 75 Ohio St.3d 552 (1996). Based upon the foregoing, we find Mr. Sprout's testimony fails to rebut the valuation analysis and conclusion presented in the owner's report. Accordingly, we find, the BOE was required, but failed, to prove a value other than that determined by the BOR. Further, upon our careful review, we find the owner's report provides sufficient competent and probative evidence of the subject's value for tax year 2015.

[9] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 610-104639-00

TRUE VALUE

$1,400,000

TAXABLE VALUE

$490,000

OHIO BOARD OF TAX APPEALS

WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2166
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION
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373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

NCH12 COLUMBUS OH LLC.
Represented by:
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ATTORNEY
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DELAWARE, OH 43015

Entered Monday, May 7, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 600-213375-00, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcrjpt certified pursuant to R.C. 5717.01, and the record of this board's hearing.

[2] The subject property, a suburban office building, was initially assessed at $4,037,000. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $1,750,000. The BOE filed a counter-complaint, which objected to the request.

[3] The BOR held a hearing on the matter, at which time the property owner and BOE appeared through

counsel to submit argument and/or evidence in support of their respective positions. In its presentation, the property owner submitted the appraisal report and testimony of appraiser Christian Smith, who opined the value of the subject property to be $2,400,000 as of January 1, 2015. In its presentation, the BOR submitted the appraisal report and testimony of appraiser Thomas Sprout, who opined the value of the subject property to be $3,260,000 as of January 1, 2015. Each appraiser was examined and cross-examined about the underlying data and methodologies that supported their analyses and conclusions of value. At the BOR decision hearing, the BOR members voted to accept Smith's appraisal report as the best indication of the subject property's value. As such, the BOR subsequently issued a written decision, which reduced the subject property's value to $2,400,000, and this appeal ensued.

[4] At this board's hearing, both parties appeared again through counsel to submit additional argument and/or evidence in support of their respective positions. In its presentation, the BOE submitted an updated appraisal report and testimony from Sprout. Based upon updates to his appraisal report, after performing an interior inspection of the subject property and reviewing its financial information, he modified his conclusion of the subject property's value to $3,225,000 as of January 1, 2015. He was examined and cross-examined about the underlying data and methodologies that supported his updated opinion of value. At the denouement of the hearing, each party argued th strengths of its own appraiser's report and testimony and, conversely, the weaknesses of the opposing party's appraiser's report and testimony.

[5] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Cana/co v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). "However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964).

[6] The record does not disclose a recent, arm's-length transfer of the subject property; therefore, we proceed to consider the parties' appraisal evidence.

[7] We begin our analysis with Smith's appraisal report, which developed the sales comparison and income approaches to valuing real property. He began his analysis by determining the subject property's highest and best use, as vacant, would be "office related," and, as improved, would be its present use, "office related." In his sales comparison approach, he compared the•subject property's characteristics to five other office properties that sold in Franklin County, Ohio between November 2014 and May 2016. After adjusting the comparable properties to account for differences with the subject property, such as location, age, and condition, he determined that the subject property would sell on the open market for $75.10 per square foot. In doing so, he concluded to an indicated value for the subject property of $2,350,000 as of January 1, 2015. In his income approach, Smith relied upon five other office properties that were leased, or available for lease, in Franklin County, Ohio. After adjusting the comparable leased properties for differences with the subject property, he determined the subject property's potential gross income to be $281,637 based upon potential rent, from which he then deducted $22,531, or 8.0% of potential gross income, for vacancy and $4,225, or 1.5% of potential gross income, for credit loss, to conclude to an effective net rental income of $254,881. From that number, he added $168,677 for expense reimbursements to conclude to effective gross income of $423,558. He proceeded to deduct $197,335 for expenses, which included items such as insurance, utilities, management fee, and reserves for replacement, to conclude to a net operating income of $226,223. He capitalized the net operating income at 9.29%, including a tax additur, to conclude the subject property's value to be $2,450,000 as of January 1, 2015. He reconciled the indicated values to finally conclude the subject property's value to be $2,400,000 as of January 1,

2015.

[8] We now tum to Sprout's appraisal report, which developed the sales comparison and income approaches to valuing real property. He began his analysis by determining the subject property's highest and best use, as vacant, would be to hold for future development and, as improved, would be its present use, "office/flex building." In his sales comparison approach, he compared the subject property's characteristics to five other office properties that sold in Franklin County, Ohio between May 2012 and June 2015. After adjusting the comparable properties to account for differences with the subject property, such as location, age, and condition, he determined that the subject property would sell on the open market between $105 per square foot and $110 per square foot. In doing so, he concluded to an indicated value for the subject property would be between $3,150,000 and $3,300,000 as of January 1, 2015. In his income approach, Sprout relied upon six other "office/flex" properties that were leased, or available for lease, in Franklin County, Ohio. After adjusting the comparable leased properties for differepces with the subject property, he determined the subject property's potential gross income to be $300,030 based upon potential rent, to which he added $191,514 for expense reimbursements, such as taxes and insurance, to conclude to potential rental income of $491,544. He then deducted 9%, or $44,239, for vacancy and credit loss to conclude to net effective gross income of $447,305. He proceeded to deduct $197,515 for expenses, which included items such as taxes, insurance, and reserves for replacement, to conclude to a net operating income of $249,790. He capitalized the net operating income at 7.75% to conclude the subject property's value to be $3,225,000 as ofJanuary 1, 2015. He reconciled the indicated values to finally conclude the subject property's value to be $3,225,000 as of January 1, 2015.

[9] We have often acknowledged in cases where competing appraisals are offered that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported.

[10] Upon review, we find Sprout's updated appraisal report to b the most competent and probative evidence of the subject property's value. We question the reliability of Smith's report for a number of reasons. First, under his sales comparison approach to value, we find Smith's lack of consistency in his treatment of the comparable properties to be suspect. For example, several of his comparable properties were the subject of multi-property transfers; however, Smith treated these properties differently. Although he accepted the individual allocated sale prices for comparable sales one and two, for comparable sale five, he disregarded the individual allocated sale prices and relied on the entire multi-property sale price of $10,200,000, from which he derived an average price per square foot. His treatment of sale comparable five is especially confounding given that he testified that he was most interested in just one of the parcels in the multi-property transfer, i.e., 5025 Bradenton Avenue. Furthermore, he failed to adequately support the use of multi-property transfers as comparable properties given that the subject property is a single property. In contrast, Sprout's sales comparison approach relied upon sales of properties most similar to the subject property, i.e., the transfer of a single property, instead of multi-property transfers. As such, he avoided the inconsistent treatment of his selected comparable sales, unlike Smith. Based upon the foregoing, we find Sprout's sales comparison approach to be more reliable.

[11] Second, under his income approach to value, we find Smith's conclusion of market rent to be equally suspect. In his appraisal report and testimony, Smith conceses that his conclusion of market rent is based upon a conversation with one "market participant [who] opined a market rental rate for office space similar to the subject. He stated that $9.00 per square foot, triple net, would be applicable

to the subject as of January 1, 2015." Statutory Transcript at Smith Appraisal Report at page 38. As such, it appears that Smith accepted the single, unidentified market participant's conclusion of $9.00 per square and sought market information to support that conclusion instead of determining the appropriateness of such conclusion. Furthermore, although we note that there was tremendous overlap in the appraisers' range in market rent, we find Sprout's $10 per square foot conclusion of market rent more credible given that the subject property was essentially at the beginning of the underlying 126 month lease, which was initially set at $9.85 per square foot with 2% annual increases. Smith's lease comparable three most closely mirrors the subject property in square footage and lease term, and indicated a $9.75 per square foot value and more closely tracks with Sprout's conclusion of market rent. With regard to his capitalization rate, Smith also talked to a single unknown market participant who opined to a 9% capitalization rate. Id. at page 46. As such, it appears that Smith sought market information to support that conclusion instead of determining the appropriateness of such conclusion. We also find his reliance, in part, on sale comparables three and five to support his capitalization rate to be unreliable based upon our earlier discussion on the use of multi-property transfers. In contrast, Sprout's capitalization rate of 7.75% more accurately reflects the lower level of risk associated with the subject property given that, on tax lien date, the underlying lease still had several years remaining in the 126 month lease term. Based upon the foregoing, we find Sprout's income approach to be more reliable.

[12] In its closing argument at this board's hearing, the property owner argued that we should reject Sprout's appraisal report because Smith's appraisal report contained more detailed information, because Sprout failed to include a tax additur in his analysis, and because his capitalization rate was based, in part, upon a sale of property outside of Franklin County, Ohio. We find that Sprout's calculation of effective gross income adequately accounted for the negative effect of property taxes passed on to the property owner because of vacancy and credit loss. We also conclude that both appraisers provided sufficient information for our review, whether such information was found in the addendum, as in Smith's appraisal report, or body of the appraisal report, as in Sprout's appraisal report. We also find no error in Sprout's capitalization rate, which was based upon actual sales in the market and refied less on national surveys and the opinion of a single, anonymous market participant. It should be noted, however, that Sprout's capitalization rate falls within the range of capitalization rates provided on page 45 of Smith's appraisal report.

[13] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that the BOE satisfied its evidentiary burden on appeal. In so doing, we find that Sprout's appraisal report was more competent, probative, and reliable than the appraisal report submitted by the property owner's appraiser, Smith. It is, therefore, the order of this board that the subject property's true and taxable values, as of January 1, 2015, are as follows:

TRUE VALUE

$3,225,000

TAXABLE VALUE

$1,128,750

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

OHIO BOARD OF TAX APPEALS

GREAT VALLEY-OHIO LLC, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 20 I 6-1392

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GREAT VALLEY-OHIO LLC
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COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
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Entered Monday, May 7, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant property owner, Great Valley-Ohio, LLC ("owner"), appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel numbers 010-011002 and 010-056276, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, the record of hearing before this board, and any written argument submitted by the parties.

The subject's aggregate total true value was initially assessed at $899,000. The property owner filed a decrease complaint with the BOR, seeking a reduction in value to $450,000, based upon appraisal evidence. S.T., Exhibit ("Ex.") A. The Board of Education of the Columbus City Schools ("BOE") filed a counter complaint seeking to maintain the subject's initially assessed value. S.T., Ex. B.

At the BOR's hearing, owner's counsel offered the testimony of Mr. Carl Jacobsman, the subject's tenant, Mr. Don Daniels, owner of the LLC, and the appraisal and testimony of Ms. Jayne E. Young, GAA, RAA, a state-certified general real estate appraiser in Ohio. Mr. Jacobsman provided testimony regarding the condition, location, and parking of the subject property. Mr. Daniels explained his fondness for the subject property, but explained that due to constant repairs, the property has not been as profitable as he anticipated it would be when he purchased it. In her report, Ms. Young employed the sales comparison, income capitalization, and cost approaches to value. Upon reconciling the resulting values, Ms. Young placed primary weight on the sales comparison and cost approaches and concluded to a value of $450,000 for the subject property as of December 31, 2015. S.T., Ex. F appraisal at 17. Through cross examination, BOE's counsel confirmed with Ms. Young that the effective date of the valuation she concluded to in her report was December 31, 2015. S.T., Ex. E. A BOR member then asked Ms. Young whether there were any significant changes to the property that would affect her opinion of value as of January 1, 2015 and Ms. Young replied in the negative.

Thereafter, the BOR did not elect to rely upon the owner's appraisal report to determine value, but rather, applied a 20% depreciation factor to the subject's value and issued a decision reducing its value to $719,200. S.T., Ex. G. Dissatisfied with the result, the property owner filed an appeal with this board.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397, i!24; *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, ,r6 ("In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value."). Although• we acknowledge a narrow exception to this general rule, known as the *Bedford* rule, see *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 115 Ohio St.3d 449, 2007-Ohio-5237, such rule is not applicable herein, as the owner is the appellant before this board and the BOR did not rely upon the owner's appraisal evidence to determine value. See also *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 123 Ohio St.3d 268, 2009-Ohio-4975, at ,r24.

Further, we also acknowledge, an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, we are mindful that in order for such opinion to be considered probative, it must be supported with reliable tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tok/es & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992). On appeal, the weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Fed.* S. *& L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996).

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). In the absence of a recent arm's-length sale, as in the case before us, an appraisal or other relevant evidence is necessary to determine the subject's true value. *First Union Real Estate Equity & Mtg. Investments v. Cuyahoga Cty. Bd. of Revision,* 53 Ohio St.3d 236 (1990); *State ex rel. Park Investment Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410,412 (1964). It is not enough, however, for the proponent of change to simply come forward with some evidence of value; rather, it is incumbent upon an appellant to present competent and probative evidence of the value sought to make its case. See *Columbus City School Dist. Bd. of Edn.,* supra.

On appeal, at this board's hearing, the owner offers essentially the same testimony and evidence as was submitted to the BOR. For its part, the BOE offers testimony from Mr. Thomas D. Sprout, MAI, CPA, a

state-certified general real estate appraiser in Ohio, who performed a review of the owner's appraisal evidence.

When, as here, a party relies on an appraiser's opinion of value, this board may "accept all, part or none of the testimony of any appraiser"; there is no requirement for this board to adopt the valuation fixed by any expert appraiser. *Witt Co. v. Hamilton Cty. Bd. of Revision,* 61 Ohio St.3d 155 (1991). See also *Cardinal Fed. S. & L. Assn.*, supra; *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 30 (1997). This board is charged with the responsibility of determining value based upon evidence properly contained within the record and found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997). As such, we look to all aspects of the record before us in conducting our independent review of the subject property.

Turning to the owner's appraisal evidence, we observe, the effective date of the value concluded to by the appraiser in the report is December 31, 2015, a date subsequent to the tax lien date at issue, i.e., January 1, 2015. S.T., Ex. F appraisal at 17. See also S.T., Ex. F appraisal at 1-2, 18. Although we acknowledge that, for the first time on appeal, the appraiser indicated at hearing that the December 31, 2015 effective date was a mistake and that it should have been January 1, 2015, when asked by BOE's counsel when the mistake came to her attention, the appraiser responded, "I don't know, truthfully." H.R. at 42. The effective date of valuation is a significant component of an appraisal as "[m]arket forces are dynamic, and the appraiser's opinions[, analyses,] and conclusions refer to a specific point in time." The Appraisal of Real Estate 134 (13th Ed.2008). Moreover, the Supreme Court of Ohio has repeatedly cited to the importance of an expert's opinion of valuation being "as of' the tax lien date in issue when determining the value of real property for purposes of ad valorem taxation. *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision,* 75 Ohio St.3d 552 (1996). See also *Freshwater,* supra, at 30 ("The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. *** The real estate market may rise, fall, or stay constant between any two dates, and the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact."). Here, beyond the appraiser's testimony, the record is devoid of any corroborating proof that the valuation she concluded to in the report is valid as of the tax lien date at issue, i.e., January 1, 2015. Given such deficiency, we are unable to conclude that the value arrived at by the appraiser constitutes competent and probative evidence of the subject's value as of the tax lien date.

Turning to the owner's remaining evidence, we find the testimony of the subject's tenant and owner in relation to its condition and challenges to be competent; however, the record is devoid of any probative evidence demonstrating how those alleged conditions and challenges may impact the property's value. See *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227, 228 (1996) ("Evidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value. It is the decrease in true value that may result from the need for the repairs that is the important factor to be determined by the BTA.").

Having found no probative support for the reduction sought by the owner, we now consider the propriety of the BOR's decrease in value. In so doing, we are mindful that "decisions of boards of revision should not be accorded a presumption of validity." *Colonial Village Ltd. v. Washington Cty. Bd. of Revision,* 114 Ohio St.3d 493, 2007-Ohio-4641, at if23. "To be sure, if a board of revision makes a valuation change that is completely unsupported in the record, the BTA may not affirm or adopt it. See *Columbus City School Dist.Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 567 *** (2001) (the BTA errs by affirming a board of revision's reduced or increased valuation if 'there is no evidence or other information in the statutory transcript to explain the action taken by the BOR.')." *Worthington City School Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 140 Ohio St.3d 248, 2014-0hio-3620, at if38. See also *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 147 Ohio St.3d 503, 2016-Ohio-1485, at if30 ("A legal error in the BOR's determination prevents affirmance of the BOR's determination."); *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 123 Ohio St.3d 268, 2009-Ohio-4975, at if31, citing *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision,* 113 Ohio St.3d 281,2007-Ohio-1948. Ultimately, this board recognizes its duty to independently weigh the evidence presented and not merely "rubber stamp" a board of revision's finding from which the appeal is taken. *Consolidated Freightways, Inc. v. Summit Cty. Bd. of Revision,* 21

Ohio St.3d 17 (1986). See also *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291,201l-Ohio-5078.

In this instance, upon a careful review, we are unable to discern how the BOR arrived at a 20% depreciation factor in relation to the subject property, and we are unable to replicate it. See *Sapina v. Cuyahoga Cty. Bd. of Revision,* 136 Ohio St.3d 227, 2013-Ohio-3028, ,r35. Accordingly, we are unable to conclude that the BOR's decrease in value was premised upon competent and probative evidence and as such, we find the BOR erred when it decreased the subject's value by applying a 20% depreciation factor.

Having found no support for the BOR's reduction in value, we now turn to the record to determine whether this board may independently determine value. Although we acknowledge that this board may utilize portions of an appraisal to independently determine value, in this instance, we find the contents of the report do not provide a sufficiently reliable basis to determine value. See *Copley-Fairlawn,* supra, at ,r24-25. In the absence of sufficient competent and probative evidence to support a reduction value, we simply cannot engage in conjecture in deriving our own value. See *Howard v. Cuyahoga Cty. Bd. of Revision,* 37 Ohio St.3d 195, 197 (1988) ("We now require [the BTA] to state what evidence it considered relevant in reaching its value determinations."). See also *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059, at ,r15 ("Mere speculation is not evidence."). Based upon the foregoing, we find it appropriate, in this instance, to reinstate the auditor's initially assessed value for the tax lien date at issue. *Vandalia-Butler,* supra, at ,r21, 24; *Olentangy Local Schools Bd. of Edn. Delaware County Bd. of Revision,* 147 Ohio St.3d 409, 2016-Ohio-7381, at ,r20; *Sapina,* supra, at ,r35; *Shinkle,* supra, at ,r28.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 010-0110002 TRUE

VALUE

$500,000

TAXALBE VALUE

$175,000

PARCEL NUMBER 010-056276 TRUE

VALUE

$399,000

TAXABLE VALUE

$139,650

OHIO BOARD OF TAX APPEALS

ROSSEN MILANOV, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2016-1936, 2016-1937, 2016-1938, 2016-1940, 2016-1941, 2016-1942, 2016-1943, 2016-1944, 2016-1945, 2016-1947, 2016-1948, 2016-1949, 2016-1950, 2016-1951, 2016-1952, 2016-1953, 2016-1954, 2016-1955, 2016-1956, 2016-1957, 2016-1958, 2016-1959, 2016-1960, 2016-1961, 2016-1962, 2016-1963, 2016-1964, 2016-1965, 2016-1966, 2016-1967, 2016-1968, 2016-1969, 2016-1970, 2016-1971, 2016-1972, 2016-1977, 2016-1978, 2016-1979, 2016-1980, 2016-1981, 2016-1982, 2016-1983, 2016-1984, 2016-1985, 2016-1986, 2016-1987, 2016-1988, 2016-1989, 2016-1990, 2016-1991, 2016-1992, 2016-1993, 2016-1994, 2016-1995, 2016-1996, 2016-1997, 2016-1998, 2016-1999, 2016-2007, 2016-2008, 2016-2009, 2016-2010

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Friday, May 11, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owners appeal the decisions of the board of revision ("BOR"), which determined the

value of the subject real property for tax year 2015. The subject property consists of parcel numbers 010-284412, 010-284421, 010-284433, 010-284406, 010-284429, 010-285994, 010-284410, 010-285999, 010-284416, 010-284430, 010-285975, 010-284415, 010-284411, 010-285998, 010-284427, 010-285973, 010-284372, 010-284403, 010-284413, 010-285997, 010-284394, 010-285977, 010-284417, 010-284399, 010-284418, 010-285992, 010-285996, 010-285974, 010-284428, 010-284436, 010-284420, 010-284407, 010-284404, 010-284409, 010-284392, 010-284391, 010-285980, 010-285984, 010-284414, 010-284425, 010-284426, 010-284419, 010-285987, 010-284434, 010-284424, 010-284389, 010-284395, 010-284377, 010-285995, 010-284400, 010-285986, 010-284388, 010-284373, 010-284374, 010-284401, 010-285981, 010-284422, 010-286005, 010-284396, 010-285989, 010-284435, and 010-284423. Each parcel is located in the Condominiums at North Bank Park ("North Bank Condos"), and is subject to a real property tax abatement and tax increment financing agreement. We note that not all of the units located in the North Bank Condos are subject to appeal. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written argument. We note that several documents have been referenced in the parties' written argument that were not admitted during a hearing before this board or the BOR, including a deposition transcript referenced in written argument by both the BOE and property owners. Because these documents are not properly in the record, we give them no weight in our analysis. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996) ("*Nestle*").

The property owners do not challenge the auditor's total value attributable to each unit, but rather contest the allocation of the total value to land on which the improvements are situated. The property owners represented that the total land value for the units was initially assessed at $6,500,000, or 10% of the total value of all units, though not all of the units are subject to the present appeal. The property owners filed decrease complaints with the BOR, and the appellee board of education ("BOE") filed countercomplaints in support of maintaining the auditor's values for four units. At the BOR hearing, the BOE moved to intervene in the remaining cases, noting that they were related and being heard together. The property owners presented testimony from Alicia Kerns, property manager for North Bank Condos, regarding the allocation of the ownership of common area among units. The property owners also presented the testimony and written report of Debi Wilcox, MAI, who opined that the value of the subject land as vacant was $1,515,000 as of January 1, 2015. Wilcox explained that she relied on the sales comparison approach to conclude to a value for the roughly 1.01 acre lot. The BOE did not present any independent evidence of value, but cross-examined Wilcox regarding her report and methodology. Wilcox also answered questions from the BOR members regarding her appraisal.

The BOR issued a decision adjusting the value of parcel number 010-285974 to $925,000 based on a recent sale of that property, which was apparently the subject of a separate BOE increase complaint. The BOR issued a second decision in this case determining that the parcel's value was $865,000, though this decision was void because it was issued after the appeal had already been filed. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio. St.3d 363, 368 (2000) ("[W]e held that prior to the actual institution of an appeal or expiration of the time for appeal, administrative agencies generally 'have inherent authority to reconsider their own decisions since the power to decide in the first instance carries with it the power to reconsider.'"). The BOR also issued decisions maintaining the initially assessed valuation for the remaining parcels, indicating that it gave no weight to Wilcox's appraisal due to issues with her methodology and evidence of recent sales of several units at amounts higher than the auditor's appraised values. From these decisions, the property owners filed the present appeals.

At the hearing before this board, the property owners again relied on the testimony from Kerns and Wilcox. In addition to Wilcox's report and the documents related to unit ownership, the owners provided the 2011 land values for other condominium communities in downtown Columbus, a Columbus City Council ordinance from 1997, two news articles related to development in downtown Columbus, and a map purporting to show the boundaries of the "Arena District" in downtown Columbus. The BOE offered the testimony and written report of Thomas D. Sprout, MAI, who opined a total true value of $3,740,000 as of January 1, 2015. Like Wilcox, Sprout relied solely on the sales comparison approach to value the land as

though it were vacant. Following the hearing, both the property owners and BOE filed written argument. The property owners reiterated their reliance on Wilcox's appraisal, challenging not only Sprout's appraisal, but also the auditor's initial valuation. The BOE advanced two arguments. First, the BOE contended that the auditor's value must be retained because neither appraisal properly valued the property, which is, in fact, improved with a high-rise residential tower and split into separate parcels. Second, the BOR maintains that even if the board were to reject its first argument, Sprout's appraisal provides the only competent and probative evidence of value in the record.

Before we reach the merits of the case, we must address the deficiency in the record received from the BOR. The BOR did not include some evidence that was apparently considered during its deliberations. The BOR referred to sales of a number of the subject units, even explaining that the value of parcel number 010-285974 was determined by the BOR in BOR case number 15-900288 and that it had reviewed sale documents as part of that decision. Though basic transfer information (date and purchase price) is included on the property record cards, none of the documents related to sales or other related complaints have been provided to this board. Parties and various tribunals rely upon boards of revision to fulfill their statutory duties to create and maintain a record capable of being reviewed on appeal. R.C. 5715.08; R.C. 5717.01. The BOR should take care to ensure its evidentiary record is accurate and provide all evidence considered during its proceedings in the transcript provided to this board because it defaults on its statutory obligation when it fails to transmit the record in its entirety. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078. Due to its absence in the record, we are unable to review the sale evidence discussed and considered by the BOR.

We now turn to the merits of the appeals. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). The court has emphasized that this board must "eschew a presumption of the validity of the BOR's value and instead to perform its own independent weighing of the evidence in the record." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2017-Ohio-5823, ¶7, citing *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, ¶15, 22; *Vandalia-Butler City Schools*, supra, at ¶13, citing *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011-Ohio-2258, ¶17, citing *Nestle*, supra, at 15. Additionally, although the property owners primarily contest the auditor's allocation of the total value land and building, a challenge of valuation necessarily puts the value of the entire property at issue before the BOR and the BTA. *Blatt v. Hamilton Cty. Bd. of Revision*, 123 Ohio St.3d 428, 2009-Ohio-5260, ¶20 ("[T]he jurisdiction of boards of revision and, derivatively, that of the BTA is controlled in the first instance by R.C. 5715.19(A). That statute explicitly places the total value of the property (both land and improvements) at issue in an appeal of valuation.").

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). Based on the comments by the BOR members and property record cards, it is clear that several of the units have been subject to transfers that appear to be recent to the tax lien date, though we lack the information regarding the parties to those sales. On appeal, none of the parties in this case have relied on these sales, nor have they disputed the sales' reliability. The BOR referred to these sales in its decision hearing and notes, but did not provide the detailed information regarding the parties to the transfer. Although there is a "relatively light initial burden" to demonstrate that a sale was "qualifying" and a reliable indication of value, see *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, the record lacks the basic information necessary to consider whether the sales were arm's-length, i.e., the parties to the transaction. As such, we are unable to fulfill our duty to independently review and weigh the evidence to determine value, even if it is not the value advocated by any party. See *Huber Hts. City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, Slip Opinion No. 2017- Ohio-8819. Therefore, we must remand the matter to the BOR to review its records and determine whether each recent transfer listed on the relevant property record card appears to be at arm's length on its face. If

the BOR finds to the affirmative, then it must give any party opposed to reliance on the sale the ability to provide rebuttal evidence. If no such evidence is offered, then the BOR shall value the parcel consistent with the sale price. See *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 691, 2017-Ohio-1412.

The property owners do not contest the property's total value, only the allocation of that value to land. The property owners reason that because the tax abatement relieves owners of the responsibility to pay taxes on the improvement value, the total true value is of less consequence than the allocation among land and building. The property owners argue that the auditor improperly relied on an "allocation method" to attribute value to the land rather than the sales comparison approach. In an effort to refute the auditor's allocation, the property owners relied on Wilcox's appraisal, which opined a value for the roughly 1.01 acre land beneath the 20-story condominium community. In return, the BOE presented Sprout's appraisal, which also valued the land beneath the building as though it were unimproved. The BOE has argued, however, that this board must reject both appraisals because they violate the prohibition against utilizing a "bulk discount" on properties that have been subdivided, citing *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940 ("*East Bank*"). The BOE further argues that the auditor properly considered relevant condominium property law and utilized the "allocation method" to determine land value consistent with Ohio law and the Appraisal of Real Estate.

The land value of the subject property was litigated by the parties for tax year 2013, and the Supreme Court ultimately affirmed this board's reliance on Sprout's appraisal for 2013 after consideration of the evidence and arguments presented at that time. *NWD 300 Spring, L.L.C. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 193, 2017- Ohio-7579. Notably, in the prior litigation, the property owners and BOE each relied on their respective appraisal reports, while the county appellees did not participate or advocate for their own values. Unlike this case, the BOE did not make the argument that neither appraisal provided a legally correct methodology and that the auditor's value allocation should be retained. Thus, although the property owners questioned the propriety of the methodology behind the auditor's initial land values, it was not material and was not expressly addressed. Id. at ¶15. After a review of the facts of this case and existing case law, we agree with the BOE that neither appraisal provides a reliable indication for the subject's land value.

In *East Bank*, supra, the court held that it is legally improper to value multiple condominiums as a single economic unit once they have been divided into separate condominium parcels. The court reasoned that to consider 21 individual parcels in bulk as if they were one unit reflects a bulk discount in violation of R.C. 5311.11, which provides that "[e]ach unit of a condominium property and the undivided interest in the common elements appurtenant to it is deemed a separate parcel for all purposes of taxation and assessment of real property." The court explained that the appraisal improperly utilized a volume discount when the appraiser concluded that the units, which were all held by a common owner, would only sell at one time to one investor and did not consider the value of each unit individually.

We find that the same rationale applies to the present appeals. Both the Wilcox and Sprout appraisals value the land as though it were a single unit that would transfer in bulk rather than acknowledge the land had been subdivided into separate units. To do so not only violates R.C. 5311.11, but also ignores the reality that there are dozens of separate owners and the land could not transfer as one economic unit. Accordingly, we agree with the BOE that neither appraisal provides a competent and probative valuation of the subject land. See, also, *City of Columbus Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 700, 2016-Ohio-8375, ¶ 13-14.

The property owners have argued that this board may not "simply revert" to the auditor's valuation because that value was affirmatively contradicted by the only evidence in the record, citing to *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948. The court has recently reaffirmed the well-settled standards for burdens of proof in real property valuation cases:

> "'[T]he party challenging the board of revision's decision at the BTA has the burden of proof

to establish its proposed value as the value of the property.' *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, *** ¶23; see also *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision*, 170 Ohio St. 340, 342, *** (1960) ('The burden is on the taxpayer to prove his right to a deduction. He is not entitled to the deduction claimed merely because no evidence is adduced contra his claim'). To meet that burden, the appellant must furnish 'competent and probative evidence' of the proposed value. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, *** ¶6. '[T]he board of revision (or auditor),' on the other hand, 'bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof at the BTA.' *Colonial Village* at ¶ 23." (Parallel citations and footnote omitted.) *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2017-Ohio-8818, ¶12.

Notably, in *Jacobovitch*, supra, the court affirmed this board's rejection of the owner's evidence, which resulted in the adoption of the fiscal officer's values. In doing so, the court expressly rejected the owner's argument relying on *Dayton-Montgomery*, and held that a lack of supporting rationale for the fiscal officer's valuation was "immaterial" and her arguments failed because the owner "never met her burden in the first instance and thus never cast the burden back on the county to defend the accuracy of its valuation. Id. at ¶21-22. Nevertheless, we will address both aspects of the owners' argument.

Contrary to the property owners' assertions, the "allocation method" is a proper approach to land valuation under Ohio law. See Ohio Adm. Code 5703-25-11(C) ("Land may be valued by four principal methods: *** (2) The allocation method in which the land value is estimated by subtracting the value of the improvements from a known sale price. This is primarily used in an area where there are very few sales of vacant land and the improvements to land are of a generally uniform type."). Thus, we disagree with the owners' argument that by utilizing an "allocation method," the auditor utilized an improper approach. Accordingly, we find that the property owners have failed to "affirmatively negate" the auditor's value because they failed to demonstrate it was based on improper methodology. Instead, the owners have merely set forth a land value based on alternative methodology, which we find unpersuasive and inappropriate for the valuation of the subject property.

Furthermore, the property owners have failed to meet their burden of proof to show that an alternative allocation is correct. The owners rely on the auditor's treatment of other condominium communities in downtown Columbus to show that the subject is being treated disparately. This evidence fails for two reasons. First, it is well established that "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). See, also, *Meyer v. Bd. of Revision*, 58 Ohio St.2d 328, 335 (1979). Second, even if we accept the downtown land allocations represented on Exhibit 4 as being accurate and persuasive, they show that the 10% allocation attributed to the land on the subject property was consistent with the median land values.

The owner's final argument in support of a reduction is that its location within the "Pen West" district distinguishes it from other downtown properties, particularly those that are located within the desirable Arena District. As evidence that it is located outside of the Arena District, the property owners submitted a map that was obtained from a link after clicking on a footnote for the Arena District entry Wikipedia.com, the ultimate source of which is purported to be an article in the Columbus Dispatch. Even if we accept this map as true and accurate, the court pointed out that the state of this area many years ago "has little relevance to valuing the property as of January 1, 2013." *NWD 300 Spring*, supra, at ¶17. It is likewise irrelevant to the property's value as of 2015. Moreover, even if we were to consider it to be reliable, the property owners have failed to show the impact it has on the value of the subject property as of January 1, 2015. See *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996) (pointing out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must

demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value).

Finally, we find that the record lacks any competent and probative evidence that will allow this board to independently determine a land value allocation other than that initially determined by the auditor. As we described above, it appears that several parcels have been the subject of recent transfers, and the sale price from those transfers will provide the best evidence of value if they are, in fact, recent arm's-length sales. Due to deficiencies in the record, however, we are unable to make this finding. Accordingly, we hereby remand this matter to the BOR to make a determination as to whether each parcel has been the subject of a recent arm's-length sale. For those parcels without a recent arm's-length sale, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence."). Those parcels that have recently transferred in an arm's-length transaction should be valued consistent with the price at which they sold. For the remaining parcels, the auditor's values are hereby affirmed.

OHIO BOARD OF TAX APPEALS

JEAN MARSTON, (et. al.),

Appellant(s)

, vs.

CUYAHOGA COUNTY BOARD OF REVISION,
(et. al.),

Appellee(s)

.

CASE NO(S). 2017-2335

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JEAN MARSTON
3070 S. OCEAN BLVD.
LANTANA, FL 33462

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH
FLOOR CLEVELAND, OH 44113

Entered Monday, May 14, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See also R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "Ia]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review

decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JOHN HUNTINGTON AND SUSAN HUNTINGTON, (et. al.),	CASE NO(S). 2018-230
Appellant(	(REAL PROPERTY
s), vs.	TAX) DECISION AND
	ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s)	

.

APPEARANCES:

For the Appellant(s) - JOHN HUNTINGTON AND SUSAN HUNTINGTON
Represented by:
SUSAN
HUNTINGTON
435 HIGHGATE AVENUE
WORTHINGTON, OH 43085

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING
ATTORNEY FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH
FLOOR COLUMBUS, OH 43215

WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H.
GILLIS
RICH & GILLIS LAW GROUP,
LLC 6400 RIVERSIDE DRIVE,
SUITE D DUBLIN, OH 43017

Entered Monday, May 14, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the appellees' motions to dismiss the present appeal as premature. The county appellees and board of education assert that the appellants did not file an initial complaint with the Franklin County Board of Revision ("BOR") and thus no final decision has been issued. Appellants did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On March 21, 2017, the appellants filed a notice of appeal; however, appellants did not include a copy of a BOR decision. Instead, they attached correspondence from the county auditor indicating his assessment of the property's value for tax year 2017 following a reappraisal of property values in the county. There is no indication that appellants filed a complaint against the valuation with the county board of revision as provided for in R.C. 5715.19, and, further, the county appellees attached to their motion a certification that there is no record of the board of revision having issued a decision on the value of the subject property.

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." *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellants have not appealed from a BOR decision and th\}s this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

HM SALEH LTD, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-217

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HM SALEH LTD
Represented by:
HUSSEIN SALEH
OWNER
HM SALEH LTD
1637 E. LIVINGSTON AVE
COLUMBUS, OH 43205

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITED
DUBLIN, OH 43017

Entered Monday, May 14, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the appellees' motions to dismiss the present appeal as premature. The county appellees and board of education assert that the appellant did not file an initial complaint with the Franklin County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On March 22, 2018, the appellant filed a notice of appeal with this board. Appellant did not include a copy of a BOR decision. The county appellees attached to their q10tion certification that there is no record of a decision issued for the subject property.

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." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CHRISTOPHER REESE, (et. al.),

Appellant(s)

, vs.

CUYAHOGA COUNTY BOARD OF REVISION,
(et. al.),

Appellee(s)

CASE NO(S). 2017-2321

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)
- CHRISTOPHER REESE
OWNER
7794 GLENWOOD CIRCLE
BROADVIEW HEIGHTS, OH 44147

For the Appellee(s)
- CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, May 14, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(8). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision ("BOR") provided such appeal is filed with this board *and the EOR* within thirty days after notice of the decision of the county BOR is mailed. See also R.C. 5715.20. In *Hope v. Highland Cty. Ed. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to near appeals.*** 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." See, also, *Cincinnati School Dist. Ed. of Edn. v. Hamilton Cty. Ed. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider this matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DAVID BATCHELOR, (et. al.),

AppeHant(s)

, vs.

CUYAHOGA COUNTY BOARD OF REVISION,

(et. al.),

Appellee(s)

.

CASE NO(S). 2018-40

(REAL PROPERTY

TAX) DECISION AND

ORDER

APPEARANCES:

For the Appellant(s) - DAVID BATCHELOR
274 ORCHARD ST.
CHAGRIN FALLS, OH 44022

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH
FLOOR CLEVELAND, OH 44113

Entered Tuesday, May 15, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See also R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals.*** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Appellant's response did not provide documentation to demonstrate that the appeal was timely filed with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

VICTOR GOZION, JR., (et. al.),

Appellant(s)

, vs.

CUYAHOGA COUNTY BOARD OF REVISION,
(et. al.),

Appellee(s)

CASE NO(S). 2018-34

(REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- VICTOR GOZION, JR.
OWNER
12911 SNOWVILLE ROAD
BRECKSVILLE, OH 44141

For the Appellee(s)

- CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR CLEVELAND, OH 44113

Entered Tuesday, May 15, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See also R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "{a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner."). The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MOSES DURDEN, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1427

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MOSES DURDEN
5340 MAGNOLIA OVERLOOK
INDEPENDENCE, OH 44131

For the Appellee(s) - CUYAHOGA COUNTY BOAim OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

INDEPENDENCE LOCAL SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
DAYID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Tuesday, May 15, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(8). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See also R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and

5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the mot ion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LASHANDA LYLES-BURDEN, (et. al.),

Appellant(s)

, vs.

ALLEN COUNTY BOARD OF REVISION, (et.
al.),

Appellee(s)

.

CASE NO(S). 2017-1884

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LASHANDA LYLES- BURDEN
P.O. BOX 361834
DECATUR, GA 30036

For the Appellee(s) - ALLEN COUNTY BOARD OF REVISION
Represented by:
JUERGEN A.
WALDICK
PROSECUTING ATTORNEY
ALLEN COUNTY
204 N. MAIN STREET., SUITE 302
LIMA, OH 45801

Entered Monday, May 21, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The above-named appellant appeals a decision of the board of revision ("BOR"), which denied her application for remission of a 10% late payment penalty assessed on the second half real property tax bill for tax year 2016. We proceed to consider this matter based upon the notice of appeal and the record certified pursuant to R.C. 5717.01.

[2] The appellant applied for remission of the late payment penalty, alleging that she did not receive a tax bill because such bill was not sent to her out of state address but was, instead, sent to the subject property's address. She asserted that, upon learning of the delinquency, she immediately paid the outstanding bill. The BOR denied her request for remission of the penalty, citing a prior late payment made in tax year 2015. Thereafter, the taxpayer appealed to this board, clarifying that her mother, the titled owner of the subject property, had passed away in November 2014 and the late payment penalty was assessed to the real property tax bill because there were delinquent sewer bills for tax year 2016. See R.C. 343.08(A)(l) and (A)(2) (delinquent sewer bills "shall be a lien on the property from the date they are placed upon the real property duplicate by the auditor and shall be collected in the same manner as other taxes."). She further explained that her failure to timely pay the sewer bills was based upon her unfamiliarity with the sewer billing process in Allen County and was unintentional. The

taxpayer also disputed the BOR's assertion that there was a late payment in tax year 2015. Although the parties had an opportunity to request a merit hearing before this board to submit evidence in support of their respective positions, none of the parties availed themselves of such opportunity. We will, therefore, perform an independent review of the record based upon the argument and limited evidence in the record. See *Black v. Cuyahoga Cty. Bd. of Revision,* 16 Ohio St.3d 11 (1985). As the appellant, the burden is on the taxpayer to demonstra_te that the BOR improperly denied the request for remission of the real property, late payment penalty. See *Columbus City School Dist. Ed. of Edn. v. Franklin Cty. Ed. of Revision,* 90 Ohio St.3d 564, 566 (2001).

[3] Based upon our review, we find that the appellant has failed to demonstrate that the facts and circumstances of this matter qualify for remission of the late payment penalty pursuant to R.C. 5715.39. Although we acknowledge that the titled owner of the subject property passed away in November 2014, unfortunately we cannot grant penalty remission on this basis. See R.C. 5715.39(B)(3) (the late payment penalty shall be remitted if "[t]he tax was not timely paid because of the death or serious injury of the taxpayer, or the taxpayer's confinement in a hospital within sixty days preceding the last day for payment of the tax if, in any case, the tax was subsequently paid within sixty days after the last day for payment of such tax."). See also *Estate of Raymond J. Battaglia v. Zaino* (Oct. 12, 2001), BTA No. 2001-L-5l1, unreported.

[4] Furthermore, we find that the BOR properly determined that the facts and circumstances described by the appellant in the initial application for remission of the late payment penalty do not satisfy the requirement ofR.C. 5715.39(C), which provides that the late payment penalty shall be remitted if the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not r asonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. Although the appellant disputes that there was an untimely payment or penalty in tax year 2015, in the first paragraph of her notice of appeal, she acknowledges that she "paid the penalty for 2014, in 2015, because it was listed on the property tax invoice." While we are sympathetic to the appellant's plight, she has failed to demonstrate that she satisfies the requirements for remission ofreal property tax penalties under R.C. 5715.39(C).

[5] Based upon the foregoing, we affirm the BOR's decision to deny the appellant's request for remission of the late payment penalty for the second half of tax year 2016.

OHIO BOARD OF TAX APPEALS

ROONEY PROPERTIES LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s) .	CASE NO(S). 2016-1889, 2016-1890, 2016-1891, 2016-1892 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- ROONEY PROPERTIES LLC
Represented by:
MATTHEW GILMARTIN
ATTORNEY AT LAW
P.O. BOX 939
NORTH OLMSTED , OH 44070

For the Appellee(s)

- CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING
ATTORNEY CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

OLMSTED FALLS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
THOMAS A.
KONDZER KOLICK &
KONDZER
24650 CENTER RIDGE ROAD, SUITE 110
WESTLAKE, OH 44145

Entered Monday, May 21, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals four decisions of the board of revision ("BOR") which determined the values of the subject real property, parcel numbers 262-13-005, 262-14-006, 262-14-008, 262-14-009, 262-14-010, 262-14-040, 262-14-042, and 262-14-043, for tax year 2015. These consolidated appeals are now considered upon the notices of appeal, statutory transcripts ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing ("H.R.") before this board. For the reasons set forth below, we find the owner was required, but failed, to provide sufficiently probative evidence in support of the reductions in value sought and, in the absence of sufficient competent and probative evidence from which this board may independently determine value, we affirm the BOR's retention of the subject's initially assessed values.

Before proceeding to the merits of these consolidated appeals, we first address the owner's objections, raised on appeal at this board's hearing, to the admission of the board of education's Exhibits B, C, D, E,

and F, all of which relate to an oil and gas lease for the subject, for which this board's hearing officer reserved ruling. H.R. at 19-20. Upon consideration of the arguments advanced, we hereby overrule the objections, but assign no weight to such exhibits in our analysis below. We now proceed to the merits.

The subject is residential property consisting of both improved and vacant parcels. The subject's total true values were initially assessed at $17,600; $85,000; $144,700; $10,400; $355,100; $116,400; $35,500; and

$49,800, respectively. The property owner filed decrease complaints with the BOR, seeking reductions in value to $14,400; $59,710; $114,975; $8,480; $216,000; $81,200; $25,340; and $41,120. S.T., Exhibit

("Ex.") A. Rhe Board of Education of the Olmsted Falls City School District ("BOE") filed counter complaints requesting to maintain the subject's initially assessed value, with the exception parcel number 262-13-005, for which it filed no countercomplaint. S.T., Ex. B.

The BOR held four hearings on the underlying complaints. Although the BOR's hearing audio relating to parcel numbers 262-14-006, 262-14-008, 262-14-009 is not contained in the transcript certified to this board, upon examination of the evidence contained in all four transcripts, the BOR's four written oral hearing journal summaries, and the audio recordings of the other three BOR hearings, we find the facts and issues of these matters to be sufficiently similar so that this board may glean the information discussed in the missing audio and allow us to proceed with our review on appeal. S.T. At the BOR's hearings, based upon the three hearing audio recordings and four oral hearing journal summaries, owner's counsel offered the testimony of Mr. David Rooney, owner of the ownership entity, and Mr. George Potz, a real estate broker and developer. Mr. Rooney testified as to the condition of the subject property and surrounding area and characterized the vacant parcels as "pasture land." Further, Mr. Rooney provided testimony regarding property damage sustained from past tenants and property defects relating to the sewer/septic system in place. Mr. Rooney also stated that he determined values for the subject property based upon the advice of Mr. Potz. Mr. Potz testified that he based his opinions of value upon what property is selling for and further, indicated that he recommended the demolition of some of the subject's improvements due to the costs of needed repairs. In support of the testimony, the o ner submitted federal tax forms, 2012-2013 broker opinions of value, comparable sales information, property listings, and information relating to a bank account. S.T., Ex. F. On cross examination by BOE's counsel, Mr. Potz admitted, several of the comparable sales he submitted in support of his values resulted from foreclosure proceedings and Mr. Rooney

admitted that he receives royalties from the subject's oil and gas lease. S.T., Ex. E.

Thereafter, based upon information available to it, the BOR found insufficient support for the requested reductions and issued four decisions maintaining the subject property's initially assessed valuation. S.T., Exs. E & G. Dissatisfied with the results, the property owner timely appealed to this board.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). As the court stated in *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, at 'iJ6: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, ***. The appellee also has a choice to do nothing." (Parallel citation omitted.) Nevertheless, a party's election not to present its own evidence of value is not without risk, as another party's evidence may be found to be competent, probative, and sufficiently persuasive. See, e.g., *Westhaven, Inc. v. Wood Cty. Bd. of Revision,* 81 Ohio St.3d 67 (1998).

It is well settled that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be relevant to the tax lien date at issue and be supported with reliable tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tok/es & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992); *Amerimar Canton Office, L.L.C. v. Stark Cty. Bd. of Revision,* 5th Dist. Stark No. 2014CA00162, 2015-Oh.io-2290. To be sure, it is not enough for a proponent of change to simply come forward with some evidence of value. Neither is it permissible for this board to grant the requested increase or decrease merely because no evidence is offered to challenge the claim. *W Industries, Inc. v. Hamilton Cty. Bd. of Revision,* 170 Ohio St. 340 (1960); *Hibschman v. Bd of Tax Appeals,* 142 Ohio St. 47 (1943). On appeal, the weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Fed.* S. *& L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record which is found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997).

It has long been held by the Supreme Court that "the best evidence of 'true value in money' ofreal property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). In the absence of a recent arm's-length sale, as in the case before us, an appraisal or other relevant evidence is necessary to determine the subject's true value. *First Union Real Estate Equity & Mtg. Investments v. Cuyahoga Cty. Bd. of Revision,* 53 Ohio St.3d 236 (1990); *State ex rel. Park Investment Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410,412 (1964). See, also, Justice Pfeifer's concurrence in *LTC Properties, Inc. v. Licking Cty. Ed. of Revision,* 133 Ohio St.3d 111, 2012-0hio-3930, r28.

On appeal, the owner and the BOE appeared through counsel at this board's hearing. Both counsel for the owner and counsel for the BOE advanced essentially the same arguments as were presented to the BOR. Additionally, both owner's counsel and BOE's counsel offer several unattested exhibits at hearing. Upon review, and noting that statements of counsel are not evidence, see *Corporate Exchange Bldgs. IV & V, LP. v. Franklin Cty. Bd. of Revision,* 82 Ohio St.3d 297, 299 (1998), we assign no probative weight to any of the exhibits offered at this board's hearing in our analysis below. See also *Hardy v. Delaware Cty. Bd. of Revision,* 106 Ohio St.3d 359, 2005-Ohio-5319, at ,r13,

(discussing adverse consequences which may result from a party's failure to present witness testimony before the board and electing instead to rely upon documentary exhibits discussed by counsel).

Turning to the owner's evidence of value, although we find the testimony provided by Mr. Rooney to be competent, we find a lack of sufficiently probative and corroborating tangible evidence in support thereof. See *WJJK Investments, Inc.*, supra. As to the subject's condition and property defects, in *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996), the Supreme Court addressed the burden attendant in advancing claims similar to those made by the owner (at the BOR's hearing) and, in so doing, the court emphasized that a party must demonstrate more than the mere *existence* of adverse factors, but rather, the *impact* they have upon the property's *value*. See also *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397, 400 (1997) ("[t]he mere evidence of disrepair is not probative evidence of value."); *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported ("[a] recitation of defects in a taxpayer's property, without more, is not especially helpful in determining a (lower) valuation."). Here, the evidence of the subject's condition/defects falls well short of demonstrating the impact of such adverse factors upon the subject's value.

Similarly, we find the owner's reliance upon the opinion of value provided by Mr. Potz, who is a broker and property developer, to be unavailing. While a variety of individuals and professionals, such as real estate brokers/developers, may be familiar with valuation concepts, as noted in The Appraisal of Real Estate (13th Ed.2008), an accepted treatise, they are not appraisers trained to opine to fee simple property values, specifically:

> "Real estate salespeople are licensed to sell real estate. They have training in their field but may or may not have extensive appraisal experience. They are generally familiar with properties in a given locale and have access to market information. They frequently use sales and other market information for property comparison purposes in pricing. Some may develop appraisal expertise. As a group, real estate salespeople evaluate specific properties, but they typically do not consider all the factors that professional appraisers do." Id. at 8-9.

Therefore, while we acknowledge Mr. Potz's many years of experience in the real estate industry (as testified to before the BOR), we do not recognize him as an expert appraisal witness. Further, we find that an insufficient foundation was laid with regard to Mr. Potz's knowledge and experience in appraisal methods and the derivation of true value for a particular piece of real property, and, consequently, we assign no probative weight to his opinions of value.

While we acknowledge the comparable sales and listings offered in support of the broker's opinions of value, such information does not provide a reliable probative basis to determine value. "The purpose of the sales comparison approach, one of the three commonly employed methods of appraising property, is to derive an estimate of value by comparing the property under consideration to similar properties recently sold within the market place." *Kaiser v. Lorain Cty. Bd. of Revision* (Nov. 2, 2010), BTA No. 2009-V-1090, unreported, citing *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. Under such approach, appraisers typically employ qualitative or quantitative adjustments to comparables selected to align, and thereby compare, the comparable properties to the subject property. In this instance, however, the owner's comparable sales data does not reflect any adjustments accounting for meaningful differences between the subject property and the comparables selected. In the absence of such adjustments, this board is left to speculate 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; to be sure, "[m]ere speculation is not evidence" and does not serve as a basis upon which this board

may rely to reduce value. *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059, at **,it** 5. See generally *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26 (1997). See also *Kaiser v. Franklin Cty. Aud.,* 10th Dist. Franklin No. IOAP-909, 2012-Ohio-820, ,r12 ("[A] listing price, iq essence an aspirational selling price, is not conclusively probative of what a willing buyer would pay for the property in an arm's-length transaction, and is therefore not conclusively probative of actual market value."). Likewise, we find evidence of the subject's federal tax information and bank balances to be insufficient evidence of the subject's value.

There is no other evidence contained in the record from which this board may independently determine value. In the absence of sufficient competent and probative evidence to support a reduction value, we simply cannot engage in conjecture in deriving our own value. See *Howard v. Cuyahoga Cty. Bd. of Revision,* 37 Ohio St.3d 195, 197 (1988) ("We now require [the BTA] to state what evidence it considered relevant in reaching its value determinations."). Based upon the foregoing, we find the property owner was required, but failed, to present competent and probative evidence in support of the requested decreases in value. See *Simmons v. Cuyahoga Cty. Bd. of Revision,* 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 262-13-005

TRUE VALUE

$17,600

TAXABLE VALUE
$6,160

PARCEL NUMBER 262-14-006

TRUE VALUE

$85,000

TAXABLE VALUE

$29,750

PARCEL NUMBER 262-14-008

TRUE VALUE

$144,700

TAXABLE VALUE

$50,650

PARCEL NUMBER 262-14-009

TRUE VALUE

$10,400

TAXABLE VALUE

$3,640

PARCEL NUMBER 262-14-0 I 0

TRUE VALUE

$355,100

TAXABLE VALUE

$124,290

PARCEL NUMBER 262-14-040

TRUE VALUE

$116,400

TAXABLE VALUE

$40,740

PARCEL NUMBER 262-14-042

TRUE VALUE

$35,500

TAXABLE VALUE

$12,430

PARCEL NUMBER 262-14-043

TRUE VALUE

$49,800

TAXABLE VALUE

$17,430

OHIO BOARD OF TAX APPEALS

MARK A. TAYLOR, (et. al.),

Appellant(s)

, vs.

FAIRFIELD COUNTY BOARD OF REVISION,
(et. al.),

Appellee(s)

.

CASE NO(S). 2017-2125

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARK A. TAYLOR
3376 STADLER DRIVE
PICKERINGTON, OH 43147

For the Appellee(s) - FAIRFIELD COUNTY BOARD OF REVISION
Represented by:
KYLE WITT
PROSECUTING ATTORNEY•
FAIRFIELD COUNTY
239 WEST MAIN STREET, SUITE 101
LANCASTER, OH 43130

Entered Monday, May 21, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The above-named appellant appeals a decision of the board of revision ("BOR"), which denied his application for remission of a 10% late payment penalty assessed on the second half real property tax bill for tax year 2016. We proceed to consider this matter based upon the notice of appeal and the record certified pursuant to R.C. 5717.0 I.

The appellant applied for remission of the late payment penalty, alleging that his failure to timely pay the property tax bill for the second half of tax year 2016 was not based upon willful neglect but was, instead, the result of reasonable cause. In doing so, he asserted that he did not receive tax bills for any part of tax year 2016 because the United States Postal Service had r turned such bills to the county treasurer for unknown reasons. He further asserted that he did not have a history of delinquent property tax payments and, as such, any penalties should be remitted. The BOR denied his current request for remission of the penalty because it had previously remitted a late payment penalty for untimely payment of the property tax bill for the first half of tax year 2016. Thereafter, the appellant appealed to this board, reiterating the arguments previously raised in his application for penalty remission. Although the parties had an opportunity to request a merit hearing before this board to submit evidence in support of their respective positions, none of the parties availed themselves of such opportunity. We will, therefore, perform an independent review of the record based upon the argument and limited evidence in the record. See *Black v. Cuyahoga Cty. Ed. of Revision,* 16 Ohio St.3d 11 (1985).

On appeal, the burden is on the appellant to demonstrate that the BOR improperly denied the request for remission of the real property late payment penalty. See *Columbus City School Dist. Ed. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001).

Based upon our review, we are constrained to find that the appellant has failed to demonstrate that the facts and circumstances of this matter qualify for remission of the late payment penalty pursuant to R.C. 5715.39, which provides the guidelines to determine when real property tax, late payment penalties shall be remitted. Relevant to this matter, R.C. 5715.39(C) provides that the late payment penalty shall be remitted if the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. Here, it is undisputed that the appellant untimely paid the prior tax bilJ, i.e., the property tax bill for the first half of tax year 2016. As such, we find that the BOR properly determined that the facts and circumstances described by the appellant do not satisfy R.C. 5715.39(C).

Based upon the foregoing, we affirm the BOR' s decision to deny the appellant's request for remission of the late payment penalty for the second half of tax year 2016.

OHIO BOARD OF TAX APPEALS

SURENDER GULATI, (et. al.),

Appellant(s)

, vs.

FRANKLIN COUNTY BOARD OF REVISION,
(et. al.),

Appellee(s)

.

CASE NO(S). 2017-2071

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SURENDER GULATI
210 REDSAIL CT
WESTERVILLE, OH 43081

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
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FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH
FLOOR COLUMBUS, OH 43215

Entered Monday, May 21, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The above-named appellant appeals a decision of the board of revision ("BOR"), which denied an application for remission of a 10% late payment penalty assessed on the second half real property tax bill for tax year 2016. We proceed to consider this matter based upon the notice of appeal and the record certified pursuant to R.C. 5717.01.

[2] The appellant applied for remission of the late payment penalty, alleging that failure to timely pay the property tax bill for the second half of tax year 2016 was not based upon willful neglect but was, instead, the result of reasonable cause. In doing so, the appellant c:lsserted that no tax bill was received for that period and that a good faith attempt was made to obtain such bill. The BOR denied the request for remission of the penalty because it had previously remitted a late payment penalty for untimely payment of the property tax bill for the second half of tax year 2015. Thereafter, the appellant appealed to this board. Although the parties had an opportunity to request a merit hearing before this board to submit evidence in support of their respective positions, none of the parties availed themselves of such opportunity. We will, therefore, perform an independent review of the record based upon the argument and limited evidence in the record. See *Black v. Cuyahoga Cty. Ed. of Revision,* 16 Ohio St.3d 11 (1985).

[3] On appeal, the burden is on the appellant to demonstrate that the BOR improperly denied the request for remission of the real property late payment penalty. See *Columbus City School Dist. Ed. of Edn. v. Franklin Cty. Ed. of Revision,* 90 Ohio St.3d 564, 566 (2001).

[4] Based upon our review, we find that the appellant has failed to demonstrate that the facts and circumstances of this matter qualify for remission of the late payment penalty pursuant to R.C. 5715.39, which provides the guidelines to determine when real property tax late payment penalties shall be remitted. We first consider whether the appellant qualifies for remission of the late payment penalty under R.C. 5715.39(B)(2), which provides that the late payment penalty shall be remitted if a property tax bill was not received and the taxpayer "made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax." Here, there has been no demonstration that the appellant made any effort to procure the property tax bill within thirty days of the due date for payment of property taxes for the second half of tax year 2016, i.e., within thirty days of June 20, 2017. Furthermore, "[f]ailure to receive any bill *** does not excuse failure or delay to pay any taxes shown on such bill or, except as provided in division (B)(l) of section 5715.39 of the Revised Code, avoid any ponalty, interest, or charge for such delay." R.C. 323.13. As such, we find that the appellant does not qualify for remission of the late payment penalty under R.C. 5715.39(B)(2).

[5] We next consider whether the appellant qualifies for remission of the late payment penalty under R.C. 5715.39(C), which provides that the late payment penalty shall be remitted if the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See, e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. Here, it is undisputed that there was a prior late payment of property tax, which the appellant asserts was due to an error by the mortgage company. However, that prior late payment of property tax is sufficient to establish a pattern of late payments for purposes of penalty remission. As such, we find that the facts and circumstances described by the appellant do not satisfy R.C. 5715.39(C).

[6] Based upon the foregoing, we affirm the BOR's decision to deny the appellant's request for remission of the late payment penalty for the second half of tax year 2016.

OHIO BOARD OF TAX APPEALS

JUNE AL-SAYED, (et. al.),

Appellant(s),

vs.

LUCAS COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1909

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JUNE AL-SAYED
6020 W. BANCROFT UNIT 35266-1
TOLEDO, OH 43635

For the Appellee(s) - LUCAS COUNTY BOARD OF REVISION
Represented by:
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LUCAS COUNTY
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TOLEDO, OH 43604

Entered Monday, May 21, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The above-named appellant appeals a decision of the board of revision ("BOR"), which denied an application for remission of a 5% late payment penalty assessed on the second half real property tax bill for tax year 2016. We proceed to consider this matter based upon the notice of appeal and the record certified pursuant to R.C. 5717.01.

The appellant applied for remission of the late payment penalty for the subject property, parcel 15-66657 (as well as several other properties that are not the subject of this appeal), alleging that the failure to timely pay the property tax bill for the second half of tax year 2016 was not based upon willful neglect but was, instead, the result of reasonable cause. In doing so, the appellant asserted that financial difficulties and family obligations caused the late property tax payment. The BOR denied the request for remission of the penalty because "not paid in full & past delinquencies." Thereafter, the appellant appealed to this board, asserting that the subject property recently transferred to the appellant and the second half of tax year 2016 was the first tax period for which the appellant was responsible for the subject property's tax payments, and, therefore, the appellant could not have had a history of delinquent tax payments for the subject property. Although the parties had an opportunity to request a merit hearing before this board to submit evidence in support of their respective positions, none of the parties availed themselves of such opportunity. However, the county appellees submitted written argument to which they attached additional documentation. Because such documentation was produced outside the hearing context, we cannot consider it. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13 (1996); *Bd. of Edn. of the South Euclid-Lyndhurst City School Dist. v. Cuyahoga Cty. Bd. of Revision* (Oct. 28, 2008), BTA No. 2007-V-99, unreported. We will, therefore, perform an independent review of the record based upon the

argument and limited evidence that is properly in the record. See *Black v. Cuyahoga Cty. Bd. of Revision,* 16 Ohio St.3d 11 (1985).

On appeal, the burden is on the appellant to demonstrate that the BOR improperly denied the request for remission of the real property tax late payment penalty. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001}.

Based upon our review, we find that the appellant has successfully demonstrated that the facts and circumstances of this matter qualify for remission of the late payment penalty pursuant to R.C. 5715.39, which provides the guidelines to determine when real property tax, late payment penalties shall be remitted. Relevant to this matter, R.C. 5715.39(C) provides that the late payment penalty shall be remitted if the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported.

Here, the county appellees have failed to demonstrate that the appellant has a history of untimely paying property tax bills. We acknowledge that the BOR denied the application for remission of the late payment penalty based upon "not paid in full & past delinquencies." The BOR failed, however, to provide evidence to support such determination. A review of R.C. 5715.39 fails to provide "not paid in full," or some similar verbiage, as a basis for denying an application for remission of the late payment penalty. Additionally, notably absent from the record is any evidence to demonstrate when the "past delinquencies" occurred. When a taxpayer/property owner has a history of delinquent payments of property taxes, the application for remission of late payment penalty, DTE Form 23, specifically directs the county treasurer "to include the amount(s) and tax period(s) for the preceding three years." We further note that the property record card confirms that the subject property was the subject of a transfer in May 2017, which corroborates the appellant's assertion that the appellant did not own the subject property during the time of prior delinquent property taxes.

Based upon the foregoing, we find that the appellant has successfully demonstrated that remission of the penalty for late payment of the property tax bill for the second half of tax year 2016 is appropriate, consistent with R.C. 5715.39(C). Therefore, it is the decision and order of the Board of Tax Appeals that the BOR's decision not to remit the late payment penalty to the appellant is in error and is hereby reversed.

OHIO BOARD OF TAX APPEALS

GIOVANNI PALMIERI, (et. al.),

Appellant(s)

, vs.

BUTLER COUNTY BOARD OF REVISION, (et.
al.),

Appellee(s)

.

CASE NO(S). 2017-1017

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

Forthe Appellant(s)
- GIOVANNI PALMIERI
OWNER
2839 HAMILTON MASON ROAD
HAMILTON, OH 45011-5305

For the Appellee(s)
- BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L.
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BUTLER COUNTY
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HAMILTON, OH 45012-0515

Entered Monday, May 21, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers A0300-060-000-007, A0300-060-000-009, and A0300-060-000-010, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and appellant's written argument.

The subject parcels are apparently three of five contiguous parcels that form roughly 1.5 acres of land improved with a house, garage, and several outbuildings. The parcels at issue consist of approximately 0.71 acres with an outbuilding. The total true value of the three subject parcels was initially assessed at $32,610, of which $31,540 was attributable to the value of the land. Appellant filed a decrease complaint with the BOR seeking a reduction in value to $15,770 for the land. The BOR convened a hearing, at which it considered appellant's written argument because no one appeared to testify or present additional evidence. In his written statement, appellant maintained that the land value was inconsistent with the assessed values of other parcels in the area. The BOR issut,d a decision maintaining the initially assessed valuation, which led to the present appeal. On appeal, appellant again relies on written argument, asserting that the land value of the subject property is inconsistent with values in his neighborhood. Appellant argues that the total true value of the subject is $29,800 per acre, providing a summary of the assessed values for other properties in the area.

Initially, we acknowledge that appellant challenges only the land value of the subject property. Nonetheless, we must address the total value of each parcel, as a challenge of valuation necessarily puts the value of the entire property at issue before the BOR and the BTA. *Blatt v. Hamilton Cty. Ed. of Revision,* 123 Ohio St.3d 428, 2009-Ohio-5260, ,r20 ("[T]he jurisdiction of boards of revision and, derivatively, that of the BTA is controlled in the first instance by R.C. 5715.19(A). That statute explicitly places the total value of the property (both land and improvements) at issue in an appeal of valuation."). We recognize, however, that the improvement value for the outbuilding is a relatively small component of the overall value of the three parcels.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Ed. of Edn. v. Franklin Cty. Ed. of Revision,* 90 Ohio St.3d 564, 566 (2001). An appellant must present competent and probative evidence in support of his requested reduction, and an owner is not entitled to a reduction merely because no evidence is presented against his claim. Id. The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Ed. of Tax Appeals,*175 Ohio St. 41O (1964).

In lieu of an appraisal of the subject property, appellant relies on the auditor's assessed land values for other parcels near the subject. This evidence is not sufficient to support a change in the subject's value. First, this information was provided by appellant in the form of a hand-written list without any documentation to corroborate its accuracy. Moreover, it is well established that "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Ed. of Revision,* 76 Ohio St.3d 29, 31 (1996). See, also, *Meyer v. Ed. of Revision,* 58 Ohio St.2d 328, 335 (1979). Accordingly, we find that appellant's claims based on other properties' values are not reliable evidence of the value of the subject property.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Ed. of Revision,* 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

PARCEL NUMBER A0300-060-000-007

TRUE VALUE: $9,030

TAXABLE VALUE: $3,160

PARCEL NUMBER A0300-060-000-009

TRUE VALUE: $14,070

TAXABLE VALUE: $4,920

PARCEL NUMBER A0300-060-000-010

TRUE VALUE: $9,510

TAXABLE VALUE: $3,330

OHIO BOARD OF TAX APPEALS

MARIA SCAGLIONE, (et. al.),

Appellant(s)

, vs.

CUYAHOGA COUNTY BOARD OF REVISION,
(et. al.),

Appellee(s)

.

CASE NO(S). 2017-984

(REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Monday, May 21, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The above-named property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject properties, parcel 541-06-052 and 542-33-048, for tax year 2016. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and any motions and the associated responses filed by the parties.

[2] The subject properties were initially assessed at $47,600 for parcel 541-06-052 and at $43,300 for parcel 542-33-048. The property owner filed a complaint with the BOR, which requested reductions to the subject properties values. She asserted that the subject properties experienced "[o]ccupancy change of at least 15% had a substantial economic impact on the property." The affected board of education ("BOE") filed a counter-complaint, which objected to the request. Days prior to the BOR's scheduled hearing, the property owner waived her appearance and submitted written argument along with comparable sales data and statements from tenants alleged to have been living in the subject properties. At the BOR hearing, only counsel for the BOE appeared to submit argument and/or evidence in support of its position. As the hearing commenced, counsel questioned whether the BOR had jurisdiction to consider the property owner's complaint. In doing so, she asserted that the subject properties had been the subject of a complaint for tax year 2015 and that, although line 14 of the complaint alleged that the subject properties experienced at least 15% occupancy change, i.e., the owner's written argument asserted that parcel 541-06-052 experienced a 100% occupancy change and parcel 542-33-048 experienced a 60% occupancy change, no actual evidence had been submitted to support such allegations. Counsel further noted that the person who submitted the written argument, Benny Scaglione, was not the property owner and was not licensed to practice law in the state of Ohio. One of the BOR members confirmed that the subject properties had been the subject of a complaint for tax year 2015. The BOR subsequently issued a decision that dismissed the underlying complaint as an impermissible multiple filing, for both parcels, pursuant to R.C. 5715. l 9(A)(2). This appeal ensued. Because our jurisdiction is derivative, the only issue before us is the propriety of the BOR's dismissal.

[3] Days prior to this board's scheduled hearing, the county appellees filed what has been interpreted as a combined motion to dismiss and a motion to affirm. The county appellees moved this board to dismiss this matter, asserting that Benny Scaglione engaged in the unauthorized practice of law by filing the notice of appeal on behalf of the property owner. The county appellees alternatively moved this board to affirm the BOR's decision to dismiss the underlying complaint, alleging that it was an impermissible multiple filing under R.C. 5715.19(A)(2). In response to the motion, the property owner argued that Benny Scaglione is her business partner, interpreter, realtor, and son, which allows him to represent her in real estate matters and disputed that his actions constituted the unauthorized practice of law. In reply, the county appellees noted the property owner's failure to come forward with actual evidence to demonstrate that Benny Scaglione was authorized to file the notice of appeal.

[4] Based upon our review of the relevant statutory and case law, we deny the county appellees' motion to dismiss. Recently, in *NASCAR Holdings, Inc. v. Testa,* lip Opinion No. 2017-Ohio-9118, the court considered whether a notice of appeal, filed on behalf of a taxpayer by someone not licensed to practice law in Ohio, invoked this board's jurisdiction. In doing so, the court held that the statute(s) that provide the procedures for appealing to this board "places no limits" on who may file an appeal as an agent to a taxpayer; however, the court noted that "who may properly act as the taxpayer's agent is a question of fact that hinges on whether the person filing the notice of appeal was authorized by the taxpayer to file it." Id. at iJ15, citing *Jemo v. Assoc., Inc. v. Lindley,* 64 Ohio St.2d 365, 367-368 (1980). Here, the relevant procedural statute, R.C. 5717.01, "places no limits" on who may file an

appeal from a board of revision decision, as an agent for a property owner.

[5] Here, although the county appellees cite to a number of cases in support of the motion to dismiss, those cases relate to the authority for filing complaints on behalf of a property owner with a county board of revision, not notices of appeal to this board. *Sharon Village Ltd. v. Licking Cty. Bd. of Revision,* 78 Ohio St.3d 479 (1997); *DH Partners LLC v. Cuyahoga Cty. Bd. of Revision* (Jan. 4, 2018), BTA No. 2017-161, unreported. Furthermore, based upon the response to the county appellees' motion, we surmise that the property owner authorized Benny Scaglione to file the notice of appeal on her behalf. Therefore, we deny the county appellees' motion to dismiss. However, Mr. Scaglione is cautioned that, while R.C. 5715.19(A) permits certain non-attorneys to file complaints with boards 'of revision on behalf of others, in proceedings before this board, acts of advocacy, i.e., making legal argument and examining witnesses, constitute the unauthorized practice of law and will not be permitted by this board. See *Richman Properties, L.L.C. v. Medina Cty. Bd. of Revision,* 139 Ohio St.3d 549, 2014-Ohio-2439; *Dayton Supply & Tool Co., Inc. v. Montgomery Cty. Bd. of Revision,* 111 Ohio St.3d 367, 2006-Ohio-5852; Ohio Adm. Code 5717-l-02(B).

[6] Now that we have concluded that we have jurisdiction to consider this matter, we now turn to the county appellees' motion to affirm. The BOR's decision to dismiss the underlying complaint is premised upon R.C. 5715. l 9(A)(2), which provides that "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. *Sayko Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 141 Ohio St.3d 43, 2014-Ohio-451 l, iJ20. "The apparent purpose of the modification ofR.C. 5715.19(A) was to reduce the number of filings, while still allowing new tax valuations in interim years in certain limited circumstances." *Dublin City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 79 Ohio App.3d 781, 784 (1992). 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)." *Developers Diversified Ltd. v. Cuyahoga Cty. Ed. of Revision,* 84 Ohio St.3d 32, 35 (1998).

[7] Here, the relevant interim period in Cuyahoga County includes tax years 2015, 2016, and 2017 and the statutory transcript contains the complaint and BOR hearing worksheet to demonstrate that the property owner had filed a complaint challenging the subject properties' values for tax year 2015. See also *Scaglione v. Cuyahoga Cty. Ed. of Revision* (Jan. 19, 2017), BTA Nos. 2016-532 et al., unreported. On line 14 of the complaint for tax year 2016, the property owner alleged the exception set forth in R.C. 5715.19(A)(2)(d), which states that a complainant may permissibly file multiple complaints within the same interim period if the complainant alleges, on the complaint, "[a]n increase or decrease of at least fifteen per cent in the property's occupancy *has had a substantial economic impact on the property."* (Emphasis added.) Although the property owner made such allegations on the underlying complaint, she failed to provide competent, credible, and probative evidence to prove that there was a 15% occupancy change *and* that the alleged occupancy change had substantial economic impact on the subject properties. The property owner submitted unsworn statements from two people alleged to have been tenants in the subject properties, who alleged that they both intended to vacate the subject properties in November 2015. Neither of these individuals testified before the BOR and their unswom, written statements are hearsay. See, e.g., *De/lick v. Eaton Corp.,* 7th Dist. Mahoning No. 03-MA-246, 2005-Ohio-566, at ,r25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 80l(C). *** Generally, hearsay is inadmissible. Evid.R. 802."). The underlying lease agreements with the alleged tenants are notably absent from the record. As a consequence, the record is devoid of any competent, credible, and probative evidence to demonstrate whether the alleged tenants actually vacated the subject properties on or before the tax lien date of January 1, 2016. Furthermore, because the property owner failed to testify at any of the scheduled hearings, the record is equally devoid of any competent, credible, and probative about the subject properties' occupancy history between January 1, 2015 and January 1, 2016 and about any

alleged substantial economic impact that occupancy change had on the subject properties. Because the property owner failed to establish "[a]n increase or decrease of at least fifteen percent in the property's occupancy has had a substantial economic impact on the property[,]" we grant the county appellees' motion to affirm the BOR's decision to dismiss the underlying complaint as an impermissible multiple filing within the triennial period.

[8] Even if we had had jurisdiction to consider the property owner's evidence about the subject properties' values, we would have concluded that the unadjusted comparable sales data was not competent, credible, and probative evidence. See e.g., *Grenny Properties v. Cuyahoga Cty. Ed. of Revision* (Jul. 28, 2017), BTA Nos. 2016-1332 et al., unreported; *Scaglione v. Cuyahoga Cty. Ed. of Revision* (Jan. 15, 2013), BTA Nos. 2012-Y-1084 et seq., unreported. There was no indication that the property owner had any firsthand knowledge of the unadjusted comparable sales data and, as such, such information was unreliable hearsay. *Worthington City Schools Ed. of Edn. v. Franklin County Ed. of Revision,* 140 Ohio St.3d 248, 20**l** 4-Ohio-3620, ,r19 ("the owner qualifies primarily as a fact witness giving information about his or her own property; usually the owner may not testify about comparable properties, because that testimony would be hearsay. See *Raymond v. Raymond,* 10th Dist. Franklin No. llAP-363, 2011-Ohio-6173,r19-20.). See also *Carr v. Cuyahoga Cty. Fiscal Officer,* 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, at ,r11 ("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."). Furthermore, with nothing more than a list of raw sales data, a 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. See, generally, The Appraisal of Real Estate (14th Ed. 2013). Compare *Columbus City Schools Ed. of Edn. v. Franklin Cty. Ed. of Revision,* 148 Ohio St.3d 700, 2016-Ohio-8375.

[9] Accordingly, based upon the foregoing, we deny the county appellees' motion to dismiss. However, we grant the county appellees' motion to affirm the BOR's decision to dismiss the underlying complaint as an impermissible multiple filing because the property owner failed to demonstrate that any of the exceptions found in R.C. 5715. l 9(A)(2) applied to the subject properti es.

OHIO BOARD OF TAX APPEALS

BUCKEYE BUSINESS GROUP LLC, (et. al.),	CASE NO(S). 2017-640
Appellant(s)	(REAL PROPERTY
, vs.	TAX) DECISION AND
CUYAHOGA COUNTY BOARD OF REVISION,	ORDER
(et. al.),	
Appellee(s)	
.	

APPEARANCES:

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For the Appellee(s)

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Entered Monday, May 21, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 126-13-019, for tax year 2015. This matter is now considered upon the notice of appeal, the statutory transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties. For the reasons set forth below, we find the owner was required, but failed, to establish that the values initially reported on the conveyance fee statement exceed the true value of the subject. Further, we find the subject's 2013 sale was recent, arm's-length, and provides the best evidence of value.

The subject is commercial property, initially assessed by the fiscal officer at $230,000, for tax year 2015. The Cleveland Municipal School District Board of Education ("BOE") filed a complaint with the BOR requesting an increase in value to $390,000, based upon a transfer. S.T., Exhibit ("Ex.") A. The property owner filed a counter complaint seeking to maintain the subject's initially assessed value. S.T., Ex. B.

At the BOR's hearing, both the BOE and the property owner appeared through counsel. In support of the complaint, the BOE offered a deed and information from CoStar. The BOR incorporated a conveyance fee statement into the record. The collective sale documentation reflects a transfer of the subject property from MJM Land Group, LLC, to Buckeye Business Group LLC, on November 27, 2013, for a total purchase price of $500,000 with $110,000 allocated to items other than real property, leaving $390,000 as the total consideration paid for the subject's realty. S.T., Ex. F. Owner's counsel did not dispute that the transaction was arm's-length in nature and recent, but argued that the sale included a larger amount of personal property than was listed on the conveyance fee statement and submitted an owner's opinion of value pro forma packet. Thereafter, the BOR's oral hearing summary sheet indicates, "[b]oard finds requested value [to be] supported by an arm's length sale recent to tax lien," a decision was issued increasing the subject's value to $390,000, and the present appeal ensued. S.T., Exs.E, G. On appeal, all parties waived their right to appear at a hearing before this board and, as such, we proceed to determine value based upon the record as developed by the parties. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996), quoting *Black v. Cuyahoga Cty. Bd. of Revision,* 16 Ohio St.3d 11, 13-14, 16 (1985).

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

In reviewing this matter, we acknowledge the Supreme Court's longstanding principle that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. a/Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, ,I33; R.C. 5713.03.

The primary issue presented on appeal centers around the appropriate portion of the subject's November 2013 purchase price to allocate to items other than real property. As the owner contends the values reported on the conveyance fee statement are an inaccurate, pursuant.to case law, the owner must satisfy a two-part burden, the latter part of which only arises upon satisfaction of the initial burden. *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision,* Slip Opinion 2017-Ohio-7664, ,I24. See also *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 132 Ohio St.3d 371, 2012-Ohio-2844, ,I21 (when a school board advocates reliance upon an allocated sale price reported on a conveyance fee statement, "the burden of rebuttal rests on the owner because the owner is the party

most likely to possess the information that could justify or refute the propriety of the allocation."). Initially, the owner has the "burden to show that the amount it originally reported to the county as the consideration paid for the property [on the conveyance fee statement] exceeds the true value of the property. *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision,* ***, 2017-Ohio-7664, ***, 122." *Orange City School Dist. Bd. o/Edn. v. Cuyahoga Cty. Bd. of Revision,* Slip Opinion 2017-Ohio-8817, ,I14. Upon satisfying such burden, the owner must then provide corroborating evidence to support the allocation sought. *Buckeye Terminals, L.L.C.,* supra, ,I24; *St. Bernard Self-Storage v. Hamilton Cty. Bd. of Revision,* 115 Ohio St.3d. 365, 2007-Ohio-5249, ,Il 7; *Conalco, Inc.,* supra.

In this instance, to satisfy its burden, the owner relies on legal argument presented by its counsel at the BOR's hearing and written argument submitted on appeal. Specifically, owner's counsel argued that the title company determined the amounts indicated on the con11eyance fee statement and that no negotiation took place between the buyer and seller, and offered a single page, apparently from the owner's accounting records, which sets forth the values claimed by the owner. On appeal, owner's counsel also suggests that the purchase price is not applicable to the tax lien date based upon notations on the subject's property record card that indicate a use change and alterations.

Although we acknowledge the arguments advanced by counsel and information submitted to the BOR, as discussed further below, we find the owner failed to satisfy its burden to show that the values originally reported exceed the true value of the property. Turning to the owner's unattested single accounting page, we find such evidence does not rise to the level upon which this board may rely and assign it no probative weight. Further, we note the record is devoid of the parties' purchase contract, which may have provided insight into the parties' underlying analysis and motivations for the values claimed by the owner. See *Orange City School Dist,* supra; *Bedford Bd. of Edn.,* supra, ‖(24 ("just as the parties to a sale of real property can allocate for purposes that genuinely relate to the true value of the properties, they can also allocate for other purposes that may 'distort the true value of the subject property' in a given case. [*W.S. Tyler Co. v. Bd. of Revision,* 57 Ohio St.3d 47, 49 (1991)]."). We also note with importance, beyond statements of counsel, the record lacks any testimony from the owner that support the values claimed. See *Corporate Exchange Bldgs. IV & V, L.P. v. Franklin Cty. Bd. of Revision,* 82 Ohio St.3d 297, 299 (1998) (statements of counsel are not evidence); *Hardy v. Delaware Cty. Bd. of Revision,* 106 Ohio St.3d 359, 2005-Ohio-5319, i(l3, (discussing adverse consequences which may result from a party's failure to present witness testimony before the board and electing instead to rely upon documentary exhibits discussed by counsel). Given the deficiencies noted above, we are unable to conclude that the owner satisfied its initial burden to show the originally reported values on the conveyance fee statement exceed the true value of the property. *Buckeye Terminals, L.L.C.,* supra, i(24; *St. Bernard Self-Storage v. Hamilton Cty. Bd. of Revision,* supra. Similarly, to the extent counsel also suggests that the subject has undergone material changes since the transfer, we find insufficient probative evidence to support such assertion. See *OEH Estate LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 10, 2016), BTA No. 2016-166, unreported. See also *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059, ‖15 ("Mere speculation is not evidence.").

Accordingly, absent sufficiently reliable evidence demonstrating that the values originally reported in relation to the November 2013 sale exceed the true value of the property, we will not engage in conjecture as we find the existing record demonstrates that such transfer was recent, arm's-length, and constitutes the best indication of the subject's value as of the tax lien dates at issue.

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER 126-13-019

TRUE VALUE

$390,000

TAXABLE VALUE

$136,500

OHIO BOARD OF TAX APPEALS

GRENNY PROPERTIES, LLC, (et. al.),

Appellant(s)

, vs.

CUYAHOGA COUNTY BOARD OF REVISION,

(et. al.),

Appellee(s)

.

CASE NO(S). 2017-438

(REAL PROPERTY

TAX) DECISION AND

ORDER

APPEARANCES:

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Entered Monday, May 21, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel numbers 132-25-008, 481-26-022, and 541-07-079, for tax year 2015. This appeal is now considered upon the notice of appeal, the statutory transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties. For the reasons set forth below, we find the owner was required, but failed, to provide sufficiently probative evidence in support of the values sought and absent such evidence, we affirm the BOR's retention of the subject properties' initially assessed values.

Before proceeding to the merits, we first address the owner's motion to strike the county appellees' two appraisal reports and the county's response thereto. Upon consideration, we find the owner's motion to be moot, as the county's reports were submitted outside of the record on appeal. For context, while the county appellees timely disclosed its appraisal evidence pursuant to this board's case management schedule, the county did not appear at this board's hearing to offer such evidence into the record, and the reports were not part of the original record certified from the BOR to this board. As such, the county's appraisal reports do not rise to the level of evidence upon which this board can rely in making a determination of value. *Columbus Ed. of Edn. v. Franklin Cty. Ed. of Revision,* 76 Chio St.3d, 13 (1996). We now proceed to the merits.

For tax year 2015, the subject properties were initially assessed by the fiscal officer at $36,300, $90,000, and $21,200, respectively. The property owner filed a decrease complaint with the BOR, seeking reductions in value to $20,000, $65,000, and $10,000. S.T., Exhibit ("Ex.") A. The affected boards of education ("BOE") each filed a counter complaint requesting to maintain the subject's initially assessed value. S.T., Ex.B.

At the BOR's hearing, Mr. Benny Scaglione, member of the ownership entity, and attorneys for the affected boards of education appeared. In support of the value sought, Mr. Scaglione provided testimony regarding fire and water damage and submitted insurance information and comparable sales. Mr. Scaglione was then briefly cross examined by the counsel for the BOE. S.T., Ex. F. Upon consideration of the information presented, the BOR found insufficient evidence to support the requested value, issued a decision maintaining the subjects' initially assessed values, and the present appeal ensued. S.T., Exs. E, G. Ultimately, the property owner waived the opportunity to appear at this board's hearing and the county appellees did not to appear. Thus, we proceed to determine value based upon the record as developed by the parties. *Columbus Ed. of Edn.*, supra, at 15, quoting *Black v.'Cuyahoga Cty. Ed. of Revision,* 16 Ohio St.3d 11, 14(1985).

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Ed. of Revision,* 90 Ohio St.3d 564,566 (2001). See also *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Ed. of Revision* , 106 Ohio St.3d 1, 2005-Ohio-3096, if5-6. It is well settled that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be relevant to the tax lien date at issue and be supported with reliable tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Ed. of Revision,* 69 Ohio St.3d 572 (1994); *Tok/es & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992); *Amerimar Canton Office, LLC v. Stark Cty. Ed. of Revision,* 5th Dist. Stark No. 2014CAOO162, 2015-0hio-2290.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' ofreal property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Ed. of Revision,* 50 Ohio

St.2d 129 (1977). See also *Terraza 8, L.L.*C. *v. Frankli71 Cty. Ed. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, if33; R.C. 5713.03. In the absence ofa recent arm's-length sale, as in the case before us, a valid appraisal or other relevant evidence is necessary to determine the subject's true value. *State ex rel. Park Investment Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964). See, also, Justice Pfeifer's concurrence in *LTC Properties, Inc. v. Licking Cty. Ed. of Revision,* 133 Ohio St.3d 111, 2012-Ohio-3930, ,r28.

In this instance, although we find Mr. Scaglione's BOR testimony to be competent, there is insufficient probative evidence in support of the reductions in value sought. See *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). Turning to the owner's evidence of property damage, we acknowledge, the Supreme Court addressed the burden attendant in advancing claims similar to those made by the owner and, in so doing, the court has emphasized that a party must demonstrate more than the mere *existence* of adverse factors, but rather, a party must demonstrate the *impact* they have upon the property's *value. Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996). See also *Gupta v Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397, 400 (1997) ("[t]he mere evidence of disrepair is not probative evidence of value."). Similarly, absent adjustments accounting for meaningful differences between the subject properties and the owner's comparable sales, this board is left to speculate how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale a.s opposed to tax lien date, etc., may affect a valuation determination. See *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported.

The record is devoid of other evidence from which this board may independently determine value and we simply cannot engage in conjecture in deriving our own value. See *Howard v. Cuyahoga Cty. Bd. of Revision,* 37 Ohio St.3d 195, 197 (1988) ("We now require [the BTA] to state what evidence it considered relevant in reaching its value determinations."). Based upon the foregoing, we find the property owner was required, but failed, to present competent and probative evidence in support of the requested decreases in value. See *Simmons v. Cuyahoga Cty. Bd. of Revision,* 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board ofrevision's valuation, without the board ofrevision's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 132-25-008

TRUE VALUE

$36,300

TAXABLE VALUE

$12,710

PARCEL NUMBER 481-26-022

TRUE VALUE

$90,000

TAXABLE VALUE

$31,500

PARCEL NUMBER 541-07-079

TRUE VALUE

$21,200

TAXABLE VALUE
$7,420

OHIO BOARD OF TAX APPEALS

SHAVIT 555 INVESTMENTS LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2463

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SHAVIT 555 INVESTMENTS LLC
Represented by:
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SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, May 21, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The above-named appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 687-26 010, for tax year 2015. This matter is now considered upon the notice of appeal, transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and the record of hearing ("H.R.") before this board. For the reasons set forth below, we find the owner's appraisal evidence provides the most persuasive evidence of value before this board.

Before proceeding to the merits of this appeal, we first acknowledge, at hearing, this board's hearing officer reserved ruling on the owner's objection to the county's appraisal report on the basis that such report was untimely disclosed. Upon consideration of the arguments advanced, we hereby overrule the objection. We now proceed to the merits of this appeal.

The subject is residential property, initially assessed by the fiscal officer at a value of $142,600, for tax year 2015. The property owner filed a decrease complaint with the BOR, seeking a reduction in value to $65,000. S.T., Exhibit ("Ex.") A. No counter complaint was filed.

At the BOR's hearing, the owner appeared through counsel, who offered an owner's pro forma valuation packet containing comparable sales, sales documents, and other information, in support of the value sought. In addition, counsel also referenced a 2012 BOR complaint, for which a final decision (based upon

a 2012 sale) was issued in January 2016, and requested the value be carried forward to the tax lien date at issue. Upon consideration of the evidence presented, the BOR's oral hearing journal summary indicates "[t]he 2012 sale is too remote for the tax year lien date" and the BOR issued a decision maintaining the subject's initially assessed value. S.T., Exs. E. G. Dissatisfied with the result, the property owner timely filed an appeal with this board.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Ed. of Edn. v. Franklin Cty. Ed. of Revision,* 90 Ohio St.3d 564, 566 (2001). See, also, *Shinkle v. Ashtabula Cty. Ed. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397; *EOP-EP Tower, L.L.C. v. Cuyahoga Cty. Ed. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096.

In reviewing this matter, we are mindful of the Supreme Court's longstanding principle that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Ed. of Revision,* 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Ed. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, iJ33; R.C. 5713.03. In this instance, although the subject's property record card reflects a 2012 transfer of the subject, see S.T., Ex. C, we find such transfer to be remote from the tax lien date at issue. See generally *Akron City School Dist. Ed. of Edn. v. Summit Cty. Ed. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588, iJ26 (as the transfer date becomes farther from the tax lien date at issue "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property has not changed between the sale date and the lien date."). See also *Cummins Property Servs. L.L.*C. *v. Franklin Cty. Ed. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-l 473 (recency "encompasses all factors that would, by changing with the passage of time, affect the value of property."). While we acknowledge the owner's unattested and unadjusted comparable sales contained in the proforma submitted to the BOR, we find such evidence insufficient to demonstrate relevant market conditions or to establish that the subject's character did not change between the sale and tax lien date. See *Kaiser v. Lorain Cty. Ed. of Revision* (Nov. 2, 2010), BTA No. 2009-V-1090, unreported, citing *Speca v. Montgomery Ct. Ed. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. See also *Hardy v. Delaware Cty. Ed. of Revision,* l 06 Ohio St.3d 359, 2005-Ohio-53 l 9, at ,r13**,** (discussing adverse consequences which may result from a party's failure to present witness testimony before the board and electing instead to rely upon documentary exhibits discussed by counsel).

Accordingly, in the absence of a recent arm's-length sale, an appraisal, or other relevant evidence is necessary to determine the subject's true value. *First Union Real Estate Equity & Mtge. Investments v. Cuyahoga Cty. Ed. of Revision,* 53 Ohio St.3d 236 (1990); *State ex rel. Park Investment Co. v. Ed. of Tax Appeals,* 175 Ohio St. 410,412 (1964). See also Justice Pfeifer's concurrence in *LTC Properties, Inc. v. Licking Cty. Ed. of Revision,* 133 Ohio St.3d 111, 20 l 2-Ohio-3930, iJ28.

On appeal, both the appellant property owner and county appellees rely on appraisal evidence. Based upon such evidence, we find the owner's request to carry the subject's 2012 value forward to tax year 2015 be moot. At hearing, owner's counsel offers an appraisal report and the testimony of Mr. Carmen Iammarino, a state-certified general real estate appraiser in Ohio. In his report, Mr. Iammarino employed both the sales comparison and income approaches to value. Upon reconciling the resulting values, Mr. Iammarino primarily relied upon the sales comparison approach and opined to a value of $90,000 for the subject property as of January 1, 2015. H.R., Appellant's Ex. G. For its part, the county appellees offer an appraisal report and the testimony of Mr. Kresimir Tomljenovic, a state-certified general real estate appraiser in Ohio. In his report, Mr. Tomljenovic employed the sales comparison approach to value and opined to a value of$155,000 for the subject property as of January 1, 2015. H.R., Appellees Ex. 2.

When, as here, a party relies on an appraiser's opinions of value, this board my accept all, part, or none of that appraiser's opinions. *Witt Co. v. Hamilton Cty. Ed. of Revision,* 61 Ohio St.3d 155 (1991). Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported. In determining value herein, we must look to all aspects of the record before us in our independent review of the subject property. *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 123 Ohio St.3d 268, 2009-Ohio-4975.

At the outset, we observe, both appraisers found that the sales comparison approach provides best indication of the subject's value, and we agree. Accordingly, we will focus our review on the appraisers' treatment of the subject utilizing the sales comparison approach to value. Further, while we acknowledge the parties' respective oral arguments, advocating for this board's reliance upon their appraiser's opinion of value, upon careful consideration, we find Mr. Iammarino's report provides the most persuasive evidence of value before this board.

Upon review of the sales comparison approaches, the appraisers primarily disagree on the appropriate rating of the subject's condition, which directly affects the appraisers' comparable sales selection. In determining the subject's condition, Mr. Iammarino noted some updates indicated in a 2001 MLS listing; however, he stated upon his physical inspection of the subject, he found the subject suffered from exterior and interior deferred maintenance and determined that any previous updates were "very basic" and did not constitute a complete renovation of the subject. H.R. at 25-26. Based upon his findings, Mr. Iammarino rated the subject in an "overall average condition" and selected four comparables he found similar to the subject. In contrast, Mr. Tomljenovic relied upon information he obtained from the MLS, which is not contained in his report, and did not physically inspect the interior of the subject. Based upon the MLS and his exterior viewing of the subject, Mr. Tomljenovic concluded the subject was in good condition and selected three updated/renovated comparables. H.R. at 45. Based upon Mr. Iammarino's testimony and the information contained in his report, we find his "average" rating of the subject provides a more accurate reflection of the subject as of tax lien date. Further, we find the comparables he selected are appropriately similar to the subject; whereas we find the condition, alone, of all of the comparables selected by Mr. Tomljenovic to be superior to that of the subject. Thus, we conclude Mr. Iammarino's report offers the most accurate evaluation of the subject, as of the tax lien date at issue. *Wynwood Apartments v. Bd. of Revision*, 59 Ohio St.2d 34, 35 (1979) (this board is given broad discretion in attaching what weight it will assign to expert testimony); *Cardinal Fed.* S. *& L Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975).

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, shall be that which the owner's appraiser opined, as follows:

PARCEL NUMBER 687-26-010

TRUE VALUE

$90,000

TAXABLE VALUE

$31,500

OHIO BOARD OF TAX APPEALS

TAMONEA CALLOWAY-WOODS, (et. al.),

Appellant(s)

, vs.

CUYAHOGA COUNTY BOARD OF REVISION,

(et. al.),

Appellee(s)

CASE NO(S). 2018-41, 2018-42

(REAL PROPERTY

TAX) DECISION AND

ORDER

APPEARANCES

For the Appellant(s)

- TAMONEACALLOWAY-WOODS
11405 CONTINENTAL AVE.
CLEVELAND, OH 44104

For the Appellee(s)

- CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
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1200 ONTARIO STREET, 8TH
FLOOR CLEVELAND, OH 44113

Entered Tuesday, May 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These matters are now considered upon the county appellees' motions to remand to the Cuyahoga County Board of Revision ("BOR") with instructions to dismiss the underlying complaints for lack of jurisdiction. Specifically, the county appellees argue that the complaints were filed by a non-attorney agent who committed the unauthorized practice of law in doing so, and, further, had no independent standing to file complaints under R.C. 5715.19. Appellant did not respond to.the motions.

The statutory transcripts certified to this board by the fiscal officer pursuant to R.C. 5717.01 indicate that the underlying complaints against the valuation of parcel numbers 129-26-048 and 126-06-091 for tax year 2016 were filed by "Tamone Calloway" as the "complainant if not owner." On the complaint against the valuation of parcel 129-26-048, the filer indicated his "relationship to property if not owner" on line 5 as "father." The owner of the properties, as indicated on the complaints and the property record cards is "Tamonea Calloway-Woods." Mr. Calloway confirmed his relationship as the father of the property owner at the BOR hearing. Following the hearings, the BOR issued decisions finding no change in value was warranted for either parcel, and the appellant appealed to this board. The county appellees now argue that the complaints failed to properly invoke the jurisdiction of the BOR and should have properly been dismissed.

R.C. 5715.19(A) enumerates who may file a complaint against valuation, including what non-attorney agents may file on behalf of an authorized filer. Among those authorized filers are individuals who own taxable real property in the county. To the extent Mr. Calloway filed on his own behalf, as a complainant, and not as an agent of his property owner/daughter, there is no indication in the record that he owns real property in the county. The record therefore does not establish that Mr. Calloway has independent standing to file a complaint against the valuation of the subject parcels.

To the extent Mr. Calloway filed on behalf of his daughter, he engaged in the unauthorized practice of law by doing so and therefore did not properly invoke the jurisdiction of the BOR. *Sharon Village Ltd. v. Licking Cty. Bd. of Revision,* 78 Ohio St.3d 479 (1997). While the Ohio Supreme Court has found that spouses may file on behalf of the titled property owner, no other familial relations are listed among those non-attorney individuals who may file on behalf of an owner. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 134 Ohio St.3d 529, 2012-Ohio-5680. See also *Menas v. Cuyahoga Cty. Bd. of Revision* (Apr. 11, 2013), BTA Nos. 2012-Q-5127, unreported. The county appellees' motions are therefore well taken.

Based upon the foregoing, we find the underlying complaints failed to properly invoke the jurisdiction of the BOR. These matters are therefore remanded to the Cuyahoga County Board of Revision with instructions to vacate its decisions finding value, and dismiss the underlying complaints.

OHIO BOARD OF TAX APPEALS

FRANKLIN & D M WEARN, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION,
(et. al.),

Appellees

CASE NO(S). 2017-1159

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FRANKLIN & D M WEARN 255 W. 70TH STREET #2
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CLEVELAND, OH 44113

Entered Tuesday, May 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owners appeal a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 686-15-023, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property was initially assessed at $171,400. Tile property owners filed a complaint with the BOR, which requested that the subject property be revalued at $67,479, purportedly based upon the alleged costs to make necessary repairs, i.e., $103,921.

At the property owners' request, the BOR continued its merit hearing to a date that would match the property owners' travel needs. However, prior to the rescheduled hearing, the property owners waived their appearance and, instead, provided written argument, estimates to demonstrate the cost to repair the home sitused on the subject property, and unadjusted comparable sales data in support of their complaint. The BOR hearing worksheet demonstrates that the BOR conducted its own research and considered this board's prior decision in *Wearn v. Cuyahoga Cty. Bd. of Revision* (Feb. 4, 2015), BTA No. 2014-1426, unreported *("Wearn I"),* by which this board determined that the property owners' arguments and evidence were not competent and probative of the subject property's value for tax year 2012. In doing so, the BOR determined that the property owners submitted substantially similar evidence in this matter and, likewise, concluded that their arguments and evidence were not competent and probative of the subject property's value for tax year 2015. After receiving the BOR's written decision that retained the subject property's initially assessed value of$171,400, the property owners appealed to this board.

Although this board scheduled this matter for a merit hearing to provide the parties an opportunity to supplement the record with additional evidence, none of the parties availed themselves of such opportunity. Instead, the parties submitted written argument to thoroughly explain their positions. By way of their submission, the property owners asserted that the repair estimates and unadjusted comparable sales data cons titut ed competent and probative evidence, which the county appellees had failed to rebut with evidence to demonstrate the propriety of valuing the subject property at $171,400. In the alternative, the property owners requested that this board reduce the subject property's value "in the interest of fairness" based upon alleged malfeasance and/or misfeasance by the county appellees since tax year 2006. By way of their submission, the county appellees asserted that the property owners' evidence fell "woefully short of meeting their burden" and that case law necessitated rejection of their decade old evidence, which had no relevance to the tax lien date ofJanuary 1, 2015.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' ofreal property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal

becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

In this matter, there is no evidence that the subject property was the subject of a recent, arm's-length sale; therefore, we proceed to evaluate the property owners' repair estimates and unadjusted comparable sales data. Based upon our review, we find that the property owners' evidence is not credible and fails to satisfy their evidentiary burden. We agree with the BOR that the argument and/or evidence in this matter is substantially similar to *Wearn I* and see no reason to deviate from our prior decision.

As we previously indicated, we do not find the alleged condition of the of the subject property and repair estimates to be competent and probative evidence of real property value. *Wearn I,* supra, at 2 ("[W]e find the bases cited insufficient to support the claimed adjustment to value."). As an initial matter, we note that the record is devoid of any testimony about the condition of the subject property and there was no evidence of how any alleged defects impacted the subject property's value. The repair estimates *may* have demonstrated the condition of the subject property in tax year 2001, the year in which the estimates were provided to the property owners, but demonstrate nothing about the condition of the subject property on the tax lien date of January 1, 2015. In *Gides v. Cuyahoga Cty. Bd. of Revision,* 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, the court noted "[t]here was no evidence or testimony submitted that established how those defects might have impacted the property value such that it warranted a *** reduction. Without such evidence, the list of defects are simply variables in .search of an equation. See *Throckmorton v. Hamilton Cty. Bd. of Rev.,* 75 Ohio St.3d 227,228, *** (1996) (stating '[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.')." (Parallel citation omitted.) Id. at ,r7. Likewise, this board has repeatedly rejected the argument that defects, not quantified by a proper appraisal, are insufficient evidence to determine real property value. See e.g., *Bardshar Apts., Inc. v. Erie Cty. Bd. of Revision* (Mar. 15, 2016), BTA No. 2015-1451, unreported. Furthermore, Ohio courts, as well as this board, have pointed out in a number of contexts that dollar-for-dollar costs do not necessarily directly correlate to value. See, e.g., *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996); *Eldabh v. Cuyahoga Cty. Bd. of Revision* (Nov. 17, 2016), BTA No. 2016-729, unreported. As such, we find this aspect of the property owners' argument unpersuasive.

We also find the unadjusted comparable sales date to be equally unavailing. With nothing more than a list of raw sales data, a 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. See, generally, The Appraisal of Real Estate (13th Ed.2008). For example, at least two of the unadjusted comparable sales differ from the subject property based upon number of bathrooms and possibly condition and location. Nothing in the property owners' evidentiary submission provides the necessary expertise to distill these variables and apply it to the subject property. As this board stated in *Copp v. Franklin Cty. Bd. of Revision* (Sept. 8, 2009), BTA No. 2007-Z-692, unreported, "[b]y not developing a sufficient foundation to establish an appropriate expertise in appraisal methods and the deviation of true value for a particular piece ofreal property, this board does not find the analyses particularly probative and does not accord them much weight." See, also *Witt Co. v. Hamilton Cty. Bd. of Revision,* 61 Ohio St.3d

155 (1991); *Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision,* 44 Ohio St.2d 13 (1975). Furthermore, we are particularly suspicious whether the property owners' unadjusted comparable sales data truly captured the market in which the subject property would have operated on the tax lien date because there is absolutely no evidence to demonstrate the relevant market conditions at that time. See *Carr v. Cuyahoga Cty. Fiscal Officer,* 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, at 11 ("Carr cannot cherry-pick lower-valued nearby homes and use those predictably lower sales prices to justify a valuation of her property. Th\!re has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning.")

It is notable that instead of providing evidence relevant to the tax lien date of January 1, 2015, the property owners provided documents that are more than a decade old. For example, the alleged comparable property located at 2976 Kensington Road sold for $75,000 in October 2002. However, no effort was made to make this more than twelve-year-old sale relevant to the tax lien date. As an additional example, the estimate from Buckeye Painting & Decks, Inc. was dated March 30, 2001. Again, no effort was made to make this more than thirteen-year-old estimate relevant to the tax lien date.

To the extent that the property owners implicitly argue that a complainant satisfies the burden of proof by submitting minimal evidence that supports a requested value, the Supreme Court has considered and rejected such argument. In *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* 150 Ohio St.3d 69, 2017-Ohio-4002, the court relied upon longstanding case law and reiterated that the burden is *affirmatively* placed on a complainant to come forward with "'competent and probative evidence to establish the correct value of the subject property.'" Id. at 9, quoting *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572, 574 (1994). Likewise, we reject the property owners' argument that the fiscal officer and/or the BOR must provide evidence to demonstrate the propriety of the subject property's initially assessed value. As we explained in *Weldon v. Medina Cty. Bd. of Revision* (June 7, 2011), BTA No. 2008-M-1591, unreported, the fiscal officer is not required to defend the value originally concluded to by the mass appraisal system. See, also, *Fairlawn Assoc. Ltd. v. Summit Cty. Bd. of Revision,* 9th Dist. Summit No. 22238, 2005-Ohio-l 95l.

We also reject the property owners' invitation to reduce the subject property's value "in the interest of fairness" because we lack jurisdiction to do so. In *Columbus* S. *Lumber Co. v. Peck,* 159 Ohio St. 564, 569 (1953), the court indicated that as an administrative agency, the BTA "does not have equitable jurisdiction." Thus, this board lacks the requisite authority to provide equitable relief.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we conclude that the property owners failed to provide competent and probative evidence to demonstrate that the subject property should be valued at $67,479 or any other value less than the initially assessed value of $171,400. It is therefore the orqer of this board that the subject property's true and taxable values, as of January 1, 2015, are as follows:

TRUE VALUE

$171,400

TAXABLE VALUE

$59,990

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

OHIO BOARD OF TAX APPEALS

HUSSEIN SALEH, (et. al.), Appellant(s) vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s	CASE NO(S). 2018-218 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HUSSEIN SALEH
OWNER
HM SALEH LTD
1637 E. LIVINGSTON AVE
COLUMBUS, OH 43205

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF
REVISION 373 SOUTH HIGH STREET,
20TH FLOOR COLUMBUS, OH 43215

Entered Tuesday, May 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Franklin County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On March 22, 2018, the appellant filed a notice of appeal with this board, on which it was indicated that the BOR mailed a decision on March 22, 2018. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion certification that there is no record of a decision issued for the subject property.

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." *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Ed. of Revision,* 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ERIC C & SAUNDRA E FOGLE, (et. al.),	CASE NO(S). 2017-800
Appellant(s), vs.	(REAL PROPERTY TAX) DECISION AND ORDER
LORAIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s)

- ERIC C & SANDRA E. FOGLE OWNERS
  15186 STATE ROUTE 301
  LAGRANGE, OH 44050

For the Appellee(s)

- LORAIN COUNTY BOARD OF REVISION
  Represented by:
  SUFIAN DOLEH
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  225 COURT STREET, 3RD FLOOR
  ELYRIA, OH 44035-5642

Entered Wednesday, May 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant property owners, Eric C. & Saundra E. Fogle ("owners") appeal a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 15-00-016-000-010, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties. For the reasons set forth below, we find the subject's December 2015 sale to be recent, arm's-length in nature, and the best evidence of value.

[2] The county auditor assessed the subject property's total true value at $401,530. Appellants filed a complaint with the BOR seeking a reduction in value to $240,000, based upon a comparison of nearby properties' assessed values. S.T., Exhibit ("Ex.") A. No counter complaint was filed. At the BOR hearing, the owners argued that assessed values of neighboring properties were disproportionate to that of the subject. BOR members questioned the owners regarding the subject's December 30, 2015 transfer. In response, the owners stated they were driving by when they stopped at the subject, found it to be for sale, and, ultimately, "haggled" over the price, arriving at an agreed purchase price of $417,500. S.T., Ex. E. The owners did not dispute the arm's-length nature or recency of sale. However, the owners indicated they required a ranch-style home (such as the subject) and further, based upon research they conducted subsequent to the sale, they overpaid for the property. Upon consideration of the information presented, the BOR issued a decision maintaining the subject's initially assessed value and the present appeal ensued. S.T., Ex. G. On appeal, no hearing was requested before this board."When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision* , 106 Ohio St.3d 1, 2005-Ohio-3096, 5-6. It is well settled that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be relevant to the tax lien date at issue and be supported with reliable tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tok/es & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992); *Amerimar Canton Office, LLC v. Stark Cty. Bd. of Revision,* 5th Dist. Stark No. 2014CAOO162, 2015-0hio-2290.

[3] It has long been held by the Supreme Court that "the best evidence of 'true value in money' ofreal property is an actual, recent sale of the property in an arm's-length trapsaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, 33; R.C. 5713.03; *N. Royalton City Sch. Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 129 Ohio St.3d 172, 201 l-Ohio-3092, 29. Once a qualifying sale has been established, typically, "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, 14.

[4] In this instance, the record, i.e., the property record, and the deed and conveyance fee statement submitted by the county, reflects a transfer of the subject property from Eric McConnel, to Eric Fogle, on December 30, 2015, for $417,500. S.T., Exs. A, C, E, F. Although we acknowledge the owners' contention that they overpaid for the property, this board has previously considered, and rejected, similar arguments and finds no reason to deviate in this instance. See *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 97-M-262, unreported (the presumption accorded the purchase price paid in a qualifying transaction is not overcome simply because, after the fact of the sale, the purchasers believe they made a bad deal). Further, the mere allegation of a purchaser's desire to acquire a ranch-style home does not, itself, rebut the presumption of validity accorded a recent arm's-length transfer. See generally *Lakeside Avenue Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision,* 75 Ohio St.3q 540 (1996). Accordingly, in the absence of an affirmative demonstration that the December 2015 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 at issue. See *Conalco,* supra; *Terraza 8, L.L.C.,* supra.

[5] It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2016, were as follows:

PARCEL NUMBER 15-00-016-000-010

TRUE VALUE

$417,500

TAXABLE VALUE

$146,130

OHIO BOARD OF TAX APPEALS

NORTHWOOD LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2039
Appellant(s)	(REAL PROPERTY TAX)
, vs.	DECISION AND ORDER
WOOD COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s)	

APPEARANCES:

For the Appellant(s)

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Entered Wednesday, May 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals from a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel M50-300-240000008000, for tax year 2015. We proceed to consider this matter based upon the notice of app<tal, the statutory transcript certified pursuant to R.C. 5717.01, the record of this board's hearing, and any written argument submitted by the parties.

The subject property was initially assessed at $1,716,900. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $825,000 purportedly based upon the price at which it transferred. The property owner attached a settlement statement to the complaint, which demonstrated the $825,000 transfer of the subject property from CB 2011 Ohio & Michigan Retail, LLC to the property owner in August 2015. The BOE filed a counter-complaint, which objected to the request.

The BOR held a hearing on this matter, as well as the issue of value for another parcel, which is not the subject of this appeal. Both the property owner and BOE appeared through counsel to submit argument and/or evidence in support of their respective positions. In its presentation, the property owner submitted the testimony of Ivan Iliev, a member of the corporate property owner, who testified about the facts and circumstances of the subject sale. In support of its argument that the subject property's should be reduced, the property owner also submitted an appraisal report performed by appraiser Brian J. Fischer, contemporaneous with the subject sale, which opined the "as is" "leased fee" value of the subject property to be $880,000 as of July 2015 and the "as stabilized" "leased fee" value of the subject property to be$1,250,000 as of July 2016 and a letter, dated July 15, 2016, from the broker involved with the subject sale, Duke Wheeler. Based upon the evidence presented, the property owner requested that the BOR revalue the subject property at $825,000. In its presentation, the BOE cross-examined Iliev about the circumstances of the subject sale. Based upon the elicited testimony, the BOE asserted that the subject sale occurred under the direction of a court-appointed receiver, which indicated that such sale occurred under duress Furthermore, the BOE noted its objection to the appraisal report because Fischer was not present to authenticate the report or to answer questions about the underlying data and methodologies used to derive his conclusion of value. The BOR subsequently issued a• decision that valued the subject prope11y at $825,000, as requested by the property owner, and this appeal ensued.

Shortly before this board's scheduled hearing, both parties filed motions in limine. In its motion, the property owner requested that it not be barred from submitting new evidence, pursuant to R.C. 5715.l 9(G), because such evidence was necessary to correct a misstatement or misunderstanding in testimony submitted at the BOR hearing. The property owner attached affidavits from Wheeler and Fischer. In its motion, the BOE requested that the property owner be barred from submitting new evidence that was known to the property owner or in its possession, pursuant to R.C. 5715. l 9(G). No ruling was made on the motions prior to the hearing.

At this board's hearing, both the property owner and BOE appeared, once again through counsel, to submit additional argument and/or evidence into the record. As the hearing commenced, the parties were provided opportunities to argue in support of their own motion, and against the opposing motion. The attorney examiner deferred ruling and allowed the property owner to proffer the evidence during its case in chief. The hearing proceeded to the merits of this appeal. In its presentation, the BOE argued that the BOR impermissibly reduced the subject property's value based UJ?On a receivership sale, which is presumed not to be at arm's-length. In suppo11 of that argument, the BOE submitted an unofficial, written copy of

the relevant portions of the BOR hearing, a copy of the discovery requests propounded upon the property owner, and a copy of an email exchange between counsel for the BOE and counsel for the property owner that memorialized service of the discovery requests. In its presentation, the property owner proffered testimony from Wheeler and Iliever, and documents related to the prior sale of the subject property in October 2013, which memorialized the circumstances under which CB 2011 Ohio & Michigan Retail, LLC, the seller in August 2015 sale, obtained ownership of the subject property. Subsequent to the hearing, the parties submitted written argument to more fully explain their respective positions.

Before we consider the merits of this appeal, we must first dispose of several preliminary issues. First, evident from the BOR hearing record, the BOR relied upon pictometry to discuss some of the subject properties. However, that information is not included in the statutory transcripts. The board takes this opportunity to remind the BOR of the various statutes which impose obligations upon boards ofrevision to create and maintain a record capable of being reviewed on appeal, beginning with R.C. 5715.08, which expressly requires that "[t]he county board of revision shall take full minutes of all evidence given before the board, and it may cause the same to be taken in shorthand and extended in typewritten form. The secretary of the board shall preserve in his office separate re¥ords of all minutes and documentary evidence offered on each complaint." Upon the filing of an appeal, "[t]he county board of revision shall thereupon certify to the board of tax appeals a transcript of the record of the proceedings of the county board of revision pertaining to the original complaint, and all evidence offered in connection therewith." R.C. 5717.01. See, also, *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078. However, we also remind the parties of their duty to assure that the statutory transcript contains the evidence and/or filings presented to the BOR. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd of Revision,* 90 Ohio St.3d 564 (2001).

Second, we grant the BOE's motion in limine to bar the property owner from presenting new evidence on appeal and conversely deny the property owner's motion in limine to permit it to present new evidence on appeal, based upon R.C. 5715.19(G). We note that the property owner failed to demonstrate good cause for its failure to first provide its evidence, i.e, additional testim.ony from Iliev, new testimony from Wheeler, and documents related to a prior sale of the subject property that occurred in October 2013. See e.g., *CASA 94, L.P. v. Franklin Cty. Bd. of Revision,* 89 Ohio St.3d 622 (2000). The witness testimony should have been first provided to the BOR. Furthermore, we do not find the documents related to the prior sale of the subject property to be relevant.

Third, however, we deny the BOE's request that the matters in its request for admissions be deemed admitted. In *Salem Med. Arts & Dev. v. Columbiana Cty. Bd. of Revision,* 82 Ohio St.3d 193 (1998), the Supreme Court commented that a request for admissions "is not a discovery procedure but is a procedure used to narrow the issues and to eliminate unnecessary proof at trial by obtaining the admission of facts known to the party requesting the admissions and concerning that upon which there should be no issue." Id. at 197. However, as this board noted in *Elizabeth Williams Group Home, Inc. v. Levin* (Interim Order, Feb. 1, 2011), BTA No. 2010-K-1967, unreported, such requests "may not be used in proceedings before this board as a means by which to secure what is, in essence, summary judgment." See also *Brown v. Levin,* 119 Ohio St.3d 335, 2008-Ohio-408 l (holding that this board is without authority to act in a summary manner with respect to substantive issues). It is clear that BOE seeks summary disposition of dispositive facts in this matter through its request for admission.

We now turn to the merits. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several

factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410,412 (1964).

We begin our analysis with the subject sale. The BOE does not dispute that the subject sale took place. In *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075, and *Utt v. Lorain Cty. Bd. of Revision,* 150 Ohio St.3d 119, 2016-Ohio-8402, the court determined that minimal evidence of a sale is acceptable in those circumstances when an opponent of such sale fails to dispute whether the sale actually occurred or whether the property owner paid the claimed amount in a recent sale. See, *Lunn,* supra, at ,i 14-15; *Utt,* supra, at ,i 2, *6.Compare1192 Group Partnership LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 18, 2013), BTA No. 2010-Y-651, unreported. We find, therefore, that the settlement statement and notation on the property record card, which memorialized the subject sale, is sufficient to create a rebuttable presumption that such sale is the best indication of the subject property's value.

The BOE does, however, dispute whether the subject sale occurred between parties acting at arm's-length. The BOE attempted to rebut the presumptions accorded to the subject sale by relying upon Iliev's admission at the BOR hearing that the subject sale was conducted through a court-appointed receiver and a one-line excerpt from page 41 of the financing appraisal report that was performed contemporaneous with the subject sale, which noted that the subject sale was "a receiver directed sale and not arm's-length." Although in *Emerson v. Erie Cty. Bd. of Revision,* 149 Ohio St. 3d 148, 2017-0hio-865 the Supreme Court has held that a hearsay appraisal report may be relied upon to determine *fair market value* to demonstrate

that parties were not acting in concert to depress real property value, the BOE does not rely upon the earsay appraisal report in this matter for that specific puri,ose. Instead, the BOE relied on the appraisal report for the truth of the matter asserted in the text of the appraisal report, i.e., that the subject sale was the subject of a forced, receiver sale. Because the appraiser who authored the financing appraisal did not testify at the BOR hearing or at this board's hearing, we are limited in our ability to evaluate such statement. As such, we find the excerpt from the appraisal report to be unreliable hearsay. See, e.g., *Dellick v. Eaton Corp.,* 7th Dist. Mahoning No. 03-MA-246, 2005-Ohio-566, 125. ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). *** Generally, hearsay is inadmissible. Evid.R. 802."). For the same reasons, we find Wheeler's letter, submitted to the BOR, and affidavits from Wheeler and Fischer, attached to the property owner's motion in limine, to be unreliable hearsay.

Although we acknowledge that Iliev testified that the subject sale occurred via a receivership, there is no competent and probative evidence in the record to support that assertion. A review of the settlement statement fails to disclose that receiver fees were a part of the various fees related to the subject sale. See R.C. 2735.04(C). A receivership deed is notably absent from the record. See R.C. 2735.04(D)(3)(b); R.C. 2735.04(0)(9). As such, we find insufficent evidence that the sale was a "forced sale" under R.C. 5713.04.

In reviewing this matter, we are mindful of our duty to itfdependently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that the record demonstrates that the subject sale was a recent, arm's-length sale indicative of the subject property's value. In doing so, we find that the BOE failed to rebut the presumptions accorded to such sale and, therefore, the BOE failed to satisfy its evidentiary burden on appeal.

It is therefore the order of this board that the subject property's true and taxable values as of January I,

2015 are as follows:

TRUE VALUE

$825,000

TAXABLE VALUE

$288,750

OHIO BOARD OF TAX APPEALS

BRUNSWICK CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1016
Appellant(s)	(REAL PROPERTY TAX)
, vs,	DECISION AND ORDER
MEDINA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s)

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Entered Wednesday, May 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 003-18D-03-061, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is improved with a 2,997 square-foot commercial building utilized as an owner-occupied branch bank. The subject's total true value was initially assessed at $1,217,710. The appellee property owner, KeyBank National Association ("KeyBank"), filed a decrease complaint with the BOR seeking a reduction in value to $650,000. The BOE filed a countercomplaint in support of maintaining the auditor's value. At the BOR hearing, KeyBank relied on a written submission of documents that set forth its opinion of value. This submission included both income and sales comparison approaches to value, ultimately concluding to an opinion of value of $650,000. The BOE objected to KeyBank's packet as hearsay because no corroborating testimony had been offered, but offered no independent evidence of value. The BOR issued a decision reducing the initially assessed valuation to $650,000 based on the comparable sales presented by KeyBank. From this decision, the BOE filed the present appeal.

A hearing was convened before this board, at which KeyBank presented the testimony and written report of Richard G. Racek, Jr., MAI. The BOE and county appellees waived the opportunity to appear to present additional evidence or argument. Racek indicated that he disregarded the cost approach because the building's 1999 construction would not produce a credible result. Racek then discussed his sales comparison analysis, in which he considered the sales of 7 branch-bank-style buildings, concluding to an indicated value of $225 per square foot, for a total value of $675,000 (rounded). Racek described his income approach, reducing an estimated a rental rate of $22.50 per square foot ($67,433 total) to account for 5% vacancy/credit loss, management/administrative costs, and replacement reserves. This resulted in a net operating income of $60,000, which he capitalized at 8.5%, for an indicated value of $705,000 (rounded). Racek gave both approaches equal weight, concluding to an indicated value of $690,000 as of January 1, 2016. Because the appellee parties waived the opportunity to appear, neither was present to cross-examine Racek or challenge his findings.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to l:1uy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. ofTaxAppeals,* 175 Ohio St. 410 (1964).

Such is the case in this matter, as the record does not indicate that the subject property recently transferred through a qualifying sale. Upon review of Racek's appraisal, which provides an opinion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find the appraisal to be competent and probative and the value conclusions reasonable and well-supported. We have often acknowledged that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the

information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported. In this case, we have no express challenges to any of Racek's methodology or the data upon which his conclusions were based. Accordingly, upon review of the record before us, we find that Racek's appraisal provides the most reliable evidence of the subject's value as of the tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

TRUE VALUE

$690,000

TAXABLE VALUE

$241,500

OHIO BOARD OF TAX APPEALS

ELLET PROPERTIES COMP/ELLET PROPERTIES, LTD/ELLET PROPERTIES COMPANY, A PARTNERSHIP/TRT REAL ESTATE DEVELOPMENT LLC, (et. al.),	CASE NO(S). 2016-1935
	(REAL PROPERTY TAX)
Appellant(s),	DECISION AND ORDER
vs.	
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - ELLET PROPERTIES COMP/ELLET PROPERTIES, LTD/ELLET PROPERTIES COMPANY, A PARTNERSHIP/TRT REAL ESTATE DEVELOPMENT LLC
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Entered Wednesday, May 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number 68-12548, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and any written argument

submitted by the parties. For the reasons set forth below, we find the subject's August 22, 2016 transfer to be arm's-length in nature, recent to the tax lien date, and the resulting purchase price to be the best evidence of the subject's true value.

The subject's total true value was initially assessed at $301,040. The property owner filed a decrease complaint with the BOR, seeking a reduction in value to $170,130, based upon an August 2016 transfer. S.T., Exhibit ("Ex.") A. The Board of Education for the Akron City School District ("BOE") filed a counter complaint seeking to retain the initially assessed value.

At the BOR's hearing, owner's counsel appeared and submitted an owner's valuation pro forma which included a deed, settlement statement, conveyance fee statement, and purchase agreement relating to an August 2016 transfer of the subject. Specifically, the owner's sale documents evidence a transfer of the subject property from Ellet Properties, Ltd., to TRT Real Estate Development, LLC, on August 22, 2016, for $170,133. S.T., Ex. F. Further, counsel offered the testimony of Gary Murphy, Chief Financial Officerof Tesla Properties, which entity is "the owner of TRT Real Estate Development LLC * * * [.]" Appellant's Brief. On direct examination, Mr. Murphy authenticated the August 2016 sale documents and testified that there was no relationship between the buyer and seller and that the subject was vacant at the time of sale, though he admitted during cross examination by the BOE that he had no first-hand knowledge of the circumstances of the August 2016 transfer. S.T., Ex. E. A BOR member expressed concerns over decreasing the subject's value for tax year 2015, because the subject sale took place in a tax year subsequent to that at issue, i.e., tax year 2016.

Thereafter, upon consideration of the information presented, the BOR determined that the property owner "was a year too early on their sale" and issued a decision maintaining the subject's initially assessed valuation. S.T., Ex. E, at BOR decision audio recording. Se also S.T., Ex. G. Dissatisfied with the result, the property owner timely appealed to this board. On appeal, no new evidence of value was submitted. Through written argument, as before the BOR, the owner contends the subject's August 22, 2016 purchase price provides the best evidence of the subject's value for the tax lien date at issue. No other party submitted written argument advancing its position to this board. In the absence of any new evidence being submitted on appeal, we now proceed to independently review the record as developed by the parties before the BOR. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996), quoting *Black v. Cuyahoga Cty. Bd. of Revision,* 16 Ohio St.3d 11, 14 (1985).

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). See also *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-379.

It is well settled that an owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987); however, in order for such opinion to be considered probative, it must be supported with reliable tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tok/es & Son, Inc. v. Midwestern lndem. Co.,* 65 Ohio St.3d 621 (1992). The weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal* S. *& L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). Rather, this board is charged with the responsibility of determining value based upon evidence properly contained within the record and found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997).

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). The initial burden on a party presenting evidence of a sale "is not a heavy one, where the sale on its face appears to be recent and at arm's length." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, at R 41. The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision,* 138 Ohio St.3d 153, 2014-Ohio-104. Then, typically, "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 138 Ohio St.3d 223, 2014-Ohio-523, i114. See also *Cummins Property Servs., L.L.C.,* supra, at ,r13. But see *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, at ,r27, 34 (statutory amendment to R.C. 5713.03 allows for consideration of encumbrances and their effect on the sale price if the party opposing the transfer presents it as rebuttal evidence). Moreover, the Supreme Court has made it clear that no "bright line" test exists when establishing recency and that the mere passage of time does not, per se, render a sale unreliable. See, e.g., *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059. Compare *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588.

In this instance, the record clearly demonstrates that the property owner presented evidence of a facially qualifying sale of the subject to the BOR, and, as a result, a rebuttable presumption of validity arose in favor of the subject's August 2016 transfer. *Cummins Property Servs.,* supra, at ,r4I. To be sure, once a qualifying sale is established, the burden then shifts to the opponent of utilizing such sale (here, the county appellees) to rebut such presumption and prove that the sale price is not indicative of value. While the BOR may not agree that the best evidence of the subject's true value is an actual, recent, arm's-length sale because the transfer occurred subsequent to the tax lien date at issue, see S.T., Ex. E at BOR decision audio, we disagree. Moreover, on appeal, the county advances no written argument, cites to no authority in support, and offers no independent evidence of any value, be that in support of the initially assessed value or of some other value.

Upon a close review of the record, we can find no evidence that calls into question either the recency or arm's-length nature of the subject's August 2016 transfer. See *HIN, L.L.C.,* supra, at ,r14. Accordingly, absent an affirmative demonstration that the August 2016 sale is not a qualifying sale for tax valuation purposes, this board will not engage in conjecture, as we find the existing record demonstrates that the transaction was both recent and conducted at arm's-length. See generally *Lakota Local School Dist. Bd. of Edn.,* supra, at ,r26 ("Mere speculation is not evidence.").

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2015, were as follows:

PARCEL NUMBER 68-12548

TRUE VALUE

$170,130

TAXABLE VALUE

$59,550

OHIO BOARD OF TAX APPEALS

SANDRA K. HUNTER, (et. al.),

Appellant(s),

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s)

CASE NO(S). 2017-2250

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- SANDRA K. HUNTER
OWNER
2674 CIRCLE VIEW DR.
KETTERING , OH 45419

For the Appellee(s)

- MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
ADAM M. LAUGLE
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
P.O. BOX 972
DAYTON, OH 45422

Entered Thursday, May 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers N64 00802 0115 and N64 00802 0116, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property consists of two vacant lots adjacent to appellant's home. The subject's total true value was initially assessed at $12,990. Appellant filed a decrease complaint with the BOR seeking a reduction in value to $1,500. At the BOR hearing, appellant indicated that the two lots are unbuildable because they are situated on a floodway and that she purchased them for a combined total of $1,500. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. At the hearing before this board, appellant again relied on her purchase of the property, further expanding on the circumstances of the sale. Appellant explained that after the City of Kettering acquired ownership of the parcels, it demolished the structures previously situated thereon. When she discovered the lots would be available, she contacted the city about purchasing them due to their proximity to her home. At that time, she was informed that they were listed on a website. Appellant testified that she purchased them for $1,500 - the price at which they were listed - but had to go back and forth with the city regarding an easement that would be needed to properly maintain the waterway that ran adjacent to the property.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). In order to benefit from the rebuttable presumption that a sale price "'has met all the requirements that characterize true value,' *** the proponent of a sale must satisfy a relatively light initial burden and need not 'definitive[ly] show[]*** that no evidence controvert[s] the*** arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075, 14, citing *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d at 327 (1997); *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, 41. Accordingly, 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. *Cincinnati Bd. of Edn.,* supra. Additionally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, 11.

In the present appeal, it is undisputed that appellant purchased the subject property on May 3, 2016 from the City of Kettering after it was listed on a website available to the public for anyone to purchase. The county appellees have provided no specific challenge to the validity of any aspect of this sale. Accordingly, 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. The beginning point of the board's value finding is the auditor's original assessment for tax year 2016. We have utilized the percentages reflected therein to allocate value among the parcels, rounding values to the nearest $10. See *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision,* 125 Ohio St.3d 485, 2010-Ohio-1921.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

PARCEL NUMBER N64 00802

0115 TRUE VALUE

$840

TAXABLE VALUE

$290

PARCEL NUMBER N64 00802 0116

TRUE VALUE

$660

TAXABLE VALUE

$230

OHIO BOARD OF TAX APPEALS

MITCHELL J. & LORIE. CLEMENTE, (et. al.),

Appellant(s),

vs.

MEDINA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1306

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MITCHELL J. & LORIE. CLEMENTE
Represented by:
LORI E. CLEMENTE
OWNER
640 CRYSTALBROOKE DR
HINCKLEY, OH 44233

For the Appellee(s) - MEDINA COUNTY BOARD OF REVISION
Represented by:
DENNISE. PAUL
ASSISTANT PROSECUTING ATTORNEY
MEDINA COUNTY
72 PUBLIC SQUARE
MEDINA, OH 44256

Entered Thursday, May 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon a notice of appeal by the appellant property owners from a decision of the Medina County Board of Revision ("BOR"), which determined the value of the subject property, parcel number 016-03A-24-030, for tax year 2016. All parties waived their appearances at a hearing before this board. We therefore consider the matter upon the notice of appeal, the statutory transcript certified by the auditor pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The county auditor initially valued the subject property at $370,770 for tax year 2016. Appellants filed a complaint seeking a decrease in value to $308,118 based on a comparison of the "taxable rate per square foot" of the subject to neighboring properties. Appellants specifically identified two neighboring properties and the taxes assessed per square foot. Owner Lori Clemente also presented purportedly comparable sales from the multiple listing service ("MLS"). She further questioned the comparable sales used by the county, indicating that they are dissimilar from the subject property. After considering the evidence, the BOR determined the no change in value was warranted, and issued a decision maintaining the auditor's initial value.

Appellants thereafter appealed to this board, requesting a decrease in value to $335,444 based on a residential broker price opinion and comparable sales/listing data. We note that appellants attached several documents to the notice of appeal, including an excerpt from a broker price opinion and MLS listings.

Because these documents were not presented at a hearing before this board, to the extent they were not already provided to the BOR and included in the statutory transcript, they are not properly in the record and will not be considered in our analysis. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13 (1996); *Cunagin v. Tracy* (Mar. 31, 1995), BTA No. 1994-P-1083, unreported.

As the appellants in this matter, the burden is on the owners "to demonstrate that the value [they advocate] is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* l 06 Ohio St.3d 1, 2005-Ohio-3096, r6**.** As the Supreme Court recently reite ated in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision,* Slip Opinion No. 20 l 7-Ohio-8818, "' [T]he board of revision (or auditor),' on the other hand, 'bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies ***.'" Id. at ,r12, quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 123 Ohio St.3d 268, 2009-Ohio-4975, ,r23.

In considering the evidence presented, we are mindful that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision,* 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, ,r33. In the absence of a recent, arm's-length sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964). The record in this matter contains neither a recent, arm's-length sale, nor an appraisal of the property. Appellants rely on unadjusted comparable sales data and comparable assessed values. We find neither to be probative of the subject's value on tax lien date.

Initially, we must acknowledge the fallacy of any argument relying on the assessed values of other properties in support of a requested reduction in value, as the basis of this challenge is the erroneous nature of the subject property's value. Indeed, "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 31 (1996).

We likewise find the comparable sales data presented by appellants insufficient to support a reduction in value. This board has repeatedly stated that, without a reliable analysis of such data, i.e., an appraisal, the submission of raw sales information is normally insufficient to demonstrate value since the trier of fact is left to speculate as to common differences, e.g., location, size, quality of construction of improvements, nature of amenities, etc., and the date of sale as opposed to tax lien date, may affect a value determination. See generally The Appraisal of Real Estate (14th Ed.2013); *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* 150 Ohio St.3d 69, 2017-Ohio-4002.

Based upon the foregoing, we find appellants have failed to meet their burden to provide competent and probative evidence in support of their requested decrease in value. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$370,770

TAXABLE VALUE

$129,770

OHIO BOARD OF TAX APPEALS

ALLENDER, AMANDA JUNE & KLAEHN, WILLIAM IV /SURV, (et. al.),	CASE NO(S). 2017-1219
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
SANDUSKY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - ALLENDER, AMANDA JUNE & KLAEHN, WILLIAM IV /SURV
Represented by:
AMANDA ALLENDER
410 HAYES AVE
FREMONT, OH 43420

For the Appellee(s) - SANDUSKY COUNTY BOAR.D OF REVISION
Represented by:
MARK MULLIGAN
ASSISTANT PROSECUTING ATTORNEY
SANDUSKY COUNTY
100 N. PARK AVENUE, SUITE 220
FREMONT, OH 43420

Entered Thursday, May 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owners appeal to this board from a decision of the Sandusky County Board of Revision ("BOR") determining the value of parcel number 34-50-00-0113-00 for tax year 2016. We proceed to consider the matter upon the notice of appeal and the statutory transcript certified by the auditor pursuant to R.C. 5717.01.

The auditor initially valued the subject property at $49,300 for tax year 2016. Property owner Amanda Allender filed a complaint seeking a decrease in value to $25,000 - the amount for which the property was purchased in September 2016. At the BOR hearing, the owners advocated for value in accordance with the sale, and discussed renovations taking place in 2017 and planned for the future. The BOR decreased the value of the property to $45,000 due to condition, and the appellants appealed to this board.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. Testimony was presented at the BOR hearing that appellants purchased the property from a bank in September 2016 for $25,000. The auditor's property record card corroborates such testimony, indicating a sale for that amount in September 2016, and indicating that it was a "valid" sale. Although we recognize that no additional

documentation of the sale has been presented to this board, the county appellees have not disputed the basic facts of the sale. *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402, iJ14. We find the September 2016 sale to be the best evidence of the property's value on tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$25,000

TAXABLE VALUE

$8,750

OHIO BOARD OF TAX APPEALS

FAIRFIELD HEALTH PROPERTIES LLC, (et. al.),

Appellant(s)

, vs.

FAIRFIELD COUNTY BOARD OF REVISION, (et. al.),

Appellee(s)

CASE NO(S). 2017-1181

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- FAIRFIELD HEALTH PROPERTIES LLC
  Represented by:
  JASMER S. BATH •
  12111 BENTWOOD FARMS DRIVE PICKERINGTON, OH 43147

For the Appellee(s)

- FAIRFIELD COUNTY BOARD OF REVISION
  Represented by:
  KYLE WITT
  PROSECUTING ATTORNEY
  FAIRFIELD COUNTY
  239 WEST MAIN STREET, SUITE 101
  LANCASTER, OH 43130

  PICKERINGTON LOCAL SCHOOL DISTRICT BOARD OF EDUCATION
  Represented by:
  JONATHAN T.
  BROLLIER BRICKER & ECKLER, LLP
  100 SOUTH THIRD STREET
  COLUMBUS, OH 43215-4214•

Entered Thursday, May 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision (" BOR"), which determined the value of the subject real property, parcel number 041-02427-00, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board. We note that although Jasmer S. Bath listed himself as the appellant when he filed the notice of appeal, it is clear from the proceedings both here and at the BOR that he filed it in his representative capacity on behalf of the named owner, Fairfield Health Properties LLC ("FHP"). As we have done in the past under certain circumstances, we hereby correct this ministerial error through a substitution of the real party in interest. See, e.g., *Lidar Holdings, LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 2, 2015), BTA No. 2014-3392, unreported. Additionally, the board of education ("BOE") filed a countercomplaint and participated during the BOR proceedings, but has not entered an appearance in this appeal. It does not appear that the BOR provided notice to the BOE that the instant appeal was filed pursuant to R.C. 5717.01. Accordingly, we provide the BOE notice of our decision in this matter.

The subject property is a medical office building, and was initially assessed by the auditor at total true value of $1,209,300. FHP filed a decrease complaint with the BOR seeking a reduction in value to $850,000. The BOE filed a countercomplaint in support of maintaining the auditor's values. At the BOR hearing, Mr. Bath appeared on behalf of FHP to testify in support of the requested reduction. Mr. Bath explained that FHP purchased the property in 2003 for roughly $350,000 and has spent an additional $250,000 to renovate the property since that time. Mr. Bath asserted that the assessed value of the property increased significantly in 2007, and that the assessed value of the property does not represent its current condition. Mr. Bath asked that the value of the property be reduced retroactively to account for the time it was assessed, in his opinion, too high. A member of the BOR indicated that the value of the parcel may have appeared to increase because a portion of the building value was previously on another parcel pursuant to a tax increment financing agreement. The BOR members also asked Mr. Bath several questions about his representation of FHP, of which he admitted he is not an owner. Mr. Bath explained that his son owned FHP as well as the business operating in the subject property, and that he granted Mr. Bath the authority to file the underlying complaint and represent FHP at the hearing. Upon questioning by the administrator of the BOR, Mr. Bath testified that he was a paid employee of FHP. The BOE did not offer any independent evidence of value, but questioned Mr. Bath and presented legal argument. The BOE argued that Mr. Bath lacked the authority to file the underlying complaint as the father of the owner of the property, and further asserted that FHP had failed to offer sufficient competent and probative evidence to meet its burden of proof. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

A hearing was convened before this board, at which only FHP was represented. Mr. Bath again appeared to testify. No one appeared on behalf of the county appellees or the BOE, though as noted above, it appears that the BOR failed to notify the BOE of the pending appeal. For the reasons below, we find that the BOE's lack of participation did not prejudice them in the outcome of the appeal, so we proceed to decision.

At the outset, we note that at the BOR hearing, the BOE raised a jurisdictional issue that could potentially affect this board's authority to decide the present appeal, specifically the validity of the complaint filed by Mr. Bath. The BOE objected to Mr. Bath's filing of the complaint on behalf of FHP, arguing that he lacked authority to do so, and the complaint was, therefore, invalid. R.C. 5715.19(A)(l), via Sub.H.B. 694 (effective March 30, 1999), allows various non-attorneys to file complaints on behalf of others. Relevant here, R.C. 5715.19(A)(l) provides that "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." During the BOR hearing, when Mr. Bath was asked if he was paid a salary, he answered to the affirmative. Accordingly, even if he lacked authority to file as the father of the owner, see, e.g., *Voudouris v. Lucas Cty. Ed. of Revision* (Oct. 5, 2007), BTA No. 2006-H-1807, unreported (concluding that a complaint filed by a non-attorney son filing on behalf of his father, purportedly µnder a power of attorney, was insufficient to invoke the jurisdiction of a board of revision), Mr. Bath properly could file as a salaried employee of the owner. *Marysville Exempted Village School Dist. Ed. of Edn. v. Union Cty. Ed. of Revision,* 136 Ohio St.3d 146, 2013-Ohio-3077. We therefore find that the complaint properly vested jurisdiction in the BOR, and, derivately, this board.

We now look at the substantive issues of the appeal. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Ed. of Edn. v. Franklin Cty. Ed. of Revision,* 90 Ohio St.3d 564, 566 (2001). An appellant must present competent and probative evidence in support of its requested reduction, and an owner is not entitled to a reduction merely because no evidence is presented against its claim. Id. The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. ofTaxAppeals,* 175 Ohio St. 410 (1964).

There is no evidence of a recent, arm's-length sale of the property, as the most recent transfer of the property took place more than 12 years prior to the tax lien date. Additionally, FHP did not present a qualifying appraisal of the subject property. In lieu of an appraisal, Mr. Bath discussed the history of the subject's value, asserting that increases in the subject's value since FHP's sale were not consistent with the physical condition of the property or the values of other properties.

We find that FHP's arguments are not persuasive and do not support a downward adjustment in value. Initially, we note that the complaint was filed for tax year 2016 and the date of valuation at issue is January 1 of that year. Thus, we lack authority to look at any prior years and any evidence presented must relate to that date in order to be relevant. Second, we must reject FHP's argument that the auditor's value for the subject property from various tax years or other properties reflects the correct assessed value for the year at issue. A property's valuation from one tax year is not competent and probative evidence of value for another tax year. See *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26, 29 (1997). Additionally, the values of other properties are not reliable evidence of value for the subject. *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 31 (1996) ("Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner."). Third, evidence of negative conditions experienced by the subject property due to its age or any other issue are not sufficient to support a reduction in value. In order to support this type of claim, FHP must demonstrate not only that such factors are present, but also the impact on the value of the subject property. *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996). See, also, *Gupta v. Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397 (1997). Similarly, we reject the argument that the value of the property is the sale price plus the cost of renovations because these dollar-for-dollar costs do not necessarily correlate to value. See, e.g., *Throckmorton,* supra; *Gupta,* supra.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision,* 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any

evidence.").

It is therefore the order of this board that the true and taxabte values of the subject property, as of January I, 2016, were as follows:

TRUE VALUE

$1,209,300

TAXABLE VALUE

$423,260

OHIO BOARD OF TAX APPEALS

CAITO FOODS LLC, (et. al.),

Appellant(s)

, vs.

TUSCARAWAS COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1143

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CAITO FOODS LLC
Represented by:
SEAN F.
BERNEY
DOUGLASS & ASSOCIATES CO., LPA
4725 GRAYTON ROAD
CLEVELAND, OH 44135

For the Appellee(s) - TUSCARAWAS COUNTY BOARD OF REVISION
Represented by:
RYAN
STYER
PROSECUTING ATTORNEY
TUSCARAWAS COUNTY
125 E HIGH ST.
NEW PHILADELPHIA, OH 44663

Entered Thursday, May 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 45-02540-011, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject's total true value was initially assessed at $5,913,200. Appellant filed a decrease complaint with the BOR seeking a decrease in value to $3,890,000. At the BOR hearing, appellant presented a deed and conveyance fee statement as evidence that the property sold in January 2017. Appellant also provided a copy of a press release from its parent company that described the circumstances of the transaction. The BOR members had questions about the allocation because the real property transferred as part of a larger business acquisition. No one was present to testify, but appellant provided a copy of an appraisal that was created as part of the transaction that showed the value allocated to the real property that was reported on the conveyance fee statement was within the two value conclusions in the report. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. Appellant again relied on the January 2017 sale, arguing that it provides the best evidence of the subject's value. The county appellees did not participate on the appeal or offer any specific challenge regarding the reliability of the sale.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). In order to benefit from the rebuttable presumption that a sale price "'has met all the requirements that characterize true value,' *** the proponent of a sale must satisfy a relatively light initial burden and need not 'definitive[ly] show[] *** that no evidence controvert[s] the*** arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075, 14, citing *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d 325, 327 (1997); *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-14 73, 41. Accordingly, 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. *Cincinnati Bd. of Edn.,* supra. Additionally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-0hio-3025, 11.

In the present appeal, it is undisputed that appellant purchased the subject property on or about January 12, 2017 for $3,890,000 from Caito Foods Service Inc. The county appellees have provided no specific challenge to the validity of any aspect of this sale, and the appraisal provides further confirmation regarding the reliability of the sale price. *Emerson v. Erie Cty. Bd. of Revision,* 149 Ohio St.3d 148, 2017-Ohio-865. Accordingly, 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.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

TRUE VALUE

$3,890,000

TAXABLE VALUE

$1,361,500

OHIO BOARD OF TAX APPEALS

QUON C. LOUIE, (et. al.),

Appellant(s)

, vs.

HAMILTON COUNTY BOARD OF REVISION,
(et. al.),

Appellee(s)

.

CASE NO(S). 2017-1053

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

Forthe Appellant(s)

- QUON C. LOUIE
OWNER
P.O. BOX 2404
SANTA CLARA, CA 95055

For the Appellee(s)

- HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J.
SCHEVE
ASSISTANT PROSECUTING
ATTORNEY HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

CINCINNATI CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID C. DIMUZIO
ATTORNEY AT
LAW
DAYID C. DIMUZIO, INC.
810 SYCAMORE STREET, SIXTH
FLOOR CINCINNATl, OH 45202

Entered Thursday, May 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the Hamilton County Board of Revision ("BOR") determining the value of the subject real property, i.e., parcel number 052-0003-0044-00, for tax year 2016. As no party requested a hearing before this board, we proceed to consider the matter upon the notice of appeal, the statutory transcript certified by the auditor pursuant to R.C. 5717.01, and the appellees' written arguments.

The subject property was initially valued by the auditor at $1,955,010 for tax year 2016. The owner filed a complaint requesting a decrease in value to $1,200,000, based on the sale of an adjacent property for $800,000 in December 2015. The Cincinnati School District Board of Education ("BOE") filed a countercomplaint, pursuant to R.C. 5715. l 9(8), requesting that the auditor's initial value be maintained. No one appeared on behalf of the owner at the BOR hearing. One BOR member noted that the subject property is larger, and has a different use, than the adjacent property. An appraiser from the county auditor's office echoed such comments, and testified that he did not believe an adjustment was warranted based on the information presented. The BOR issued a decision finding. no change in value, and appellant thereafter appealed to this board.

Initially, we note that the owner objected, by way of letter to the BOR, to the participation of the BOE in the BOR's proceedings. Under R.C. 5715. l 9(B), when a complaint requests a change in total true value of $50,000 or more, the county auditor is required to notify "each board of education whose school district may be affected by the complaint." The notified board of education is then permitted to file a complaint "objecting to the amount of alleged overvaluation," and, upon doing so, becomes a party to the action. The owner requested a decrease in value of $755,010 in the complaint. We therefore find that the BOE's counter complaint and participation in these proceedings is proper.

As the appellant in this matter, the burden is on the property owner "to demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, if6. "The best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision,* 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.*C. *v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, if33. In the absence of a recent, arm's-length sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964). The record in this matter contains neither a recent, arm's-length sale, nor an appraisal of the property.

Appellant relies solely on the sale of an adjacent property. While comparable sales data is commonly relied upon by appraisers, in the absence of an appraisal which analyzes such data, the raw data itself 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, etc., may affect a value determination. See generally The Appraisal of Real Estate (14th Ed.2013). Moreover, while it is possible that a single sale could reflect the general marketplace, arguably, several sales must be reviewed to definitively establish what constitute relevant market conditions on a particular tax lien date.

Based upon the foregoing, we find that appellant has failed to meet his burden to provide competent and probative evidence in support of the requested decrease in value. It is therefore the order of this board that the true and taxable values of the subject property as ofJanuary 1, 2016, were as follows:

TRUE VALUE

$1,955,010

TAXABLE VALUE

$684,250

OHIO BOARD OF TAX APPEALS

HARTMUT H. SCHOEPPER, (et. al.),	CASE NO(S). 2017-813
Appellant(s)	(REAL PROPERTY
, vs.	TAX) DECISION AND
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	ORDER
Appellee(s).	

APPEARANCES:

For the Appellant(s)

- HARTMUT H.SCHOEPPER
  5737 BRANTFORD RD.
  DAYTON, OH 45414

For the Appellee(s)

- MONTGOMERY COUNTY BOARD OF REVISION
  Represented by:
  ADAM M. LAUGLE
  ASSISTANT PROSECUTING ATTORNEY
  MONTGOMERY COUNTY
  P.O. BOX 972
  DAYTON, OH 45422

Entered Thursday, May 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the appellant property owner's notice of appeal from a decision of the Montgomery County Board of Revision ("BOR"), which determined the value of the subject property, i.e., parcel number E21 01005B0012, for tax year 2016. We proceed to consider the matter upon the notice of appeal and the statutory transcript certified by the auditor pursuant to R.C. 5717.01.

Appellant filed a complaint requesting a decrease in the value of the property from the auditor's initial value of $76,320 to $38,500 for tax year 2016 due to detrimental effects from drainage ditches located on the property. The BOR noted during its hearing that appellant had previously filed a complaint for tax year 2014, and the BOR granted a decrease for that year. Appellant testified that the ditches have been on the property for the past 45 years, and that the surface water and erosion issues on the property have led to the need to remove numerous trees and repair fence, at expense to him. At the BOR's decision hearing, the BOR members voted to dismiss the complaint as an improper second filing in the same interim period as appellant's tax year 2014 complaint, and the BOR issued a decision finding no change in value was warranted. Appellant thereafter appealed to this board, and has presented no additional evidence or argument on appeal.

The record in this matter indicates that appellant filed complaints for tax year 2016, and, previously, for tax year 2014; both years are within the same triennial period for Montgomery County, which conducted a sexennial reappraisal ofreal property values in 2014. R.C. 5715.19(A)(2) provides that "a party dissatisfied with the valuation of property may file only one complafot in [a triennial period], unless one of the exceptions applies." *Soyko Kulchystsky, L.L.*C. *v. Cuyahoga Cty. Ed. of Revision*, 141 Ohio St.3d 43, 20l4-Ohio-4511, ,r20. The statute provides four specific exceptions to the multiple filing prohibition, including where the property lost value due to a casualty. Appellant alleged such exception on the underlying tax year 2016 complaint. To meet the exception, a complainant must 1) allege on the second complaint that the property value should be changed as a result of a casualty, 2) the casualty must have occurred after the tax lien date for the year which the prior.complaint was file d, and 3) *the casualty must not have been taken into consideration with respect to the prior complaint.* See *Sayko*, supra, at i!23-26; *Johnson v. Clark Cty. Bd. of Revision* (June 28, 2017), BTA Nos. 2016-2511, 2514, unreported.

Appellant acknowledged that the drainage ditches have existed on the property for the past 45 years, and that he had previously sought a reduction in value based on the negative issues caused by the ditches. We therefore find that he has failed to establish that a *new* casualty occurred, different from that previously considered by the BOR in its tax year 2014 decis ion, that would satisfy the requirements of R.C. 5715.19(A)(2) to allow a second complaint to be filed in the same triennial period.

While the BOR acknowledged that it lacked jurisdiction to consider the merits of appellant ' s tax year 2016 complaint, it nevertheless issued a decision determining value for the property, i.e., no change in value . Given the foregoing discussion, we agree that the BOR lacked jurisdiction to consider the value of the property for tax year 2016, and find that the BOR should have dismissed the complaint consistent with its oral vote. Accordingly, we hereby remand this matter to the Montgomery County Board of Revision with instructions to dismiss the underlying complaint for lack of jurisdiction, the practical effect being no change in value.

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-557
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

•

PARK.WAY MANOR APARTMENTS LLC
Represented by:
STEVEN R. GILL
SLEGGS, DANZINGER & GILL CO., LPA
820 WEST SUPERIOR AVENUE, 7TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, May 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant Cleveland Municipal School District Board of Education ("BOE") appeals a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel number 001-15-049 for tax year 2015. All parties waived their appearances at a hearing before this board. We therefore proceed to consider the matter upon the notice of appeal and the statutory transcript certified by the fiscal officer.

The subject is a 48-unit apartment building which the fiscal pfficer valued at $1,199,600 for tax year 2015. The BOE filed a complaint requesting an increase in value to $1,430,000 based on a mortgage against the property for that amount recorded in December 2013. At the BOR hearing, counsel for the BOE presented a copy of the recorded mortgage and sales of similarly-aged apartment buildings in the same area as the subject. Although counsel for property owner Parkway Manor Apartments LLC appeared at the hearing, no

additional evidence was submitted on its behalf. Finding no change in value was warranted based on the information submitted, the BOR issued a decision maintaining the fiscal officer's initial valuation of $1,199,600. The BOE thereafter appealed to this board, but has presented no further argument or evidence in support of its requested value.

As the appellant in this matter, the burden is on the BOE "to demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, 6. "The best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision,* 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, 33. In the absence of a recent, arm's-length sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964). The record in this matter contains neither a recent, arm's-length sale, nor an appraisal of the property.

The BOE appears to rely on the mortgage recorded in December 2013. However, a review of the recorded mortgage indicates that it is secured not only by the subject real property, but also by personal property and other items. We are therefore unable to rely on the mortgage as reflecting the value of the real property on tax lien date. Further, although the BOE submitted purportedly comparable sales in support of its request for an increase in value, without an appraisal analyzing such data, we likewise find such information not probative of value on tax lien date. See, e.g., *Carr v. Cuyahoga Cty. Fiscal Officer,* 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, 11. Even if this board did consider such data probative, we note that counsel for the BOE acknowledged at the BOR hearing that the fiscal officer's valuation of the property at approximately $25,000 per unit is supported by the lower end of its submitted comparable sales data.

Based upon the foregoing, we find the BOE has failed to meet its burden to demonstrate that the value of the subject property should be increased. It is therefore the order of this board that the true and taxable values of the property as of January 1, 2015, were as follows:

TRUE VALUE

$1,199,600

TAXABLE VALUE

$419,860

OHIO BOARD OF TAX APPEALS

DAVID P AND MARILYN K METCALF TRUST, (et. al.),	CASE NO(S). 2018-175
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - DAVID P AND MARILYN K METCALF TRUST
Represented by:
DAVID P. METCALF
769 HARDTACK CT.
GAHANNA, OH 43230

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Friday, May 25, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellants did not file an initial application for remission with the county treasurer and thus no final decision has been issued. Appellants did not respond to the motion. This matter is now decided upon the motion and appellants' notice of appeal.

On March 13, 2018, the appellants filed an application for remission with this board. Appellants did not include a copy of a BOR decision. The county appellees attached to their motion certification that there is no record of a decision issued for the subject property.

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." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellants have not appealed from a board of revision decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MARISSA N. SIMPSON, (et. al.),

Appellant(s),

vs.

PORTAGE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-321

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARISSA N. SIMPSON
3899 COOK ROAD
ROOSTOWN, OH 44272

For the Appellee(s) - PORTAGE COUNTY BOARD OF REVISION
Represented by:
ALLISON BLAKEMORE MANAYAN
ASSISTANT PROSECUTING ATTORNEY
PORTAGE COUNTY
241 SOUTH CHESTNUT STREET
RAVENNA, OH 44266

Entered Thursday, May 31, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Portage County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On April 16, 2018, the appellant filed a notice of appeal with this board. Appellant did not include a copy of a BOR decision. The county appellees argue that the Portage County BOR does not have a record of any recent complaint filed by the appellant.

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." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

STORE MASTER FUNDING IV, LLC, (et. al.),

Appellant(s),

vs.

DELAWARE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2464

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - STORE MASTER FUNDING IV, LLC
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

For the Appellee(s) - DELAWARE COUNTY BOARD OF REVISION
Represented by:
MARK W. FOWLER
ASSISTANT PROSECUTING ATTORNEY
DELAWARE COUNTY
140 NORTH SANDUSKY STREET
P.O. BOX 8006 DELAWARE,
OH 43015

OLENTANGY LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Friday, June 1, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter comes before this board upon a notice of appeal from a decision of the Delaware County Board of Revision ("BOR") determining the value of parcel number 319-314-01-001-001 for tax year 2015. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the auditor pursuant to R.C. 5717.01, the argument presented at this board's hearing, and the parties' written arguments.

The subject property was initially valued by the auditor at $4,847,500 for tax year 2015. Although it acknowledged on its complaint that the property sold for that amount in July 2013, property owner Spirit Master Funding IV, LLC requested a decrease in value to $3,900,000. It later amended its requested value to $4,100,000 in accordance with an appraisal of the property by MAI appraiser Samuel D. Koon. The

Board of Education of the Olentangy Local Schools ("BOE") filed a countercomplaint seeking to maintain the auditor's initial value.

At the BOR hearing, Spirit Master Funding presented the appraisal report and testimony of Mr. Koon. Mr. Koon discussed the July 2013 sale, indicating that the subject property sold with six other properties in a portfolio sale totaling $26,000,000. S.T., Ex. E at 6. In his report, Mr. Koon explained that the subject property's lease was amended in 2008 to reflect a total rate of $20.13 per square foot through March 31, 2018. S.T., Ex. 1 at A-7. He further noted that, using the reported allocated sale price of the subject property of $4,847,475 and the $20.13/SF rental rate resulting in an "implied capitalization rate" of 8.81%, compared to the overall 8.1% capitalization rate reported by CoStar for the entire portfolio sale. Id. at A-8. While the BOE presented no independent evidence of value, it objected to Mr. Koon's testimony regarding the July 2013 sale based on his lack of personal knowledge of the circumstances of the sale. The BOR ultimately determined that no change in value was warranted, and maintained the auditor's initial valuation of $4,847,500.

Spirit Master Funding thereafter appealed to this board. No party has presented new evidence on appeal.

As the appellant in this matter, the burden is on Spirit Master Funding "to demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. In attempting to meet its burden, Spirit Master Funding argues that the July 2013 sale must be disregarded, as it reflects the value of the leased fee interest, as opposed to the "fee simple, as if unencumbered" value required by R.C. 5713.03. The Supreme Court has recently addressed the distinction in *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. There, the court held that a recent arm's-length sale is no longer conclusively considered to be a property's value for taxation purposes; instead, a recent arm's-length sale is considered the *best* evidence of value subject to rebuttal. In evaluating the utility of a purported "leased fee" sale in determining value, the *Terraza 8* court held that the burden is on the opponent of such a sale to present evidence that the lease in place at the time of sale did not reflect market rent at the time. Id. at ¶34.

The only evidence presented to rebut the July 2013 sale is the testimony and appraisal report of Mr. Koon. Initially, we note that no one personally involved in the July 2013 sale testified before either this board or the BOR to explain the circumstances of the sale. Moreover, the lease itself was not presented; only Mr. Koon's statements regarding his understanding of the lease was presented through his appraisal report. However, even if this board were to accept Mr. Koon's statements about the lease in the absence of competent evidence of its terms and existence at the time of sale, we find Spirit Master Funding has failed to establish that the rent at the time of sale was above market. As the BOE noted during the BOR hearing, and again in its written argument, Mr. Koon's conclusion of market rent on January 1, 2015 was $20 per square foot. According to his recitation of the actual lease terms, the subject was leased at $20.13 per square foot at the time of sale. Based on our review of the information in Mr. Koon's report, including his lease comparables, we find no indication that the subject's actual lease rate of $20.13 per square foot at the time of sale did not reflect the market as of the date of sale. We therefore find that Spirit Master Funding has failed to meet its burden under *Terraza 8* to rebut the utility of the sale price. Because we find the July 2013 sale is the best evidence of the property's value, we need not further consider Mr. Koon's appraisal. *Pingue v. Franklin Cty. Bd. of Revision*, 87 Ohio St.3d 62, 64 (1999).

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2015, were as follows:

TRUE VALUE

$4,847,500

TAXABLE VALUE
$1,696,630

OHIO BOARD OF TAX APPEALS

1985 EAST MAIN STREET LLC, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-206

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 1985 EAST MAIN STREET LLC
Represented by:
1985 EAST MAIN STREET LLC
1427 53RD STREET
BROOKLYN, NY 11219

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Friday, June 1, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer prior to filing with this board, thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On March 20, 2018, the appellant filed an application for remission with this board. Appellant did not include a copy of a board of revision ("BOR") decision. The county appellees attached to their motion certification that there is no record of a decision issued for the subject property.

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." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MORE RESOURCES LLC, (et. al.),

Appellant(s)

, vs.

CUYAHOGA COUNTY BOARD OF REVISION,

(et. al.),

Appellee(s)

.

CASE NO(S). 2017-2232

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MORE RESOURCES LLC
Represented by:
WEILY LIU
MORE RESOURCES LLC •
2250 COMMUNITY COLLEGE AVE APT 409
CLEVELAND, OH 44115

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH
FLOOR CLEVELAND, OH 44113

Entered Monday, June 4, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal for lack of jurisdiction. The county appellees assert that this board lack jurisdiction over this matter because appellant did not file a valuation complaint and the board of revision ("BOR") did not issue a value decision. Rather, appellant appeals a BOR decision striking its Motion for Relief from Judgment related to a foreclosure proceeding. Appellant responded to the motion and discussed the matter during a hearing convened before this board. We now consider this matter upon the motion, appellant's response, the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

On November 30, 2017, appellant filed a notice of appeal with this board, referencing a decision made by the BOR on November 3, 2017 regarding parcel number 135-03-073. Attached to her notice of appeal was an order from the BOR granting a Motion to Strike appellant's Motion for Relief from Judgment. This was apparently related to a foreclosure action that was pending before the BOR. The

county appellees attached a copy of the docket from that matter to their motion and appellant referenced those proceedings both in its written response to the motion and during the hearing. In addition to numerous arguments related to the foreclosure proceeding, appellant argues that this board has jurisdiction over the present appeal because we have jurisdiction over all BOR decisions. Appellant asserts that it followed the instructions on the BOR's website, which did not expressly limit only those decisions related to real property valuation.

In lieu of utilizing the judicial foreclosure proceedings, a county board of revision may foreclose on a lien for real estate taxes upon abandoned land in the county. R.C. 323.66(A). Although county boards of revision may adopt rules necessary to administer cases and prepare final orders and sale of deeds, important procedural aspects of this process are governed by R.C. 323.65 to R.C. 323.99. Of particular significance to this matter, R.C. 323.79 sets for the process by which an aggrieved party may appeal the BOR's decision: "Any party to any proceeding instituted pursuant to sections 323.65 to 323.79 of the Revised Code who is aggrieved in any of the proceedings of the county board of revision under those sections may file an appeal in the court of common pleas pursuant to Chapters 2505. ana 2506. of the Revised Code upon a final order of foreclosure and forfeiture by the board." Pursuant to R.C. 5717.01, this board's jurisdiction is limited to those appeals from board of revision emanating from complaints filed under R.C. 5715.19, and decisions from the BOR relating to the foreclosure process should be made to the court of common pleas in the relevant county.

In this case, appellant readily acknowledges that it appealed a decision resulting from a complaint filed pursuant to the foreclosure process and not a complaint filed under R.C. 5715.19. To the extent that appellant argues that it was provided improper guidance regarding the procedure to appeal BOR decisions, we are mindful that estoppel does not apply against the state, even where an employee makes a misleading or confusing statement. *Amer. Handling Equip. Co. v. Kosydar*, 42 Ohio St.2d 150 (1975); *Recording Devices, Inc. v. Bowers,* 174 Ohio St. 518 (1963). Thus, even if we could confirm that appellant was given incorrect information regarding appellate procedure, that would not be sufficient to invoke jurisdiction to this board regarding the appeal. When a statute confers the right of appeal, adherence to the terms and conditions set forth in the statute is essential to the enjoyment of the right conferred. *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147 (1946); *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990).

As strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board, and since the record demonstrates that this appeal was filed from a decision regarding foreclosure proceedings and not a complaint filed under R.C. 5715.19, we must conclude that the Board of Tax Appeals does not have jurisdiction to consider the merits of the instant matter. Accordingly, based upon the existing record, this matter is hereby dismissed.

OHIO BOARD OF TAX APPEALS

JERRY L. & VANESSA A. MELSON, (et. al.),

Appellant(s),

vs.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1906

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JERRY L. & VANESSA A. MELSON
Represented by:
VANESSA MELSON
2815 MORALITY DRIVE
COLUMBUS, OH 43231

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

Entered Monday, June 4, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owners appeal the Franklin County Board of Revision's ("BOR") denial of their request for remission of the real property tax late payment penalty for the second half of 2016. As the appellants, the owners have the burden to show that their request was improperly denied by the BOR. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Because the parties have elected not to present additional evidence at a hearing before this board, we perform a de nova review of the evidence in the record. See *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985).

Appellants applied for remission under R.C. 5715.39(B)(5), which requires the county auditor to remit real property tax late payment penalties when, "[w]ith respect to the *first payment due* after a taxpayer fully satisfies a mortgage against a parcel of real property, the mortgagee failed to notify the treasurer of the satisfaction of the mortgage, and the tax bill was not sent to the taxpayer." (Emphasis added.) In denying the application, both the county auditor and the BOR noted that a previous late payment penalty had been remitted for the first half of 2016. Because the provision in R.C. 5715.39(B)(5) applies to only the first payment due, remission of a second penalty was not permitted.

The tax mailing address history submitted in the statutory transcript indicates that the address was updated to appellants' current address on August 22, 2017. Such date appears to coincide with the date on which the tax year 2016 taxes were paid; it therefore appears that appellants were late in paying both first and second

half 2016 taxes. Given the representation that the first half of 2016 penalty was remitted, we find no error in the auditor's and BOR's denial of further remission under R.C. 5715.39(B)(5). In the absence of any further argument that appellants meet the requisites for remission under another subsection of R.C. 5715.39, we find they have failed to meet their burden to establish a right to remission of the second half 2016 late payment penalty.

Accordingly, the decision of the BOR is hereby affirmed.

OHIO BOARD OF TAX APPEALS

620 HALL LLC, (et. al.),

Appellant(s)

, vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-518, 2017-523, 2017-524,
2017-530, 2017-531, 2017-540, 2017-541, 2017-542, 2017-543, 2017-591, 2017-592, 2017-594, 2017-596, 2017-597, 2017-598, 2017-599, 2017-600, 2017-605, 2017-606, 2017-857, 2017-1524, 2017-1526, 2017-1527, 2017-1530

(REAL PROPERTY

TAX) DECISION AND

ORDER

APPEARANCES:

For the Appellant(s)

- 620 HALL LLC, ET AL.
Represented by:
BRENDA MENDIZABAL
PEPZEE REALTY INC.
1013 NORTH MAIN STREET
DAYTON, OH 45405

For the Appellee(s)

- MONTGOMERY COUNTY BQARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING
ATTORNEY MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

DAYTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
GARY T. STEDRONSKY
ENNIS BRITTON, CO. LP.A.
1714 WEST GALBRAITH ROAD
CINCINNATl, OH 45239

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The above-named appellants appeal decisions of the board of revision ("BOR"), which determined the value of the subject properties, R72 05703 0070, R72 05703 0071, R72 04707 0049, R72 04707 0052, R72 05905 0062, R72 04411 0011, R72 01308 0029, R72 11207 0055, R72 03510 0010, N64 01010 0004, H3301423 0009, R72 16014 0002, R72 11008 0004, R72 06504 0048, E20 18013 0001, R72 06710 0022, E2017007 0100, R72 05802 0045, E20 17007 0049, R72 07104A 0050, E20 24108 0005, E20 24108 0004,R72 04302 0052, and R72 12313 0003 for tax year 2016. We proceed to consider these matters based upon the notices of appeal, the statutory transcripts certified pursuant to R.C. 5717.0 I, the record developed at this board's hearing, and this board's show cause order dated December 19, 2017 and the associated responses.

However, before we can consider the merits of these appeals, we must first determine whether the various property owners properly invoked the jurisdiction of this board and the BOR. In the show cause order dated December 19, 2017, we alerted the parties to various jurisdictional issues. As it relates directly to this board's jurisdiction, the show cause order noted that the DTE-Form 3, certified by the county auditor, noted that the property owners failed to file copies of the notices of appeal with the Montgomery County Board of Revision in each of these matters. We directed the property owners to come forward with evidence to demonstrate that copies of the notices of appeal were, indeed, filed with the BOR within the timeframe to do so. Instead of providing documentary evidence that the notices of appeal were filed with the BOR, the property owners submitted a letter, through their sole /rnana.isi ng member, that asserted that "every appeal was filed within 30 days as evidenced by the dates located on the BTA website. Each shows the date when we filed the appeal which was always within the 30 day deadline of receipt of Montgomery County Board of Revision certification of value."

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and* the board of revision within thirty days after notice of the decision of the county board of revision is mailed. See also R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See also *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

Here, the property owners only provided bare assertions abQut the filing of the notices of appeal but have failed to come forward with affirmative evidence to demonstrate that the notices of appeal were filed with the BOR within the time prescribed to do so. See e.g., *325 Fountain Ave. LLC v. Montgomery Cty. Bd. of Revision* (Sept. 14, 2016), BTA No. 2015-2269, unreported; *138 Santa Clara LLC v. Montgomery Cty. Bd. of Revision* (Mar. 5, 2015), BTA No. 2014-4927, unreported. To the extent that the property owners argued that the BOR received automatic notification of the appeals via this board's docketing letters, we note that docketing letters sent by the Board of Tax Appeals do not satisfy the requirement that an appealing party file notice of the appeal with a county board of revision as required by R.C. 5717.01. See e.g., *Austin Co. v. Cuyahoga Cty. Bd. of Revision,* 46 Ohio St.3d 192 (1989); *Union Allied Consulting, LLC v. Clermont Cty. Bd. of Revision,* (Nov. 21, 2017), BTA No. 2017-1322, unreported.

Accordingly, based upon the foregoing, we conclude that the property owners failed to invoke this board's jurisdiction because they failed to follow the requirements of R.C. 5717.01. These matters therefore must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

MYRA ALEXANDER, MANAGING MEMBER OF VISIONARY HOMES LLC, (et. al.),

Appellant(s)

, vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-708

(REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- MYRA ALEXANDER, MANA°GING MEMBER OF VISIONARY HOMES LLC
Represented by:
MYRA
ALEXANDER
VISIONARY HOMES LLC
5520 HOMER AVE
CINCINATTI, OH 45212

For the Appellee(s)

- HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING
ATTORNEY HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATl, OH 45202

Entered Monday, June 4, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant Myra Alexander, managing member of property owner Visionary Homes LLC, appeals from two decisions of the Hamilton County Board of Revision ("BOR") determining the value of parcel numbers 179-0074-00314-00 and 176-0019-0214-00 for tax year 2016. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified by the auditor, and the record of the hearing before this board ("H.R.").

The subject parcels are each improved with a single-family residence. Parcel number 179-0074-00314-00, located at 3913 W. Liberty Street, was initially valued by the auditor at $34,140. Parcel number 176-0019-00214-00, located at 812 Wells Street, was initially valued by the auditor at $34,200. Appellant filed a complaint for each parcel, requesting decreases in value to $10,000 for each parcel based on Visionary Homes' purchase of each property in February 2015 for that amount. At the BOR hearings, Ms. Alexander presented comparable sales which she argued support her requests for decreases. Randall Cain, a real estate appraiser employed by the Hamilton County Auditor's office, also testified and presented a report, including comparable sales data, for each property .opining that the requested decreases in value were not justified. Mr. Cain specifically noted that, during prior BOR proceedings, Ms. Alexander had indicated that repairs needed to be made to each property, including new furnaces, new wiring, and new plumbing. Upon review of the evidence presented, the BOR found that no change in the value of 3913 W. Liberty Street was warranted; however, it reduced the value of 812 Wells Street to $29,000 based on the comparable sales presented.

Appellant thereafter appealed to this board and requested that each subject property be valued at $20,000. At this board's hearing, Ms. Alexander testified that approximately $7,000 worth of repairs were made to 3913 W. Liberty Street after appellant purchased the property for $10,000 in February 2015; she indicated the repairs were made to make the property livable. H.R. at 6. For the property at 812 Wells Street, Ms. Alexander testified that approximately $5,000 worth of repairs were made to make the property livable. Id. at 14. She challenged the comparability of the properties r lied upon by the BOR, indicating that several had three bedrooms, as opposed to 3913 W. Liberty Street's two bedrooms, additional bathrooms, driveways, and additional living space. Id. at 8, 16-17.

In challenging the valuation of real property, "the appellant must come forward and demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, i-16. In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision,* 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415.

Recency is determined, not solely upon temporal proximity, but also on whether the character of the property has changed between the sale and the tax lien date. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 124 Ohio St.3d 27, 2009-Ohio-5932, i-!32; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, i-135. Here, Ms. Alexander testified that the subject properties were purchased in February 2015 in unlivable condition, and had to be improved before they could be rented. We find that such improvement6 render the sales remote from tax lien date, as they substantially changed the characters of the properties. We therefore reject reliance on the sales of the properties in February 2015 for $10,000 each.

Having rejected the sales, we tum to appellant's comparable sales data. Ms. Alexander testified before the BOR about her knowledge of the subjects' market and appears to have general knowledge thereof

as an investor in the area. However, it appears her knowledge of the specific attributes of the comparable properties, e.g., condition, is based solely on the comments included in each property's listing. There is no indication that the property descriptions were verified, or what the circumstances of the comparable sales were, i.e., arm's-length, distressed, etc. In the absence of such information, we do not find appellant's data reliable. Moreover, with nothing more than raw sales data, in the absence of any expert analysis, this board 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 value determination. See *Witt Co. v. Hamilton Cty. Bd. of Revision,* 61 Ohio St.3d 155, (1991); *Cardinal Fed.* S. *& L. Assn. v. Cuyahoga Cty. Bd. of Revision,* 44 Ohio St.2d 13 (1975); *Copp v. Franklin Cty. Bd. of Revision* (Sept. 8, 2009), BTA No. 2007-Z-696, unreported. We find the comparable sales presented by appellant are not probative of the subject properties' values.

We likewise find the BOR's reliance on comparable sales data to reduce the value of 812 Wells Street to be in error. The Supreme Court recently reiterated in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 151 Ohio St.3d 458, 2017-Ohio-5823, that its "case law has repeatedly instructed the BTA to eschew a presumption of validity of the BOR's value and instead to perform its own independent weighing of the evidence in the record." Id. at ,-i7. Here, although the BOR relied on comparable sales data presented by an appraiser, it is unclear the specific basis of its reduction in value to $29,000. Mr. Cain presented no analysis beyond presentation of the comparable sales data and offered no opinions of value. Such evidence therefore suffers from the same deficiency as appellant's comparable sales data, and, therefore, is likewise not probative of value. We find the BOR's reduction in value unsupported by the record and, the absence of any other evidence of value, reinstate the auditor's initial valuation.

Based upon the foregoing, it is therefore the order of this board that the true and taxable values of the subject properties as of January **1,** 2016, were as follows:

PARCEL NUMBER 179-0074-00314-00

TRUE VALUE

$34,140

TAXABLE VALUE

$11,950

PARCEL NUMBER 176-0019-0214-00

TRUE VALUE

$34,200

TAXABLE VALUE

$11,970

OHIO BOARD OF TAX APPEALS

1771 PROPERTIES LLC, (et. al.),

Appellant(s)

, vs.

CUYAHOGA COUNTY BOARD OF REVISION,

(et. al.),

Appellee(s)

.

CASE NO(S). 2017-705

(REAL PROPERTY

TAX) DECISION AND

ORDER

APPEARANCES:

For the Appellant(s)

- 1771 PROPERTIES LLC
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR CLEVELAND, OH 44113

For the Appellee(s)

- CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR CLEVELAND, OH 44113

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAYID H.
SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Monday, June 4, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter comes before this board upon a notice of appeal filed by property owner 1771 Properties LLC from a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of nine parcels for tax year 2015. We proceed to consider the matter upon the notice of appeal and the statutory transcript ("S.T.") certified by the fiscal officer pursuant to R.C. 5717.01. Although the parties requested that this board schedule a hearing in the matter, the parties subsequently waived their appearances at such hearing.

The subject property, i.e., parcel numbers 102-35-056, 102-35-057, 102-35-058, 102-35-059, 102-35-075, 102-35-076, 102-35-077, 102-35-078, and 102-35-079, was initially valued by the fiscal officer at a total value of $1,700,000. The property owner filed a complaint seeking a decrease in total value to $1,000,000, based on appraisal of the property for that amount by appraiser Lawrence A. Kell, ASA. The Board of Education for the Cleveland Municipal School District ("BOE") filed a countercomplaint seeking to maintain the fiscal officer's initial valuation. At the BOR hearing, Mr. Kell testified about his appraisal of the property. In addition, David Burkowski, managing member of the ownership entity, answered questions posed by counsel for the BOE and members of the BOR about the subject's lease history. Citing concerns with the lack of any market data within Mr. Kell's income capitalization approach to value, the BOR found the evidence insufficient to warrant a reduction in value, and issued a decision maintaining the fiscal officer's initial valuation.

The property owner appealed to this board and again advocates for valuation of the property in accordance with Mr. Kell's appraised value of$1,000,000. No new evidence was presented on appeal.

In challenging the valuation of real property, "the appellant must come forward and demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, if6. Although the best evidence of value is a recent, arm's-length sale of the property, "such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964). Here, the most recent sale of the property occurred in 2007. We therefore turn to the owner's appraisal -evidence.

Mr. Kell performed the income capitalization and sales comparison approaches to value. In conducing his income approach, he relied solely on the actual income, vacancy, and expenses of the property, based on the subject's historical data for 2009 through 2015. He capitalized his calculated net operating income of $102,684 at 10%, derived from Realty Rates, to determine a value of $1,030,000 under the income capitalization approach. Under the sales comparison approach, he utilized eight comparable sales that occurred between September 2007 and August 2015 for unadjusted prices of $7.81 per square foot to $24.12 per square foot. After adjusting the sales, Mr. Kell opined a range of value under the sales comparison approach of $820,000 to $990,000. In reconciling the two approaches, he adjusted the income approach downward slightly and the sales comparison approach upward slightly, and opined a final value of $1,000,000 as ofJanuary 1, 2015.

We agree with the BOR's conclusion that the income capitalization approach lacks market data and is therefore insufficient to establish value on tax lien date. The Supreme Court, in *Olmsted Falls Village Assn.v. Cuyahoga Cty. Bd. of Revision,* 75 Ohio St.3d 552, 555 (1996), stated that "an appraiser may employ actual income as reduced by actual expenses *if both amounts conform to the market."* (Emphasis added.) In the absence of market data, this board is unable to detemtine whether Mr. Kell's net operating income reflected the subject's market on tax lien date. We therefore find his conclusion under this approach not probative of value for taxation purposes.

We do, however, find support in the report for Mr. Kell's conclusion under the sales comparison approach. Though we question the utility of comparable sales 6 through 8 for valuing the subject as of January 1, 2015, given that they transferred in 2010 and 2007, the remaining sales and discussion of adjustments support Mr. Kell's ultimate conclusion of value. We therefore find that the appellant property owner has met its burden to demonstrate that a reduction in value to $1,000,000 is warranted.

It is therefore the order of this board that the true and taxable values of the subject property, allocated to each parcel in accordance with the fiscal officer's initial valuation, see *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of* Revision, 125 Ohio St.3d 485, 2010-Ohio-1921, as of January 1, 2015 were as follows:

PARCEL NUMBER 102-35-056

TRUE VALUE: $10,350

TAXABLE VALUE: $3,620

PARCEL NUMBER 102-35-

057 TRUE VALUE: $10,350

TAXABLE VALUE: $3,620

PARCEL NUMBER 102-35-

058 TRUE VALUE: $10,350

TAXABLE VALUE: $3,620

PARCEL NUMBER 102-35-

059 TRUE VALUE: $930,940

TAXABLE VALUE: $325,830

PARCEL NUMBER 102-35-

075 TRUE VALUE: $8,590

TAXABLE VALUE: $3,010

PARCEL NUMBER 102-35-

076 TRUE VALUE: $7,350

TAXABLE VALUE: $2,570

PARCEL NUMBER 102-35-

077 TRUE VALUE: $7,350

TAXABLE VALUE: $2,570

PARCEL NUMBER 102-35-

078 TRUE VALUE: $7,350

TAXABLE VALUE: $2,570

PARCEL NUMBER 102-35-

079 TRUE VALUE: $7,350

TAXABLE VALUE: $2,570

OHIO BOARD OF TAX APPEALS

MRZ INVESTMENTS LLC, (et. al.),

Appellant(s)

, vs.

FRANKLIN COUNTY BOARD OF REVISION,

(et. al.),

Appellee(s).

CASE NO(S). 2018-304

(REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- MRZ INVESTMENTS LLC
Represented by:
JAY R.
ZOLLARS
3518 RIVERSIDE DRIVE, SUITE 205
UPPER ARLINGTON, OH 43221

For the Appellee(s)

- FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING
ATTORNEY FRANKLIN COUNTY
373 SOUTH HIGH STREET, 20TH
FLOOR COLUMBUS, OH 43215

Entered Wednesday, June 6, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Franklin County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On April 12, 2018, the appellant filed a notice of appeal with this board. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion certification that there is no record of a decision issued for the subject property.

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." *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

SLOMEL, LLC, (et. al.),

Appellant(s)

, vs.

HAMILTON COUNTY BOARD OF REVISION,

(et. al.),

Appellee(s)

.

CASE NO(S). 2018-215

(REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- SLOMEL, LLC
  Represented by:
  LANCE LAGALY
  73 WEST HILL LN.
  CINCINNATI, OH 45215

For the Appellee(s)

- HAMILTON COUNTY BOARD OF REVISION
  Represented by:
  THOMAS J. SCHEVE
  ASSISTANT PROSECUTING ATTORNEY HAMILTON COUNTY
  230 EAST NINTH STREET, SUITE 4000
  CINCINNATI, OH 45202

Entered Wednesday, June 6, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(8). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal. R.C. 5717.01 allows for an appeal to be taken to this board 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. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. ***

R.C. 5717.0 I is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board ofrevision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The county appellees attached to their motion the affidavit of the clerk to the BOR, asserting that appellant's notice of appeal was not filed with the Hamilton County Board of Revision. Upon consideration, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

HARDING HERITAGE FOUNDATION, (et. al.),	CASE NO(S). 2018-209
Appellant(s)	(REAL PROPERTY
, vs.	TAX) DECISION AND
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	ORDER
Appellee(s)	

.

APPEARANCES:

For the Appellant(s)
- HARDING HERITAGE FOUNDATION
Represented by:
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Represented by:
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COLUMBUS, OH 43215

Entered Wednesday, June 6, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that, as of the date of the filing of the appeal, no decision of the Franklin County Board of Revision ("BOR") had yet been is.sued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On March 21, 2018, the appellant filed an application for remission with this board. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion certification that a decision was issued April 25, 2018, thus rendering appellant's appeal to this board premature.

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." *Am. Restaurant & Lunch Co. v. Glander,* 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that this appeal is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ROXIE B. DOUGLAS, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-99

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROXIE B. DOUGLAS
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Entered Wednesday, June 6, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals.*** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 8J Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

Appellant's response specifies that the notice of appeal was hand delivered to the BOR forty-two days after the mailing of the BOR's decision; however, no evidence of any such filing with the BOR has been

provided. Although appellant referenced an Exhibit A to l'i.er response, that document appears to be the notice of appeal filed with this board and shows only this board's time stamp.

Further, the appellant indicates that the BOR received notification of the appeal by way of this board's docketing letter. This board notes that docketing letters sent by the Board of Tax Appeals do not satisfy the requirement of R.C. 5717.01 that an appealing party file a notice of appeal with a county board ofrevision. *Austin Co. v. Cuyahoga Cty. Bd. of Revision,* 46 Ohio St.3d 192 (1989). See, also, *Rumora v. Ashtabula Cty. Bd. of Revision,* BTA No. 2000-G-970 (Mar. 30, 2001), unreported.

Upon consideration of the existing record, we find no evidence that appellant filed notice of this appeal with the Cuyahoga County Board of Revision. As such, the county's motion is well taken and this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GAHANNA-JEFFERSON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2634
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Wednesday, June 6, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 025-012074-00, for tax years 2015 and 2016. We proceed to consider this matter based upon the notice of app<tal, the statutory transcript certified pursuant to R.C. 5717.01, the record developed at this board's hearing, and any written argument submitted by the parties.

[2] The subject property was initially assessed at $1,432,400. The property owner, Bernie Cohen Venture, Ltd, filed a complaint with the BOR, which requested that the subject property be revalued at $1,182,000. The BOE filed a counter-complaint, which objected to the request.

[3] At the BOR merit hearing on the matter, both parties appeared through counsel to submit argument and/or evidence in support of their respective positions. In its presentation, the property owner submitted the testimony of Bernie Cohen, a principal at the property owner, and of appraiser Deno Duros. Cohen testified that the subject property was a 17-unit commercial building, targeted towards providing space to "startup" businesses. He also testified that the subject property had previously received the benefit of a property tax abatement, which allowed the property owner to charge more affordable, below-market rental rates. However, since the subject property had lost the benefit of the property tax abatement, Cohen testified that the tax bills significantly increased, which would have a detrimental effect on the subject property's rental rates and occupancy. On cross examination by the BOE, he testified as to the condition of the subject property and that the subject property was 100% occupied on the tax lien date. There was some discussion about whether the property tax abatement was in effect for tax year 2015. Duros testified consistent with his written appraisal report, which opined the value of the subject property to be $1,190,000 as of the tax lien date of January 1, 2015. Specifically, he testified about the underlying data and methodologies used to derive his final conclusion of value. On cross examination, he conceded that he only conducted exterior inspections of most of the comparable properties and failed to verify most of the comparable sales with someone involved in such sales, under the sales comparison approach to value, and he relied upon the subject property's actual income and expense information' to derive his conclusion of value under the income approach to value. At the BOR decision hearing, the BOR members voted to accept Duros' appraisal report as the best indication of the subject property's value and subsequently issued a written decision to that effect. Thereafter, the BOE appealed to this board.

[4] At this board's hearing, both parties appeared through counsel to supplement the record with additional argument and/or evidence. In its presentation, the BOE submitted the testimony of appraiser Thomas Sprout, who reviewed Duros' appraisal to determine its strengths and weaknesses. In support of Sprout's testimony, the BOE submitted a five page excerpt from the Appraisal Foundation's Uniform Standards of Professional Appraisal Practice ("USPAP"), to which the property owner objected. The attorney examiner deferred ruling on the objection. Sprout testified that Duros' appraisal report was not the proper type of appraisal report, according to professional standards, to submit for purposes of tax valuation litigation because it failed to provide sufficient information and analysis to users other than the property owner. He also testified that Duros' development of the sales comparison approach was inadequate; development of the income approach lacked market information and allowed for "double dipping"; and consideration of the subject property's loss of property tax abatement, in the value conclusion, was inappropriate. Subsequent to the hearing, the parties submitted written argument to more fully assert their respective positions. While this matter was pending, the BOE filed a notice of supplemental authority to alert this board's attention to the recent Supreme Court decision, *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* , Slip Opinion No. 2018-Ohio-919.

[5] Before we consider the merits of this appeal, we must first dispose of two preliminary issues. First, the BOR hearing record indicates that the property owner provided the BOR with a layout of the building situated on the subject property; however, this documentation is not included in the statutory transcript. Parties and various tribunals rely upon boards of revision to fulfill their statutory duties to create and maintain a record capable of being reviewed on appeal. R.C. 5715.08; R.C. 5717.01. The Supreme Court has noted that "[f]ailure to certify the entire evidentiary record may prejudice the interest of the proponents of the omitted items, and therefore, boards of revision should take care to comply with the statutory duty to certify the *entire* record." (Emphasis in original.) *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 201 l-Ohio-5078, at ,r27, fn.4. However, it is the parties' duty to assure that the statutory transcript contains the evidence presented to the BOR. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd of Revision,* 90 Ohio St.3d 564 (2001).

[6] Second, as indicated above, the property owner objected to the BOE's documentary exhibit proffered into evidence at this board's hearing, i.e., the excerpt regarding USPAP as, "new evidence." We have construed the property owner's objection as an objection under R.C. 5715.19(0), which requires that evidence known to or in the possession of a party should first be provided at the board of revision level. Based upon our review of the record, the objection is now overruled. The BOR hearing record indicates that counsel for the BOE did not receive the Duros appraisal report until the BOR hearing on this matter commenced, which is good cause for failing to first provide the excerpt from USPAP.

[7] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-0hio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' ofreal property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sa e an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

[8] As an initial matter, it appears that the parties dispute the nature of the evidence submitted by the BOE at this board's hearing. The property owner argued that the BOE failed to submit new evidence on appeal and, therefore, the BOE cannot prevail. Though the BOE did not present independent evidence of the subject property's value, which it is not required to do, see *Sears, Roebuck & Co. v. Franklin Cty. Bd. of Revision,* 144 Ohio St.3d 421, 2015-Ohio-4522, the BOE did submit new evidence in the form of testimony from Sprout and the excerpt from USPAP at this board's hearing. See, also *City of Columbus Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 148 Ohio St.3d 700, 2016-Ohio-8375 (the rule derived from *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 115 Ohio St.3d 449, 2007-Ohio-523 7 does not require this board to affirm a BOR decision that is based upon legal error); *Lutheran Social Servs. of Cent. Ohio Village Hous., Inc. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 125, 2017-Ohio-900, i!12-13 ("The BTA's decision *** does need to consider and weigh conflicting evidence in the course of justifying its reliance on certain evidence as opposed to contravening evidence.*** Under this case law, the BTA erred by adopting the appraisal valuations in this case without explicitly addressing the negative appraisal review offered by Sprout, the BOE's appraiser at the BTA hearing."). (Internal citation omitted.) We will proceed to evaluate the competency of Duros' appraisal report, and Sprout's testimony about its deficiencies, and the propriety of the BOR's decision.

[9] In his appraisal report, Duros developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he compared the subject property to four other properties, located in Franklin County, Ohio, that were alleged to be comparable. After adjusting the comparable properties to account for differences with the subject property, he determined that the subject property would sell on the open market at $42.37 per square foot. In doing so, he concluded to an indicated value for the subject property of $1,295,369.70 as of January 1, 2015. In his income approach, Duros relied upon the subject property's actual income and expenses from tax year 2014 to derive his conclusion of value. In doing so, he considered the actual gross income derived from the subject property, $191,380, and deducted 5%, $9,569, for vacancy and credit loss, to arrive at an effective gross income of $181,811.40. From that number, he deducted $91,032.75 to account for operating expenses, such as maintenance, insurance, and real estate taxes, to arrive at a net operating income of $90,778.65. After he capitalized the net operating income at 8.5%, he concluded to an indicated value for the 9ubject property of $1,068,000. He blended the indicated conclusions of value and considered the loss of the tax abatement to finally conclude to $1,182,000 as the subject property's value as of January 1, 2015.

[10] Where, as here, a party relies upon an appraiser's opinion of value, this board may accept all, part, or none of the appraiser's opinion. *Witt Co. v. Hamilton Cty. Bd. of Revision,* 61 Ohio St.3d 155 (1991); *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision,* 85 Ohio St.3d 609 (1999). Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported. Recently, the Supreme Court has reaffirmed that "[w]hen the BTA 'reviews appraisals, [it] is vested with wide discretion in determining the weight to be given to the evidence and the credibility of the witnesses that come before it." *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2018- Ohio-919, 12, citing *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, at 9.

[11] The court's decision in *South-Western City Schools Bd. of Edn.,* supra, is especially relevant here because that matter also included a substantially similar appraisal report performed by Duros that neither the BOR, this board, nor the Supreme Court found to be competent and probative evidence of value. In that case, Duros was faulted for failing to verify that his comparable properties were arm's-length transactions and to conduct interior inspections of the comparable properties, under the sales comparison approach, and to rely upon market information under the income approach. We find merit with Sprout's testimony about the numerous deficiencies with Duros' appraisal report and, conclude, likewise, in this matter.

[12] Here, under his sales comparison approach, Duros testified that he only verified one of the four comparable properties with either a buyer or seller involved and, instead, relied upon information relied upon in the Haines Report, an Ohio based real-estate research site, and the county auditor's office. This board has previously rejected reliance on unverified sale information. See, e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (June 13, 2013), •BTA Nos. 2011-Q-550, et seq., unreported; *Overstreet v. Hamilton Cty. Bd. of Revision* (Feb. 15, 2002), BTA No. 2001-V-639, unreported. The Appraisal of Real Estate (14th Ed.2013) also comments on the need to verify information regarding the comparable sales "to make sure that the sale occurred under conditions that meet the definition of value based in the appraisal." Id. at 125. For example, there is no indication that Duros verified that the information contained in the Haines Report documents was accurate even though the Haines Report documents include disclaimers that suggested readers take additional steps to confirm the accuracy of the provided information. Moreover, nothing in the Haines Report documents provides information about the arm's-length character of the transactions. Indeed, this board has previously declined to find value in accordance with comparable sales that were not arm's-length in nature. See, e.g., *Allen v. Hamilton Cty. Bd. of Revision* (May 22, 2012), BTA No. 2010-Q-829, unreported; *Withers v. Montgomery Cty. Bd. of Revision* (Mar. 6, 2012), BTA No. 2009-Q-3113, unreported. Furthermore, the Appraisal of Real Estate notes that it is essential for an appraiser to inquire whether any concessions were involved in the comparable sales. Id. As for another example, there is no indication that Duros made the necessary inquiry into this element of the comparable sales, as supported by his notation of "None known" in the adjustment grid of his appraisal report. In addition, he indicated that he did not view each of the subject property's 17 units or the interiors of any of the four comparable sale properties. We question, therefore, the accuracy of the adjustments taken, since his basis for comparison was strictly limited to 24% of the subject property's units and the exterior of the comparable properties. Thus, based upon these cumulative errors, we do not find the sales comparison approach in Duros' appraisal report to be competent evidence of value.

[13] Under his income approach, Duros' appraisal report contains no market information relating to income, expenses, and vacancy, credit loss, and capitalization rates relevant to the tax lien date. Here, Duros' appraisal report relies upon the actual income and expenses of the subject property without any evidence of market income and expenses beyond his his bare assertions at the BOR hearing. In *Olmsted*

Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision, 75 Ohio St.3d 552, 555 (1996), the court commented that "an appraiser may employ actual income as reduced by actual expenses *if both amounts conform to market."* (Emphasis added.) Continuing, the court noted that it has "required the BTA to make factual findings, supported by the record, of the appropriate market rents and expenses to be used in the income approach to value." Id. While the income and expenses derived from the subject property are certainly important, the notable absence of market income and expenses is critical. We have previously stated that "[t]he evidence of actual income, while the beginning point of any valuation finding, see Ohio Adm. Code 5703-25-07(D)(2) (contract rent of a given property is to be considered), is not, in itself, determinative of value. The contract rents must reflect the market in which the property is found . The record before this board contains no market survey, so this board annot compare the rents collected from the subject property with market rents." See *N. Canton City School District Ed. of Edn. v. Stark Cty. Ed. of Revision* (Jan. 25, 2011), BTA No. 2008-M-42, unreported at 6. Though we acknowledge that Duros' appraisal report does contain market information for the capitalization rate, such information is related to interest rates for various times in tax year 2016, i.e., February 1, 2016 and second quarter 2016. No effort was made to make this data relevant to the tax lien date of January 1, 2015. Thus, based upon these cumulative errors, we do not find the income approach in Duros' appraisal report to be competent evidence of value.

[14] Having rejected the property owner's evidence, we now tum the BOR's determination and the BOE's argument that the auditor's value must be reinstated. While valuation determinations made by county boards of revision are not presumptively correct, see, e.g., *Vandalia-Butler City Schools,* supra, under certain circumstances, when the BOR adopts a new value ba ed on the owner's evidence, it has the effect of "shifting the burden of going forward with evidence to the board of education on appeal to the BTA." *Dublin City Schools Ed. of Edn. v. Franklin Cty. Ed. of Revision,* 139 Ohio St.3d 193, 2013-0hio-4543,rt6. The court has recently clarified the elements of this *"Bedford* rule," which is based on its decision in *Bedford Ed. of Edn. v. Cuyahoga Cty. Ed. of Revision,* 115 Ohio St.3d 449, 2007-Ohio-5237. The court set forth four elements necessary to invoke the *Bedford* rule: (1) the property owner either filed the original complaint or a countercomplaint; (2) the board of revision ordered a reduced valuation based on "competent evidence offered by the property owner[;]" (3) the board of education is the appellant before this board; and (4) "the board of revision's determination of value is based on appraisal evidence rather than a sale price offered as the property value." *Dublin City Schools Ed. of Edn. v. Franklin Cty. Ed. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ,r,r 9-11. Notably, the court's more recent rulings have not disturbed its earlier edict that "the *absence* of sufficient evidence requires the BTA to reverse a reduction or increase ordered by a board of revision." (Emphasis sic.) *Vandalia-Butler,* supra at ,r21. See, also, *City of Columbus Schools,* supra, at ,r17 ("The rule does not require adoption of the BOR's valuation here because there is legal error in the BOR's determination."); *Copley-Fairlawn City School Dist. Ed. of Edn. v. Summit Cty. Ed. of Revision,* 147 Ohio St. 3d 503, 2016-Ohio-1485 if30 ("A legal error in the BOR's determination prevents affirmance of the BOR's determination"). Consequently, even if some evidence tends to negate the auditor's original valuation, it is proper to revert to tha.t valuation when a taxpayer has not provided sufficient evidence to support a lower value and there is no evidence from which this board can independently determine value. *Vandalia-Butler,* supra, at if24. See, also *South-Western City Schools Ed. of Edn.,* supra; *South-Western City Schools Ed. of Edn. v. Franklin Cty. Ed. of Revision,* Slip Opinion No. 2018-0hio-918; *South-Western City School Dist. Ed. of Edn. v. Franklin Cty. Ed. of Revision,* Slip Opinion No. 2017-Ohio-8384. Though the BOR's decision to reduce the subject property's value was based upon the property owner's evidence, we do not find the *Bedford* rule to be applicable based upon the numerous legal errors contained in Duros' appraisal report. Based upon those errors, we cannot say that the property owner's evidence was competent, or minimally plausible, such that the BOR's decision is deserving of a presumption of correctness under the *Bedford* rule.

[15] We note that there was much discussion at the BOR hearing about whether the subject property was subject to a tax abatement for tax year 2015. The property record contains a notation that states that that "tax abatement expires for tax year 2015." To the extent that the property owner implicitly argued that

the subject property's value should be reduced for tax year 2015 to compensate for the lost tax abatement, we reject such argument. A property tax abatement is a privilege, not a right.

[16] We are mindful of our duty to independently determine the subject property's value. *Columbus Ed. of Edn. v. Franklin Cty. Ed. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that the BOE submitted sufficient evidence, through Sprout's appraisal review testimony, to demonstrate that the property owner's appraisal evidence was not competent and probative, or minimally plausible, evidence of the subject property's value. The Duros appraisal report is replete with legal errors that render it unreliable. Furthermore, because the information contained in Duros' appraisal report is so unreliable, we find we are unable to rely upon it to independently determine the subject property's value. As a result, we are constrained to reinstate the subject property's initially assessed value. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 127 Ohio St.3d 63, 2010-Ohio-4907, 35 (reinstating county auditor's original valuation when "the record did not contain sufficient evidence for the BTA to perform an independent valuation of the property").

[17] It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2015, and January 1, 2016:

TRUE VALUE

$1,432,400

TAXABLE VALUE

$501,340

OHIO BOARD OF TAX APPEALS

ROOTSTOWN ELDERLY HOUSING LIMITED PARTNERSHIP, (et. al.),	CASE NO(S). 2016-1048
Appellant(s),	(REAL PROPERTY TAX)
VS.	DECISION AND ORDER
PORTAGE COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s)	

.

APPEARANCES:

For the Appellant(s)

- ROOTSTOWN ELDERLY HOUSING LIMITED PARTNERSHIP
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Entered Thursday, June 7, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 32-021-00-00-036-003, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the records of the hearings before this board.

The subject property is a 36-unit apartment complex subsidized through the United States Department of Agriculture ("USDA") Rural Development program. The subject's total true value was initially assessed at $1,012,100. Appellant filed a decrease complaint with the BOR seeking a reduction in value to $665,000.The appellee board of education ("BOE") filed a countercomplaint in support of maintaining the auditor's values. At the BOR hearing, appellant presented information about its operating history, offering an opinion of value based on the income approach, including testimony from the property manager, who testified that the property underwent a significant renovatilm in 2013, which included the demolition of buildings and the construction of a new two-story building. The BOE cross-examined the property manager and argued that the income and expense information was unreliable because no one with knowledge as to how it was composed was present to question. The BOE did not present any independent evidence of value. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

Two hearings were convened before this board, at which appellant relied on the testimony and written report of appraiser Richard G. Racek, Jr., MAI. In both his original report and amended report, Racek opined that the subject's value was $635,000 as of January 1, 2015 based on the income approach to value. Although the value determination was consistent in both, Racek amended his report to clarify that the purpose of the appraisal was to estimate the cash equivalent market value of the fee simple interest in the subject property subject to governmental actions. Racek also explained how his methodology estimated the value of this interest. The owner's asset manager also testified at the second hearing to describe the way that rents are set and limitations on the rates tenants may pay.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to
sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964).

In the present appeal, the record shows that the subject property transferred in September 2012 for $1,208,032, which includes the assumption of a mortgage with a balance of $909,296.97 at the time of the transaction. Between the time of the sale and the tax lien date, the property underwent significant renovations, including the demolition of multiple structures and new construction of a two-story building. Accordingly, this sale is not reliable evidence of value as of tax lien date. See, e.g., *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-

Ohio-1473, if35 (recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property"); *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision,* 80 Ohio St.3d 36, 44 (1997), overruled in part on other grounds (recency factors include "changes that have occurred in the market").

Racek indicated that because the subject operates as a Rura! Development property, he valued the subject based on the restrictive covenant in place and considered only the income approach to value. Racek applied a 9% capitalization rate plus 2.16% tax additur to a net operating income of $71,924, for an indicated value of $644,480. Racek then subtracted $9,000, or $250 per unit, to account for personal property, for a total opined value of $635,000 (rounded) for the subject housing project.

Upon review of appellant's appraisal evidence, which provides an opinion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find the appraisal to be competent and probative and the value conclusion reasonable and well-supported. See, generally, *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 151 Ohio St.3d 12, 2017-Ohio-2734; *Notestine Manor, Inc. v. Logan Cty. Bd. of Revision,* Slip Opinion No. 2018-Ohio-2; *Pine Grove Apartments Ltd. Partnership* (Jan. 29, 2013), BTA No. 2009-Y-1584, unreported Furthermore, there have been no specific challenges to any aspect of Racek's appraisal. Accordingly, we find that, in the absence of any evidence or argument to the contrary, Racek's appraisal reflects the value of the subject real property as of the tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property, as of January
1, 2015, were as
follows:

TRUE VALUE

$635,000

TAXABLE VALUE

$222,250

OHIO BOARD OF TAX APPEALS

CINCINNATI CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1164
Appellant(s	(REAL PROPERTY TAX)
), vs.	DECISION AND ORDER
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s	
).	

APPEARANCES:

For the Appellant(s)

- CINCINNATI CITY SCHOOLS BOARD OF EDUCATION
  Represented by:
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For the Appellee(s)

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  CINCINNATI, OH 45242

Entered Friday, June 8, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 108-0005-0040-00, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is an apartment building and was initially assessed at a total true value of $889,320. The appellee property owner, Dana Avenue Properties, LLC, filed a decrease complaint with the BOR seeking a reduction in value to $312,500. The BOE filed a countercomplaint in support of maintaining the auditor's value. At the BOR hearing, Erez Tubul appeared on behalf of the property owner to testify in support of reducing the subject's value based on a sale of the property in December 2016. Tubul described the circumstances surrounding his purchase, stating that the property had been listed for several months prior to his purchase. Tubul also described the condition of the property, asserting that it was 99% vacant at the time of the sale and that 95% of the units were uninhabitable at that time. Tubul acknowledged that the seller was a receiver, but indicated that he paid the appropriate amount taking into consideration the condition of the property at the time of the sale. Tubul apparently brought photographs of the property to show condition, but was unable to introduce them into evidence because they were on his phone. Jeff Neiman, an appraiser for the auditor's office, concluded that the sale was arm's-length from the point of view of the buyer. The BOE noted that the only evidence in the record regarding the sale was Tubul's testimony and an unsigned settlement statement. The BOE argued that Tubul's claims surrounding the marketing of the property and its poor condition were not corroborated by any evidence. As such, the BOE concluded, the owner had failed to show that the receiver sale was reliable evidence of value. The BOR issued a decision reducing the initially assessed valuation to $312,500, which led to the present appeal.

At the hearing before this board, the BOE challenged the sale and the BOR's reliance thereon. The BOE argued that the sale was "forced" and not reliable evidence of value. The BOE presented the complaint and decree of foreclosure that resulted in the appointment of the receiver and the sale of the subject property. The BOE argued that because the transaction was a forced sale, the owner was required to show that the sale should nonetheless be regarded as best evidence of the subject's value because the parties acted as a typically-motivated buyer and seller, but that the owner failed to do so. No one appeared on behalf of the property owner at this board's hearing.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). In order to benefit from the rebuttable presumption that a sale price "'has met all the requirements that characterize true value,' *** the proponent of a sale must satisfy a relatively light initial burden and need not 'definitive[ly] show[ ] *** that no evidence controvert[s] the ***arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075, iJ14, citing *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d at 327 (1997); *Cummins Property Servs., L.L.*C. *v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, iJ41. Accordingly, 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. *Cincinnati Bd. of Edn.,* supra. Additionally, because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, iJl 1.

In the present appeal, it is undisputed that Dana Avenue Properties LLC purchased the subject property from Prodigy Properties, Receiver for MAP Capital Group, LLC, on or about December 14, 2016 for $312,500. The BOE argues, however, that the sale price from this transaction is not reliable evidence of value because it was not an arm's-length sale. The BOE maintains that this transaction was not arm's-length because it was a post-foreclosure receivership sale. This board 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. See, e.g., *Nadler v. Cuyahoga Cty. Bd. of Revision* (Feb. 15, 2013), BTA No. 2012-Q-3033, unreported. See, also, *Warrensville Hts. City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 145 Ohio St.3d 115, 2015-0hio-78 (holding the amount received for the subj ct real property sold at auction under court supervision was a forced sale did not establish its value). 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. *Olentangy Local School Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723. See, also, *Schwartz v. Cuyahoga Cty.Bd. of Revision,* 143 Ohio St.3d 496, 2015-0hio-3431. Thus, a party relying on the sale may show that it "was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value." *Olentangy Local Schools,* supra, at 43.

In this case, the owner relied solely on Tubul's testimony as evidence to rebut the presumption that the forced sale was not arm's-length. Tubul did not provide any corroborating evidence such as a listing for the property. We recognize that the BOR rejected Tubul's offer to supplement the record with such evidence after the hearing, but this did not prevent the owner from presenting any additional evidence during this board's hearing. Accordingly, we find that the owner failed to meet its burden to show that the receiver sale was nonetheless the best evidence of the subject's value. Consequently, we find that the record does not support reducing the subject's value to the sale price.

Finally, to the extent that the owner also relied on Tubul 's description of the negative conditions experienced by the subject property, such as low occupancy and a large number of uninhabitable units, this is not sufficient to reduce the value of the subject property. Even if the record contained additional documentation to corroborate Tubul's testimony, evidence of negative conditions experienced by the subject property is not sufficient to support a reduction in value. In order to support this type of claim, an owner must demonstrate not only that such factors are present, but also the impact on the value of the subject property, as dollar-for-dollar costs do not necessarily correlate to value. *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996). See, also, *Gupta v. Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397 (1997).

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

TRUE VALUE

$889,320

TAXABLE VALUE

$311,260

OHIO BOARD OF TAX APPEALS

SPIRIT MASTER FUNDING IX, LLC, (et. al.),	CASE NO(S). 2017-73
Appellant(s	(REAL PROPERTY
), vs.	TAX) DECISION
CUYAHOGA COUNTY BOARD OF REVISION,	AND ORDER
(et. al.),	
Appellee(s	
).	

APPEARANCES:

For the Appellant(s)

- SPIRIT MASTER FUNDING IX, LLC
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  SLEGGS
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  ORANGE CITY SCHOOLS BOARD OF EDUCATION
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Entered Friday, June 8, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter comes before this board upon a notice of appeal from a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel number 901-01-064 for tax year 2015. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the fiscal officer, and the parties' written arguments. We note that the parties represent that no audio recording from the underlying BOR hearing is available due to a technical, issue; however, the parties have agreed to supplement the record with the audio recording from the hearing on the 2014 valuation of the subject property involving the same parties, same sales, and same appraisal report.

The subject property was initially valued at $2,016,400 by the fiscal officer for tax year 2015. Property owner Spirit Master Funding IX, LLC filed a complaint seeking a decrease in value to $1,535,000 based on an independent appraisal. The Orange City School District Board of Education ("BOE") filed a countercomplaint seeking an increase in value to $3,439,000•based on a sale of the property for that amount in December 2014.

As indicated above, the valuation of this property for tax year 2014 had been previously considered by the BOR. The BOR's decision in that matter was appealed to this board, and we found that the sale of the subject property in August 2014 for $2,925,980 to be the best evidence of its value for tax year 2014. Spirit Master Funding appealed that decision to the Supreme Court, where it is still pending. *Spirit Master Funding IX, LLC v. Cuyahoga Cty. Bd. of Revision* (Sept. 1, 2016), BTA No. 2015-2188, 2195, unreported, appeal pending, S.Ct. No. 2016-1423. Notably, the evidence presented in that case was the same, i.e., conveyance fee statements and deeds evidencing the two sales of the property in August 2014 and December 2014, and an appraisal of the property by MAI appraiser Richard G. Racek, Jr., opining a value of $1,535,000 as of January 1, 2014 and January 1, 2015. In its decision on the value of the property for tax year 2015, the decision from which this appeal was taken, the BOR increased the value of the property to $3,439,000, finding the December 2014 sale to be a recent, arm's-length transaction and the best evidence of value.

While the evidence remains the same, Spirit Master Funding argues that a change in the case law necessitates rejection of both sales of the property. In *Terraza 8, L.L.*C. *v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, the Supreme Court addressed amended R.C. 5713.03, which now states that, in assessing real property, county auditors must determine "the true value of the fee simple estate, *as if unencumbered,"* and that the auditor *may* consider a recent, arm's-length sale to be the true value of property for taxation purposes. (Emphasis added.) Previously, the statute *required* that a recent, arm's-length sale price be used to establish a property's true value. *Berea City School Dist. Bd. of Edn. v. Cuyahgoa Cty. Bd. of Revision,* 106 Ohio St.3d 269, 2005-Ohio-4979. The *Terraza 8* court held that the change to the statute overrides the rule of *Berea,* and, instead of a recent, arm's-length sale being *conclusive* of a property's value, it is now the best evidence of value subject to rebuttal. Specifically, the opponent of a recent, arm's-length sale may present evidence that a property sold subject to a lease that did not reflect market rent at the time of the sale. *Terraza 8,* supra, at ⁋34.

With this legal framework in mind, we tum to the merits of this matter. The record indicates that

the subject property sold twice recent to tax lien date. Pursuant to the Supreme Court's directive in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, paragraph one of the syllabus, we begin our analysis with the sale closer in time to tax lien date, i.e., the transfer from Red Lobster Hospitality, LLC to Spirit Master Funding XI, LLC recordeq on December 29, 2014, for a reported price of $3,439,029. In its brief, Spirit Master Funding argues that the December 2014 sale was of the leased fee interest and therefore is not properly considered the best evidence of value. Under the *Terraza 8* decision, we must determine whether Spirit Master Funding has met its burden to prove that (1) the December 2014 sale was subject to a lease, and (2) if so, whether the lease rate was at, above, or below market rent at the time. Upon review of the record before us, we find that it has not.

As the BOE noted in its written argument, no one personally involved with any of the transfers of the subject property testified before the BOR or this board in either the present matter or the prior case involving tax year 2014. Moreover, no lease has been provided to confirm whether it was in place at the time of the December 2014 sale or the lease rate itself. The only evidence in the record before us is the testimony of Mr. Racek, who indicated that a lease for $32.65 per square foot began on December 23, 2014, and that such rate was above market at the time. We find such evidence falls short of what is required to successfully rebut a sale. The information relayed by Mr. Racek is hearsay. While it is appropriate for an appraiser to use such information in developing an opinion of a property's value, here, it is submitted for the truth of the matter asserted, i.e., that the subject property sold subject to an above-market lease. Because we find that Spirit Master Funding has not established that the sale should be disregarded, we do not further consider Mr. Racek's appraisal analysis.

In the absence of competent evidence, we find that Spirit Master Funding failed to meet its burden to rebut the presumption that the December 2014 sale is the best evidence of the property's value on tax lien date. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2015, were as follows:

TRUE VALUE

$3,439,000

TAXABLE VALUE

$1,203,650

OHIO BOARD OF TAX APPEALS

MMM HOSPITALITY, LTD., (et. al.),

Appellants

vs.

FRANKLIN COUNTY BOARD OF REVISION,
(et. al.),

Appellees

CASE NO(S). 2016-2099

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- MMM HOSPITALITY, LTD.
Represented by:
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For the Appellee(s)

- FRANKLIN COUNTY BOARD OF REVISION
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COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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RICH & GILLIS LAW GROUP, LLC 6400 RIVERSIDE DRIVE, SUITE D DUBLIN, OH 43017

Entered Friday, June 8, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcels 010-132261-00 and 010-134007-00, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, the record of this board's hearing, and any written argument submitted by the parties.

The subject property, a motel, was initially, collectively assessed at $1,800,000. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $480,000. The affected board of education ("BOE") filed a counter-complaint, which objected to the request.

At the hearing before the BOR, both parties appeared through counsel to submit argument and/or evidence in support of their respective positions. It should be noted that the property owner's counsel, Sanjay Bhatt, was sworn as a witness as the hearing commenced. In the "property owner's presentation, Bhatt testified about the numerous problems with the subject property that resulted in a municipal court granting an injunction that forced the motel to close in 2014. According to him, the motel was closed for most of tax year 2015 and did not recommence operations until January 2016. Vishnu Patel, a member of the property owner, also testified. He amended the property owner's opinion of value to $500,000 to $600,000, which was based, in part, upon the recent sale of nearby motel for $600,000. The property owner submitted an incomplete copy of a temporary restraining order issued by the municipal court. The BOE cross-examined Bhatt about the condition of the subject property on the tax lien date and the costs of the remedial work that took place in tax year 2015, as well as the nature of the motel's operations since it reopened. The BOE also cross-examined Patel about the features of the nearby hotel that sold for $600,000. The BOR voted to retain the subject property's initially assessed value, because the property owner failed to provide any competent and probative evidence of value, and subsequently issued a written decision to that effect. Thereafter, the property owner appealed to this board.

This board held a brief hearing on this matter, at which time both parties appeared through counsel to submit additional argument into the record, which they more fully explained by way of post-hearing briefs. By way of its written argument, the property owner asserted that Patel was qualified, as an owner, to provide an opinion of the subject property's value and that hts detailed rendition of the problems associated with the subject property sufficiently demonstrated that the subject property's value should be reduced to
$500,000. By way of its written argument, the BOE asserted that the property owner failed to provide any competent and probative evidence of the subject property's value and, therefore, this board should retain the subject property's initially assessed value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' ofreal property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a sale has been determined to be an unreliable indicator of value, then "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410, 412 (1964).

In this matter, the record does not disclose a recent, arm's-length sale of the subject pro pe rty or an

appraisal report, and accompanying testimony, opining the subject property's value as of the tax lien date. We will proceed to consider the sufficiency of the property owner's evidence, i.e., testimony from Patel and Bhatt and incomplete copy of the municipal court's restraining order against the property owner.

Based upon our review of the record, we conclude that the property owner failed to provide competent and probative evidence of value of the subject property's value. We do not find the testimony from Patel and Bhatt to be to be particularly competent and/or probative. With regards to Patel's limited testimony at the BOR hearing, we acknowledge that he was qualified to offer an opinion of the subject property's value based upon his ownership. We agree that owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987), but in order for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision,* 69 Ohio St.3d 572 (1994); *Tok/es & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992). The weight to be accorded an owner's evidence is left to the sound discretion of this board, *Cardinal Federal* S. *& L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraphs two and three of the syllabus, and "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996). An owner's opinion must still be probative as to the value of thf property on lien date. See *Amerimar Canton Office, LLC v. Stark Cty. Bd. of Revision,* 5th. Dist. Stark No. 2014CA00162, 2015-Ohio-2290. Thus, merely because Patel is competent to testify about the subject property, this board is not required to accept his opinion, or the opinion of any expert, as fact and utilize it as the basis for our determination. We are particularly hesitant to accept his testimony given that his opinion of value is based upon the price at which a nearby property allegedly sold and there is no indication that he had firsthand knowledge of such sale. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 140 Ohio St.3d 248, 2014-Ohio-3620, at iJ19 ("Important in the owner-opinion rule*** is that the owner qualifies primarily as a fact witness giving information about his or her own property; usually the owner may not testify about comparable properties, because that testimony would be hearsay. *See Raymond v. Raymond,* 10th Dist. Franklin No. llAP-363, 201 l-Ohio-6173, iJ19-20."). Upon review of Patel's testimony, we find that he failed to present sufficient support for his stated opinion of value, and therefore find that such opinion is not probative. *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* J50 Ohio St.3d 69, 2017-0hio-4002 (affirming this board's determination that an owner's opinion of value, while competent, was not probative).

With regard to Bhatt's substantial testimony at the BOR hearing, it was unclear whether his testimony was based upon firsthand knowledge of the facts or was based upon knowledge conveyed to him by his clients, including the property owner, on other legal matters. For example, he testified about the events that occurred the night the property owner's employee was arrested for soliciting an undercover police officer for sexual intercourse in exchange for a $25 credit towards a motel room; however, Bhatt failed to testify about how he knew of these events. To the extent that he lacked firsthand knowledge of the events for which he testified, we must conclude that his testimony is hearsay. See, e.g., *Dellick v. Eaton Corp.,* Mahoning App. No. 03-MA-246, 2005-Ohio-566, iJ25. ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). *** Generally, hearsay is inadmissible. Evid.R. 802."). To the extent that he had firsthand knowledge of the facts for which he testified, we do not find bare assertions about defects with the subject property, i.e., its location in a crime-ridden area and its condition, to be sufficient basis to reduce the subject property's value especially without evidence of how those defects impacted the subject property's value. In *Gides v. Cuyahoga Cty. Bd. of Revision,* 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, the court noted "[t]here was no evidence or testimony submitted that established how those defects might have impacted the property value such that it warranted a *** reduction. Without such evidence, the list of defects are simply variables in search of an equation. *See Throckmorton v. Hamilton Cty. Bd. of Rev.,* 75 Ohio St.3d 227, 228, *** (1996) (stating '[e]vidence

of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.')." (Parallel citation omitted.) Id. at iJ7.

We also find the municipal court's temporary restraining order to be equally unpersuasive not only because it is hearsay, but also because page 5 of this document is missing. It appears that this page of the document may contain crucial information about the property owner's efforts to address the crime issues that were alleged to have taken place on the subject property. See Statutory Transcript at Temporary Restraining Order at page 4, paragraph 14.

We disagree with the property owner's fallacious argument that the subject property's lack of income for tax year 2015 requires a reduction to the subject property's value. The property owner failed to provide any market information such that we could conclude that the subject property's lack of income was the norm in the motel market in tax year 2015. In *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996), the court commented that "an appraiser may employ actual income as reduced by actual expenses if both amounts conform to market." Continuing, the court noted that it has "required the BTA to make factual findings, supported by the record, of the appropriate market rents and expenses to be used in the income approach to value." Id. Here, the utility of market information is particularly important to ensure that the subject property's claimed performance is not the result of poor management. See, *Whitaker v. Miami Cty. Bd. of Revision* (Feb. 12, 2013), BTA No. 2012-Y-2567, unreported.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). Based upon our review of the record, we find that the property owner failed to satisfy the evidentiary burden before this board. The property owner primarily relied upon bare assertions about the subject property without any corroborating documentary evidence to establish the subject property's value, which is insufficient to justify a 72% decrease in the subjett property's value. See *Cannata v. Cuyahoga Cty. Bd. of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094, at ,r20 (an appraisal report "reflected a reduction of 62 percent from the fiscal officer's original valuation, and the character of the property called for careful scrutiny of an appraisal that advocated so great a reduction."). It is, therefore, the order of this board that the subject property's true and taxable values are, as follows, as of January 1, 2015:

PARCEL NUMBER 010-132261-00

TRUE VALUE

$1,718,100

TAXABLE VALUE

$601,340

PARCEL NUMBER 010-134007-00

TRUE VALUE

$81,900

TAXABLE VALUE

$28,670

OHIO BOARD OF TAX APPEALS

DEBORAH KARASEK, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-2337

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEBORAH KARASESK
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AKRON, OH 44333

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, June 8, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon an appeal by property owner Deborah Karasek from decisions of the Cuyahoga County Board of Revision ("BOR") denying her requests for remission of real property tax late payment penalties assessed for the first and second halves of 2016. As the appellant, Ms. Karasek has the burden to show that her requests were improperly denied by the BOR. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Because the parties have elected not to present additional evidence at a hearing before this board, we perform a de novo review of the evidence in the record. See *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985).

On her applications, appellant requested remission based on reasonable cause and not willful neglect, explaining that she did not receive a tax bill despite having attempted to change/correct her tax mailing address the previous year. The BOR denied the applications, citing appellant's prior late payment in 2015, and indicating on its journal entry: "There is no evidence of attempt to receive tax bill." On appeal to this board, appellant explains that she no longer resides in the property at issue, and sought to change her address to her new residence after receiving a late payment notice in 2015. She indicates that she spoke to someone in June 2016 but the address change was never made. She did not become aware of the failure until receiving late payment notices in 2017 for tax year 2016.

R.C. 5715.39(C) allows a board of revision to remit a real property tax late payment penalty if the late payment was due to "reasonable cause and not willful neglect." This board has previously affirmed decisions denying remission under R.C 5715.39(C) where even one prior incidence of late payment occurred. See, e.g., *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported; *Patel v. Testa* (Apr. 29,

2014), BTA No. 2014-261, unreported. Moreover, we are unable to confirm appellant's contention that the tax mailing address should have been corrected. The only evidence of her attempt to change the address are the self-serving statements in the notice of appeal and on the application. Notably absent is evidence of any attempt to obtain the 2016 tax bills after the payment deadline(s).

Based upon the foregoing, we find the appellant has failed to meet her burden on appeal. We therefore affirm the decision of the BOR denying her applications for remission.

OHIO BOARD OF TAX APPEALS

STACEY AND MICHAEL C. MOLLINET, (et. al.),	CASE NO(S). 2017-1098
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - STACEY AND MICHAEL C. MOLLINET
Represented by:
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NORWOOD ROAD
SHAKER HTS., OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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SHAKER HEIGHTS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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BEACHWOOD, OH 44122

Entered Monday, June 11, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owners appeal a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of the subject property, parcel number 735-23-094, for tax year 2016. Appellants did not request a hearing before this board at which to present new evidence. Ohio Adm. Code 5717-1-07(A), 5717-1-16(A). We therefore proceed to consider the matter upon the notice of appeal, the statutory transcript certified by the fiscal officer pursuant to R.C. 5717.01, and any written argument of the parties.

The subject property was initially valued by the fiscal officer at $75,000 for tax year 2016. The record indicates that the property owners filed a complaint requesting a reduction in value to a nominal $1, explaining that "[t]he house burned down 12/17/15 and had to be demolished, etc. As of tax lien date the building value was negative due to the need to demolish it and the property value was negative due to the

need to restore it to code, which cost more than its value. Overvalued by auditor. Obsolescence." The Shaker Heights City School District Board of Education ("BOE") filed a countercomplaint requesting that the fiscal officer's valuation be maintained. At the BOR hearing, counsel for the owners explained that the house was demolished in April 2016 at a cost of approximately $12,500, and that, even after demolition and clean up, the owners have been unable to sell the property despite listing it for as little as $4,000. Given the destruction of the home and the cost to demolish and re-grade the property, counsel for the owners argued for essentially a nominal value. Counsel for the BOE presented comparable sales; owners' counsel disputed the comparability of such sales.

The BOR ultimately reduced the value of the property to $34,400. It noted in its Oral Hearing Journal Summary that it lacked information about the extent of the fire damage, whether the home could be restored, and whether insurance covered the loss. It explained that it "chose to value the property in accordance with appraisal policy stated on the Application for Valuation of Damaged or Destroyed Property that allows 75% of the building to be removed in month of April, when the demolition occurred." S.T., Ex. E.

The owners have appealed to this board. As the appellants in this matter, the burden is on the owners "to demonstrate that the value [they advocate] is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. In their written submission, appellants argue that the evidence in the record demonstrates one of three values: $0 as advocated in the notice of appeal, $900 based on the only comparable nearby sale, or $4,000 based on the subject property's listing price. We reject all three values and find support for the BOR's reduced value.

This board has repeatedly rejected arguments that a property should be valued at $0. See, e.g., *Parker v. Clark Cty. Bd. of Revision* (Dec. 9, 2008), BTA No. 2007-M-280, unreported. See also *Madison Route 20, LLC v. Lake Cty. Bd. of Revision*, 11th Dist. No. 2013-L-019, 2014-Ohio-3183. We likewise reject appellants' argument that one comparable nearby sale should establish for the subject property. Very little information about the comparable sale, of 16709 Scottsdale Blvd., was presented. In the absence of information about the characteristics of that property and the circumstances of its sale, we are unable to determine that it is a reliable basis upon which to establish value. Further, although appellants rely on the Eighth District Court of Appeals' decision in *Scranton-Averell, Inc. v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga Nos. 98493, 98494, 2013-Ohio-697, in arguing for a "nominal value" for the property, we find that decision distinguishable, as the owner in that case presented an appraisal of the property. No appraisal has been presented here. Notably, such an appraisal could have quantified the value lost due to the fire and established an appropriate cost to raze the improvements and clear the site. See *Scranton-Averell*, supra, at ¶27.

We also reject appellants' argument that the unsuccessful listing price for the property ($4,000 in 2016, and $1,000 in 2017) constitutes the upper limit of its value. As we noted in *Moloney v. Montgomery Cty. Bd. of Revision* (Aug. 10, 2010), BTA No. 2008-V-967, unreported, "[t]his board has held on many occasions that the price at which property is 'listed' is not necessarily indicative of market value and also does not constitute the 'outer limit' at which the property would sell. Further, we have previously recognized that "[t]he fact that the property has been listed but remains unsold at the asking price is not persuasive in determining a value for the property." *Jones v. Montgomery Cty. Bd. of Revision* (June 24, 2005), BTA No. 2004-J-804, unreported. We therefore do not find either listing price for the subject property probative of its value on tax lien date.

While we reject appellants' argument that a further reduction in value is warranted, there is merit to appellants' contention that the value of the property should be reduced given the fire damage to the home thereon. It is clear that the fiscal officer's initial valuation has been negated and we find support in the record for the reduction ordered by the BOR.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1,

2016, were as follows:

TRUE VALUE

$34,400

TAXABLE VALUE

$12,040

OHIO BOARD OF TAX APPEALS

VITRAN OHIO, LLC (OWNER AS OF JANUARY 1, 2015) AND/OR CROWN ENTERPRISES, INC. (OWNER AS OF DECEMBER, 2015 - DEED FILED OCTOBER 19, 2016), (et. al.),

Appellant(s),

VS.

FRANKLIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-2351

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- VITRAN OHIO, LLC (OWNER AS OF JANUARY **1,** 2015) AND/OR CROWN ENTERPRISES, INC. (OWNER AS OF DECEMBER, 2015 - DEED FILED OCTOBER 19, 2016)
Represented by:
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For the Appellee(s)

- FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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373 SOUTH HIGH STREET, 20TH
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SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H.
GILLIS
RICH & GILLIS LAW GROUP,
LLC 6400 RIVERSIDE DRIVE,
SUITE D DUBLIN, OH 43017

Entered Monday, June 11, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owners appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 570-116100-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the written argument of the parties.

The subject's total true value was initially assessed at $1,660,000. The property owners filed a decrease complaint with the BOR seeking a reduction in value to $1,100,000. The appellee board of education ("BOE") filed a countercomplaint in support of retaining the auditor's value. A BOR hearing was convened, at which the property owners asserted that the subject property had transferred in December 2015 for $1,070,000, though the deed had not yet been recorded as of the BOR hearing due to filing issues. The property owners presented testimony from Ron Patti, the Vice President and Chief Financial Officer for Crown Enterprises Inc. ("Crown"), the buyer in the most recent transaction. Patti provided background information on the property and circumstances of Crown's acquisition of the subject property, including the relationship between Crown and Vitran Ohio LLC ("Vitran Ohio"), the seller in the most recent transfer. The BOE argued that the sale was among related parties and did not provide a reliable basis for a reduction in the subject's value. The BOR issued a decision maintaining the initially assessed valuation. From this decision, Vitran Ohio and Crown filed the present appeal. At a hearing before this board, the parties reiterated their positions. The property owners supplemented the record with a recorded copy of the deed and conveyance fee statement. The BOE presented the stipulation of value for tax year 2013, evidence of the 2013 sale, and documents from the Secretary of State regarding the ownership of Vitran Ohio and Crown.

Before we reach the merits of the appeal, we must address the property owners' objection to the evidence offered by the BOE during this board's hearing. The property owners argued that because the BOE had not presented the evidence at the BOR hearing, it was therefore barred by R.C. 57 l 5. l 9(G), which prohibits a complainant's introduction of evidence on appeal that was available during the BOR hearing, unless good cause is shown. The BOE argues that it had good cause to present this evidence because the documents were not in counsel's knowledge or possession at the time of the BOR hearing and it was necessary to complete the record regarding Patti's testimony. First, we sustain the property owners' objection with respect to the 2013 sale and stipulation of value. As evidenced by the signed stipulation of value, those items were clearly in the possession of the BOE prior to the BOR hearing, even if counsel herself did not have personal knowledge. Second, we overrule the objection relating to the documents from the Secretary of State because they were related to testimony from the BOR hearing regarding a transfer that had not even been recorded at the time of that hearing. As such, we find that the BOE had good cause and will give those documents the appropriate weight. We note that even if we were to have received all of the documents into evidence, none of them would alter the outcome of our decision, as they simply support uncontroverted facts and do not independently support an alternative value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Because the central issue in the instant appeal is whether

the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, ifl 1. It has long been held by the Supreme Court that "the best evidence of 'true value in money' ofreal property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). In order to benefit from the rebuttable presumption that a sale price "'has met all the requirements that characterize true value,' *** the proponent of a sale must satisfy a relatively light initial burden and need not 'definitive[ly] show[ ] *** that no evidence controvert[s] the *** arm's-length character of the sale."' *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075, if14, citing *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 78 Ohio St.3d at 327 (1997); *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision,* 117 Ohio St.3d 516, 2008-Ohio-1473, if4 l Accordingly, 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. *Cincinnati School Dist.,* supra. Once the opponent successfully rebuts the reliability of the sale, however, a second rebuttable presumption arises, which operates against the proponent of the sale, who must agaiR show that the sale is nevertheless a reliable indication of value. *Lunn,* supra, at ‖23.

In the present appeal, it is undisputed that the subject property transferred twice in relative close proximity to the tax lien date, though both of these transfers appear to have been among related parties. Patti explained that in 2013, Vitran Express, Inc. spun off some of its real estate into a separate but related entity, Vitran Ohio. This transfer was recorded on February l, 2013 for a sale price of $1,840,000, and was the subject ofBOR proceedings for an earlier year, which ultimately ended with a stipulation of value. At some point thereafter, a sister company of Crown purchased Vitran Ohio, which included its real property holdings. In December 2015, a note for $1,070,000 secured by the subject property came due, and Crown decided to pay off the note and take title to the property. The property then transferred from its sister company to Crown in December 2015, though the deed was not recorded until October 2016. Patti indicated that he was unsure whether the property was listed for sale or marketed to the public and there was no negotiation regarding the purchase price, but Crown determined that it was worth paying the balance of the loan in exchange for title to the property. Patti testified that Crown's decision was based on photographs of the property and the auditor's property record card regarding the property's condition, though there was no appraisal done at the time. Patti stated that after personally viewing the condition of the property, he believed that Crown may have even overpaid for the subject because Crown was motivated to purchase it because it owns a nearby property.

We acknowledge that related parties "can and do effect transfers at fair market prices," such a transaction requires an affirmative demonstration that the price reflects the subject's fair market value irrespective of the parties' relationship. *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 129 Ohio St.3d 172, 2011-0hio-3092, i!33. For instance, even a sale between related parties of a property that was not listed on the open market can be considered best evidence of value where there is sufficient additional evidence to establish that the price reflected fair market value, such as an appraisal performed contemporaneous with the sale. *Emerson v. Erie Cty. Bd. of Revision,* 149 Ohio St.3d 148, 2017-Ohio-865. We find that neither transfer in the instant appeal meets this standard. Contrary to the argument of Crown and Vitran Ohio, the note that was secured by the subject property does not serve this purpose. Unlike a new mortgage or financing appraisal that may serve as corroborating indicia of a sale price under certain circumstances, the payment of an existing note does not reflect a third-party opinion that can be relied on to show that a sale price was at a fair market value. Accordingly, we find that neither sale can be relied on to establish the value of the subject property.

Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the board of revision's valuation, without the board ofrevision 's presenting any evidence.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$1,660,000

TAXABLE VALUE

$581,000

OHIO BOARD OF TAX APPEALS

WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2193
Appellant(s	(REAL PROPERTY TAX)
), vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s	
).	

APPEARANCES:

For the Appellant(s)

- WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION
  Represented by:
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For the Appellee(s)

- FRANKLIN COUNTY BOARD OF REVISION
  Represented by:
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  GENUINE PARTS CO.
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Entered Monday, June 11, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 610-197287-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written arguments.

The subject property is a 9.14 acre parcel of land improved with a 125,000 square-foot building. The building consists of an 85,000 square-foot distribution watehouse, roughly 30,000 square feet of office space, and a 10,000 area that operates as a NAPA Auto Parts retail store. The subject property is effectively owner-occupied because the owner of the subject property, Genuine Parts Co. ("Genuine Parts"), is related to NAPA. The subject's total true value was initially assessed at $3,900,000. Genuine Parts filed a decrease

complaint with the BOR seeking a reduction in value to $2,500,000. The BOE filed a countercomplaint in support of maintaining the auditor's value. At the BOR hearing, Genuine Parts presented testimony and a written report from appraiser David R. Hatcher, MAI, who.opined that the total true value of the subject property was $2,700,000 as of January 1, 2015. The BOE cross-examined Hatcher, but offered no independent evidence of va lue . The BOR issued a decision reducing the initially assessed valuation to
$2,700,000 based on Hatcher's appraisal. From this decision, the BOE filed the present appeal. At the hearing before this board, the BOE offered testimony and a written report from appraiser Samuel D. Koon, MAI, who opined a total true value of $3,900,000 as of January 1, 2015. For Genuine Parts, Hatcher again testified in support of his appraisal. Following the hearing, the BOE and Genuine Parts submitted written argument pointing to the strengths of their respective expert witnesses and challenging the methodology and conclusions of the opposing party's witness.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (200 l). This board must independently weigh the evidence in the record to find the true value of the property. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 147 Ohio St.3d 409, 2016-Ohio-7381. As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410 (1964). This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision,* 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. In *Cardinal,* supra, at paragraphs two and three of the syllabus, the court held that "[t]he Board of Tax Appeals is not required to adopt the valuation fixed by any expert or witness" and that it "is vested with wide discretion in determining the weight to be given to evidence and the credibility of witnesses which come before [it]."

In the present appeal, there were some similarities among Hatcher's and Koon's appraisals. Both

appraisers performed the sales comparison and income approaches to value, and both recognized the somewhat unique nature of the property due to the finished retail space. The appraisers diverged, however, in the way they implemented these approaches, and specifically how they accounted for the office and retail space in their income approaches.

Both Hatcher and Koon performed the sales comparison approach, but we find neither provides a reliable indication of value. Hatcher considered the sales of seven comparable properties. These buildings ranged in size from 75,600 square feet to 207,827 square feet, selling for prices ranging from $19.19 to $29.91 per square foot. Hatcher did not make any adjustments to the sales, but indicated he considered the property's ceiling height and the percentage of office space when he concluded to an indicated value of $22.50 per square foot, or $2,800,000 (rounded). Koon considered sales of five properties, which ranged from 94,250 square feet to 156,641 square feet, and sale prices from $25.73 to $36.68 per square foot. Unlike Hatcher, Koon adjusted these sales to take account for differences in ceiling clearance and finished area, but also location, size, and land-to-building ratio. Koon concluded to an indicated value of $31 per square foot, or $3,900,000 (rounded).

It is not readily clear whether and to what extent Hatcher considered differences between the comparable sales and the subject property regarding location, size, age, and condition, or any changes to market conditions between the tax lien date and the date of each sale, which took place as much as 32 months before the tax lien date. Thus, we find that we cannot rely on Hatcher's sales comparison approach to value. Koon, on the other hand, did consider the need to make adjustments for both physical differences and changes in market conditions in his sales comparison analysis. Yet, Koon failed to take into consideration one key variable. Four of the five comparable sales were transfers of buildings with leases in place at the time of the transaction, though the subject property is owner-occupied. While the existence of a lease does not preclude an appraiser from utilizing that sale for purposes of comparison, it does require an analysis as to whether the terms of the lease were consistent with the market. *Rite Aid of Ohio, Inc. v. Washington Cty. Bd. of Revision*, 146 Ohio St.3d 173, 2016-0hio-371, 20 ("Precisely because the lease affects the sale price and value, the leased-fee comparable ought to be adjusted when the subject property has no lease; the adjustment would remove the effect of the lease on the sale price so that the sale can indicate what the unencumbered subject property would sell for. *Steak 'n Shake, Inc. v. Warren Cty Bd. of Revision*, 145 Ohio St.3d 244, 2015-Ohio-4836, *** 36."). In this case, Koon did not adjust any of the leased comparable properties, and it is unclear the extent to which he investigated the details of the leases on these properties and how their terms compared to the market. As such, we must disregard sales two through five in Koon's sales comparison approach. Despite its similarity to the subject property, we find that the sole remaining comparable sale does not provide a sufficient basis for this board to independently value the subject property.

Having rejected both appraiser's sales comparison approaches, we now look to each income approach to discern whether either provides a reliable basis upon which this board may rely to value the subject property. The subject property houses not only warehouse and distribution facilities for NAPA, but also its local and regional offices and the retail store. This results in a total finished space of roughly 32%. Both appraisers considered the value of the additional finished space by determining a different rental rate for this portion and the remaining industrial portion of the subject property.

Hatcher looked at the properties from his sales comparison approach to conclude that 10% office space is appropriate for the subject property. Based on the size of the warehouse/distribution

space, he attributed 97,500 square feet as "industrial" space, to which he attributed a market rental rate of $1.75 per square foot (triple net). He then considered the remaining 27,500 square feet as excess office/retail space, to which he attributed a market rental rate of $5 per square foot (triple net). Based on this analysis, Hatcher concluded to a total potential gross income ("PGI") of $308,125. Hatcher reduced this to account for a 15% market vacancy and credit loss, which he determined by looking at the average length of a lease term for that type of property and the approximate down time between tenants because it is a single-user property. Hatcher did not reduce this amount any futther to account for expenses. This resulted in a net operating income ("NOi") of $261,906, which he capitalized at a rate of 10.00%, for a resulting indicated value of $2,620,000 (rounded).

Koon also separated the retail from the industrial space for purposes of determining market rent, but he included all of the office space as part of the industrial area and only attributed a higher rental rate to the 10,000 square feet currently dedicated to retail space. Using a rental rate of $3 per square foot (triple net) for the industrial space and $5 per square foot (triple net) for the retail space, Koon concluded to a PGI of $395,000. Koon then reduced this amount by 7.5% for vacancy/collection loss, $6,995 for those expenses incurred during vacancy that would ordinarily be reimbursed, plus $12,500 reserve for replacement. He capitalized the resulting NOI of $345,880 at 9.25% capitalization rate plus a .26% vacancy-weighted tax additur, for an indicated value of $3,600,000 (rounded).

Upon review of these two approaches, we find that Koon's approach provides a better representation of the value of the subject property. Hatcher estimated the ordinary amount of finished space a building of the subject's size would require and then applied a premium to the remaining finished space. Koon essentially valued the retail space separately from the industrial are , and then valued the industrial space as an 115,000 square foot industrial building with 30,000 square feet of office space. We find that this is appropriate given that even Hatcher acknowledged the 10,000 square feet of retail space could be leased separate from the remaining industrial portion of the building. While we acknowledge that Genuine Parts has challenged the comparability of the industrial rental comparables utilized by Koon, we find that they are sufficiently similar to the subject property to provide reliable results. Accordingly, we find that the value conclusion resulting from Koon's income approach provides the best indication of the subject property's total true value.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$3,600,000

TAXABLE VALUE

$1,260,000

OHIO BOARD OF TAX APPEALS

KATHLEEN A. WIECHMAN, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-265

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KATHLEEN A. WIECHMAN
1433 W. KEMPER ROAD
CINCINNATI, OH 45240

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Thursday, June 14, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions.only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GEORGEAN M. GERMANO, (et. al.),

Appellant(s),
vs.
CUYAHOGA COUNTY BOARD OF REVISION,
(et. al.), Appellee(s).

CASE NO(S). 2017-1468

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s)
- GEORGEAN M.GERMANO
1404 FORD ROAD
LYNDHURST, OH 44124

For the Appellee(s)
- CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING
ATTORNEY CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH
FLOOR CLEVELAND, OH 44113

Entered Tuesday, June 19, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel number 712-17-005, for tax year 2016. We proceed to consider the matter upon the notice of appeal and the statutory transcript ("S.T.") certified by the fiscal officer.

The fiscal officer valued the subject property at $128,900 for tax year 2016. Appellant filed a complaint against the valuation seeking a decrease to $120,000. Although appellant did not appear at the BOR hearing, she submitted a letter indicating the property was in need of repairs, specifically to repair a cracked foundation, correct sewage overflow, siding, and interior updates. She submitted a list of purportedly comparable sales in support of her requested decrease. The BOR found that no change in value was warranted, stating "the fiscal officer's value is supported by the sale of the subject in 12/2016." S.T. at Ex. E.

Appellant thereafter appealed to this board. Because appellant did not request a hearing before this board at which to present new evidence, we proceed to conduct a de novo review of the arguments and evidence presented to the BOR. *Black v. Cuyahoga Cty. Bd. of Revision,* 16 Ohio St.3d 11 (1985).

In challenging the valuation of real property, "[t]he burden is on the taxpayer to prove his right to a deduction." *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision,* 170 Ohio St. 340, 342 (1960). "[T]he appellant must come forward and demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d **1,** 2005-Ohio-3096, ,J6. The Supreme Court explained in *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 123 Ohio St.3d 268,

2009-Ohio-4975, that "the board ofrevision (or [auditor]) bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof at the BTA." Id. at i-123.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision,* 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415. The property record card in the statutory transcript indicates that the subject property transferred to appellant from Colette O'Brein in December 2015 for $128,8000 in a valid sale. S.T., Ex. C. Appellant confirmed on the complaint that such sale occurred. S.T., Ex. A.

Appellant argued that defects in the property justify a reduction below the recent sale price. As the Supreme Court stated in *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397, "[a]s a general matter, '[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.' *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227, 288, *** (1996)." (Parallel citation omitted.) Id. at ,-r27. As this board has repeatedly stated, a party must do more than simply demonstrate the existence of negative factors; it must also demonstrate the impact such factors have on the property's value. In the absence of an appraisal quantifying the effect of any negative factors on the value of the property, we find appellant's evidence insufficient to support a reduction in value.

We likewise find appellant's comparable sales insufficient to support a reduction. This board has repeatedly stated that, without a reliable analysis of such data, i.e., an appraisal, the submission of raw sales information is normally insufficient to demonstrate value since the trier of fact is left to speculate as to common differences, e.g., location, size, quality of construction of improvements, nature of amenities, etc., and the date of sale as opposed to tax lien date, may affect a value determination. See generally The Appraisal of Real Estate (14th Ed.2013); *Moskowitz v. Cuyahoga Cty. Bd. of Revision,* 150 Ohio St.3d 69, 2017-Ohio-4002.

Based upon the foregoing, we find appellant has failed to satisfy her burden to prove her right to a reduction in value. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016 were as follows:

TRUE VALUE

$128,900

TAXABLE VALUE

$45,120

OHIO BOARD OF TAX APPEALS

AMERIGO BERARDINELLI & ANNA BERARDINELLI, (et. al.),

Appellant(s)

, vs.

LAKE COUNTY BOARD OF REVISION, (et. al.),

Appellee(s)

.

CASE NO(S). 2017-989

(REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- AMERIGO BERARDINELLI & ANNA BERARDINELLI
  Represented by:
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  1545 VILLA GRANDE DRIVE
  PAINESVILLE, OH 44077-791.9

For the Appellee(s)

- LAKE COUNTY BOARD OF REVISION
  Represented by:
  ERIC A. CONDON
  ASSISTANT PROSECUTING ATTORNEY LAKE COUNTY
  105 MAIN STREET
  P.O. BOX490
  PAINESVILLE, OH 44077

Entered Friday, June 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owners appeal a decision of the Lake County Board of Revision ("BOR") which decided the value of parcel number 11-B-043-G-00-009-0 for tax year 2016. The matter is considered by this board upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the written comments submitted by appellants.

The subject property is a single-family residence built in 2014. The auditor initially valued the property at $495,830. The appellant owners filed a complaint requesting a decrease in value to $364,000, noting that the auditor's records had an error in the property's square footage, i.e., it should be listed at 2,680 square feet instead of 3,162. The Board of Education for the Riverside Local School District filed a countercomplaint requesting that the auditor's value be maintained.

At the BOR hearing, owners Amerigo and Anna Berardinelli testified that they are construction contractors and constructed the home themselves for a cost of approximately $364,000. Mr. Berardinelli indicated that, prior to the hearing, he had spoken to the auditor's office about correcting the square footage error on the auditor's records; the BOR members indicated they would verify that the square footage has been corrected. The owners further argued that their tax burden is higher than their neighbors, specifically noting that a home next door is nearly twice as large but pays only slightly more in taxes. Mrs. Berardinelli noted that, although they had not anticipated it when they built the home, a new, 32-home development has gone in directly behind the subject home and negatively impacts its value.

After considering the evidence presented, the BOR decreased the value of the property to $434,630. A review of the auditor's property record card indicates that the decrease in value was the result of changes to the square footage, grade, and condition made by the auditor in January 2017.

Appellants thereafter appealed to this board, requesting a further decrease in value to $344,720. Although they requested a hearing before this board, which this board continued at their request, appellants waived their appearance. In lieu of attending, they submitted a three-page land value appraisal. Because the appraisal was not submitted at a hearing, it is not properly part of the record before us and will not be considered in our determination of value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13 (1996).

As the Supreme Court recently reiterated in *Schutz v. Cuyahoga Cty. Bd. of Revision,* Slip Opinion No. 2018-Ohio-1588, "[i]n a valuation case, 'the party challenging the board of revision's decision at the BTA has the burden of proof to establish its proposed value as the value of the property.' *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 123 Ohio St.3d 268, 2009-Ohio-4975, ***, iJ23. To meet that burden, the challenging party 'must come forward and demonstrate that the value it advocates is a correct value.' *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 106 Ohio St.3d 1, 2005-Ohio-3096, ***, iJ6." (Parallel citation omitted.) Id. at iJ9. Appellants must therefore provide competent and probative evidence in support of their requested decrease.

Appellants have failed to properly present any new evidence on appeal in support of their requested decrease in value. Before the BOR, they relied on conclusory statements about the taxes assessed against nearby properties and the effect of a nearby housing develonment. It is unclear whether properties near the subject property are alleged to pay more taxes due the underlying valuation of those properties. We must acknowledge the fallacy of such argument, as the nature of the present matter is the erroneous nature of the subject property's value. Indeed, the Supreme Court has noted

that "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 31 (1996).

We find no evidence in the record to support appellants' arguments that a nearby housing development has negatively impacted the subject property's value. The Supreme Court has repeatedly rejected qualitative statements about negative impacts to a property in the absence of evidence establishing an actual value. *Schutz,* supra, at iJl 7; *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2018-Ohio-918, iJ17, citing *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397, iJ27, and *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227, 228 (1996); *Gupta v. Cuyahoga Cty. Bd. of Revision,* 79 Ohio St.3d 397,400 (1997).

Having rejected appellants' evidence and arguments in support of their requested decrease in value, we turn to the decision of the BOR to decrease the value to $434,630. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 151 Ohio St.3d 458, 2017-0hio-5823, iJ7 ("our case law has repeatedly instructed the BTA to eschew a presumption of the validity of the BOR's value and instead perform its own independent weighing of the evidence in the record."). It is clear that the BOR's reduction in value mirrors the change in value noted on the property record card. Notably, the date of the changes coincides with the filing of appellants' complaint with the BOR. The property record card indicates that the property data was subject to a "quality control" check by the auditor's office, which resulted in changes to the dwelling data, i.e., re-sketching to account for the correct square footage and removing one half-bathroom, and changes to the property's condition and grade. We find such changes are supported by the appellants' testimony at the BOR hearing, as both the owners of the property and the construction contractors who built the home.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as determined by the board ofrevision, as follows:

TRUE VALUE

$434,630

TAXABLE VALUE

$152,120

OHIO BOARD OF TAX APPEALS

NORTHRIDGE LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),

Appellant(s)

, vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-50

(REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s)

- NORTHRIDGE LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H.
GILLIS
RICH & GILLIS LAW GROUP,
LLC 6400 RIVERSIDE DRIVE,
SUITE D DUBLIN, OH 43017

For the Appellee(s)

- MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

DEVINE DESTINATION, INC.
1399 8TH LINE OF SMITH
LAKEFIELD, ONTARIO K0L2H0

Entered Friday, June 22, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant appeals a decision of the board of revision ("BOR") which determined the value of the subject real property, parcel number E21-0l 103-0078, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of hearing before this board ("H.R."). For the reasons set forth below, we find the owner was required, but failed, to provide sufficiently probative evidence in support of the reduction in value sought, the BOR erred in decreasing value based upon the condition of the subject, and, as a result, the subject's initially assessed value must be reinstated.

The subject's total true value was initially assessed at $272,980. The property owner filed a decrease complaint with the BOR, seeking a reduction in value to $155,000, based upon a 2012 transfer. S.T., Exhibit ("Ex.") A. The Northridge Local Schools Board of Education ("BOE") filed a counter complaint requesting to maintain the initially assessed value. S.T., Ex. B. At the BOR's hearing, Mr. John Burman, owner of the ownership entity, Mr. Larry Parr, a tenant of the subject, and counsel for the BOE appeared. In support of the requested reduction, Mr. Burman testified as to the subject's condition/defects and surrounding area, and submitted pictures, comparable sales information, and an estimate to demolish the subject's improvement. S.T., Exs. E, F. In response to questions posed by BOR members, Mr. Burman stated he had not improved the subject since purchasing it and that he does not charge rent for the flea market which operates thereon. On cross examination by BOE's counsel, Mr. Burman admitted, a third party pulled the comparable sales he submitted and that he listed the property for sale in February 2016 for $600,000. The BOE then objected to the BOR's consideration of the owner's comparable sales; however, the BOR made no ruling on such objection. S.T., Ex. E. Thereafter, based upon the condition of the property, the BOR issued a decision decreasing the subject's value to $155,000. BOR decision audio; S.T., Ex. G. Dissatisfied with the result, the BOE timely filed an appeal with this board.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). Typically an appellant employs tangible evidence and corroborating testimony to satisfy its burden of proof on appeal; however, as in the case before us, an appellant may elect to meet its burden by showing that the BOR erred when it reduced a property's value from the amount first determined by the auditor. *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 106 Ohio St.3d 157, 2005-Ohio-4385. See also *Snavely v. Erie Cty. Bd. of Revision,* 78 Ohio St.3d 500, 503 (1997) ("How a party seeking a change in valuation attempts to meet its burden of proof * * * is a matter for that party's judgment."). Yet, a party's election not to present its own evidence of value is not without risk, as another party's evidence may be found to be competent, probative, and sufficiently persuasive. See, e.g., *Westhaven, Inc. v. Wood Cty. Bd. of Revision,* 81 Ohio St.3d 67 (1998).

It has long been held by the Supreme Court that "the best evidence of 'true value in money' ofreal property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). In this instan ce, although the subject's property record card reflects a February 2012 transfer of the subject for $155,000, see S.T., Ex. C, Montgomery County underw ent a six-year reappra isa l in 2014, and, as such, we find the 2012 transfer to be remote from the tax lien date at issue. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision,* 139 Ohio St.3d 92, 2014-Ohio-1588, iJ23-24, 26 ("[w]e hold that a sale that occurred more than 24 months before the lien date and that is reflected in the property record maintained by the county auditor or fiscal officer should not be presumed to be recent when

a different value has been determined for that lien date as part of the six-year reappraisal."); compare *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision,* Slip Opinion No. 2018-Ohio-1612 (holding that no 24-month bright-line rule applies to sales that occur *after* tax lien date). Accordingly, in the absence of a recent arm's-length sale, an appraisal or other relevant evidence is necessary to determine the subject's true value. *First Union Real Estate Equity & Mtg. Investments v. Cuyahoga Cty. Bd. of Revision,* 53 Ohio St.3d 236 (1990); *State ex rel. Park Investment Co. v. Bd. of Tax Appeals,* 175 Ohio St. 410,412 (1964).

On appeal, at this board's hearing, the BOE argues, the property owner failed to meet its initial burden to prove the value, the BOR erred when it reduced the subject's value to its 2012 purchase price, and, as such, requests this board to reinstate the auditor's initially assessed value. H.R. Neither the property owner nor county appellees elected to attend this board's hearing pr submit written argument advancing their respective positions on appeal.

Initially, as a general rule, we acknowledge, the initial burden is on the taxpayer/complainant to provide competent and probative evidence in support of the reduction sought before the BOR. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision,* 170 Ohio St.3d 340, 342 (1960); *Dayton-Montgomery Cty. Port. Auth. v. Montgomery Cty. Bd of Revision,* 113 Ohio St.3d 281, 2007-Ohio-1948. In this instance, although we find the testimony provided by Mr. Burman to be competent, see *Smith v. Padgett,* 32 Ohio St.3d 344, 347 (1987), we find the probative value of the corroborating tangible evidence offered to be lacking. See also *Amsdell v. Cuyahoga Cty. Bd of Revision,* 69 Ohio St.3d 572 (1994); *Tok/es & Son, Inc. v. Midwestern Indem. Co.,* 65 Ohio St.3d 621 (1992); *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision,* 76 Ohio St.3d 29, 32 (1996) ("there is no requirement that the finder of fact accept [the owner's value] as the true value of the property.").

Upon review of the owner's evidence of the subject's condition, we are not persuaded. In *Throckmorton v. Hamilton Cty. Bd. of Revision,* 75 Ohio St.3d 227 (1996), the Supreme Court addressed the burden attendant in advancing claims similar to those made by the owner (at the BOR's hearing) and, in so doing, the court emphasized that a party must demonstrate more than the mere *existence* of adverse factors, but rather, the *impact* they have upon the property's *value.* See also *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported. Here, the evidence of the subject's condition falls well short of demonstrating the impact of such adverse factors upon the subject's value.

Similarly, we find the owner's comparable sale evidence unavailing. "The purpose of the sales comparison approach, one of the three commonly employed methods of appraising property, is to derive an estimate of value by comparing the property under consideration to similar properties recently sold within the market place." *Kaiser v. Lorain Cty. Bd. of Revision* (Nov. 2, 2010), BTA No. 2009-V-1090, unreported, citing *Speca v. Montgomery Ct. Bd of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. Under such approach, appraisers typically employ qualitative or quantitative adjustments to comparables selected to align, and thereby compare, the comparable properties to the subject property. In this instance, however, the owner's comparable sales data does not reflect any adjustments accounting for meaningful differences between the subject property and the comparables selected. In the absence of such adjustments, this board is left to speculate 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; to be sure, "[m]ere speculation is not evidence" and does not serve as a basis upon which this board may rely to reduce value. *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision,* 108 Ohio St.3d 310, 2006-Ohio-1059, at 15. See generally *Freshwater v. Belmont Cty. Bd. of Revision,* 80 Ohio St.3d 26 (1997).

Having found no probative support for the reduction sought by the owner, we now consider the propriety of the BOR's decrease in value. It is well established that "decisions of boards of revision should not be

accorded a presumption of validity." *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 114 Ohio St.3d 493, 2007-Ohio-4641, 23. Further, we acknowledge the court's instruction that, "if a board of revision makes a valuation change that is completely unsupported in the record, the BTA may not affirm or adopt it. *See Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 567 *** (2001) (the BTA errs by affirming a board ofrevision's reduced or increased valuation if 'there is no evidence or other information in the statutory transcript to explain the action taken by the BOR.')." (Parallel citation omitted.) *Worthington City School Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 140 Ohio St.3d 248, 2014-Ohio-3620, 38. See also *Copley-Fairlawn City School Dist. Bd. of End. v. Summit Cty. Bd. of Revision,* 147 Ohio St.3d 503, 2016-Ohio-1485, 30 ("A legal error in the BOR's determination prevents affirmance of the BOR's determination."); *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision,* 123 Ohio St.3d 268, 2009-Ohio-4975, 31, citing *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision,* supra. Ultimately, this board recognizes its duty to independently weigh the evidence presented and not merely "rubber stamp" a board ofrevision's finding from which the appeal is taken. *Consolidated Freightways, Inc. v. Summit Cty. Bd. of Revision,* 21 Ohio St.3d 17 (1986). See also *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 201l-Ohio-5078.

In this instance, it is clear from the BOR's decision audio recording that the BOR reduced the subject's value based upon the owner's evidence of the condition of the subject property. As discussed above, evidence of the subject's condition, alone, does not provide a sufficiently reliable probative basis upon which to decrease value. Consequently, we are unable to conclude that the BOR's decrease in the subject property's value was premised upon competent and probative evidence.

Having found no competent and probative support for the BOR's reduction in value, we now tum to the record to determine whether this board may independently determine value. Upon a careful review, we find insufficient probative evidence upon which we may rely to independently determine value in this matter. In the absence of sufficient competent and probative evidence to support a reduction value, we simply cannot engage in conjecture in deriving our own value. See *Howard v. Cuyahoga Cty. Bd. of Revision,* 37 Ohio St.3d 195, 197 (1988) ("We now require [the BTA] to state what evidence it considered relevant in reaching its value determinations."). Based upon the foregoing, we find it appropriate in this instance to reinstate the auditor's initially assessed value for the tax lien date at issue. *Vandalia-Butler,* supra, at 21, 24; *Sapina v. Cuyahoga Cty. Bd. of Revision,* 136 Ohio St.3d 188, 2013-Ohio-3028, 35 ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it. This court has emphatically held that the BTA's independent duty to weigh evidence precludes a presumption of validity of the BOR's valuation. *Vandalia-Butler City Schools,* 130 Ohio St.3d 291, 201 l-Ohio-5078, 958 N.E.2d 131, 13.").

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER E21-01103-0078

TRUE VALUE

$272,980

TAXABLE VALUE

$95,540

OHIO BOARD OF TAX APPEALS

WHITE PICKET PROPERTIES, LLC, (et. al.),	CASE NO(S). 2018-210
Appellant(s)	(REAL PROPERTY
, vs.	TAX) DECISION AND
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	ORDER
Appellee(s).	

APPEARANCES:

For the Appellant(s)

- WHITE PICKET PROPERTIES, LLC
  Represented by:
  WHITE PICKET PROPERTIES, LLC
  ATTN: ALEX STEWART
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  NEW ALBANY, OH 43054

For the Appellee(s)

- FRANKLIN COUNTY BOARD OF REVISION
  Represented by:
  WILLIAM J. STEHLE
  ASSISTANT PROSECUTING
  ATTORNEY FRANKLIN COUNTY
  373 SOUTH HIGH STREET, 20TH
  FLOOR COLUMBUS, OH 43215

Entered Monday, June 25, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that no final decisi@n has been issued regarding the remission of late-payment penalties for the subject property. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On March 21, 2018, the appellant filed an application for remission with this board. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County BOR that there is no record of a decision issued for the subject property.

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." *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, 150; *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68. Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CURTIS M. TURNER JR., (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-198 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s)
- CURTIS M. TURNER JR.
387 GATES ROAD
HAMILTON, OH 45013

For the Appellee(s)
- BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L. FERGUSON •
ASSISTANT PROSECUTING ATTORNEY BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
P. 0. BOX 515
HAMILTON, OH 45012-0515

Entered Monday, June 25, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial complaint with the Butler County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On March 18, 2018, the appellant filed a notice of appeal with this board, on which it was indicated that the BOR mailed a decision on November 2, 2017. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion, the affidavit of the clerk for Butler County BOR that there is no record of a decision issued for the subject property.

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." *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, 150; *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68. Strict compliancewith R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DANIEL ZUDIC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION,
(et. al.),

Appellee(s)

.

CASE NO(S). 2017-1435

(REAL PROPERTY TAX)

ORDER

APPEARANCES:

For the Appellant(s)

- DANIEL ZUDIC
Represented by:
ROBERT K. DANZINGER
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, 7TH FLOOR CLEVELAND, OH 44113

For the Appellee(s)

- CUYAHOGA COUNTY BOAiμ) OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR CLEVELAND, OH 44113

Entered Monday, July 2, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is now considered upon the county appellees' motion to dismiss for failure to prosecute, and appellant's request to voluntarily dismiss its appeal. This matter was scheduled for merit hearing, at appellant's request, on May 29, 2018. At that time, counsel for the county appellees appeared and made an oral motion to dismiss for failure to prosecute; no one appeared on behalf of appellant. Although this matter was scheduled proceed to 9:00 AM, appellant did not submit its request to voluntarily dismiss this appeal until after the hearing was scheduled to commence.

Pursuant to Ohio Adm. Code 5717-1-18(A), "The board may dismiss an appeal upon the filing of an appellant's voluntary dismissal at any time prior to the commencement of the hearing. *After commencement of the hearing, a dismissal may be granted with the consent of all the parties and the approval of the board.* The dismissal of an appeal is with prejudice." It is clear that appellant failed to file its voluntary dismissal prior to the hearing on May 29, 2018. In the absence of the consent of all other parties, appellant's request to voluntarily dismiss this appeal is hereby denied.

Although having been duly notified of the hearing scheduled to proceed in this matter on May 29, 2018, appellant failed to appear at the hearing and also failed to provide the required advance written notice of its

intent to waive hearing. See Ohio Adm. Code 5717- l -1 6(F). Accord ingly, acting pursuant to Ohio Adm. C_o_de 5717-1-19, the resent matte_ris hereby dism iss ed due to a fail ur e to prosecute wit h the requisite d iigence. Compare *Ginter v. Aug/a, ze Cty. Bd. of Revision* , 143 Ohio St.3d 3d 340

OHIO BOARD OF TAX APPEALS

ROSSFORD EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1380
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
WOOD COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - ROSSFORD EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION
Represented by:
JONATHAN T. BROLLIER
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For the Appellee(s) - WOOD COUNTY BOARD OF REVISION
Represented by:
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RICH & GILLIS LAW GROUP, LLC
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DUBLIN, OH 43017

BECK ENERGY CORPORATION
C/O RYAN LLC, BANK OF AMERICA CENTER
15 W. 6TH STREET, SUITE 2400
TULSA, OK 74110

Entered Monday, July 2, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number T68-400-026101002515, for tax year 2016. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject's total true value was initially assessed at $1,048,700. The BOE filed an increase complaint with the BOR seeking an adjustment in value to $2,450,000. At the BOR hearing, the BOE presented a deed and conveyance fee statement evidencing an April 1, 2015 sale of the subject property for $2,450,000, asserting that it provided the best evidence of the subject's value as of the tax lien date. No one appeared on behalf of the owner to dispute the reliability of the sale *tq* establish value. The BOR issued a decision maintaining the initially assessed valuation, indicating that it did so based on the recommendation of an appraiser from Lexur Appraisal. The BOR indicated that "it appears the sale price likely took in to consideration a long term lease in addition to the business value," because the subject property houses a Kentucky Fried Chicken restaurant. No report or supporting documentation was offered or included in the transcript certified to this board, and this information was not discussed during the merit hearing when the BOE was present to ask questions or provide additional information. From this decision, the BOE filed the present appeal.

A hearing was convened before this board, at which the BOE again argued that the subject's value should be increased consistent with the April 2015 sale price. The BOE also objected to consideration of the appraiser's statements, the lease, or any other information that was not provided during the BOR hearing, arguing that this information is unreliable hearsay. The county appellees appeared in support of their values, arguing that the BOR has discretion to reject a sale pursuant to R.C. 5713.03, particularly where there is an above-market lease. Again, the property owner did not participate at the hearing or refute any aspect of either sale.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). To benefit from the rebuttable presumption that a sale price has met all the requirements that characterize true value, "the proponent of a sale must satisfy a relatively light initial burden," which may be satisfied through the submission of even unauthenticated sale documents where the existence of the sale was undisputed and the admissibility of the evidence was not challenged before the BOR. *Lunn v. Lorain Cty. Bd. of Revision,* 149 Ohio St.3d 137, 2016-Ohio-8075, iJiJ14-15. "[T]he proponent of a sale is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate." *Terraza 8, L.L.*C. *v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, iJ32. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." Id. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 147 Ohio St.3d 38, 2016-Ohio-3025, iJl 1.

In the present matter, it is undisputed that the subject property transferred from Merco IV, LLC to Beck Energy Corporation on or about April 1, 2015 for $2,450,000. The BOR indicated that the sale price did

not reflect the property's value because it took into consideration a lease in place at the time of the sale and some business value. Notably, no one with any personal knowledge of the sale or the lease was present to testify. The record is likewise devoid of the terms of the lease or how those terms compare to the market. Thus, we are unable to independently weigh this evidence to determine whether it negates the reliability of the sale. While a recent, arm's-length sale price no longer *conclusively* determines the value of a property, such a sale still constitutes the best evidence of a property's value. *Terraza,* supra, at ¶13-34. As such, the burden still lies with the opponent of a sale to establish why its purchase price is not the best evidence of value. The court has held that while an appraiser's sworn statements and report may be relied upon to rebut the presumptive validity of a sale, "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." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 146 Ohio St.3d 470, 2016-Ohio-757, ¶20. Consequently, to satisfy its burden, any opponent of a sale must present more than merely an appraiser's opinion that a sale did not reflect a property's value. In this case, no such evidence was offered. Accordingly, 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.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

TRUE VALUE	TAXABLE VALUE
$2,450,000	$857,500

OHIO BOARD OF TAX APPEALS

RICHARD DANSEREAU, (et. al.),

Appellant(s)

, vs.

HAMILTON COUNTY BOARD OF REVISION,

(et. al.),

Appellee(s)

.

CASE NO(S). 2018-340

(REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RICHARD DANSEREAU
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CINCINNATI, OH 45208

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
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HAMILTON COUNTY
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CINCINNA Tl, OH 45202

Entered Monday, July 2, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered by the Board of Tax Appeals based upon the filing of a motion to dismiss by the county appellees, which asserts that this board lacks jurisdiction to consider this matter. Specifically, the county appellees argue that the appellant property owner failed to file a complaint with the board of revision ("BOR") and, therefore, has no county board of revision ("BOR") decision from which to appeal to this board. See R.C. 5717.01. Instead, the county appellees charge, the property owner submitted "a generalized complaint about the BOR, the BOR process, and a claim as to overall bias and unfairness." In response, the property owner argues that fear of retaliation from the county appellees, and a possible increase to his property's value, necessitated circumventing the complaint valuation process and appealing directly to this board.

A review of the property owner's notice of appeal highlights its admission that he is "not filing a complaint regarding my new property value" and its sole focus on the "conflict of interest" of the BOR members as county employees. More specifically, the property owner objects to the makeup of the BOR, which is comprised of the county auditor, county treasurer, and designee of the board of county commissioners, and requests that this board change such composition.

As an initial matter, it is undisputed that the property owner did not follow the statutory requirements of the real property valuation challenge procedures, i.e., did not initiate proceedings by way of filing a complaint against the valuation of real property with the BOR pursuant to R.C. 5715.19, and did not appeal an adverse BOR decision to this board. Thus, it is clear that we lack jurisdiction to consider this matter pursuant to R.C. 5717.01, which allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board and the board of revision within thirty days after notice of the decision of the county board of revision is mailed. See, also, R.C. 5715.20. See, e.g., *Hope v. Highland Cty. Bd. of Revision,* 56 Ohio St.3d 68 (1990) ("Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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.")

We note that, R.C. 5703.02, this board's enabling statute, does not give this board authority to take the action that the property owner seeks. See, generally *Snodgrass v. Testa,* 145 Ohio St.3d 418, 2015-Ohio-5364, at ,r34 ("We have often pointed out that the BTA is a creature of statute whose powers are limited to those conferred by statute. See, e.g., *Steward v. Evatt,* 143 Ohio St. 547 *** (1944), paragraph one of the syllabus; *Delaney v. Testa,* 128 Ohio St.3d 248, 2011-Ohio-550, ***, **,r20.")** (Parallel citations omitted.) It should also be noted that R.C. 5715.02 provides, in relevant part, that "[t]he county treasurer, county auditor, and a member of the board of county commissioners selected by the board of county commissioners shall constitute the county board ofrevision ***." As such, the Board of Tax Appeals is not the proper venue for the property owner to seek redress and the valuation complaint process established by the General Assembly.

With regard to the property owner's claim of bias before the BOR, we note that the Supreme Court has stated that"'[t]he rule is generally accepted that, in the absence of evidence to the contrary, public officers, administrative officers and public boards, within the limits of the jurisdiction conferred by law, will be presumed to have properly performed their duties and not to have acted illegally but regularly and in a lawful manner.'" *Cedar Bay Constr., Inc. v. Fremont,* 50 Qhio St.3d 19, 21 (1990). Compare *L.J Smith, Inc. v. Harrison Cty. Bd. of Revision,* 140 Ohio St. 3d 114, 2014-Ohio-2872 (finding that the county auditor's failure to follow the statutory scheme for challenges to real property value indicated that he had *not* performed his duties in a regular and lawful manner).

To the extent that the property owner raises the issue ofreal property value for tax year 2017, in this matter, any consideration of real property value for tax year 2017 would be premature.

Based upon the foregoing, we find that we lack jurisdiction to consider this matter because it is undisputed that there is no BOR decision from which the property owner could appeal to this board. As a consequence, we grant the county appellees' motion and hereby dismiss this appeal.

OHIO BOARD OF TAX APPEALS

STEFANIE A. HICKEY, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-14, 2018-15

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - STEFANIE A. HICKEY
Represented by:
STEFANIE HICKEY
5330 WATERBRIDGE DR. NORTH
ROYALTON, OH 44133

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, July 9, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The above-named appellant appeals decisions of the board of revision ("BOR"), which denied applications for remission of real property tax late payment penalties assessed for the first and second halves of tax year 2016. The appellant filed duplicative appeals with this board, which we consolidated consistent with her request. We proceed to consider this matter based upon the notice of appeal and the record certified pursuant to R.C. 5717.01.

The appellant applied for remission of the late payment penalties, alleging that failure to timely pay the property tax bills for the first and second halves of tax year 2016 was not based upon willful neglect but was, instead, the result of reasonable cause. In doing so, the appellant asserted that she was caring for a sick family member, which caused emotional stress that led to the untimely property tax payments. The BOR denied the requests for remission of the penalties because it had previously remitted late payment penalties for untimely payments of the property tax bills for the second half of tax year 2015. Thereafter, the appellant appealed to this board. Although the parties had an opportunity to request a merit hearing before this board, to submit evidence in support of their respective positions, none of the parties availed themselves of such opportunity. The county appellees submitted written argument, which argued that the appellant had failed to satisfy the burden of proof before the BOR and this board. We will, therefore, perform an independent review of the record based upon the limited argument and evidence in the record. See *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985).

On appeal, the burden is on the appellant to demonstrate that the BOR improperly denied the request for remission of the real property late payment penalty. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001).

Based upon our review, we are constrained to find that the appellant has failed to demonstrate that the facts and circumstances of this matter qualify for remission of the late payment penalty pursuant to R.C. 5715.39, which provides the guidelines to determine when real property tax, late payment penalties shall be remitted. As an initial matter, we find R.C. 5715.39(B)(3) to be inapplicable because it relates to the death or serious injury of the taxpayer, not the taxpayer's family member. Relevant to this matter, R.C. 5715.39(C) provides that the late payment penalty shall be remitted if the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. Here, we find that the BOR properly determined that the facts and circumstances described by the appellant do not satisfy R.C. 5715.39(C).

The appellant concedes that the payments for the property tax bills for the first half of tax year 2016 were untimely; however, as noted above, she asserts that caring for a sick family member led to her unintentionally paying the property tax bills after their due date. Even if a property owner's situation is sympathetic, if it does not fall within a prescribed fact pattern, remission of the late payment penalty is inappropriate. *Labuda v. Tracy* (June 18, 1993), BTA No. 1992-M-416, unreported. Here, because the appellant had a prior late payment of property taxes, for tax year 2015, we are constrained to find that remission of the late payment penalties, for first and second halves of tax year 2016, is inappropriate.

In the notice of appeal, the appellant asserted that the property tax payments for second half tax year 2016 were timely paid; however, the record is void of any corroborating evidence that such payments were mailed and postmarked on the due date for the property tax bills for the second half of tax year 2016, i.e., on July 13, 2017. This board has previously held that a notice of appeal "is not an adequate substitute for reliable documentary and testimonial evidence. The Notice of Appeal merely constitutes unsworn, unproven statements, claims and allegations. Evidence presented at a hearing is accepted only upon conditions designed to insure its reliability. Appellants must first be sworn on oath. Their sworn testimony is then scrutinized and subjected to cross-examination. Documentary evidence is also subjected to the scrutiny of the parties and their counsel." *Cunagin v. Tracy* (Mar. 31, 1995), BTA No. 1994-P-1083, unreported, at 3. See also *Powderhorn v. Lake Cty. Bd. of Revision*, 11th Dist. Lake No. 2007-L-071, 2008-Ohio-1024. Thus, appellant's statements in her notice of appeal do not rise to the level of evidence upon which we can rely in making our determination, as they constitute mere contentions, submitted outside this board's hearing process. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996); *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), BTA No. 1992-P-880, unreported.

Based upon the foregoing, we affirm the BOR's decision to deny the appellant's requests for remission of the late payment penalties for the first and second halves of tax year 2016.

OHIO BOARD OF TAX APPEALS

INTEGRITY INDUSTRIAL EQUIPMENT INC., (et. al.),	CASE NO(S). 2016-2498
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - INTEGRITY INDUSTRIAL EQUIPMENT INC.
Represented by:
JEFFREY SMITH
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For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
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MONTGOMERY COUNTY
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HUBER HEIGHTS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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DUBLIN, OH 43017

Entered Monday, July 9, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Integrity Industrial Equipment Inc. ("Integrity") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number P70 02019 0010, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject is a commercial property with warehouse space housing Integrity's business operations. The subject's total true value was initially assessed at $265,220. The appellee board of education ("BOE") filed an original complaint with the BOR seeking an increase in value to $334,400. Jeffrey S. Smith, president of

Integrity, filed a countercomplaint in support of maintaining the auditor's value. At the BOR hearing, the BOE presented a deed and conveyance fee statement as evidence of a July 2015 sale of the property. The BOE asserted that according to the conveyance fee statement, $334,400 of the total sale price ($409,000) was attributable to real property and constitutes the best evidence of the subject's value on the tax lien date. Neither Smith nor any other individual appeared on behalf of Integrity to dispute the validity of the sale, though Smith did send a letter to the BOR. In the letter, Smith asserted that the loan included financing for personal property, such as furniture, new bathroom fixtures, and new carpeting. Smith further discussed his views on corporate social responsibility and opinion that his new business should receive a tax abatement. The BOR issued a decision increasing the initially assessed valuation to $334,400, which led to the present appeal.

At the hearing before this board, Smith appeared on behalf of Integrity. Smith provided further information regarding the details of the July 2015 transaction to demonstrate that the sale included personal property, though he did not challenge the sale's recency or arm's-length nature. Smith also provided information about the auditor's values for the other properties near the subject, asserting that the owners of buildings even nicer than the subject property pay lower taxes. Smith also again espoused his views that new businesses should receive favorable tax treatment and that boards of education should not file increase complaints on properties transferring to a new business. The BOE again argued in favor of reliance upon the sale price, highlighting that it requested only the amount listed on the conveyance fee statement as "consideration for real property on which fee is to be paid," and did not include the portion that was listed as items other than real property.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). To benefit from the rebuttable presumption that a sale price has met all the requirements that characterize true value, "the proponent of a sale must satisfy a relatively light initial burden," which may be satisfied through the submission of a deed and conveyance-fee statement. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14. "An owner who favors the use of an allocated bulk-sale price to reduce the value assigned to real property must bear the burden of proving the propriety of the allocation." *RNG Properties, Ltd. v. Summit Cty. Bd. of Revision*, 140 Ohio St.3d 455, 2014-Ohio-4036, ¶36, citing *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. ofRevision*, 125 Ohio St.3d 485, 2010-Ohio-1921, ¶26, explaining *St. Bernard Self-Storage, L.L.C. v.Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249, ¶17. Because the central issue in the instant appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present matter, it is undisputed that Integrity purchased the subject property from Edward A. and Bonnie R. Geiger on or about July 21, 2015. Because Integrity disputes the sale price reported on the conveyance fee statement, it must show that items other than real property were included in that price and prove that an alternative allocation is proper. In order to meet this burden, Smith provided a number of documents purporting to show that the transaction included a variety of non-realty items, including a settlement statement, a portion of the principal terms and conditions from the small business loan that set forth the permitted use of funds, some purchase orders, emails with the seller, and a fixed asset listing. These documents do corroborate Smith's statements that personal property was obtained as part of the overall transaction to start up Integrity's business operations, but not that the consideration was included in the price attributed to real property. The only evidence presented that corroborates Smith's testimony that some personal property transferred with the real property and was included in the $334,400 purchase price is an email chain with the seller. The email states that the seller would give some office furniture, warehouse shelving, and miscellaneous office equipment with the sale of the building. Even if we accept the statements in the emails with the seller as being true, the emails clearly state that they would be given

"at no cost" to Integrity. Thus, the parties did not contemplate a value attributable to those items. We find, therefore, that Integrity has failed to show that the amount reported on the conveyance fee statement is not a proper allocation of the total sale price. See *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1611 (holding that the BTA must determine whether the record contains adequate support to find that any of the consideration paid in a bulk sale was for assets other than real estate before it allocates the purchase price to items other than real property).

Even if we find that the recorded purchase price included personal property, we find that the record lacks sufficient evidence to reduce that amount to account for personal property. According to the excerpt from the small business loan terms and conditions, in addition to the $409,000 loan amount, Integrity was responsible for $115,100, for a total of $524,100 funding. On this document, $334,400 was allocated to the purchase of the subject real property. Likewise, the settlement statement reflects a $334,400 contract sales price and a blank line where personal property is listed. Integrity provided a fixed asset listing that attempts to accord some value to those items. This list, however, does not provide a reliable basis for this board to attribute a particular value to those items that transferred with the real property for two reasons. First, Smith testified that he personally created the list to assign value to Integrity's fixed assets for tax purposes. As such, we find that without additional supporting documentation for those values, the list created by Smith is insufficient to corroborate an allocation to personal property. Second, even if we were to accept the values on the list as accurate, it does not isolate the items transferred with the real property from all other purchased items. This is especially problematic where the seller was willing to part with the items at no cost to Integrity, which calls into question their condition at the time of the transfer. Furthermore, though it is not sufficient to ascribe a particular value to the real property in this case, we note that the appraisal obtained for lending purposes opines a value of $340,000 for the real property, an amount that exceeds the reported sale price.

Accordingly, absent an affirmative demonstration Integrity's purchase 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. Moreover, we find that Integrity failed to contradict the conveyance fee statement and show that an alternative allocation is correct. Therefore, we likewise reject Integrity's evidence regarding the auditor's values of other properties in the subject's neighborhood. This evidence fails for two reasons. First, when the record contains evidence of a recent arm's-length sale, there exists no reason to resort to any other evidence of value. *Pingue v. Franklin Cty. Bd. of Revision*, 87 Ohio St.3d 62 (1999). Second, it is well established that "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). See, also, *Meyer v. Bd. of Revision*, 58 Ohio St.2d 328, 335 (1979).

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$334,400

TAXABLE VALUE

$117,040

OHIO BOARD OF TAX APPEALS

INLAND DIVERSIFIED PEPPER PIKE CHAGRIN, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY NKA REALTY INCOME PEPPER PIKE CHAGRIN, LLC, (et. al.),	CASE NO(S). 2016-1571
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Monday, July 9, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Inland Diversified Pepper Pike Chagrin, L.L.C., A Delaware Limited Liability Company NKA Realty Income Pepper Pike Chagrin, LLC ("Inland"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 872-36-014, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript

certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board ("H.R."), and the parties' written argument.

The subject property is a roughly 0.8513 acre lot improved with a 3,574 square-foot office building currently operated as a freestanding KeyBank branch. The subject's total true value was initially assessed at $1,722,900. Inland filed a decrease complaint with the BOR seeking a reduction in value to $1,000,000. The appellee board of education ("BOE") filed a countercomplaint in support of maintaining the fiscal officer's value. At the BOR hearing, Inland presented a packet of information titled "Property Owner's Submission of Documents, Business Records, and Opinion of Value" for the subject property, which opined a value of $1,000,000 for tax year 2015. The packet of information included an affidavit from a senior vice president, basic information about the subject's lease and the property itself, and unadjusted sales and lease data for other properties. No one appeared to testify on behalf of the owner. The BOE relied on a May 2012 sale of the subject property, asserting that the BOR found value for tax year 2012 based on the sale and that the fiscal officer carried that value into 2015 during the triennial update. The BOE presented a copy of the relevant deed as well as the earlier BOR decision. Inland did not dispute the details of the May 2012 sale, asserting, however, that it was too remote from the tax lien date to be considered reliable evidence of value. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

A hearing was convened before this board, at which Inland presented testimony and written report from appraiser Richard G. Racek, Jr., MAI. Racek indicated that he did not utilize the sale of the subject property in his analysis because it was part of a "portfolio transaction," and instead "took a step further to try to find what the property would be worth more than two years after the sale occurred to arrive at my value rather than relying solely upon the purchase price." H.R. at 18. In his analysis, Racek performed both the sales comparison and income approaches to value. Racek testified that the subject is "well-located," being situated "in a higher end community in the greater Cleveland area. There is a significant amount of demand, and property values and the population have remained relatively stable, with property values somewhat increasing." H.R. at 40, 10. Racek also explained how the market for branch banks has resulted in a number of properties being converted for other uses, such as coffee shops or medical office space. Id. at 47-48. Racek concluded to an indicated value of $1,080,000 as of January 1, 2015, giving roughly equal weight to both the sales-comparison ($1,070,000) and income ($1,090,000) approaches. The BOE challenged the reliability of Racek's analysis and again relied on the sale to establish the value of the subject property.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). To benefit from the rebuttable presumption that a sale price has met all the requirements that characterize true value, "the proponent of a sale must satisfy a relatively light initial burden," which may be satisfied through the submission of even unauthenticated sale documents where the existence of the sale was undisputed and the admissibility of the evidence was not challenged before the BOR. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶¶14-15. "[T]he proponent of a sale is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." Id. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present matter, it is undisputed that Inland purchased the subject property from First States Investors

2550A, LLC in an arm's-length transaction on May 18, 2012 for a reported sale price of $1,722,900. Although Inland argues that the BOE has not provided adequate evidence in support of the sale because the BOE did not offer a certified copy or otherwise authenticate the deed, we reject this argument. Inland has not denied that a sale took place or that any aspect of the deed with the conveyance fee stamp is not a true and accurate copy. See *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664, ¶13. Furthermore, the sale is evidenced by the property record card and provided the basis for the subject's values for tax years 2012 through 2014.

Nonetheless, Inland has challenged the reliability of the sale to establish the subject's value for 2015. Inland first argues that because it took place more than 24 months before the tax lien date, the sale is no longer sufficiently recent to establish value. See *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. Inland argues that even if we decline to utilize a bright-line 24 month rule to shift the burden of proof surrounding recency to the proponent of the sale, this board should reject the sale and rely on Racek's opinion of value. Inland asserts that pursuant to the court's holding in *Terraza*, supra, a sale price is no longer entitled to a presumption that it is conclusive evidence of value. As such, Inland contends, when an inference is raised that the sale price does not reflect value, this board must consider other evidence, including an appraisal. The BOE, on the other hand, maintains that Inland has misstated the holdings from *Akron* and *Terraza*, and that Inland has failed to rebut the presumption that the May 2012 sale is the best evidence of the subject's value. For the reasons further explained below, we agree with the BOE and find that the price at which Inland purchased the subject property provides the best evidence of the subject's value.

We first address Inland's argument that simply raising an inference that a sale price does not reflect a property's value mandates a consideration of its remaining evidence. Inland correctly asserts that the court held that that a recent, arm's-length sale price no longer *conclusively* determines the value of a property, but ignores the portion of the holding that such a sale still constitutes the best evidence of a property's value. *Terraza*, supra, at ¶¶31-34. As such, the burden still lies with Inland as the opponent of the sale to establish why its purchase price is not the best evidence of value. The court has held that while an appraiser's sworn statements and report may be relied upon to rebut the presumptive validity of a sale, "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." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 470, 2016-Ohio-757, ¶20. Thus, before we can consider Racek's ultimate conclusion of value, we must first find that Inland has rebutted some aspect of the sale. In this case, Inland has generally invoked three separate theories to challenge the reliability of the sale: (1) that the sale was not recent to the tax lien date; (2) that the sale was not reliable evidence of value because the property was encumbered by an above-market lease at the time of the transfer; and (3) that the reported sale price was not indicative of value because it was a portfolio sale.

We reject Inland's argument that the sale was not recent to the tax lien date. Inland argues that in *Akron*, supra, the court declared that any sale more than 24 months removed from the tax lien date should not be accorded the presumption of recency. This interpretation, however, ignores a critical component of the court's holding. The court held that "[w]hen a sale occurs more than 24 months before the lien date, *and the assessor decides not to base the reappraisal on it*, the sale should not be presumed recent." (Emphasis added.) Id. at ¶23. Integral to reaching this conclusion, the court then discussed the duty of the auditor or fiscal officer when performing the six-year reappraisal and clarified that "a sale that occurred more than 24 months before the lien date and that is reflected in the property record maintained by the county auditor or fiscal officer should not be presumed to be recent when a different value has been determined for that lien date as part of the six-year reappraisal." Id. at ¶26. The court explained that "[t]he rule that we adopt today prevents a remote sale from controlling over a more recent appraisal." Id. at ¶27.

In the present appeal, we are presented with circumstances that are distinguishable in an important way: during the 2015 update, the fiscal officer carried forward the 2012-2014 values, which were based on the May 2012 sale. Unlike the situation where an assessor rejects a sale and revalues the property when

performing his or her statutory duty to perform a sexennial reappraisal, the fiscal officer instead maintained that value during the update. Thus, these facts fall outside the parameters established in *Akron*. See, also, *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, ¶19, fn. 4 ("The BTA erred by ignoring the negation of the auditor's valuation and focusing solely on the passage of more than 24 months between the sale and the tax-lien date, citing our decision in *Akron* ***."); *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1612, ¶19 (concluding that a facially qualifying sale still enjoys a presumption of recency even when it postdates the tax-lien date by more than 24 months). Consequently, the burden remains with Inland to challenge the reliability of the subject's sale.

Whether a sale is "recent" to or "remote" from a tax lien date is not decided exclusively upon temporal proximity, but may necessarily involve a multitude of other impacts/considerations. See, e.g., *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, ¶35 (recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property"); *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, 44, overruled in part on other grounds (recency factors include "changes that have occurred in the market"). Inland has not alleged any specific change to the subject property itself, nor did Racek's report include any particular reference to a change in market conditions – or lack thereof – between the sale and tax lien date. Racek's testimony varied from saying that the market had "gotten better" between 2012 and 2015, to an explanation that the number of bank branches is "shrinking" due to consolidations resulting from increases in online banking. H.R. at 35; 47. Racek appeared to avoid giving any direct answer regarding the extent to which the market changed for this type of property, if at all. As such, we find that any assertions regarding general market changes were not adequately supported by the record. Thus, we conclude that Inland has failed to show that an intervening event, market change or otherwise, has rendered the sale remote from the tax lien date.

Similarly, we find that Inland has failed to substantiate its claims that the subject benefitted from an above-market lease at the time of the transfer. Although there is some information regarding the lease that was presented to the BOR, no one appeared on behalf of Inland to authenticate the document, explain the purpose for which it was created and is used, or testify as to how and by whom it was created. Thus, we do not give this document any weight in our determination. We acknowledge that Racek concluded that the lease rate on the property was above market at $30.96 per square foot compared to his determined market lease rate of $25 per square foot. H.R. at 48. Racek, however, did not show that he has any personal knowledge about the sale or the lease in place at the time of the transaction, or had even spoken with someone who does. Racek did not describe the extent of his review of the subject lease, if at all, for any terms other than simply the lease rate. Nor was there any evidence presented to show how the lease in place compared to market conditions at the time of the sale, rather than lease conditions on January 1, 2015. While we recognize Racek's expertise in the area of real estate appraisal, we will not abdicate our fact-finding authority and duty to independently weigh the evidence. Inland argues that either the market conditions changed and the sale was not recent to the tax lien date, or they were constant and the lease continued to be above market. Inland, however, has failed to meet its burden to corroborate this claim through the presentation of evidence rather than merely conclusory statements. Therefore, we find that Inland failed to provide adequate support for us to conclude that the terms of the lease were so atypical of the market that it rebutted the reliability of the sale.

Finally, we reject the contention that because the sale was part of a portfolio transaction, it was not the best evidence of value. Racek took this position as his explanation for not utilizing the transaction in his appraisal. We can quickly dispose of this issue because it is undisputed that the sale at issue was the subject of an earlier BOR proceeding that resulted in the adoption of the sale price as best evidence of the subject's value. When none of the affected parties chose to appeal this decision in favor of the BOE, it became binding on the issues of both the allocation of the total sale price and the arm's-length nature of the sale pursuant to the doctrine of res judicata. *Superior's Brand Meats, Inc. v. Lindley*, 62 Ohio St.2d 133 (1980).

Even if we ignore the earlier BOR decision, the record does not contain sufficient support to rebut the reported sale price or arm's-length nature of the sale. In fact, Racek testified that he did not discuss the sale with a party to the sale, describing his investigation as consisting of a review of an affidavit from the purchaser of the property. H.R. at 18. Racek further testified that based upon his review, he concluded that the sale was negotiated at arm's-length, but nonetheless did not include it as part of his analysis. Id. Racek indicated that the sale was a portfolio transaction that involved properties throughout the country, though he could not recall the number of properties or how the allocation was made among the properties. Id. at 17-18. This explanation alone is again insufficient to rebut the presumptive validity of the reported sale price. Accordingly, we find that Inland has failed to meet its burden and that the May 2012 sale constitutes the best evidence of the subject's value as of the tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$1,722,900

TAXABLE VALUE

$603,020

OHIO BOARD OF TAX APPEALS

STEFANIE A. HICKEY, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-14, 2018-15

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Monday, July 9, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The above-named appellant appeals decisions of the board of revision ("BOR"), which denied applications for remission of real property tax late payment penalties assessed for the first and second halves of tax year 2016. The appellant filed duplicative appeals with this board, which we consolidated consistent with her request. We proceed to consider this matter based upon the notice of appeal and the record certified pursuant to R.C. 5717.01.

The appellant applied for remission of the late payment penalties, alleging that failure to timely pay the property tax bills for the first and second halves of tax year 2016 was not based upon willful neglect but was, instead, the result of reasonable cause. In doing so, the appellant asserted that she was caring for a sick family member, which caused emotional stress that led to the untimely property tax payments. The BOR denied the requests for remission of the penalties because it had previously remitted late payment penalties for untimely payments of the property tax bills for the second half of tax year 2015. Thereafter, the appellant appealed to this board. Although the parties had an opportunity to request a merit hearing before this board, to submit evidence in support of their respective positions, none of the parties availed themselves of such opportunity. The county appellees submitted written argument, which argued that the appellant had failed to satisfy the burden of proof before the BOR and this board. We will, therefore, perform an independent review of the record based upon the limited argument and evidence in the record. See *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985).

On appeal, the burden is on the appellant to demonstrate that the BOR improperly denied the request for remission of the real property late payment penalty. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001).

Based upon our review, we are constrained to find that the appellant has failed to demonstrate that the facts and circumstances of this matter qualify for remission of the late payment penalty pursuant to R.C. 5715.39, which provides the guidelines to determine when real property tax, late payment penalties shall be remitted. As an initial matter, we find R.C. 5715.39(B)(3) to be inapplicable because it relates to the death or serious injury of the taxpayer, not the taxpayer's family member. Relevant to this matter, R.C. 5715.39(C) provides that the late payment penalty shall be remitted if the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. Here, we find that the BOR properly determined that the facts and circumstances described by the appellant do not satisfy R.C. 5715.39(C).

The appellant concedes that the payments for the property tax bills for the first half of tax year 2016 were untimely; however, as noted above, she asserts that caring for a sick family member led to her unintentionally paying the property tax bills after their due date. Even if a property owner's situation is sympathetic, if it does not fall within a prescribed fact pattern, remission of the late payment penalty is inappropriate. *Labuda v. Tracy* (June 18, 1993), BTA No. 1992-M-416, unreported. Here, because the appellant had a prior late payment of property taxes, for tax year 2015, we are constrained to find that remission of the late payment penalties, for first and second halves of tax year 2016, is inappropriate.

In the notice of appeal, the appellant asserted that the property tax payments for second half tax year 2016 were timely paid; however, the record is void of any corroborating evidence that such payments were mailed and postmarked on the due date for the property tax bills for the second half of tax year 2016, i.e., on July 13, 2017. This board has previously held that a notice of appeal "is not an adequate substitute for reliable documentary and testimonial evidence. The Notice of Appeal merely constitutes unsworn, unproven statements, claims and allegations. Evidence presented at a hearing is accepted only upon conditions designed to insure its reliability. Appellants must first be sworn on oath. Their sworn testimony is then scrutinized and subjected to cross-examination. Documentary evidence is also subjected to the scrutiny of the parties and their counsel." *Cunagin v. Tracy* (Mar. 31, 1995), BTA No. 1994-P-1083, unreported, at 3. See also *Powderhorn v. Lake Cty. Bd. of Revision*, 11th Dist. Lake No. 2007-L-071, 2008-Ohio-1024. Thus, appellant's statements in her notice of appeal do not rise to the level of evidence upon which we can rely in making our determination, as they constitute mere contentions, submitted outside this board's hearing process. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996); *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), BTA No. 1992-P-880, unreported.

Based upon the foregoing, we affirm the BOR's decision to deny the appellant's requests for remission of the late payment penalties for the first and second halves of tax year 2016.

OHIO BOARD OF TAX APPEALS

JOANNE HALL, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-344

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, July 10, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the county appellees' motion to dismiss. Specifically, the county asserts that appellant failed to follow the statutory procedure for appealing to this board by failing to file notice of the appeal with the Hamilton County Board of Revision. Appellant has not responded to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68, the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the property owner both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363, 369 ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and R.C. 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record before us does not demonstrate that appellant filed notice of the appeal with the Hamilton County Board of Revision. Appellant has failed to comply with the statutory requirements for filing an appeal; therefore, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1256
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Wednesday, July 11, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 009-10-038, for tax year 2016. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the record of this board's hearing.

[2] The subject property was initially assessed at $165,900. The BOE filed a complaint with the BOR, which requested that the subject property be revalued at $320,000, to reflect the price at which it transferred in October 2016. The property owner, Melnik's Automotive, LLC, filed a counter-complaint, which objected to the request, and requested that the subject property be revalued at $165,000.

[3] At the BOR hearing on the matter, both parties appeared to supplement the record with argument and/or

evidence. The BOE presented a general warranty deed that memorialized the $320,000 transfer of the subject property from Broadview Property Management, LLC to the property owner in October 2016. (It should be noted that the property record card and general warranty deed indicate that the subject property is listed with parcel 009-10-050, which does not carry an independent value.) Based upon its presentation, the BOE requested that the subject property be revalued at its purchase price. George Melnik, a member of the property owner, appeared on its behalf. He testified that he purchased the subject property, equipment, and options (one written and one oral) to purchase two different adjacent parcels, for $320,000. Instead of valuing the subject property at $320,000, he argued that his research on Internet real-estate website, Zillow.com, and the condition of the subject property indicated that the subject property should be valued at $165,000. Melnik submitted a number of documents in support of his testimony. The BOR determined that the subject sale was not reflective of the subject property's value because it was not offered for sale on the open market and because the subject sale may not have been at arm's-length. The BOR subsequently issued a decision that retained the subject property's initially assessed value and this appeal ensued.

[4] At the hearing before this board, only the property owner appeared to supplement the record with argument and/or evidence. In doing so, Melnik provided additional testimony about the facts and circumstances surrounding the subject sale. The BOE and county appellees waived their appearance of hearing.

[5] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* 50 Ohio St.2d 129 (1977). Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and *typically* the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. See, also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2017-Ohio-441. Accordingly, 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. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 327 (1997).

[6] We begin our analysis with the subject sale. The presentation of the general warranty deed created a rebuttable presumption that the subject sale was a recent, arm's-length transfer indicative of the subject properties' values. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932; *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402. The property owner advanced a number of arguments to assert that the subject sale is not indicative of the subject property's value. We reject those arguments.

[7] First, the property owner asserted that the subject sale occurred under duress because of the need to find a new location to continue its automotive repair business. The Supreme Court has discussed the concepts of economic duress and compulsion in the context of determining the utility of a sale in establishing real property value. In *Lakeside Avenue Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 540 (1996), the Supreme Court held that "compelling business circumstances of the type at issue in this case are clearly sufficient to establish a recent sale of property was neither arm's-length in nature nor representative of true value," characterizing the uniquely "compelling business circumstances" as ones in which "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." Id. at 548-549. Here, there is no evidence that any of the parties to the underlying transaction were faced with "survival on one hand and swift and sure corporate death on the other hand ***." See, also, *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St.3d 250, 2005-Ohio-6434. Though Melnik testified that he needed a place to continue his business, the record is devoid of any evidence to demonstrate whether any effort was made to determine if other suitable locations existed. The record is equally devoid of competent and probative evidence to demonstrate that failure to purchase the subject property would have resulted in

the property owner's bankruptcy. See, also *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 15AP-549, 2016-Ohio-4554; *Katabi Investments Ltd. v. Franklin Cty. Bd. of Revision* (July 3, 2013), BTA No. 2010-L-3842, unreported. We therefore find insufficient evidence of duress such that the sale must be disregarded.

[8] Second, the property owner asserted that the subject sale included items other than the subject property, i.e., a written option to purchase a parcel adjacent to the subject property, an oral option to purchase another parcel adjacent to the subject property, and equipment that was inside the warehouse situsued on the subject property. The court reaffirmed in *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 151 Ohio St.3d 109, 2017-Ohio-7650, at ¶ 9, that "'[a]n owner who favors the use of an allocated bulk-sale price to reduce the value assigned to real property must bear the burden of proving the propriety of the allocation.' *RNG Properties, Ltd. v. Summit Cty. Bd. of Revision*, 140 Ohio St.3d 455, 2014-Ohio-4036, ***, at ¶36." (Parallel citation omitted.) The Supreme Court has instructed this board that "if the record clearly establishes that a portion of a sale price pertains to personal property, the BTA should subtract that portion from the stated sale price to arrive at the amount of consideration paid for the realty." *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 125 Ohio St.3d 103, 2010-Ohio-1040, ¶22. To satisfy that burden, the proponent of using an allocated bulk-sale price must provide "corroborating indicia" of such allocation. *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 1, 2014-Ohio-853. As the court pointed out in *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921, at ¶25, it is the purchaser of the property who performs the allocation provided to the auditor and possesses the information necessary to demonstrate the relationship of value to the real property. Here, the record is devoid of any corroborating evidence to support Melnik's testimony that the $320,000 subject sale price included items other than the subject property. The underlying purchase agreement is notably absent. Though we acknowledge that the option contract notes that the parties consummated the deal in exchange for $1 consideration, there is no evidence to corroborate that the $1 was included in the $320,000 subject sale price.

[9] Third, the property owner asserted that the subject sale should be disregarded because it knowingly overpaid for the subject property. All buyers and sellers have subjective motives in any transaction. It is evident that the property owner considered the subject to be worth the $320,000 sale price and may have been motivated by its subjective view of circumstances to purchase the subject property; nevertheless, this does not require rejection of the subject sale. This board will not disregard a sale simply because a party may have gotten a good deal and potentially underpaid for a property or, conversely, may have gotten a bad deal and potentially overpaid for a property. See, *Wendel v. Mercer Cty. Bd. of Revision* (Jan. 15, 2013), BTA No. 2012-L-1824, unreported ("[G]etting a 'good deal' on the purchase of a property does not automatically negate an arm's-length transaction as being the best indication of value. Therefore, as there is insufficient evidence to indicate that the sale occurring around May 25, 2011 sale was not an arm's-length transaction ***."); *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported, at 11 ("A negotiated purchase price is not invalidated merely because a purchaser later believes he made a bad deal.").

[10] Fourth, the property owner asserted that the condition of the subject property, and latent defects discovered after the subject sale, necessitate some valuation below the full $320,000 subject sale price. This board has consistently rejected the argument that a sale should be rejected 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. See, e.g., *Bd. of Edn. of the Huber Hts. City Schools v. Montgomery Cty. Bd. of Revision* (Sept 1, 2006), BTA No. 2004-A-1210, unreported. We have explicitly held that a property owner's failure "to engage in greater due diligence does not equate to failure to act in his own self-interest." *Snodgrass v. Franklin Cty. Bd. of Revision* (July 26, 2016), BTA No. 2015-1924, unreported at 3.

[11] We note that the BOR justified its rejection of the subject sale, in part, on the lack of market exposure. This alone, however, does not disqualify the sale because "[t]he case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broadrange of potential buyers." *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, at ¶29.

[12] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its

"own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). As such, we find that the BOE satisfied its evidentiary burden before the BOR when it submitted the general warranty deed, which demonstrated a recent, arm's-length sale of the subject property, and that the property owner failed to rebut any aspect of such sale. In doing so, we find that the BOR erred in its decision.

[13] It is therefore the order of this board that the subject property's true and taxable values as of January 1, 2016 are as follows:

TRUE VALUE

$320,000

TAXABLE VALUE

$112,000

OHIO BOARD OF TAX APPEALS

VIOLA ASSOCIATES, LLC, (et. al.),

Appellant(s),

vs.

LORAIN COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2016-1273, 2016-1274, 2016-1275

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, July 11, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owners, Viola Associates, LLC and Green Circle Growers Inc. (collectively "Green Circle Growers"), appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 13-10-012-000-003, 13-10-012-000-007, 13-10-012-000-006, and 13-10-004-000-014, for tax year 2015. This matter is now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, the record of the hearings before this board, and the written argument of the parties.

The subject property consists of roughly 186.34 acres of land along with greenhouse, packing, and storage facilities associated with Green Circle Growers' commercial horticulture business. The subject property also includes a single-family home with 7,030 square feet of finished, above-ground living area, and a

2,560 square foot pole barn. The primary issue on appeal is whether the greenhouses situated on the property should be treated as real property properly included in the assessment of the subject's total true value, or personal property that should be excluded from the subject's value for purposes of ad valorem taxation. The subject's total true value was initially assessed at $40,204,380. Green Circle Growers filed complaints with the BOR seeking a reduction in value to $22,229,680. The appellee board of education ("BOE") filed a countercomplaint in support of maintaining the auditor's values.

The BOR convened a hearing, at which Green Circle Growers argued that the greenhouses affixed to the land constitute personal property and should not be included in the value of the subject real property. In support of this contention, Green Circle Growers presented testimony from several witnesses regarding the processes by which a greenhouse is erected and subsequently taken down, along with the way greenhouses are viewed by lenders and market participants. With respect to the machinations of the greenhouses and their market, Green Circle Growers presented testimony from CJ van Wingerden, the General Manager of Operations, and Shawn Brown, owner of a company that erects, takes down, and sells greenhouses. The witnesses also described an active secondary market for the resale of greenhouses, which are deconstructed and then sold to again be used for horticulture. Green Circle Growers also offered testimony from appraiser Samuel D. Koon, MAI, who did not provide a value opinion for the property, but did state that in his opinion, the greenhouses were personal property and should not be included in the value of the subject real property. Koon indicated that because they could be removed from the property with relative ease, a lender would attribute greater risk to any loan secured by a greenhouse. Likewise, a buyer of the property would take this into consideration when considering the purchase of a property with a greenhouse. Koon indicated that it was unlikely that the greenhouses in place on the subject property would provide any value to a potential buyer that was not in the commercial horticulture business.

The BOE cross-examined the witnesses, but did not offer any independent evidence of value. Counsel for the auditor and BOR was also present to question the witnesses, but did not present independent evidence of value. The BOR issued a decision maintaining the initially assessed valuation, finding that Green Circle Growers had presented insufficient evidence to support a reduction in value. From this decision, Green Circle Growers filed the present appeal.

A hearing was convened before this board, at which van Wingerden again testified about the physical components of a greenhouse, the different types of greenhouses present at the subject property, and the process by which they are erected and deconstructed. For this board's hearing, Koon performed an appraisal of the subject property, again indicating that he considered the greenhouses to be personal property that provide value to the business and should, therefore, be excluded from the value of the real property. For those buildings that are attached to a greenhouse, Koon made the extraordinary assumption that they have four walls and would be suitable for use as enclosed structures. Based on the cost and sales-comparison approaches to value, Koon concluded that the real property's total indicated value was
$9,900,000 as of January 1, 2015.

The county appellees presented the testimony and written report, Ronald N. Geer, ARA, who appraised the subject property to determine a value as of the tax lien date that included the greenhouses as real property. Geer compared a greenhouse to timber on a piece of woodland: just as a tree changes from realty to inventory when it is cut down, a greenhouse is real property so long as it is affixed to the real property and becomes personal property only when it is removed. Geer stated that based on his experience with market participants, once a greenhouse is bolted to concrete, it is considered real property, just as he would treat grain bins or bulk milk tanks. Like Koon, Geer utilized the cost and sales-comparison approaches to value, concluding to total indicated value of $30,700,000 as of January 1, 2015. The county appellees also presented testimony from Fred Westbrook, chief appraiser for the Lorain County Auditor's Office. Westbrook testified that while not all greenhouses are real property, those that are located at the subject

property have permanent concrete foundations and separate the internal environment from the external environment, and, in his opinion, therefore qualify as real property. Westbrook indicated that he believed that the greenhouses situated on the subject property are designed for commercial agriculture and are more analogous to a barn erected for commercial agriculture than they are to a more rudimentary greenhouse that can be relocated relatively easily. The BOE relied on its cross-examination of all witnesses and legal argument, but presented no independent evidence of value.

Following the hearing, the parties submitted written argument in support of their respective positions regarding whether a greenhouse should be classified and taxed as real property, as defined by R.C. 5701.02. Green Circle Growers argued that the greenhouses are temporary and mobile fabrications that primarily benefit their horticulture business, and, therefore, they are not real property. The BOE argued that both case law and guidance from the Tax Commissioner support a finding that the subject greenhouses are real property, albeit special purpose properties, and should be included in the true value of the subject parcels for purposes of ad valorem taxation. The county appellees also argued that the subject greenhouses qualify as real property subject to taxation, citing to case law from both the Supreme Court and this board. Each party also criticized the reliability of the opposing party's appraisal evidence.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). This board must independently weigh the evidence in the record to find the true value of the property. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381. As the Supreme Court of Ohio has consistently held, "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964). This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraph two of the syllabus. In *Cardinal*, supra, at paragraphs two and three of the syllabus, the court held that "[t]he Board of Tax Appeals is not required to adopt the valuation fixed by any expert or witness" and that it "is vested with wide discretion in determining the weight to be given to evidence and the credibility of witnesses which come before [it]."

In the present appeal, the difference between the approaches of the appraisers relate to their underlying perspectives on the characterization of the greenhouses. Although both performed the cost and sales-comparison approaches to value, Koon did not give any contributory value to the greenhouses situated on the subject real property. Geer, on the other hand, considered not only the value of the structural components of the greenhouse (i.e., walls, roof, etc.), but also "agricultural extras," such as shades, irrigation, fertilization, and computer systems.

In pertinent part, R.C. 5701.02(A) defines "real property" to include the "land itself *** and, unless otherwise specified in this section or section 5701.03 of the Revised Code, all buildings, structures, improvements, and fixtures of whatever kind on the land, and all rights and privileges belonging or appertaining thereto." R.C. 5701.03 defines "personal property" and "business fixture," the value of which are not included the total true value of the real property. We recognize that the greenhouses at issue in the present appeal have been addressed by the Supreme Court in an earlier case, which held that they were structures erected upon the land and attached to the realty, and therefore should be treated as real estate. *Green Circle Growers, Inc. v. Lorain Cty. Bd. of Revision*, 35 Ohio St.3d 38 (1998). As the appellee parties

acknowledge, however, this case was decided prior to a 1992 amendment to R.C. 5701.02 and 5701.03 that revised the definitions of real and personal property for taxation purposes. These definition changes demand reconsideration of the issue and lead to a different result.

The court's prior determination regarding the greenhouses was made under a former version of R.C. 5701.02, which utilized a different standard than the one employed on the tax lien date. The court has explained that under previous versions of the statute, "[h]istorically, the distinction between fixtures that were real property and fixtures that were personal property was elusive." *Metamora Elevator Co. v. Fulton Cty. Bd. of Revision*, 143 Ohio St.3d 359, 2015-Ohio-2807, ¶20. "In 1992, the General Assembly passed Sub.S.B. No. 272, stating in the preamble that it was '[t]o amend sections 5701.02 and 5701.03 of the Revised Code to revise the definitions of real and personal property for taxation purposes.' Sub.S.B. No. 272, 144 Ohio Laws, Part I, 1528." *Funtime, Inc. v. Wilkins*, 105 Ohio St.3d 74, 2004-Ohio-6890, ¶17. Prior to this amendment, when the court analyzed whether an item was "real property" under R.C. 5701.02, "the court merely had to determine whether an item was a building, structure, improvement, or fixture, and if it was any of those, it was classified as real property," even if that item would otherwise be classified as personal property. Id. at ¶15. "As amended by Sub.S.B. No. 272, R.C. 5701.02 continued to use the terms '[r]eal property' and 'land' to include 'all buildings, structures, improvements, and fixtures of whatever kind on the land.' However, unlike the previous statute, in amended R.C. 5701.02 the General Assembly defined the terms 'building,' 'structure,' 'improvement,' and 'fixture' thereby heeding the suggestion of this court in *Pittsburgh-Des Moines Steel Co. v. Lindley* (1982), 1 Ohio St.3d 15, 17, *** fn. 3, wherein we declined to provide a definition for the term 'structure,' stating that the definition should emanate from the General Assembly." (Parallel citations omitted.) Id. at ¶18. Sub.S.B. No. 272 likewise added the newly defined term "business fixture," which the General Assembly specifically excluded from the definition of real property. Thus, it is clear that the *Green Circle Growers* case decided in 1988, which was prior to the 1992 amendment, did not consider whether the greenhouses fit any of the definitions now present in the statute.

In *Funtime*, supra, the court held that following the 1992 amendments, amusement park rides and their accoutrements were business fixtures and not real property. The court described a two-step analysis: "first, determine whether the item meets the requirements of one of the definitions of real property set forth in R.C. 5701.02. If the item does not, then it is personal property. If the item fits a definition of real property in R.C. 5701.02, it is real property unless it is 'otherwise specified' in R.C. 5701.03. If an item is 'otherwise specified' under R.C. 5701.03, it is personal property." *Funtime*, supra, at ¶33. In *Metamora*, supra, at paragraph two of the syllabus, the court held that if an item is expressly defined as a business fixture in R.C. 5701.03, such as a storage bin or tank (specifically a grain bin, in that case), the first step is not necessarily required. Although we may avoid an inquiry as to whether an item meets the definition of real property in R.C. 5701.02 if it is "otherwise specified" in R.C. 5701.03, such an analysis is worthwhile in the present case.

For purposes of real property taxation, a building is "a *permanent fabrication or construction*, attached or affixed to land, consisting of foundations, walls, columns, girders, beams, floors, and a roof, or some combination of these elemental parts, that is intended as a habitation or shelter for people or animals or a shelter for tangible personal property, and that has structural integrity independent of the tangible personal property, if any, it is designed to shelter." (Emphasis added.) R.C. 5701.02(B)(1). A structure is "a *permanent fabrication or construction*, other than a building, that is attached or affixed to land, and that increases or enhances utilization or enjoyment of the land. 'Structure' includes, but is not limited to, bridges, trestles, dams, storage silos for agricultural products, fences, and walls." (Emphasis added.) R.C. 5701.02(E). An improvement is "a *permanent addition enlargement, or alteration* that, had it been constructed at the same time as the building or structure, would have been considered a part of the building or structure." (Emphasis added.) R.C. 5701.02(D). A fixture, on the other hand, is "an item of tangible personal property that has become *permanently attached or affixed* to the land or to a building, structure, or improvement, and that primarily benefits the realty and not the business, if any, conducted by the occupant on the premises." (Emphasis added.) R.C. 5701.02(C). Plainly, the definitions for "building," "structure,"

and “improvement” share an element of permanence in their fabrication or construction, while a fixture is incorporated when it is permanently attached or affixed to the real property and retains its separate identity as tangible personal property.

The greenhouses situated on the subject property are not buildings, structures, or improvements. The record shows that the greenhouses are designed in such a way that they are able to be constructed, deconstructed, and reconstructed, all while maintaining the integrity of the underlying parts. Van Wingerden explained that they are constructed like an erector set, where pieces are connected but not welded. As such, elements of a greenhouse, or the greenhouse as a whole, can be removed and replaced if business needs change, and the portions that were removed remain intact and can be sold or reused elsewhere. This is particularly evident given the second-hand market for greenhouses, which does not exist for buildings. We recognize that many of the greenhouses have been attached to the ground and have remained in place for significant length of time with no immediate plans for relocation. This does not speak to the permanence of their construction, but rather to the permanence of their attachment to the real property, which is a defining characteristic of a fixture.

It is likewise undisputed that these greenhouses are larger and more complex than, for instance, a simple backyard greenhouse. These complexities do not speak to the permanence of their construction, particularly because these elements, such as a retracting roof, varied styles of irrigation, or a complex computer system, are specifically designed to benefit the business of growing plants as opposed to enhancing the utilization or enjoyment of the land, as is required by R.C. 5701.02(E). Additionally, the contention that the greenhouses are permanent because the concrete beneath them is permanent, is flawed. Although the concrete is incorporated into the real property due to its permanent construction, that does not transform the item to which it is attached, such as a grain bin or an amusement park ride and its shelter, which retains its character as tangible personal property, albeit permanently affixed to the land. We note that Geer’s use of a shorter economic life for the greenhouses (20 years) than he did for the warehouse/office/storage buildings (30 years) on the property, supports a finding that they lack the permanent construction found in buildings. As such, we find that once they were bolted to the concrete and permanently attached to the land, the greenhouses in question became fixtures.

Having determined that the greenhouses meet the definition of “fixture,” we must next consider whether they are “business fixtures,” which excludes them from the value of the real property. A “business fixture” is “an item of tangible personal property that has become permanently attached or affixed to the land or to a building, structure, or improvement, and that primarily benefits the business conducted by the occupant on the premises and not the realty. *** ‘Business fixture’ also means those portions of buildings, structures, and improvements that are specially designed, constructed, and used for the business conducted in the building, structure, or improvement, including, but not limited to, foundations and supports for machinery and equipment.” R.C. 5701.03(B). Because we have already found that the greenhouses are fixtures, we must only consider whether it is a fixture “that primarily benefits the business conducted by the occupant on the premises and not the reality,” and find in the affirmative.

There is no dispute that the subject greenhouses are used for Green Circle Growers’ commercial horticulture business. The greenhouses are outfitted with computer systems, shade cloths, irrigation systems, retractable roofs, and a number of other components that are specific to the sophisticated operation taking place at the property. Neither of the appellee parties has pointed to an alternative use for any of these items that would benefit the land or any other occupant of the property that was not engaged in a commercial horticulture business. Thus, at the very least, these items should be excluded from the value of the real property, though they were included in Geer’s conclusion of value.

The remaining physical components that join to form the walls and roof of the greenhouse are also business fixtures and should be excluded from the value of the real property. The county appellees have suggested that a greenhouse may have an alternative use beyond horticulture, such as shelter for a box of tools or a boat. There has been no evidence to show that these hypothetical alternative uses occur in practice. Green

Circle Growers, on the other hand, presented testimony from multiple individuals to demonstrate that the greenhouses in question were designed especially for growing plants, and that in their experience, even a second-hand greenhouse would be used only for horticulture. Accordingly, we find that the greenhouses primarily benefit Green Circle Growers' horticulture business and would provide little value, if any, to another occupant of the land who was not engaged in the same or very similar business. We conclude, therefore, that the greenhouses are business fixtures and should be excluded from the value of the real property.

Having found that the greenhouses are business fixtures and, therefore, should not be taxed as real property, we now look to the appraisals submitted by the parties to determine the appropriate value for the subject property. Because Geer included the greenhouses as real property in his analysis, we disregard his appraisal in its entirety. Even if we were to remove the value assigned to the greenhouses in his cost approach, we find it would produce an unreliable result as it underestimates the functional obsolescence created by the unique configuration of the real property. Additionally, due to this unique configuration and considerable amount of concrete, we find that a cost analysis is most reliable for the agricultural portion of the property, recognizing that Koon's sales-comparison approach played a role in determining the appropriate effect of functional and external obsolescence.

Koon began his cost approach to determine a value for the agricultural components by concluding a value of $5,000 per acre for the 185.34 acres of land (excluding one acre that he attributed to the homesite), or $930,000 (rounded). Koon next determined the total replacement cost for the thirteen buildings situated on the premises ($18,604,992) and added that to the replacement cost for the site improvements, which include ponds ($1,319,200), fountains ($335,800), concrete parking ($2,589,000), a canopied arch building ($330,696), and 2,090,880 square feet of concrete beneath the greenhouses ($9,053,510). Koon then added 5% for soft costs, such as professional fees, extraordinary financing costs, and marketing costs. The resulting total replacement cost new was $33,844,859. Koon then added 5% of the land and building costs as estimated entrepreneurial profit. To account for accrued depreciation, Koon utilized an economic life of 40 years for the structures, estimating that their effective age was 13 on the tax lien date. Koon utilized shorter economic lives (ranging between 10-20 years) for the site improvements, stating that they depreciate at faster rates. The weighted average depreciation for the buildings and site improvements was 46.53%, based on estimated depreciation of each component and the percentage it contributed to the overall cost of the project. Koon then considered the impact of functional and external obsolescence, recognizing that they are difficult to quantify, but necessary considering the irregular layout of the buildings and extensive amount of concrete with sloped floors and four-foot depth because of the placement of the greenhouses. Koon indicated that in addition to these functional issues, the subject's location in a rural setting was not ideal for the scale of the improvements and required a discount for external obsolescence. Koon looked to his sales comparison approach for guidance on this issue, and determined that a discount of 25%-35% would be appropriate and utilized 30% to account for these functional and external factors. He added the total depreciated building value ($8,351,610) to the land, to conclude to an indicated value of $9,300,000 (rounded) for the agricultural components of the subject property.

Koon also performed the sales comparison approach for both the agricultural component of the property and the residential. For the agricultural portion of the property, Koon focused his search for comparables comprised of multiple buildings or with multiple additions to account for the unique functional aspects of the subject property. Koon considered the sales of six comparable properties, adjusting the sales for changes in market conditions, size, age/condition, location, other physical differences and functionality. Koon concluded to an indicated value of $20 per square foot, for a total value of $9,000,000 (rounded) as of January 1, 2015. With respect to the residential portion of the subject property, Koon considered the sales of four single-family residences with ancillary buildings in the subject's market area. After adjustments for market conditions and physical differences among the properties, Koon concluded to an indicated value of $130 per square foot, for a total value of $900,000 (rounded) for the residential portion of the subject property. In the final analysis, Koon gave greatest weight to the sales comparison approach and concluded to a total value of $9,900,000 as of January 1, 2015.

As stated above, we find that Koon's cost analysis most reliably indicated a value for the agricultural components, while the sales comparison approach forms a reliable basis to determine a value for the residential portion of the property. Accordingly, we combine the $9,300,000 value for the agricultural components with the $900,000 value of the residence and one-acre homesite, to conclude to a total value of $10,200,000 as of January 1, 2015. Because the values certified to this board include the greenhouses, we hereby remand this matter to the auditor to ensure that the $10,200,000 value is properly allocated among the parcels and between land and building.

OHIO BOARD OF TAX APPEALS

SLIMMARIE PERRYWATSON, (et. al.),	CASE NO(S). 2018-578
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - SLIMMARIE PERRYWATSON
OWNER
2379 SAYBROOK RD UNIVERSITY
HTS, OH 44118

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, July 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees' move to dismiss the appeal has having been untimely filed. We decide the matter upon the notice of appeal, the statutory transcript certified by the fiscal officer, the motion, and the responses thereto.

Appellant appeals to this board from a decision of the Cuyahoga County Board of Revision ("BOR") which was mailed on May 4, 2018. Appellant filed notice of an appeal with both this board and the BOR on June 26, 2018, fifty-three days later. Because the statute providing for the appeal requires that an appeal be filed within thirty days of the mailing of the BOR's decision, the county appellees argue that this board is without jurisdiction.

The statutory requirements for filing a notice of appeal from a decision of a county board of revision to this board are mandatory and jurisdictional. *Bd. of Edn. of Mentor v. Bd. of Revision*, 61 Ohio St.2d 332 (1980).
R.C. 5717.01 provides that an appeal may be taken to this board "within thirty days after notice of the decision of the county board of revision is mailed as provided in division (A) of section 5715.20 of the Revised Code." Appellant does not dispute that the BOR properly mailed its decision by certified mail on May 4, 2018; however, appellant explains that she did not receive the decision until June 6, 2018. As indicated in a letter attached to appellant's response to the motion to dismiss, the postal service did not leave notice of the certified mailing at appellant's address until June 2, 2018. She explains that she was out

of town at the time, and did not retrieve the letter from the post office until June 6, 2018. Because she actually received notice for the first time on June 2, 2018, appellant argues that the appeal period should not begin to run until June 2, 2018.

There is no dispute, and the record confirms, that the BOR fulfilled its responsibility under R.C. 5715.20 to send notice of its decision to appellant by certified mail. It is this date of proper mailing, rather than receipt, which begins the thirty-day appeal period. Indeed, this board has held so on numerous occasions, even where the certified mailing went unclaimed. See, e.g., *Tattershall v. Hamilton Cty. Bd. of Revision* (Oct. 15, 2015), BTA No. 2015-800, unreported; *Rafizadeh v. Franklin Cty. Bd. of Revision* (June 18, 2011), BTA No. 2010-A-1257, unreported; *Schroer v. Lucas Cty. Bd. of Revision* (Aug. 2, 1996), BTA No. 1995-B-759, unreported. Any alleged failure by the postal service to properly deliver the notice of appeal have no bearing on the statutory appeal period.

"Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *American Restaurant & Lunch Co. v. Bowers* (1946), 147 Ohio St. 147, ***. R.C. 5717.01 is specific and mandatory. *** Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision* (1989), 46 Ohio St.3d 192, ***." *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). In this matter, appellant failed to file notice of the appeal with this board, and with the BOR, within thirty days of the mailing of the BOR's decision. As such, appellant has failed to properly invoke the jurisdiction of this board.

The county appellees' motion is well taken. This matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

BEACH MIDDLE PROPERTIES LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-419

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BEACH MIDDLE PROPERTIES LLC
Represented by:
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BEACHWOOD, OH 44122

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CLEVELAND, OH 44113

Entered Monday, July 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the

existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ANTHONY M. ROSSELLO, (et. al.), Appellant(s), vs. PORTAGE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-1892 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ANTHONY M. ROSSELLO
Represented by:
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STREETBORO, OH 44241

For the Appellee(s) - PORTAGE COUNTY BOARD OF REVISION
Represented by:
ALLISON BLAKEMORE MANAYAN
ASSISTANT PROSECUTING ATTORNEY
PORTAGE COUNTY
241 SOUTH CHESTNUT STREET
RAVENNA, OH 44266

JOSEPH W. TESTA, TAX COMMISSIONER OF OHIO
Represented by:
CHRISTINE T. MESIROW
ASSISTANT ATTORNEY GENERAL
OFFICE OF OHIO ATTORNEY GENERAL
30 EAST BROAD STREET, 25TH FLOOR
COLUMBUS, OH 43215

Entered Monday, July 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter comes before this board upon a notice of appeal from the Portage County Auditor's denial of appellant's application for remission of a real property tax late-payment penalty for the second half of 2016.

In their written argument, the county appellees argue that this board lacks jurisdiction over this matter, as the Tax Commissioner, rather than this board, should make a determination on appellant's appeal. Prior to September 29, 2017, the statute governing the remission of real property tax late payment penalties stated, relevant to appeals:

"(D) The taxpayer, upon application within sixty days after the mailing of the county auditor's

or board of revision's decision, may request the *tax commissioner* to review the denial of the remission of a penalty by the auditor board." (Emphasis added.)

The statute was later amended to remove the above-quoted language. After September 29, 2017, an application for remission, once denied by the auditor, must then be presented to the county board of revision for review and decision. R.C. 5715.39(C). The county board of revision's decision may then be appealed to this board (rather than to the Tax Commissioner) under R.C. 5717.01. See also R.C. 5715.20(A).

Against this backdrop, we confront the facts of this appeal. The auditor denied appellant's application for remission on August 16, 2017. At that time, the proper avenue for appeal was to the Tax Commissioner. There is no indication that the Tax Commissioner has yet rendered any final determination on appellant's appeal. Accordingly, an appeal to this board is premature.

The county appellees' motion is therefore well taken. We hereby remand this matter to the Tax Commissioner to issue a final determination on appellant's appeal.

OHIO BOARD OF TAX APPEALS

WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-276
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - BOARD OF EDUCATION OF THE WORTHINGTON CITY SCHOOL DISTRICT
Represented by:
KIMBERLY G. ALLISON
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
WILLIAM J. STEHLE
ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

TRINITY PLACE LLC
Represented by:
FRANKLIN A. KLAINE, JR.
STRAUSS & TROY CO., LPA
150 EAST FOURTH STREET, 4TH FLOOR
CINCINNATI, OH 45202

Entered Monday, July 23, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 610-215486-00, for tax years 2011 and 2012. We proceed to consider this matter based upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property was initially assessed at $985,000 for tax year 2011. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $250,000 purportedly to reflect the price at which it transferred in May 2011. The BOE filed a countercomplaint, which objected to the request.

At the BOR hearing on the matter, both parties appeared through counsel to submit argument and/or evidence in support of their respective positions. In the property owner's presentation, Keith Schneider, an attorney and court-appointed receiver, and Alan and Harry Lancz, members of the property owner, appeared to testify about the facts and circumstances of the property owner's alleged $250,000 purchase of the subject property from the receiver in May/June 2011. The testimony indicated that the property owner purchased the subject property, along with two other properties, from the receiver for $800,000 and that they allocated $250,000 of the overall purchase price to the subject property based upon its age and square footage. The BOE cross-examined the witnesses to gain additional insight into the facts and circumstances of the subject sale. The BOR voted to accept the subject sale as the best indication of the subject property's value for tax years 2011 and 2012 and subsequently issued a written decision to that effect on March 7, 2013. Unfortunately, the BOR failed at that time to satisfy its statutory duty to mail a copy of its decision to the BOE by certified mail as required by R.C. 5715.20, and the record demonstrates that the BOR did not provide any notice of the deicsion to the BOE until February 9, 2017. The BOE then appealed to this board. See *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Interim Order June 23, 2017), BTA No. 2017-276, unreported (order from this board denying the property owner's motion to dismiss the BOE's appeal as untimely). Although the owner moved to dismiss the BOE's appeal as untimely, the motion was denied by order dated June 23, 2017.

On appeal, the parties opted not to supplement the record with additional evidence at a hearing before this board. Instead, they submitted written argument to more fully assert their relative positions. In its submission, the BOE argued that the property owner failed to rebut the presumption that the receivership sale was a forced sale. R.C. 5713.03; *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723 (forced sale is presumed not to be the evidence of a property's value, subject to rebuttal). The BOE also argued that the property owner failed to demonstrate the propriety of the $250,000 allocated to the subject property out of the overall $800,000 sale price for multiple parcels. As such, the BOE argued that the BOR's decision was in error and that this board should reinstate the subject property's initially assessed value. In its submission, the property owner conversely argued that it had successfully rebutted the presumption that the receivership sale was a forced sale, via the testimony provided at the BOR, by demonstrating that the parties to the subject sale acted as typically motivated parties and that it had provided corroborating evidence to demonstrate the $250,000 allocated to the subject property. As such, the property owner argued that the record supported the propriety of the BOR decision and that this board should affirm such decision.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). However, several factors may render a sale an unreliable indicator of value, e.g., remote from tax lien date, the exchange occurred between related parties, the transfer is considered involuntary, i.e., duress. In instances where a property has not been the subject of a recent, arm's-length sale, this board must scour the record to determine whether there is sufficient evidence to independently determine the subject property's value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, at ¶¶24-25, *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, at ¶19.

It is undisputed that the receivership sale that transferred the subject property to the property owner for $250,000 in May/June 2011 was a forced sale within the meaning of R.C. 5713.03. We find, therefore, that the BOE satisfied its burden to show that the subject sale was a forced sale between atypically motivated parties. We now turn to the property owner's heavier burden to demonstrate that the receivership sale was an arm's-length transaction between typically motivated parties. See *Olentangy Local Schools*, supra at ¶40 ("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."). Upon review, we find that the property owner satisfied its burden. The testimony provided at the BOR hearing indicated that the subject property was marketed, that other parties submitted offers to purchase the subject property, and that the parties to the subject sale negotiated the sale price. As such, we find that the property owner satisfied its burden before the BOR and that the BOR properly determined that the subject sale reflected the subject property's value for tax years 2011 and 2012.

We also reject the BOE's argument that the property owner failed to provide evidence to support that the parties to the subject sale allocated $250,000 to the subject property. The purchase agreement includes an exhibit that demonstrates that the parties agreed to allocate $250,000, of the overall $800,000 sale price for multiple parcels, to the subject property.

We note that the BOE raised the issue of continuing complaint jurisdiction over tax years 2013 through 2016, by way of its notice of appeal and its response to the property owner's motion to dismiss, because the property owner's complaint has not been finally determined. Because we lack the relevant information about the subject property's valuation history, and related valuation complaint history, subsequent to the years referenced in the underlying BOR decision, i.e., tax years 2011 and 2012, we cannot ascertain whether this board has continuing complaint jurisdiction. See *Apple Group Ltd. v. Medina County Bd. of Revision*, 139 Ohio St.3d 434, 2014-Ohio-2381, at ¶30 ("[U]nder the continuing-complaint provision, the BTA must be vigilant, when requested to determine value for later years, that it does not exceed its jurisdiction by addressing a tax year for which a fresh complaint has been filed below. *See Fogg-Akron* [*Assocs., L.P. v. Summit Cty. Bd. of Revision*], 124 Ohio St.3d 112, 2009-Ohio-6412, ***, ¶ 10 ('we have held that the filing of a "fresh complaint" * * * terminates the continuation of an earlier complaint, as long as the new complaint is procedurally valid')."); *1495 Jaeger L.L.C. v. Cuyahoga County Bd. of Revision*, 132 Ohio St.3d 222, 2012-Ohio-2680, at ¶¶19-22. We note, however, that the BOE may invoke continuing complaint jurisdiction for any subsequent tax years with the BOR. *MDM Holdings, Inc. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-541; *Life Path Partners, Ltd. v. Cuyahoga Cty. Bd. Revision*, 152 Ohio St.3d 238, 2018-Ohio-230.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we conclude that the property owner satisfied its burden to provide competent and probative evidence to demonstrate that the subject property should be valued consistent with the $250,000 price paid via a receivership sale. We are constrained, therefore, to conclude that the BOE failed to satisfy the evidentiary burden on appeal to demonstrate error in the BOR's decision.

It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2011 and January 1, 2012, are as follows:

TRUE VALUE

$250,000

TAXABLE VALUE

$87,500

It is the order of the Board of Tax Appeals that the subject property be assessed in conformity with this decision and order.

OHIO BOARD OF TAX APPEALS

SAM OWSLEY, (et. al.), Appellant(s), vs. ALLEN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-1467 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SAM OWSLEY
1110 GRANT ST.
LIMA, OH 45801

For the Appellee(s) - ALLEN COUNTY BOARD OF REVISION
Represented by: JUERGEN
A. WALDICK
PROSECUTING ATTORNEY
ALLEN COUNTY
204 N. MAIN STREET., SUITE 302
LIMA, OH 45801

Entered Tuesday, July 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter comes before this board upon a notice of appeal by property owner Sam Owsley from a decision of the Allen County Board of Revision ("BOR") determining the value of parcel number 37-3008-04-014.000, for tax year 2016. We proceed to consider the matter upon the notice of appeal and the statutory transcript certified by the auditor pursuant to R.C. 5717.01.

The subject property was initially assessed by the auditor at $28,100. Appellant filed a complaint seeking a decrease in value to $14,000, indicating that repairs needed to be made to the roof and garage. At the BOR hearing, Mr. Owsley testified that he owns nearby properties and was approached by the prior owner to purchase the subject property. Although the conveyance fee statement in the record indicates a purchase price of $28,100, Mr. Owlsey testified that only a nominal amount of money actually transferred. He receives no rental income from the property. He and his (unidentified) property manager testified that the property requires work on the interior and exterior, including a new roof. Following the hearing, the BOR sent an appraiser to view the property; based on her review of the subject property's condition and comparable sales, the appraiser recommended no change in value. The BOR ultimately adopted the appraiser's recommendation, noting that the auditor's initial value is in line with three comparable sales in the neighborhood for sale prices ranging from $15,900 to $32,500.

Appellant thereafter appealed to this board, again arguing that the needed repairs to the roof and foundation support a reduction in value.

In challenging the valuation of real property, "[t]he burden is on the taxpayer to prove his right to a

deduction." *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision*, 170 Ohio St. 340, 342 (1960). "[T]he appellant must come forward and demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. The Supreme Court explained in *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, that "the board of revision (or [auditor]) bears no burden to offer proof of the accuracy of the appraisal on which the county initially relies, with the result that the BTA is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof at the BTA." Id. at ¶ 23.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. The record, including a conveyance fee statement and the property record card, indicates that the subject property transferred for $28,100 in October 2015. This sale formed the basis for the auditor's initial valuation.

The only evidence submitted by appellant in support of his requested decrease is related to defects in the property, i.e., roof, garage, and foundation in need of repair. As the Supreme Court stated in *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, "[a]s a general matter, '[e]vidence of needed repairs, or the cost of needed repairs, while a factor in arriving at true value, will not alone prove true value.' *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 288, *** (1996)." (Parallel citation omitted.) Id. at ¶27. As this board has repeatedly stated, a party must do more than simply demonstrate the existence of negative factors; it must also demonstrate the impact such factors have on the property's value. In the absence of an appraisal quantifying the effect of any negative factors on the value of the property, we find appellant's evidence insufficient to support a reduction in value.

Based upon the foregoing, we find appellant has failed to meet his burden of proof. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as previously determined by the auditor and BOR, as follows:

TRUE VALUE

$28,100

TAXABLE VALUE

$9,840

OHIO BOARD OF TAX APPEALS

PRINCETON HOLDINGS LLC, (et. al.),

Appellant(s),

vs.

FAIRFIELD COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1279

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PRINCETON HOLDINGS LLC
Represented by:
CHRIS KNOPPE
640 BEAR RUN LANE LEWIS
CENTER, OH 43035

For the Appellee(s) - FAIRFIELD COUNTY BOARD OF REVISION
Represented by:
KYLE WITT
PROSECUTING ATTORNEY
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PICKERINGTON LOCAL SCHOOLS BOARD OF EDUCATION
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OH 43215-4214

Entered Tuesday, July 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] This matter comes before this board upon a notice of appeal filed by property owner Princeton Holdings, LLC, from a decision of the Fairfield County Board of Revision ("BOR") determining the value of parcel number 041-06999-00 for tax year 2016. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the auditor pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject parcel was initially valued by the auditor at $176,800 for tax year 2016. Owner Princeton Holdings, LLC filed a complaint seeking a decrease in value to $116,100 to reflect the amount for which it purchased the property in March 2016. The Pickerington Local School District Board of Education ("BOE") filed a countercomplaint seeking to maintain the auditor's initial valuation. At the BOR hearing, Christopher Knoppe, member of Princeton Holdings LLC, testified that an affiliated company, Autumnwood Homes, Inc., purchased the property from a bank in an arm's-length transaction for $116,100

in March 2016. A copy of the settlement statement evidencing such transaction was attached to the complaint. Mr. Knoppe testified that the property was advertised on the open market for at least a month. S.T., Ex. E at 116-117. He indicated the property was sold through an online auction involving multiple other bidders.

[3] Although the BOE presented no independent evidence of value, its counsel argued that the seller-bank "in all likelihood was not acting as an ordinarily motivated market participant," particularly in light of the difference in the amount for which it sold the property ($116,100) and the amount for which it purchased the property at foreclosure ($130,050). Id. at 129. After considering the evidence and argument submitted, the BOR found that no change in value was warranted. In discussing its decision, the county auditor indicated that he did not find the sale to be arm's-length, given his belief that the bank was not acting as a typically motivated market participant, and in light of the amount for which Princeton Holdings was ultimately able to rent the property, i.e., $1,500 per month. Id. at 39-40.

[4] Princeton Holdings thereafter appealed to this board, and, at this board's hearing, reiterated its argument that the March 2016 sale is the best evidence of value. Mr. Knoppe again testified that the property was advertised on the open market and was sold in an online auction involving multiple bidders. H.R. at 7. The BOE waived its appearance at the hearing; the county appellees neither expressly waived their appearance nor appeared at the hearing.

[5] In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. We also acknowledge that a sale by auction is presumed *not* to be the best evidence of value in the absence of evidence that it "occurred at arm's length between typically motivated parties." *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723,¶40, citing *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* ("*Fenco*"), 127 Ohio St.3d 63, 2010-Ohio-4907. See also R.C. 5713.04.

[6] Here, Princeton Holdings has met its burden to prove that the sale is the best evidence of value. Although the property sold by auction, Mr. Knoppe testified that the property was listed on the open market and that there were other bidders on the property. To the extent the BOR rejected the sale because it was from a bank, we find no reason to disregard the sale on that ground. To be sure, the prior sheriff's sale to the bank would not "qualify as an arm's-length transaction because the sale occurred under the compulsion that the property be liquidated for the benefit of creditors," *Fenco*, supra, at ¶3, but the subsequent sale by the lending institution that acquired it is the type of sale that has been repeatedly found to be a reliable indication of value. See, e.g., *Cattel v. Lake Cty. Bd. of Revision*, 11th Dist. Lake No. 2009-L-161, 2010-Ohio-4426; *Kahoe v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 99188, 2013-Ohio-2097. We find no indication in the record before us that the March 2016 sale did not occur at arm's-length between typically motivated parties.

[7] It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$116,100

TAXABLE VALUE

$40,640

OHIO BOARD OF TAX APPEALS

AUTUMNWOOD HOMES INC., (et. al.), Appellant(s), vs. FAIRFIELD COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-1278 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AUTUMNWOOD HOMES INC.
Represented by:
CHRIS KNOPPE
640 BEAR RUN LANE LEWIS
CENTER, OH 43035

For the Appellee(s) - FAIRFIELD COUNTY BOARD OF REVISION
Represented by:
KYLE WITT
PROSECUTING ATTORNEY
FAIRFIELD COUNTY
239 WEST MAIN STREET, SUITE 101
LANCASTER, OH 43130

THOMAS GESSELLS
12637 BRENTWOOD DR. NW
PICKERINGTON , OH 43147

Entered Tuesday, July 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Former property owner Autumnwood Homes, Inc. appeals from a decision of the Fairfield County Board of Revision ("BOR") determining the value of the subject real property, i.e., parcel number 036-05164-00, for tax year 2016. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the auditor pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The auditor initially valued the subject property at $201,870 for tax year 2016. Autumnwood Homes filed a complaint seeking a decrease in value to $155,700, to reflect the amount for which it purchased the property in January 2016; it attached a settlement statement evidencing such purchase. At the BOR hearing, Christopher Knoppe appeared on behalf of Autumnwood and confirmed that the property was purchased from Wells Fargo in January 2016 for $155,700 in an advertised online auction involving other bidders. After the purchase, Autumnwood rehabbed the property and ultimately sold it to Thomas Gessells in August 2016 for $252,000. The BOR ultimately found that no change in value was warranted. In discussing the BOR's decision, the county auditor noted that the second sale, i.e., the sale to Mr. Gessells was "the stronger of the two sales." S.T., Ex. E at 137. He further stated that the seller in the first sale, i.e., Wells Fargo, was not a typically motivated market participant.

Autumnwood thereafter appealed to this board. Mr. Knoppe again appeared on Autumnwood's behalf at this board's hearing, and advocated for reliance on the January 2016 sale for $155,700.

[3] In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. We also acknowledge that a sale by auction is presumed *not* to be the best evidence of value in the absence of evidence that it "occurred at arm's length between typically motivated parties." *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723,¶40, citing *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* ("*Fenco*"), 127 Ohio St.3d 63, 2010-Ohio-4907. See also R.C. 5713.04.

[4] Here, Autumnwood has met its burden to prove that the sale is the best evidence of value. Although the property appears to have sold by auction, Mr. Knoppe testified that the property was listed on the open market and that there were other bidders on the property. S.T., Ex. E at 136-137. To the extent the BOR rejected the sale because it was from a bank, we find no reason to disregard the sale on that ground. To be sure, the prior sheriff's sale to the bank would not "qualify as an arm's-length transaction because the sale occurred under the compulsion that the property be liquidated for the benefit of creditors," *Fenco*, supra, at ¶3, but the subsequent sale by the lending institution that acquired it is the type of sale that has been repeatedly found to be a reliable indication of value. See, e.g., *Cattel v. Lake Cty. Bd. of Revision*, 11th Dist. Lake No. 2009-L-161, 2010-Ohio-4426; *Kahoe v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 99188, 2013-Ohio-2097. We find no indication in the record before us that the January 2016 sale did not occur at arm's-length between typically motivated parties.

[5] Although we further acknowledge that the property was the subject of a subsequent sale in August 2016, the record indicates that substantial improvements were made to the property between tax lien date, i.e., January 1, 2016, and the date of that sale, rendering it remote from tax lien date. See also *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, at paragraph one of the syllabus ("When a property has been the subject of two arm's-length sales between a willing seller and a willing buyer within a reasonable length of time either before or after the tax lien date, the sale occurring closer in time to the tax lien date establishes the true value of the property for taxation purposes.").

[6] It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$155,700

TAXABLE VALUE

$54,500

OHIO BOARD OF TAX APPEALS

HICKORY WOODS DEVELOPMENT CO, LLC, (et. al.),	CASE NO(S). 2016-2340
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
WARREN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - HICKORY WOODS DEVELOPMENT CO, LLC
Represented by:
JAMES PAPAKIRK
ATTORNEY
FLAGEL & PAPAKIRK LLC
50 E. BUSINESS WAY, SUITE 410
CINCINNATI, OH 45241

For the Appellee(s) - WARREN COUNTY BOARD OF REVISION
Represented by: CHRISTOPHER
A. WATKINS
ASSISTANT PROSECUTING ATTORNEY
WARREN COUNTY
500 JUSTICE DRIVE
LEBANON, OH 45036

Entered Tuesday, July 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant property owner, Hickory Woods Development Co, LLC ("Hickory Woods") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 17 28 470 001, 17 28 410 001, 17 28 425 001, 17 28 425 003, 17 28 425 004, 17 28 425 005, 17 28 425 006, 17 28 415 002, 17 28 415 004, 17 28 415 006, 17 28 415 008, 17 28 415 009, 17 28 415 010, 17 28 415 011, 17 28 415 012, and 17 28 400 008, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the written argument of the parties.

The subject property is comprised of sixteen separate parcels of vacant land as part of what has been described as a "failed housing development." Fifteen of the parcels have been split into residential lots, while the remaining parcel is roughly 19.1416 acres and can potentially be divided into 39 additional lots. The subject's total true value was initially assessed at $506,650. Hickory Woods filed a decrease complaint with the BOR seeking a reduction in value to $215,000. At the BOR hearing, Hickory Woods presented evidence of a July 2015 sale of the property for $215,000, and argued that it provides the best evidence of the subject's true value. Pursuant to the sale documents, the parties had allocated the total sale price among the residential lots ($126,850) and the larger undivided parcel of land ($88,150). Hickory Woods admitted

that the seller was the real estate arm of a lender who had obtained ownership following a foreclosure action, but asserted that the property had been listed for over a year prior to the sale. Appraiser Jeff Ward appeared to testify regarding his opinion of the subject's value, though Hickory Woods indicated that it had not been provided any of the information submitted and relied upon by Ward prior to the hearing. Ward indicated that lots with homes were being marketed at $174,000 and that two homes were being constructed when he visited the property. Ward explained that he would utilize an allocation method of roughly 15%-20% of the total sale price to the land. Ward also acknowledged that he had not spoken with anyone from Hickory Woods and had no reason to conclude that the sale at issue was not at arm's length. The BOR members expressed that they found the bulk sale from a bank unreliable and that changes to R.C. 5713.03 had granted them discretion to disregard a sale and rely on additional evidence to determine the subject's value. The BOR issued a decision reducing the value of the individual lots to $17,420 each and retaining the auditor's value for the larger parcel, for a total new value of $376,150. From this decision, Hickory Woods filed the present appeal.

At the hearing before this board, Hickory Woods again relied on the sale, offering testimony from its managing member regarding the circumstances of the sale and the extent of the parties' negotiations. The county appellees did not dispute the recency or arm's-length nature of the sale, but again argued that the auditor and BOR have discretion regarding their utilization of a sale price to establish value. The county appellees offered an appraisal from Ward, who relied on the sales comparison approach to conclude to a value of $17,420 per lot for the smaller parcels and $6,000 per acre for the residual land parcel, for a total value of $376,150 as of January 1, 2015. Hickory Woods objected to Ward's appraisal, arguing that consideration of appraisal evidence is inappropriate where the record contains evidence of a recent arm's-length transaction.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). To benefit from the rebuttable presumption that a sale price has met all the requirements that characterize true value, "the proponent of a sale must satisfy a relatively light initial burden," which may be satisfied through the submission of even unauthenticated sale documents where the existence of the sale was undisputed and the admissibility of the evidence was not challenged before the BOR. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶¶14-15. "[T]he proponent of a sale is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." Id. When a central issue in an appeal is whether the sale price of the subject property established its value, the factors attending that issue must be determined de novo by the this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present matter, it is undisputed that Hickory Woods purchased the subject property from Walnut & Vine Properties II, LLC on or about July 13, 2015 for $215,000. There has been no express challenge to the recency or arm's-length nature of the sale. The county appellees contest the reliability of the sale because the parcels transferred in one bulk transaction rather than individually to separate buyers. The county appellees argue that they have discretion to reject a sale pursuant to R.C. 5713.03. In *Terraza*, supra, the court held that that a recent, arm's-length sale price no longer *conclusively* determines the value of a property, though such a sale still constitutes the best evidence of a property's value. Id. at ¶¶31-34. As such, the burden still lies with the opponent of a sale to establish why the purchase price is not best evidence of value. Consequently, before we can consider Ward's conclusion of value, we must first find that the reliability of the sale has been rebutted. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 470, 2016-Ohio-757, ¶20 (holding that while an appraiser's sworn statements and

report may be relied upon to rebut the presumptive validity of a sale, "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.").

In support of their argument that they properly rejected the bulk sale, the county appellees rely on the court's decisions in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 132 Ohio St.3d 371, 2012-Ohio2844 ("*Alexander Road*") and *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940 ("*East Bank*"). The county appellees assert that pursuant to *Alexander Road*, the validity of an allocated bulk sale price depends on the propriety of the allocation, and that an opponent of the sale could show that by the nature of the transaction, the sale price does not involve an aggregation of market prices of the constituent properties. If this board finds that an allocation is not proper or that a proper allocation is not possible based on the evidence, then the sale price is not determinative of value. The county appellees assert that Hickory Woods was required to show some corroborating indicia to ensure that their allocation reflects the true value of the property. The county appellees cite to *East Bank* where the court rejected a bulk appraisal method where the condominium units were being sold and marketed individually. The county appellees concede that *East Bank* referred to an appraisal of the property rather than a sale of the property itself, but maintain that the premise explains why Hickory Woods' bulk purchase of the subject property is an unreliable indicator of value, particularly where the parcels are now being marketed and sold individually.

We reject the county appellees' argument as the cited cases are distinguishable from the facts of the present appeal in critical ways. First, the bulk sale at issue in *Alexander Road* involved the bulk transfer of real and personal property, unlike the present case that involves only real property. The holding in *Alexander Road* required an owner to provide corroborating indicia when it sought a value for the real property lower than the price of the overall transaction. In this appeal, there is no such reduction requested from the overall purchase price. The present appeal involves the allocation of a purchase price among parcels, but there is no question that the total purchase price of $215,000 is attributed to subject real property. Furthermore, because the sale at issue involves only the subject real property, in order to show that the sale price does not involve an aggregation of the market prices of the constituent properties, the county appellees must show that the parties to this transaction were not typically motivated and acting in their own best interest. In other words, the county appellees must show that the sale was not arm's-length. The county appellees have not made this claim.

Second, as alluded to by the county appellees in their written argument, *East Bank* is not dispositive of the present appeal. Importantly, the property subject to the appeal in *East Bank* was not subject to a recent transfer and was valued by an appraiser that utilized a bulk discount for separately-parceled condominium units. In the court's analysis, it found that the appraisal was unlawful because it was based on the premise that all units would only be sold together to a single investor despite being deemed separate parcels. The *East Bank* court further discussed its holding in *Pingue v. Franklin Cty. Bd. of Revision*, 87 Ohio St.3d 62 (1999), in which it held that it was improper to look at appraisal evidence to determine the value of 44 separately-parceled condominium units that had been the subject of a recent, arm's-length bulk transaction. "*Pingue* does not support the notion that the BTA can accept bulk-appraisal evidence when determining the taxable value of condominium units. *Pingue* merely supports the notion that the law favors the use of a sale price over competing appraisal evidence." *East Bank*, supra, at ¶21. Thus, it is clear that the bar to considering a bulk discount for appraised parcels does not apply in the present appeal.

In the present appeal, we find that the county appellees have failed to show that the sale was not a recent arm's-length transaction or that it is not a reliable indication of value simply because it involved the transfer of multiple parcels. Furthermore, we find that the allocation made by the parties reasonably accounts for the increase in value for those properties that had been platted and were immediately ready for development. The individual lots sold for roughly $21,092 an acre, compared with the $4,605 per acre for the larger undivided land parcel.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

PARCEL NUMBER 17 28 470 001

TRUE VALUE $8,460

TAXABLE VALUE $2,960

PARCEL NUMBER 17 28 410 001

TRUE VALUE $8,460

TAXABLE VALUE $2,960

PARCEL NUMBER 17 28 425 001

TRUE VALUE $8,460

TAXABLE VALUE $2,960

PARCEL NUMBER 17 28 425 003

TRUE VALUE $8,460

TAXABLE VALUE $2,960

PARCEL NUMBER 17 28 425 004

TRUE VALUE $8,460

TAXABLE VALUE $2,960

PARCEL NUMBER 17 28 425 005

TRUE VALUE $8,460

TAXABLE VALUE $2,960

PARCEL NUMBER 17 28 425 006

TRUE VALUE $8,460

TAXABLE VALUE $2,960

PARCEL NUMBER 17 28 415 002

TRUE VALUE $8,460

TAXABLE VALUE $2,960

PARCEL NUMBER 17 28 415 004

TRUE VALUE $8,460

TAXABLE VALUE $2,960

PARCEL NUMBER 17 28 415 006

TRUE VALUE $8,460

TAXABLE VALUE $2,960

PARCEL NUMBER 17 28 415 008

TRUE VALUE $8,460

TAXABLE VALUE $2,960

PARCEL NUMBER 17 28 415 009

TRUE VALUE $8,460

TAXABLE VALUE $2,960

PARCEL NUMBER 17 28 415 010

TRUE VALUE $8,460

TAXABLE VALUE $2,960

PARCEL NUMBER 17 28 415 011

TRUE VALUE $8,460

TAXABLE VALUE $2,960

PARCEL NUMBER 17 28 415 012

TRUE VALUE $8,460

TAXABLE VALUE $2,960

PARCEL NUMBER 17 28 400 008

TRUE VALUE $88,150 TAXABLE

VALUE $30,850

OHIO BOARD OF TAX APPEALS

MONICA OLSZENS (HOLLEY), (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-557

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MONICA OLSZENS (HOLLEY)
Represented by:
MONICA (HOLLEY) OLSZENS
OWNER
3207 EUCLID HEIGHTS BWA
CLEVELAND , OH 44118

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, July 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter for failing to timely file with this board and the board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See also R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that appellant filed her notice of appeal with this board thirty-four days

after the mailing of the BOR's decision, and, further, that she failed to file notice of the appeal with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

KOWAL, MICHAEL AND HIGEY, AMANDA, (et. al.),	CASE NO(S). 2018-485
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - KOWAL, MICHAEL AND HIGEY, AMANDA
Represented by:
MICHAEL KOWAL
OWNER
5520 HAUSERMAN
PARMA, OH 44130

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, July 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

SHARON LUCKAS, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-453

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SHARON LUCKAS
OWNER
12814 SHADY OAK BLVD. GARFIELD
HEIGHTS, OH 44125

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, July 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See also R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LESF HOLDINGS, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-324, 2018-325, 2018-326, 2018-328 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LESF HOLDINGS, LLC
Represented by:
JOHN CHOU
MANAGING MEMBER
LESF HOLDINGS, LLC
9358 TELSTAR AVE. EL
MONTE, CA 91731

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, July 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these matters as having been untimely filed with this board. Appellant did not respond to the motions. See Ohio Adm. Code 5717-1-13(B). These matters are now decided upon the motions, the statutory transcripts certified by the county board of revision ("BOR"), and appellant's notices of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The notices of appeal in each of these matters was filed with this board on April 17, 2018, thirty-three days after the mailing of the BOR's decisions, by priority mail. Notices of appeal sent by priority mail are not entitled to a "constructive filing" date under R.C. 5717.01. See *Timberman v. Clark Cty. Bd. of Revision* (June 8, 2010), BTA No. 2008-M-1107, unreported; *Waterman v. Mercer Cty. Bd. of Revision* (Nov. 9, 2006), BTA No. 2006-T-1234, unreported. As such, the date of receipt by this board is considered the date of filing. The record demonstrates that the notices of appeal were filed with this board more than thirty days after the mailing of the BOR's decisions. Accordingly, for the reasons stated in the motions, we conclude that this board does not have jurisdiction to consider these matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

PRAVEEN AURORA, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-320

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PRAVEEN AURORA
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BROOKPARK, OH 44142

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, July 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not filed with the county board of revision. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's response to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Appellant's response did not provide documentation to demonstrate that the appeal was timely filed. For the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ELIZABETH AND VINCE FORTUNATO, (et. al.),	CASE NO(S). 2018-219
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
HOCKING COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - ELIZABETH AND VINCE FORTUNATO
Represented by:
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For the Appellee(s) - HOCKING COUNTY BOARD OF REVISION
Represented by:
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HOCKING COUNTY
88 S. MARKET ST. LOGAN,
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Entered Tuesday, July 24, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter is considered upon the county appellees' motion to remand to the Hocking County Board of Revision for further consideration.

Appellants have appealed from the Hocking County Auditor's denial of their application for remission of real property tax late payment penalties for the first and second halves of tax year 2016. However, as the county appellees note in their motion, the Hocking County Board of Revision has yet to render a decision on the matter, and, therefore, an appeal to this board is premature.

R.C. 5715.39 outlines to process for remission of real property tax late payment penalties. The statute provides that, if the county auditor denies the application, "the auditor shall present the application to the board of revision," which "shall review the auditor's determination and remit a penalty for late payment of any real property taxes or manufactured home taxes if the board determines that any of divisions (B)(1) to (5) of this section applies or if it determines that the taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." R.C. 5715.39(C). Only after the board of revision makes it determination may the applicant then appeal to this board. R.C. 5715.20; R.C. 5717.01.

The record before us indicates that the Hocking County Board of Revision has not yet rendered a decision on appellants' application. The county appellees' motion is therefore well taken, and this matter is hereby

remanded to the Hocking County Board of Revision for its consideration.

OHIO BOARD OF TAX APPEALS

7306 COMPANY LLC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-1632, 2017-1633

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 7306 COMPANY LLC
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
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BRINDZA MCINTYRE & SEED, LLP
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Entered Wednesday, July 25, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

These matters come before this board upon two notices of appeal filed by appellant 7306 Company, LLC, from decisions of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel numbers 002-050-111 and 002-05-029 for tax year 2016. Although appellant requested a hearing before this board, all parties waived their appearances at such hearing. We therefore review the record established before the BOR, and appellant's written argument on appeal, in independently determining the value of the subject property. *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985).

The subject parcels are improved with a commercial (retail/apartments) building initially valued by the fiscal officer at $54,900, and a single-family residence initially valued at $73,600, for tax year 2016. The appellant owner filed complaints against the valuations, requesting decreases in value to $25,000 and $35,000, respectively, to reflect the amount for which both properties sold in April 2016. Although it is

unclear whether it was or should have been provided notice of the complaints under R.C. 5715.19(B), the Board of Education for the Cleveland Municipal School District ("BOE") filed a countercomplaint requesting that the fiscal officer's value of parcel number 002-05-111 be maintained.

At the BOR hearing, counsel for the owner explained that both parcels had previously transferred in July 2015 through bankruptcy proceedings. Following that transfer, Tom Gillespie, owner of the current property owner, acquired both parcels in April 2016. The owner presented copies of the deeds evidencing both transactions. In addition, the owner presented an unsigned copy of the purchase agreement related to the April 2016 sale for $60,000. After considering the evidence and argument presented at the hearing by the owner, and by counsel for the BOE, the BOR made no change to the parcels' values, indicating on its oral hearing worksheet and journal entry that it was unable to determine that the April 2016 sale was arm's-length. The owner thereafter appealed to this board.

As the appellant before this board, the owner bears the burden to "come forward and demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. The best evidence of value is a recent, arm's-length sale of the subject property. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. The owner advocates for reliance on its purchase of the property in April 2016 for $60,000. While we acknowledge a recorded transfer of title to the subject parcels occurred in April 2016, we are unable to conclude, based on the evidence before us, that the sale price was $60,000. Notably, the fiscal officer's conveyance stamp on the deed indicates no consideration, nor has any conveyance fee statement been provided.

A review of the unsigned purchase agreement submitted by the owner reveals that the April 2016 transfer was effected by means of incorporation of the property owner, i.e., 7306 Company, LLC, by the seller, and Mr. Gillespie's purchase of the membership interests of 7306 Company, LLC. 2017-1633 Statutory Transcript at Ex. F. The Supreme Court has held that the transfer of stock in a corporate entity is a transfer of personal property – not the sale of real property. *Salem Med. Arts. & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 82 Ohio St.3d 193 (1998); *Gahanna-Jefferson Public Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 89 Ohio St.3d 450 (2000). Although this board has held on prior occasions that transfer of the interests in an entity holding title to real property can be a sale of the real property for tax valuation purposes, we have done so only when "the function of the [ownership entity] is solely to own the subject [real] property, with no other going concern value." *Parkland Assoc. LTD v. Cuyahoga Cty. Bd. of Revision* (June 25, 2015), BTA Nos. 2011-3898, 2011-4060, unreported. See also *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* (Mar. 6, 2015), BTA No. 2014-4328, unreported; *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 23, 2018), BTA No. 2017-127, unreported. A review of the admittedly unsigned, unauthenticated purchase agreement in the record before us in these matters does not indicate whether 7306 Company LLC holds any assets other than the subject parcels. As a result, we find that the transfer of its membership interests does not constitute a sale of real property, and, therefore, the April 2016 transfer is not presumed to be the best evidence of value.

Though we acknowledge that no party has advocated for reliance on the July 2015 sale by the bankruptcy receiver, we further find that such sale was forced and not a reliable indication of value. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723; *Warrensville Hts. City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 145 Ohio St.3d 115, 2016-Ohio-78.

In the absence of any other evidence, we are unable to independently determine the subject parcels' values and must revert to the fiscal officer's initial valuation. *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-918.

It is therefore the order of this board that the true and taxable values as of January 1, 2016, were as follows:

PARCEL NUMBER 002-05-111

TRUE VALUE

$54,900

TAXABLE VALUE

$19,220

PARCEL NUMBER 002-05-029

TRUE VALUE

$73,600

TAXABLE VALUE

$25,760

OHIO BOARD OF TAX APPEALS

ANNA BRKIC, (et. al.),

Appellant(s),

vs.

CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-264

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ANNA BRKIC
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK ASSISTANT PROSECUTING ATTORNEY CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, July 25, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was untimely filed and not filed with the county board of revision. Appellant did not respond to the motion. We consider the mater upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record indicates that appellant filed the notice of appeal with this board more than thirty days after the BOR's decision, and, further, does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2365
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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FRANKLIN COUNTY BOARD OF REVISION
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COLUMBUS, OH 43215

PALMER HOUSE BORROWER, LLC
Represented by:
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Entered Wednesday, July 25, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 010-291717-00, for tax year 2015. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written argument.

The subject property is a 264-unit apartment complex constructed in 2013, and was initially assessed at $16,000,000. The BOE filed a complaint with the BOR seeking an increase in value to $34,000,000. The BOR convened a hearing, at which the BOE presented a deed evidencing an October 8, 2015 exempt transfer along with a mortgage agreement evidencing a mortgage for $25,536,000. The BOE acknowledged

that the transfer was exempt from paying conveyance fees, and indicated that it based its opinion of value on a 75% loan to value ratio, which resulted in a value of roughly $34,000,000. The appellee property owner, Palmer House Borrower LLC ("Palmer House"), asserted that a mortgage is not sufficient to support the BOE's requested increase. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

A hearing was convened before this board, at which the BOE argued that the subject property transferred for $35,250,000 and that despite the exempt conveyance, the purchase price provides a reliable indication of value. In addition to the documents submitted to the BOR, the BOE provided a purchase agreement, settlement statement, and appraisal performed by Matthew Bilger for financing purposes. The settlement statement reflected that the seller was Preferred Real Estate Investments, LLC ("PREI"), and the buyer was Palmer House Owner, LLC ("Palmer Owner"), an entity owned by PPG Manhattan Real Estate Partners, LLC ("PPG Manhattan"). The settlement statement demonstrated that on October 6, 2015, PPG Manhattan (though Palmer Owner) purchased PREI's membership interest in the Palmer House entity for $35,250,000. Bilger appeared to testify, authenticating his report and answering some questions about the purpose of the appraisal and his analysis. Bilger opined that the subject's value was $36,500,000 as of October 23, 2014 and would be $36,600,000 as of May 1, 2015, which would be a prospective value upon stabilization. Palmer House presented the testimony and written report from Robert J. Weiler, Sr., MAI, who opined that the subject's true value was $25,000,000 as of January 1, 2015. In rebuttal, the BOE offered testimony from appraiser Thomas D. Sprout, MAI, who reviewed Weiler's appraisal and provided a "benchmark value" of
$29-30 million based on Weiler's data but with changes he deemed appropriate.

The BOE argues that a recent arm's-length sale is presumed to be the best evidence of value for purposes of real property tax, and since it presented the basic evidence of a sale, the burden shifted to Palmer House to rebut its probative nature. The BOE acknowledged that the transfer was characterized as an exempt conveyance because, purportedly, no consideration was exchanged. The BOE argues, however, that this conveyance was part of an overall transaction that accomplished an arm's-length sale of the subject property. The BOE further argued that Bilger's financing appraisal demonstrated that the October 2015 transfer reflects the subject property's true value. The BOE maintained that Palmer House failed to rebut the presumption that the October 2015 sale of the property was the best evidence of its value as of January 1, 2015.

Palmer House argues that the BOE failed to establish that an arm's-length sale occurred, thus failing to meet its burden on appeal. Palmer House claims that because the BOE failed to meet its burden to provide competent and probative evidence of value on appeal, this board should retain the auditor's value, which was maintained by the BOR. In the alternative, Palmer House asserts that if this board chooses to look at appraisal evidence, we must look to Weiler's appraisal as the only competent and probative evidence of value in the record and ignore both Bilger's financing appraisal and Sprout's review.

Palmer House first challenges the admissibility of the BOE's exhibits, asserting that the BOE failed to properly authenticate the deed, exempt conveyance fee statement, mortgage agreement, purchase agreement, and settlement statement, noting that none were certified copies. Palmer House next argues that even if the BOE had established that a transaction took place, the membership interest that transferred was personal property and the sale price does not reflect the value of the subject real property. Palmer House further contends that Bilger's appraisal cannot be considered because it was prepared for financing purposes and neither opines value as of the tax lien date nor has an effective date contemporaneous with the sale. As such, Palmer House maintains, the BOE failed to meet its burden of proof on appeal, and this board must retain the auditor's values. Palmer House asserts that if this board were to consider Weiler's appraisal, we must disregard Sprout's review of Weiler's appraisal because he did not clearly and accurately disclose his assumptions and was essentially attempting to substitute his judgment for Weiler without having prepared a full appraisal.

When a party presents a deed, conveyance fee statement, and purchase agreement demonstrating a recent

sale of the subject property, this "troika" constitutes prima facie evidence of value, subject to rebuttal by any opponent of the sale. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932, ¶28. Palmer House argues that the BOE has not provided adequate evidence of the sale because the BOE did not offer a certified copy or otherwise authenticate the documents. Notably, Palmer House has not denied that a transaction took place or that the documents are not true and accurate copies. See *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664, ¶13. Furthermore, the purchase agreement was provided to the BOE by Palmer House during discovery, and to now argue that it is not a true and accurate copy is disingenuous. Accordingly, we will consider all evidence presented at this board's hearing.

Our first task is to determine whether the documents presented by the BOE evidence a recent arm's-length transfer of real property. The recorded transfer was exempt from incurring a conveyance fee because it was characterized as a capital contribution from the grantor, Palmer Square, LLC ("Palmer Square"), to the grantee, Palmer House, where Palmer Square was the sole member of Palmer House and no cash consideration was exchanged. PREI then sold its ownership interest in Palmer House to PPG Manhattan. Palmer House correctly asserts that the Supreme Court has previously held that the sale of shares of stock or the transfer of a partnership interest were conveyances of personal property because they encompassed the going concern of the company or partnership, including other assets and liabilities. See *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 82 Ohio St.3d 193 (1998); *Gahanna-Jefferson Pub. Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 89 Ohio St.3d 450, (2000). When the record clearly indicates that the transfer of membership interest was done solely to transfer title to the subject property, this board has found that such a transaction constitutes the sale of the underlying real property for real property valuation purposes. *Parkland Assoc. LTD v. Cuyahoga Cty. Bd. of Revision* (June 25, 2015), BTA Nos. 2011-3893, 4060, unreported; *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 23, 2018), BTA No. 2017-127, unreported. We find that such is the case in the present appeal. After a review of the record, it is clear that transaction was effectively the sale of real estate structured using the "Drop Down LLC Option" provided in the purchase agreement. Palmer House was created solely to own the subject real property and the tangible personal property that is associated with the ownership of an apartment complex (and typically would be included in a sale of such a property). Thus, the October 2015 transfer of Palmer House to Palmer Owner accomplished the sale of the subject real property from PREI to PPG Manhattan. The deed evidencing the conveyance of the subject property from Palmer Square to Palmer House was signed on October 7, 2015, which is the same day that the settlement statement transferring Palmer Square's interest in Palmer House was printed. Additionally, the agents for the buyer and seller on the settlement statement were the same individuals that acted as the agents for the respective parties on the purchase agreement for the real estate transaction.

Palmer House argues that because the subject property is an apartment complex like the one in *Gahanna-Jefferson*, supra, the transfer of the ownership interest constitutes the transfer of a going concern and is, therefore, the sale of personal property. The present case is distinguishable in an important way: the transfers in *Gahanna-Jefferson* related to the dissolution of the partnership and the transfer from a subsidiary corporation to a parent corporation, and the purchase agreements in that case referenced the transfer of the ownership interest. The purchase agreement between Palmer Square and PPG Manhattan, on the other hand, reflects the intent to engage in a real estate transaction. That the parties chose to effectuate this transaction by way of an entity transfer does not alter the underlying intent of the parties to transfer the real estate. While we acknowledge that a certain amount of tangible personal property was included in the transaction, it is consistent with the tangible personal property that would ordinarily be included in the sale of similar real property, and we find that the BOE has met its initial burden to show that there was a qualifying sale of the subject real property.

Having found that the BOE provided prima facie evidence that an arm's-length sale occurred, the burden then shifts to Palmer House to demonstrate that some aspect of the sale disqualifies it from establishing the value of the subject property. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. The court has held that while an appraiser's sworn statements and report may be relied

upon to rebut the presumptive validity of a sale, "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." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 470, 2016-Ohio-757, ¶20. Thus, before we may consider Weiler's ultimate conclusion of value, we must first find that Palmer House has rebutted some aspect of the sale. In this case, we find that Palmer House has failed to show that Palmer Square and PPG Manhattan were not typically-motivated, that the sale was not recent to the tax lien date, or that some other aspect of the sale should disqualify it as the best evidence of the subject's value.

We next must determine the proper allocation of the sale price to real property because the transaction also included the sale of the personal property associated with the operation of a 264-unit apartment complex. See *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1611 (holding that the BTA must allocate the purchase price to items other than real property after it determines whether the record contains adequate support to find that any of the consideration paid in a bulk sale was for assets other than real estate). The purchase agreement expressly sets forth those items other than real property that transferred and provides that the parties will execute a document indicating the agreed-upon allocation of the purchase price at closing, though no such document was provided to this board. Under these circumstances, we are left to consider whether the record contains sufficient evidence to perform a proper allocation.

Typically, "the best evidence of 'true value in money' is the proper allocation of the lump-sum purchase price and not an appraisal ignoring the contemporaneous sale. *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph two of the syllabus. Compare *Consol. Aluminum Corp. v. Monroe County Bd. of Revision*, 66 Ohio St. 2d 410 (1981) (accepting this board's finding that due to the complexities of the sale of an entire business division, an allocation of the lump-sum purchase price to real property could not be made). Additionally the party advocating for a reduction below the full sale price due to an allocation of other assets bears the burden of showing the propriety of such action and must provide "corroborating indicia" of the appropriate allocation. *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249, ¶17. See, also, *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011-Ohio-2258. The court has clarified that even without negotiation of the allocation of the sale price among the parties contemporaneous with the time of the sale, an after-the-fact appraisal may be used to show the proper reduction of the overall sale price to account for those non-realty items. *Arbors E.*, supra, at ¶23, citing *Buckeye Terminals*, supra, at ¶35.

With respect to the purchase price, we first note that there is a discrepancy between the purchase agreement ($35,000,000) and the settlement statement ($35,250,000) provided to this board, with no clarification in the record or explanation as to the cause of that difference. Although neither document was signed by both parties nor do we have any other corroboration, we find that the settlement statement is the most likely reflection of the ultimate purchase price because it was created at the end of the transaction after any additional negotiations may have taken place that were not reflected in the original purchase agreement.

Additionally, we find that Weiler's appraisal provides a basis upon which this board may ascribe a value to the tangible personal property involved in the transfer. It would be improper to adopt his overall opinion of value because to do so would usurp the sale price and effectively assign a roughly $10,250,000 value to the non-realty items. This would constitute more than 28% of the total purchase price and is not supported by the evidence. In his appraisal, Weiler reduced his indicated values to account for tangible personal property that would typically be involved in the sale of an apartment complex like the subject property. In his report, he indicated that tangible personal property items comparable to that of the subject are estimated to range from $2,000 to $3,500 per unit, and attributed a value of $3,000 per unit to the subject's tangible personal property, for a $792,000 (264 units at $3,000 per unit). We will utilize the same reduction.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2015, were as follows:

TRUE VALUE

$34,458,000

TAXABLE VALUE

$12,060,300

OHIO BOARD OF TAX APPEALS

BEAVERCREEK CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1090
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
GREENE COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - BEAVERCREEK CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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Represented by:
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DAYTON, OH 45431

Entered Monday, July 30, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers B42-0001-0009-0-0124-00, B42-0001-0009-0-0125-00, B42-0001-0009-0-0127-00, and B42-0001-0009-0-0128-00, for tax year 2016.
This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The respective true value of each parcel was initially assessed at $569,790, $676,570, $846,210, and $502,660. On January 18, 2017, a decrease complaint was filed with the BOR seeking a reduction in value for parcel numbers B42-0001-0009-0-0127-00 and B42-0001-0009-0-0128-00 to a total value of $590,000. On April 13, 2017, an amended complaint was filed listing the relevant parcel numbers as B42-0001-0009-0-0124-00 and B42-0001-0009-0-0125-00, again requesting a combined value of $590,000. Both complaints listed the address of the property of 3821 Colonel Glenn, Highway in Beavercreek, Ohio, and indicated that the property had recently sold for $590,000. The BOE filed a countercomplaint for parcel numbers B42-0001-0009-0-0127-00 and B42-0001-0009-0-0128-00 in support of retaining the auditor's values. On its countercomplaint, the BOE included a statement asserting that the BOR lacked jurisdiction to consider parcel numbers B42-0001-0009-0-0124-00 and B42-0001-0009-0-0125-00 because the amended complaint was filed after March 31, 2017.

The BOR convened a hearing, at which Bradley Phan appeared on behalf of the property owner. Phan explained that he had filed the complaint on behalf of the property owner, AMM Brothers, LLC. Phan asserted that AMM Brothers purchased two vacant lots on Colonel Glenn Highway for $590,000 in November 2015, and claimed that the value of those parcels (B42-0001-0009-0-0124-00 and B42-0001-0009-0-0125-00) should be reduced to the sale price. The BOE cross-examined Phan, asking questions about the circumstances surrounding the sale, noting that the settlement statement provided referenced a 2010 loan for a different property. Regarding the November 2015 transaction, Phan testified that he was approached by a realtor regarding a potential purchase of the property, though he did not believe it was formally listed at the time of the sale. Phan acknowledged that he got a good deal on the lots and was planning to develop one and list the other for sale. The BOE did not offer any independent evidence of value for any of the parcels or challenge any aspect of the sale, instead relying on its argument that the BOR lacked jurisdiction to consider the value of the parcels that transferred. Following the hearing, the BOR issued four decisions. The BOR reduced the value of parcel numbers to B42-0001-0009-0-0124-00 and B42-0001-0009-0-0125-00 to a total true value of $590,000 and retained the auditor's values for the remaining parcels. The BOE appealed all four decisions to this board. This board convened a hearing, at which only the BOE appeared. The BOE indicated that it was not contesting the BOR's decision regarding parcel numbers B42-0001-0009-0-0127-00 and B42-0001-0009-0-0128-00, which did not change in value. The BOE reiterated its jurisdictional argument regarding the parcels that were reduced, asserting that the BOR lacked authority to issue those decisions. The BOE did not address the BOR's factual determination regarding valuation or the reliability of the sale.

The instant appeal presents two issues. The first is whether the BOR properly exercised its authority over the parcels purchased by AMM Brothers. If the answer is to the affirmative, which we find it is, the second issue is the valuation of those parcels. Notably, the BOE has indicated that it does not challenge the BOR's decisions regarding the value of the parcels listed on the January 2017 complaint. Because no arguments have been raised regarding parcel numbers B42-0001-0009-0-0127-00 and B42-0001-0009-0-0128-00, we will not address the BOR's decision regarding these properties. See *Oak View Properties, L.L.C. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 478, 2016-Ohio-786.

Initially, we find that the BOR properly exercised jurisdiction over parcel numbers B42-0001-0009-0-0124-00 and B42-0001-0009-0-0125-00. We agree with the BOE that a complaint filed after the March 31 deadline does not vest jurisdiction in the BOR. See, e.g., *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 404, 2005-Ohio-2285, ¶13 ("In summary, R.C. 5715.19(A)(1) requires that a complaint for the current tax year be filed by March 31 of the ensuing year. This means, for example, that if a taxpayer wants to challenge the valuation of real property for tax year 2003, the complaint against the real property valuation must be filed by March 31, 2004."). In this case, however, the January 2017 complaint was sufficient to invoke the BOR's jurisdiction.

It is well established that in order in order for a complaint to vest jurisdiction in a county board of revision, it must include all information which runs to the core of procedural efficiency. See *Cleveland Elec. Illum.*

Co. v. Lake Cty. Bd. of Revision, 80 Ohio St.3d 591 (1998). A complaint must contain this minimal information in order for county boards of revision to determine whether it must issue notice to certain affected parties of the filing of such complaint. See R.C. 5715.19(B). "The board of revision's jurisdiction, however, does not hinge on complete, technical compliance with the complaint form," as failure to provide information requested by the complaint form is not a jurisdictional defect when the requested information does not fulfill a specific statutory or constitutional requirement." *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627, ¶14. In this case, we find that the information listed on the January 2017 complaint sufficiently identified both the property complained of (the address listed, which according to the auditor's records had recently transferred) and the value sought (the sale price, which was listed on line 8 of the complaint), which allowed the BOR to provide notice to all necessary parties. Furthermore, the BOE was clearly on notice of the owner's error on the January 2017 complaint before it filed the countercomplaint in support of the auditor's values. Compare *Hilltop Commons, L.L.C. v. Mingo*, 10th Dist. Franklin No. 11AP-1089, 2012-Ohio-5661 (holding that an incorrect parcel number listed on line 8 was not itself a jurisdictional bar, though the owner's use of amounts on line 8 that were unrelated to the desired change in taxable valuation was an omission going to the core of procedural efficiency). Accordingly, we find that the BOR correctly found it had jurisdiction over parcels B42-0001-0009-0-0124-00 and B42-0001-0009-0-0125-00.

We next turn to the issue of valuation. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). To benefit from the rebuttable presumption that a sale price has met all the requirements that characterize true value, "the proponent of a sale must satisfy a relatively light initial burden," which may be satisfied through the submission of even unauthenticated sale documents where the existence of the sale was undisputed and the admissibility of the evidence was not challenged before the BOR. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶¶14-15. "[T]he proponent of a sale is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." Id.

In the present matter, it is undisputed that parcel numbers B42-0001-0009-0-0124-00 and B42-0001-0009-0-0125-00 transferred from RAI Restaurants, Inc. to AMM Brothers, LLC on or about November 2, 2015 for $590,000. 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 value as of the tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016, were as follows:

PARCEL NUMBER B42-0001-0009-0-0124-0

TRUE VALUE: $223,800

TAXABLE VALUE: $78,330

PARCEL NUMBER B42-0001-0009-0-0125-0

TRUE VALUE: $366,200

TAXABLE VALUE: $128,170

PARCEL NUMBER B42-0001-0009-0-0127-0

TRUE VALUE: $846,210

TAXABLE VALUE: $296,170

PARCEL NUMBER B42-0001-0009-0-0128-0

TRUE VALUE: $502,660

TAXABLE VALUE: $175,930

OHIO BOARD OF TAX APPEALS

MASSILLON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-86
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - MASSILLON CITY SCHOOLS BOARD OF EDUCATION
Represented by: ROBERT
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NATIONAL CHURCH RESIDENCES OF MASSILLON
Represented by:
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COLUMBUS, OH 43216-1008

Entered Monday, July 30, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

This matter comes before this board upon a notice of appeal by the Massillon City Schools Board of Education ("BOE") from a decision of the Stark County Board of Revision ("BOR") determining the value of parcel number 617726 for tax year 2015. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written arguments.

The subject property is a three-story apartment building operated as low-income senior housing under the HUD Section 202 program. The auditor initially valued the property at $1,175,000 for tax year 2015. The property owner, National Church Residences of Massillon, Ohio ("NCR"), filed a complaint against the

valuation of real property requesting a decrease in value to $600,000; the BOE filed a countercomplaint seeking to maintain the auditor's initial valuation. At the BOR hearing, NCR presented the appraisal report and testimony of Cynthia L. Hatton Tepe, a certified general real estate appraiser, who opined the value of the property to be $475,000 as of January 1, 2015. NCR also presented the testimony of Barbara Mascio, Regional Portfolio Leader for NCR, and Patricia Seidenstricker, Real Estate & Use Tax Manager for NCR, who explained the restrictions placed on the property and the operation of the property under the HUD Section 202 program. Although the BOE presented no independent evidence of value, it argued that Ms. Tepe's appraisal was improper under the Supreme Court's decision in *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16 (1988). The BOR ultimately adopted Ms. Tepe's opinion of value and decreased the value of the property to $475,000.

The BOE thereafter appealed to this board. Through argument presented at this board's hearing and in post-hearing briefs, counsel for the BOE and NCR argued about the appropriate way to value a HUD Section 202 property, with the BOE arguing that conventional market rents should be used, and NCR arguing that the government-restricted rents should be used.

The BOE has the burden on appeal to prove its right to a value different than the value adopted by the BOR. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶7. To meet its burden, the BOE argues that the Tepe appraisal upon which the BOR relied was based on legal error, i.e., the valuation of a Section 202 property using its government-restricted rents, rather than market-based rents. See *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-919, ¶16 ("a board of education need not prove a new value when a board of revision's determination of value is infected with legal error.").

The Supreme Court recently addressed the valuation of a Section 202 property in *Notestine Manor, Inc. v. Logan Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-2, reconsideration denied, *03/14/2018 Case Announcements*, 2018-Ohio-923. In rejecting an "iron rule – that a market-rent approach is required and a contract-rent approach is precluded in all cases," the court explained that "[t]he guiding principle from *Alliance Towers*, articulated in *Woda Ivy Glen* [*Ltd. Partnership v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762,] and reiterated in *Columbus City Schools* [*Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734], is that the valuation method must account for the 'affirmative value' of government subsidies, i.e., the tendency of government subsidies to inflate the value above what the market would otherwise bear." Id. at ¶22, citing *Woda*, supra, at ¶28-29, and *Columbus City Schools*, supra, at ¶17. The court further stated:

> "But the property at issue here, which is in the Section 202 program, presents a different situation [than a property receiving Section 8 rent subsidies]. The rents appear to be minimal, and any federal subsidization is strictly controlled by rigorous HUD-imposed restrictions on the accumulation of surpluses. There is no evidence here that any adjustment from contract rent to market rent would eliminate the 'affirmative value' of government subsidies." Id. at ¶23.

Based on the court's decision in *Notestine*, supra, we find no error in Ms. Tepe's use of restricted rents in valuing the subject property. As the BOE has presented no other argument that the use of the appraisal constituted legal error, and has presented no independent evidence of value, we find that it has failed to meet its burden on appeal.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2015, were as follows:

TRUE VALUE

$475,000

TAXABLE VALUE

$166,250

OHIO BOARD OF TAX APPEALS

BELINDA S JONES, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-409

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BELINDA S JONES
Represented by:
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Monday, July 30, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See also R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

BIG BUBBA HOLDINGS LLC, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-404, 2018-405

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BIG BUBBA HOLDINGS LLC
Represented by:
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CINCINNATI, OH 45202-1927

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
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HAMILTON COUNTY
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CINCINNATI, OH 45202

Entered Monday, July 30, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss these matters on the basis they were not filed with the county board of revision. Appellant did not respond to the motions. See Ohio Adm. Code 5717-1-13(B). These matters are now decided upon the motions, the statutory transcripts certified by the county board of revision ("BOR"), and appellant's notices of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See also R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notices with the BOR. Upon consideration of the

existing record, and for the reasons stated in the motions, we must conclude that this board does not have jurisdiction to consider these matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

9654 SR 250 NW, LLC, (et. al.), Appellant(s), vs. TUSCARAWAS COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-1273 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 9654 SR 250 NW, LLC
Represented by:
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For the Appellee(s) - TUSCARAWAS COUNTY BOARD OF REVISION
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STRASBURG-FRANKLIN LOCAL SCHOOLS BOARD OF EDUCATION
Represented by: ROBERT
M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

Entered Tuesday, July 31, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] The appellant property owner, 9654 SR 250 NW, LLC, appeals a decision of the Tuscarawas County Board of Revision ("BOR") determining the value of the subject real property, i.e., parcel numbers 19-00008-001 and 19-00008-002, for tax year 2016. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the auditor pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The auditor initially valued the subject parcels at a total value of $225,250 for tax year 2016. The Strasburg-Franklin Local Schools Board of Education ("BOE") filed a complaint seeking an increase in total value to $375,000, to reflect the amount for which the property sold in November 2015, and submitted a copy of the conveyance fee statement evidencing such sale. At the BOR hearing, counsel for the BOE advocated for valuing the property in accordance with the sale. The owner argued that, under R.C. 5713.03, the sale could be disregarded, and advocated for disregarding the sale in this matter because it was not

listed on the open market. The owner presented the testimony of its owner, Matthew Howell, who testified that the property was not listed on the open market for sale; he approached the prior owner about buying the property and ultimately made an offer that the seller accepted more than a month after the offer was made. Mr. Howell indicated that he had no prior relationship with the seller. The owner further presented two separate appraisal reports, one by appraiser Jan Roseberry opining a value of $385,000 as of October 2016, and one by appraiser Jon Levengood opining a value of $230,000 as of May 2017. Neither appraiser testified, and the BOE objected to consideration of either report in the absence of such testimony. The BOR ultimately increased the value of the property to the sale price, and the owner appealed to this board.

[3] At this board's hearing, the owner presented the testimony of Mr. Levengood regarding his appraisal of the property. Mr. Levengood indicated that he valued the property using the sales comparison approach to value, utilizing comparables within one mile of the subject. Again, the owner argued that the sale should be disregarded because the property was not offered for sale on the open market, and that under R.C. 5713.03 and *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, disregarding the sale is permissible and appropriate. In response, the BOE argued that *Terraza*, supra, is applicable only to leased fee sales.

[4] In challenging the valuation of real property, "[t]he burden is on the taxpayer to prove his right to a deduction." *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision*, 170 Ohio St. 340, 342 (1960). See also *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. Such principle remains, even following the court's decision in *Terraza*, where it held that the presumption that a recent, arm's-length sale price is the best evidence of value is subject to rebuttal. *Terraza*, supra, at ¶33.

[5] There is no dispute that the subject parcels transferred from Ronald and Deborah Stockert to 9654 SR 250 NW, LLC in November 2015 for $375,000. The appellant owner argues that such sale is not the best evidence of value because it was not offered for sale on the open market. In *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, the Supreme Court explained:

> "[W]e have held that an arm's-length transaction is one that '"*generally* takes place in an open market."' (Emphasis added.) *Strongsville* [*Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*], 112 Ohio St.3d 309, 2007-Ohio-6, ***, ¶ 13, quoting *Walters* [*v. Knox Cty. Bd. of Revision* (1989)], 47 Ohio St.3d at 25, ***. The case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers. See *Walters* at 26 (Douglas, J., concurring in judgment only) (distinguishing 'private sale' transactions from open-market sales and asserting that '[p]rivate sale transactions which are at arm's length occur every day').
>
> "After *Walters*, the BTA in a long line of cases has correctly applied the definition of arm's-length transaction to 'private sales,' i.e., sales that do not bear the indicia of open-market transactions. Although the presence of open-market elements definitely militates in favor of finding a transaction to have been at arm's length, the BTA decisions establish that their absence does not necessarily negate the arm's-length character of the transaction." (Footnote and parallel citations omitted.) Id. at ¶29-30.

[6] We therefore do not find the fact that the subject property was not listed for sale on the open market to be dispositive. Nothing in Mr. Howell's testimony at the BOR indicates that either party to the sale transaction was not a willing participant. Indeed, the fact that the seller took over a month to accept Mr. Howell's offer to purchase indicates that the seller was not under any duress or compulsion to sell the property.

[7] As the opponent of using the sale price as the basis for valuing the property, the owner bears the burden to prove a different value. Here, the owner presented Mr. Levengood's appraisal of the property. However, the appraisal is as of a date more than seventeen months removed from tax lien date. The Supreme Court has

repeatedly cited the importance of an expert's opinion of value being "as of" the tax lien date in issue when determining the value of real property for purposes of ad valorem taxation. See, e.g., *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996); *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997). We therefore do not find Mr. Levengood's opinion of value probative of value as of tax lien date.

[8] Moreover, we are mindful of the court's statement in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 470, 2016-Ohio-757, at ¶20, that "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." We find nothing in Mr. Levengood's report, nor in the Roseberry report submitted to the BOR, that leads us to conclude that the sale price is not indicative of the subject property's true value.

[9] Based upon the foregoing, we find that the appellant owner has failed to meet its burden to rebut the presumption that the November 2015 sale price is the best evidence of the subject property's value as of tax lien date.

[10] It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

PARCEL NUMBER 19-00008-001

TRUE VALUE

$98,770

TAXABLE VALUE

$34,570

PARCEL NUMBER 19-00008-002

TRUE VALUE

$275,980

TAXABLE VALUE

$96,590

OHIO BOARD OF TAX APPEALS

DAF INVESTMENTS, LLC, (et. al.),

Appellant(s),

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-978

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DAF INVESTMENTS, LLC
Represented by:
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For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
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Entered Tuesday, July 31, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

Appellant property owner DAF Investments, LLC, appeals from a decision of the Montgomery County Board of Revision ("BOR") determining the value of parcel number N64 01906 0028 for tax year 2016. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified by the auditor, and the record of the hearing before this board, at which only the appellant appeared.

The auditor initially valued the subject property at $81,780 for tax year 2016. The appellant property owner filed a complaint seeking a decrease in value to $52,000, to reflect the price for which it purchased the property in July 2016. The owner presented the deed and settlement statement as evidence of the sale to appellant from U.S. Bank National Association. At the BOR hearing, the owner advocated for reliance on the sale as the best evidence of value and presented the testimony of member Deborah (Urse) Fletcher who confirmed the details of the sale through Auction.com and that there was no prior relationship between the parties to the sale. Upon consideration of the evidence presented, the BOR decreased the value, not to the sale price, but to $55,210 based on an income approach to value. The BOR indicated its concern with the sale, because it occurred through Auction.com and therefore may not be exposed to the open market beyond real estate investors.

Appellant thereafter appealed to this board. Ms. Fletcher again testified that the property was purchased from a bank in July 2016 and that the purchase price was negotiated. She further indicated that there were multiple bids placed on the property.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. However, where a property sells via an auction, such sale is *not* presumed to be the best evidence in value in the absence of evidence that the sale was voluntary and at arm's-length. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. Moreover, the court has held that where "the central issue is whether a sale price of the subject property establishes its value, the factors attending that issue must usually be determined de novo by the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11. See also *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7 ("our case law has repeatedly instructed the BTA to eschew a presumption of validity of the BOR's value ***.").

We find that appellant has met its burden in this matter to prove that, despite the fact that it was sold by auction, the property sold in an arm's-length transaction. Ms. Fletcher testified that there were multiple bids on the property and that it was sold via Auction.com, an advertised website for real estate auction sales. We find such testimony and evidence demonstrates that the property transferred in a voluntary transaction. *Olentangy Local Schools*, supra. We therefore find that the July 2016 sale of the property is the best evidence of its value.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$52,000

TAXABLE VALUE

$18,200

OHIO BOARD OF TAX APPEALS

ITALIAN GREEK INVESTMENTS, LLC, (et. al.),

Appellant(s),

vs.

MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2017-977

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ITALIAN GREEK INVESTMENTS, LLC
Represented by:
JAMES PAPAKIRK
ATTORNEY
FLAGEL & PAPAKIRK LLC
50 E. BUSINESS WAY, SUITE 410
CINCINNATI, OH 45241

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
ASSISTANT PROSECUTING ATTORNEY
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301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Tuesday, July 31, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

[1] Appellant property owner Italian Greek Investments, LLC, appeals from a decision of the Montgomery County Board of Revision ("BOR") determining the value of parcel number N64 01403 0051 for tax year 2016. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified by the auditor, and the record of the hearing before this board, at which only the appellant appeared.

[2] The auditor initially valued the subject property at $63,110 for tax year 2016. The appellant property owner filed a complaint seeking a decrease in value to $40,950, to reflect the price for which it purchased the property in May 2016. The owner presented the deed and settlement statement as evidence of the sale to appellant from the Federal Home Loan Mortgage Corporation. At the BOR hearing, the owner advocated for reliance on the sale as the best evidence of value and presented the testimony of member Deborah (Urse) Fletcher who confirmed the details of the sale and that there was no prior relationship between the parties to the sale. She further indicated that both parties to the sale were represented by real estate brokers. Upon consideration of the evidence presented, the BOR decreased the value, not to the sale price, but to $52,330 based on the subject property's rents. The BOR indicated that it found the sale, from the Federal Home Loan Mortgage Corporation, to be akin to a sale from the Secretary of Housing and Urban Development and therefore distressed and not indicative of the market value of the property.

Appellant thereafter appealed to this board. Ms. Fletcher again testified that the property was purchased from a bank in May 2016 and that the purchase price was negotiated.

[3] In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. Here, the appellant has met its burden to prove that the sale is the best evidence of value. Ms. Fletcher testified that the property was listed on the open market, that there was no prior relationship between the parties to the sale, and that both parties acted as willing participants in the transaction.

[4] To the extent the BOR rejected the sale because it was from a bank, we find no reason to disregard the sale on that ground. To be sure, the prior sheriff's sale to the bank would not "qualify as an arm's-length transaction because the sale occurred under the compulsion that the property be liquidated for the benefit of creditors," *Fenco*, supra, at ¶3, but the subsequent sale by the lending institution that acquired it is the type of sale that has been repeatedly found to be a reliable indication of value. See, e.g., *Cattel v. Lake Cty. Bd. of Revision*, 11th Dist. Lake No. 2009-L-161, 2010-Ohio-4426; *Kahoe v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 99188, 2013-Ohio-2097. While the Supreme Court has found, in some cases, that the opponent of a sale from the Federal Home Loan Mortgage Corporation successfully rebuts the presumption that the sale is the best evidence of value, see, e.g., *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402, the county appellees have presented no evidence in this matter to rebut the utility of the sale. We therefore find that the appellant satisfied its burden to prove that the May 2016 sale is the best evidence of its value.

[5] It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2016, were as follows:

TRUE VALUE

$40,950

TAXABLE VALUE

$14,330

OHIO BOARD OF TAX APPEALS

PLAIN LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2059
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - PLAIN LOCAL SCHOOLS BOARD OF EDUCATION
Represented by: ROBERT
M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
STEPHAN P. BABIK
ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702-1413

CANTON OH SENIOR PROPERTY LLC
Represented by: WAYNE
E. PETKOVIC
ATTORNEY AT LAW
840 BRITTANY DRIVE
DELAWARE, OH 43015

Entered Tuesday, July 31, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The appellant Plain Local Schools Board of Education ("BOE") has appealed a decision of the Stark County Board of Revision ("BOR") determining the value of parcel number 10002372 for tax year 2015. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the record of the hearing before this board ("H.R.").

The subject property is operated as a 76-unit assisted living facility. For tax year 2015, the auditor initially valued the property at $3,583,400. The BOE filed a complaint requesting an increase to $11,300,000, to reflect the amount for which the property was reported as having transferred in February 2015. The owner, Canton OH Senior Property LLC, filed a countercomplaint requesting a value of $5,500,000, indicating that the February 2015 sale included non-real estate items.

At the BOR hearing, counsel for the BOE presented a conveyance fee statement and deed memorializing the February 2015 transfer. Counsel noted that the recorded conveyance fee statement indicated that the total purchase price was $13,750,000, of which $11,300,000 was allocated to real property and $2,450,000 was allocated to non-realty items. Counsel for the owner argued that the sale was of the entire ongoing business enterprise at the subject property, and presented the appraisal report and testimony of Samuel D. Koon, MAI, who opined a value for the land and building of $5,530,000 as of January 1, 2015. In accordance with case law, including this board's decision in *Chippewa Place Dev. Co. v. Cuyahoga Cty. Bd. of Revision* (Sept. 24, 1993), BTA No. 1991-P-245, unreported, Mr. Koon appraised the subject property as if it were a conventional apartment building, attributing the large amounts of common area to the individual units. Although not discussed during the hearing, the record certified to this board includes a "Board of Revision Standard Report" apparently written by appraiser Gary Ziegler, Jr. Mr. Ziegler recommended valuation of the property at $11,300,000 in accordance with the allocation on the conveyance fee statement.

After considering the evidence presented, the BOR decided to value the property in accordance with Mr. Koon's appraisal. During its decision hearing, one BOR member specifically noted that counsel for the owner was unable to verify who signed the conveyance fee statement and surmised that it was signed by someone at the title company unaffiliated with the owner.

The BOE thereafter appealed to this board. At this board's hearing, the BOE advocated for valuation of the property in accordance with the amount allocated to real estate on the conveyance fee statement, i.e., $11,300,000. The BOE introduced as evidence the owner's responses to its discovery requests, including a statement that the conveyance fee statement was signed by an individual affiliated with the owner's managing entity, Senior Housing Holdings, LLC. H.R. at 7, Ex. 1. The owner presented no evidence; however, its counsel introduced a copy the Koon appraisal report it had previously presented to the BOR and that was omitted from the statutory transcript certified to this board. See R.C. 5717.01 (the BOR shall "certify to the [BTA] a transcript of the record of the proceedings of the county board of revision pertaining the original complaint, *and all evidence offered in connection therewith*." (Emphasis added.)).

As the appellant before this board, the BOE bears the burden to "come forward and demonstrate that the value it advocates is a correct value." *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. While in some situations the BOR's determination of value, rather than the auditor's, is treated as the "default" value, here, because the BOR was presented with evidence of a recent, arm's-length sale, we review the issue of whether the sale price establishes the subject property's value de novo. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

The parties do not dispute that the subject real property transferred from Wegman Family (Canton) LLC VI to Canton OH Senior Property, LLC, in February 2015 for a total consideration of $13,750,000. The appellee owner, however, disputes the allocation to real property made on the conveyance fee statement, i.e., $11,300,000. As the party most likely to possess information that could refute the propriety of the allocation, the owner bears the burden to show that the amount allocated to real property on the conveyance fee statement does not reflect the true value of the property. *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2017-Ohio-7664, ¶22; *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921, ¶21, 25.

Notably, the owner failed to present any testimony from any individual associated with the parties to the sale transaction, nor did it present any documentation of the sale, i.e., the purchase contract, detailing any allocation to real property. Although owner's counsel indicated at this board's hearing that the allocation was made by the seller, H.R. at 21, there is no evidence of the basis for counsel's statement. "[S]tatements of counsel are not evidence." *Corporate Exchange Bldgs. JV & V, L.P. v. Franklin Cty. Bd. of Revision*, 82 Ohio St.3d 297, 299 (1998). While Mr. Koon's appraisal report contains an explanation of the sale,

including that $900,000 of the purchase price was allocated to personal property and $5,850,000 was allocated to business value, H.R., Ex. 1 at A-6, he was unable to verify the source of such information during the BOR hearing, and stated that the information may have been provided directly from the ownership. Such statements, to the extent relied on by the owner to support an allocation different than that reported on the conveyance fee statement, are clearly hearsay and cannot serve as a basis for this board to disregard the reported allocation to real property.

We find it important that some allocation to real property was made on the conveyance fee statement. This is not a case where only the total purchase price was reported and the evidence clearly indicated that *some* amount should be allocated to real property. As the Supreme Court stated in *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977), at paragraph two of the syllabus, "the best evidence of 'true value in money' is the proper allocation of the lump-sum purchase price and not an appraisal ignoring the contemporaneous sale." There is no indication in the record before us that the amount allocated to real property on the conveyance fee statement, i.e., $11,300,000, is not a proper allocation reflective of the property's true value. Because the owner has failed to satisfy its burden to show that the allocated amount does not reflect the true value of the property, we find the allocated sale price best reflects the subject's value, and need not further address Mr. Koon's appraisal. See *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, ¶23; *Pingue v. Franklin Cty. Bd. of Revision*, 87 Ohio St.3d 62, 64 (1999).

While we acknowledge that the BOR found value in accordance with Mr. Koon's appraisal, the recording of its decision hearing contains no discussion of the recent, arm's-length sale, apart from one member's speculation that the allocation made on the conveyance fee statement was made by an individual affiliated with the title company rather than either of the parties to the transaction. The evidence presented by the BOE on appeal appears to refute such speculation. We therefore give no presumption of validity to the BOR's decision.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2015, were as follows:

TRUE VALUE

$11,300,000

TAXABLE VALUE

$3,955,000

OHIO BOARD OF TAX APPEALS

DONALD PIERCE, (et. al.),

Appellant(s),

vs.

HAMILTON COUNTY BOARD OF REVISION, (et. al.),

Appellee(s).

CASE NO(S). 2018-477

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DONALD PIERCE
153 E. STATE RD.
CLEVES , OH 45002

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
THOMAS J. SCHEVE
ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
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Entered Friday, August 31, 2018

Mr. Harbarger, Ms. Clements, and Mr. Caswell concur.

The county appellees move to dismiss this matter on the basis it was not timely filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

R.C. 5717.01 allows for an appeal to be taken to this board 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. See also R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** 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." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record includes the affidavit of the clerk to the BOR, asserting that appellant's notice of appeal was not filed with the Hamilton County Board of Revision. Upon consideration, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider this matter. As such, this matter must be, and hereby is, dismissed.