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

The decisions of Ohio's Board of Tax Appeals ("BTA") in this **Volume 2** were issued commencing on **August 1, 2018 and continue chronologically through December 31, 2018**. The first part of this **Volume 2** contains a topic index numbered in Roman numerals. It alphabetically categorizes, by legal topic, decisions of the BTA issued from **August 1, 2018 through December 31, 2018.** Starting on August 2, 2017, BTA decisions for other periods not covered in this **Volume 2** 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 2** 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 ***Earl Mullins v. Warren County Board of Revision*** **(September 17, 2018), BTA No. 2017-1951(Vol. 2/0139 ‖ 6).** 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 0139** and in **paragraph [6]** 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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OHIO BOARD OF TAX APPEALS

LESTER VANDENBARK, (et. al.), Appellant(s), vs. MUSKINGUM COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-1765 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Thursday, August 2, 2018

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

Appellant appeals five decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 44-08-02-14-000, 44-08-02-15-000, 44-08-02-17-000, 44-08-02-18-000, 44-08-02-27-000, 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 500-acre farm with multiple homesites, and benefits from its eligibility to be taxed based on its current agricultural use value ("CAUV"). The subject's total true value was initially assessed at $1,047,500. Appellant filed a decrease complaint with the BOR, indicating that the property's soil type was incorrectly classified and that the land suffers from frequent flooding. Appellant attached a letter from July 1996 that included a report from a soil scientist related to the soil found on the subject property. At the BOR hearing, appellant argued that the CAUV determination is incorrect because improper soil types have been attributed to portions of the subject property, and that other portions are unusable because they are flooded for large stretches throughout the year, particularly during the time planting should be taking place. The BOR issued decisions maintaining the values of parcel numbers 44-08-02-14-000, 44-08-02-18-000, and 44-08-02-27-000 and reducing the values for 44-08-02-15-000 and 44-08-02-17-000, for a new total true valuation of $1,011,400. The BOR did not include the CAUV assessments in its determination letters, but explained that the adjusted value was a result of changing 18.18 acres to "wasteland," which would reduce both the true value and the calculated CAUV. From these decisions, appellant filed the present appeal.

At the hearing before this board, appellant again relied on the 1996 letter as evidence that the soil types

attributed to the subject property are incorrect, along with several photographs and maps to document the flooding. Appellant also argued that the market value of the homesites have been overstated, citing the flooding and access difficulties due to the location of railroad tracks between the homesites and the road. The county appellees argued that the BOR and this board lacked jurisdiction to consider the argument set forth by appellant, i.e., that the CAUV rates as applied to the subject property result in the overvaluation of the subject property. The county appellees also noted that the BOR did grant a reduction by changing several acres from productive land to waste. Following the hearing, this board ordered the county appellees to certify the 2016 CAUV as applied to each parcel both before and after it adjusted the subject's values.

Initially, the county appellees correctly assert that the BOR did not have the authority to change the CAUV rates set by the state. How those rates are applied to the subject property, however, are properly at issue before the BOR. See, e.g., *Johnson v. Clark Cty. Bd. of Revision*, 2nd Dist. Clark No. 2013 CA 32, 2014-Ohio-329. Thus, even if the BOR had valid grounds for maintaining the auditor's valuation for lack of sufficient evidence to support an adjustment, this defect alone does not bar the BOR's jurisdiction – or the jurisdiction of this board – to consider the issue. From the record, it appears that the rates applied to the subject property increased during tax year 2015, which led to a corresponding increase in the taxable value for the subject property for tax year 2016. It does not appear that the value increase stemmed from a change to the soil mapping.

"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(2001), 566. See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-379. 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, ***. The appellee also has a choice to do nothing. However, the appellant is not entitled to the valuation claimed merely because no evidence is adduced opposing that claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340, 342, ***." Id. at ¶5-6. (Parallel citations omitted.)

When land is devoted exclusively to agricultural use, the property owner may apply for CAUV status to avoid real property tax assessment based on the true value as appraised by the auditor. R.C. 5713.30 provides an alternative value for land devoted exclusively to agricultural use. The value assessed is based on the land tables prescribed by the Tax Commissioner pursuant to Ohio Admin. Code 5703-25-33, which are calculated "by the capitalization of the typical net income before real property and income taxes from agricultural products assuming typical management, cropping and land use patterns and yields for a given type of soil, as provided in this rule." The process by which the CAUV land tables are used to appraise the land is set forth by Ohio Admin. Code 5703-25-34.

Appellant challenges the auditor's classification of several portions of the subject property, arguing that a high value soil is being attributed to portions of the property that are under water for significant portions of the year, which limits their potential crop yields. Although he provided several maps to outline the areas he claims suffer from the flooding concerns and misidentified soil types, appellant has not adequately proven these claims or the specific boundaries for the areas he contests. Initially, appellant has not provided competent and probative evidence regarding the purportedly misidentified soil types. Appellant relies on a 1996 letter with a report from a soil scientist, although the scientist did not appear to be questioned by either the BOR or this board regarding his credentials or methodology. As such, we accord no weight to this letter in our analysis. Even if we were to consider the report, it does not support appellant's assertions regarding misidentified soil types. The letter describes his findings regarding both "dominant" soil types (those that form the bases for the CAUV allocation) and "contrasting inclusions" (soils quite different from

the dominant soil type). According to this report, no changes to the mapping were warranted because the inclusions were commonly part of the dominant soil types at issue.

The report does refer to flooding issues, which were also exhibited through photographs presented by appellant, in addition to several maps. Even with all this evidence that flooding is a significant problem for some portion of the subject property, appellant did not demonstrate the exact boundaries of those areas impacted by the extensive flooding that would prevent it from utilization as tillable land. The Supreme Court has held that because CAUV "depends so intimately on the exact land under review," and owner must prove the exact boundaries that qualify for such valuation. *Renner v. Tuscarawas Cty. Bd. of Revision*, 59 Ohio St.3d 142, 145 (1991). Here, we find that appellant has not met this standard.

Finally, to the extent that appellant argues that the value of the property should be reduced based on negative conditions, appellant has not quantified how these factors, such as the limited accessibility to the property due to the railroad tracks, impact the value of the subject property. In order to support this type of claim, appellant must demonstrate not only that negative conditions are present, but also how they affect the value of the subject property. *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). Accordingly, we find that appellant has failed to provide sufficient evidence to adjust the value of the subject property.

Our consideration of this matter does not conclude with the rejection of appellant's evidence because the BOR nonetheless reduced the value of the subject property. It appears that an appraiser for the auditor reviewed the information provided by appellant as well as the history of the subject property's CAUV soil listings. According to the supplemental documentation provided, the BOR adjusted the boundaries of the area that can be utilized as productive farm land. This resulted in a decrease in both the true value and CAUV of the property. No one had challenged the propriety of this decrease in value. The BOR was in a position to review the owner's evidence and had the benefit of additional local expertise regarding the parcels, and as such, we find that the reduction was supported, though no further adjustment is warranted.

It is therefore the order of this board that the subject property's true and taxable values, which are based on the true values and do not reflect the CAUV for the property, as of January 1, 2016, were as follows:

PARCEL NUMBER 44-08-02-14-000

TRUE VALUE: $304,800

TAXABLE VALUE: $106,680

PARCEL NUMBER 44-08-02-15-000

TRUE VALUE: $246,770

TAXABLE VALUE: $86,370

PARCEL NUMBER 44-08-02-17-000

TRUE VALUE: $110,000

TAXABLE VALUE: $38,500

PARCEL NUMBER 44-08-02-18-000

TRUE VALUE: $101,000

TAXABLE VALUE: $35,350

PARCEL NUMBER 44-08-02-27-000

TRUE VALUE: $248,800

TAXABLE VALUE: $87,080

OHIO BOARD OF TAX APPEALS

TWINSBURG CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1534
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Thursday, August 2, 2018

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

The Twinsburg City Schools Board of Education ("BOE") appeals a decision of the Summit County Board of Revision ("BOR") determining the value of parcel number 64-08845 for tax year 2016. We consider the matter upon the notice of appeal and the statutory transcript certified by the fiscal officer. Although the BOE requested a hearing before this board, all parties waived their appearances at such hearing.

The fiscal officer initially valued the subject property at $279,620 for tax year 2016. The BOE filed a complaint against valuation requesting an increase to $3,620,900 based on a sale of the property for that amount in January 2016, and presented the conveyance fee statement and limited warranty deed as evidence of the sale. The appellee property owner, LD Holdings, LLC, neither filed a countercomplaint nor appeared at the BOR hearing. (The owner has likewise not participated in the proceedings before this board.) When questioned about the state of construction of improvements during the hearing, counsel for the BOE noted that the construction permit was dated in 2016. During its decision hearing, the BOR

members noted that the conveyance fee statement, signed on January 22, 2016, indicated that there were buildings on the land, despite the fact that the fiscal officer's records indicated that the property was vacant land on tax lien date. The BOR thereafter issued a decision finding no change in value was warranted based on lack of sufficient evidence, and the BOE appealed to this board.

Because no new evidence has been presented on appeal, we review the evidence in the statutory transcript in performing our duty to independently determine the subject property's value. *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985); *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996). In doing so, we are mindful of the Supreme Court's admonition to eschew a presumption of validity of the BOR's value and instead perform our own independent weighing of the evidence in the record. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7.

Here, the BOE has presented a conveyance fee statement and limited warranty deed indicating that the subject property transferred between GB Edison I, LLC and LD Holdings, LLC in January 2016 in a seemingly arm's-length transaction. "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.

During its deliberations, the BOR appeared to indicate that the sale was remote from tax lien date due to the possible construction of improvements on the property between tax lien date and the date of sale. While it is true that a substantial change in the character of a property between the date of sale and tax lien date may render it remote and therefore not the best evidence of value, see, e.g., *W. Carrollton City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 150 Ohio St.3d 215, 2017-Ohio-4328, ¶10, we are unable to conclude, based on the limited record before us, that such change occurred in this matter. The difference in time between tax lien date, i.e., January 1, 2016, and the date the transaction was recorded, i.e., January 25, 2016, leads us to conclude that it is unlikely that improvements were constructed on the property in the interim time period. This board could engage in speculation as to the nature of the sale, for example, whether it was used as a financing mechanism, see, e.g., *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 100, 2017-Ohio-7578, but as the Supreme Court has noted, "[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, ¶26. The burden is on the opponent(s) of a sale to rebut the presumption accorded to it. *Terraza 8*, supra, at ¶32. None of the appellees in this matter have presented any evidence to rebut the sale. We therefore find that, given the record before us, the sale is the best evidence of 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

$3,620,900

TAXABLE VALUE

$1,267,320

OHIO BOARD OF TAX APPEALS

MARY P. MAGNUSSON, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-1040 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Thursday, August 2, 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 080-000922-00, for tax year 2016. We proceed to consider this matter based upon the notice of appeal, 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 $80,000. The affected board of education ("BOE") filed a complaint with the BOR, which requested that the subject property be revalued at $154,000 purportedly to reflect the price at which it transferred in January 2017. The property owner did not file a counter-complaint. At the BOR hearing, the BOE and property owner appeared to submit argument and/or evidence in support of their respective positions. The BOE presented sale documents, which demonstrated the $154,000 transfer of the subject property from William A. Radloff to the property owner in January 2017. Based upon its presentation, the BOE requested that the BOR increase the subject property's value to

reflect the subject sale price. The property owner conceded that she paid $154,000 for the subject property but argued that she willingly overpaid because she needed to expand her salon business. She submitted a comparative analysis of property tax burdens of neighboring properties and photographs of the interior of the subject property to argue that the $154,000 purchase price was not reflective of the subject property's value. She also argued that she should not be responsible for the property taxes for tax year 2016, because she did not own the subject property at that time, and that the county auditor maintained erroneous information about the subject property, i.e., it was listed as a residential property with bedrooms and bathrooms when it did not have any of those features. Based upon her presentation, the property owner argued that the BOR should reject the subject sale and retain the subject property's initially assessed value. At the BOR decision hearing, the BOR members noted that the subject property was for sale on the open market and rejected the property owner's comparative analysis of property tax burdens. The BOR proceeded to vote to accept the subject sale price as the best indication of the subject property's value for tax year 2016 and subsequently issued a written decision to that effect. The property owner then appealed to this board.

[3] At this board's hearing, both the property owner and BOE appeared to supplement the record with argument and/or evidence. The property owner reiterated her charge that the county auditor maintained erroneous information about the subject property and her positions that she should not be held accountable for the subject property's tax assessment for tax year 2016 and that she overpaid for the subject property to expand her business. The BOE noted that the subject property was classified as commercial use code "471" and, therefore, any erroneous information about the number of bedrooms and bathrooms had no effect on the subject property's value.

[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). In *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23 (1989), the Supreme Court explained that a qualifying sale for tax purposes 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." Id. at 25. 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 this matter, neither party disputes the minimal details of the transfer. As noted above, the property owner argued that compelling business reasons, i.e., her desire to expand her business, required her to overpay for the subject property. However, such motivation reflects her objective for participating in the transaction, and does not rise to the level of "duress" necessary to invalidate the subject 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.

[6] We have previously considered circumstances virtually identical to the circumstances in this matter. In *Adkins v. Cuyahoga Cty. Bd. of Revision* (Jan. 19, 2017), BTA No. 2016-648, unreported, we rejected a property owner's claim that it overpaid for a property because of its desire to operate its hair salon in a specific area. In doing so, we relied upon our decision in *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (May 4, 2015), BTA No. 2014-2686, unreported, affirmed, 10th Dist. Franklin No. 15AP-549, 2016-Ohio-4554, where this board held that a buyer's desire to remain in a particular area for competitive advantage did not amount to economic duress, such that the sale price

should be disregarded. See, also *Katabi Investments Ltd. v. Franklin Cty. Bd. of Revision* (July 3, 2013), BTA No. 2010-L-3842, unreported at 5 ("while personal factors may influence price, their presence does not necessitate a finding that a given sale is not reflective of an arm's-length transaction.").

[7] Similarly, we must also reject the property owner's argument that increasing the subject property's value would tax her at a rate higher than neighboring properties. The Supreme Court has considered, and rejected, the utility of comparing assessed values amongst parcels to determine value. For example, in *Benedict v. Bd. of Revision,* 170 Ohio St. 62, 63 (1959), the court held that "[i]t 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) ("The system of taxation unfortunately will always have some inequality and nonuniformity attendant with such governmental function. It seems that perfect equality in taxation would be utopian, but yet, as a practicality, unattainable. We must satisfy ourselves with a principle of reason that practical equality is the standard to be applied in these matters, and this standard is satisfied when the tax system is free of systematic and intentional departures from this principle."); *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."); *Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), BTA No. 1992-H-576, unreported, at 8 ("Tax valuations are not sales, and a comparative analysis thereof is always subject to the objection that the tax valuations of the compared properties are not themselves market value.").

[8] To the extent that the property owner argued that the subject sale should be rejected because the county auditor's records contained erroneous information about the subject property, we find no error there. The property record card demonstrates that the subject property's land use code is "471," which denotes real property used for commercial purposes. See R.C. 5713.041; Ohio Adm. Code 5703-25-10(C).

[9] Finally, we reject property owner's argument that the value of the property should increase for tax years only after its purchase of the subject property. We draw attention to R.C. 5713.03, which specifically provides for the consideration of recent, arm's -length sales, which occurred "*** either before *or after t*he tax lien date ***." (Emphasis added.) Additionally, even when this board is sympathetic to a property owner's situation, we are unable to ignore or disregard our statutory responsibilities to determine the subject's value consistent with well-established law. See, e.g., *Marisay v. Sandusky Cty. Bd. of Revision* (Mar. 4, 1994), BTA No. 1992-T-673, unreported.

[10] 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 rebut the presumption that her $154,000 purchase of the subject property was indicative of real property value. Absent an affirmative demonstration that the subject sale is not a qualifying sale for tax valuation purposes, we find that the record shows that the January 2017 transaction was both recent and arm's-length, and constitutes the best indication of the subject property's value as of tax lien date.

[11] 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

$154,000
TAXABLE VALUE

$53,900

[12] 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

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-558
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, August 2, 2018

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

The appellant Cleveland Municipal School District Board of Education ("BOE") appeals to this board from a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel number 101-27-014 for tax year 2015. We proceed to consider the matter upon the notice of appeal and the statutory transcript certified by the fiscal officer pursuant to R.C. 5717.01.

By way of background, the subject property was previously the subject of a tax year 2014 complaint filed by the BOE requesting an increase in value from the fiscal officer's initial value of $1,300,200 to the price for which the property was purchased in September 2014, i.e., $2,350,000. The BOR increased the property's value to $2,350,000 for tax year 2014. However, prior to the BOR's tax year 2014 decision, the fiscal officer created the tax year 2015 tax list, which he updated in accordance with the triennial update of

values in Cuyahoga County that year. The fiscal officer increased tax year 2013 initial value of $1,300,200 to $1,365,200 for tax year 2015.

The BOE filed the tax year 2015 complaint underlying this appeal, again requesting an increase to the September 2014 sale price of $2,350,000. Given that the deed presented by the BOE showed no consideration, the BOR rejected the sale and found that no change in value was warranted. On appeal, the BOE again requests an increase in value to $2,350,000.

Because no new evidence has been presented on appeal, we review the evidence in the statutory transcript in performing our duty to independently determine the subject property's value. *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985); *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996). In doing so, we are mindful of the Supreme Court's admonition to eschew a presumption of validity of the BOR's value and instead perform our own independent weighing of the evidence in the record. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7.

"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. Here, the BOE has presented a limited warranty deed and a CoStar report demonstrating a transfer of the property from PS Prospect, LLC to 811 Prospect Avenue, LLC in September 2014. The fiscal officer's stamp on the deed indicates that no conveyance fee was paid and that the sale did not occur at arm's-length. Likewise, the fiscal officer's property record card indicates the sale price as "$0." S.T., Exs. C, F. The CoStar report indicates that the purchase price was $2,350,000. No further documentation of the sale, i.e., conveyance fee statement, settlement statement, or purchase agreement, has been submitted.

The Supreme Court has recognized that a proponent of a sale has a relatively light initial burden to benefit from the rebuttable presumption that a sale "has met all the requirements that characterize true value." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14, quoting *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 327 (1997). The court has recognized such presumption where a deed, conveyance fee statement, and/or a purchase agreement have been provided. Id. Here, although a deed has been presented, there is no probative evidence of the amount for which the property transferred pursuant to such deed. Although the CoStar report indicates a price, such document does not indicate the source of such information. To the extent the BOE relies on the CoStar report as evidence of the sale price, such report is hearsay. See *Lakewood City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Feb. 12, 2018), BTA No. 2017-499, unreported. In the absence of any other evidence indicating the price for which the property transferred, we find the BOE has failed to meet its burden to demonstrate that the subject property transferred in a recent, arm's-length sale for $2,350,000.

We acknowledge that the BOR considered the value of the subject property for tax year 2014 and increased the value to $2,350,000. To the extent the BOE would argue that collateral estoppel applies to the issue of the arm's-length nature of the sale, the only indication in the record that such issue was actually considered in the prior year's proceedings is the identity of the increases requested, i.e., to $2,350,000. The record before us does not allow us to determine that the issue of the arm's-length nature of the sale was "actually and necessarily litigated and determined in a prior action." *Whitehead v. Genl. Tel. Co.*, 20 Ohio St.2d 108, 112 (1969). See also *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461, ¶17. We therefore find that collateral estoppel would not apply to the sale. Moreover, because the fiscal officer performed an update of property values in tax year 2015 pursuant to R.C. 5713.01(B), the tax year 2014 value does not automatically carry forward to tax year 2015. *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468.

In the absence of any other evidence of value, we are unable to independently determine the value of the subject property; therefore, we find that the fiscal officer's valuation is the default value. *Vandalia-Butler*

City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision, 130 Ohio St.3d 291, 2011-Ohio-5078, ¶24. 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

$1,365,200

TAXABLE VALUE

$477,820

OHIO BOARD OF TAX APPEALS

KHET PROPERTY, LLC, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-329

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Monday, August 6, 2018

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

The county appellees move to dismiss this matter for lack of jurisdiction, arguing that appellant failed to timely file the appeal under R.C. 5717.01. Appellant did not respond to the motion. We decide the motion upon the notice of appeal, the statutory transcript, and the motion.

The Cuyahoga County Board of Revision ("BOR") mailed its decision to appellant on March 2, 2018. Appellant filed its appeal with the BOR on April 16, 2018, and with this board on April 17, 2018. 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.").

The record before us indicates that appellant filed this appeal more than thirty days after the BOR mailed its decision. The county appellees' motion is well taken, and this matter is hereby dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-1877
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, August 6, 2018

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

The above-named appellant, Columbus City Schools Board of Education ("BOE"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 010-000814, 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, the parties' written argument and the BOE's citation to additional authority.

The subject property, a medical office building, was initially assessed at $7,012,000. The property owner filed a complaint with the BOR, which requested a reduction to the subject property's value; the BOE filed a counter-complaint, which objected to the request. At the BOR hearing on the matter, the property owner submitted the testimony of appraiser Christian Smith, who opined the value of the subject property to be

$6,700,000 as of the tax lien date of January 1, 2015. Smith was examined and cross-examined about the underlying data and methodologies used to derive his final conclusion of value. The BOE interspersed hearsay objections throughout Smith's testimony, alleging that he was testifying on topics for which he had no firsthand knowledge. The property owner and BOE vehemently disagreed about the relevance of the $7,012,000 transfer of the subject property to the property owner in December 2012 based upon the Supreme Court decision *in Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. The property owner asserted that the decision barred consideration of the subject sale because it occurred more than 24 months from the tax lien date; the BOE asserted that the decision did not bar consideration of the subject sale because it did not occur more than 24 months from the sexennial reappraisal year. At the BOR decision hearing on the matter, the BOR voted to reject the subject sale under *Akron* and subsequently issued a written decision that reduced the subject property's value to $6,700,000, consistent with Smith's appraisal report. This appeal ensued.

This board held a brief hearing on the matter, at which time the BOE and property owner advanced oral arguments in favor of their respective positions. Subsequent to the hearing, they submitted written argument to expand upon their positions. The BOE argued that it was improper to solely focus on the 24 month, 28 day period between the sale and tax lien dates and that, instead, the focus should be on whether the three-prong test provided in *Akron* had been satisfied, i.e., whether the sexennial reappraisal had been performed as of the tax lien date, whether the sale in question occurred more than 24 months before the sexennial reappraisal, and whether the sale in question had been rejected to determine value for the sexennial reappraisal. Because the three-prong test had not be satisfied, the BOE asserted that *Akron* did not require rejection of the subject sale. The BOE further argued that, as a consequence, the property owner had failed to rebut the presumption that the subject sale was recent to the tax lien date. The property owner conversely argued that *Akron* stood for the "bright-line" proposition that a sale of a real property must be disregarded if it occurred more than 24 months from the tax lien date. It further argued that this board could not reinstate the subject property's initial value of $7,012,000 because the BOR had reduced value based upon the property owner's evidence, consistent with the rule derived from *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237.

Before we consider the merits of this appeal, we must first dispose of a preliminary issue. After the established briefing schedule had ended, the BOE submitted additional authority, *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1612, *and* additional written argument in support of its position. Pursuant to Ohio Adm. Code 5717-1-17(A), after the deadline for submission of briefs has passed, parties may file additional authority for their position, if decided after the briefing deadline, "without further argument." Therefore, the BOE's additional written argument is stricken.

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).

We begin our review with the $7,012,000 transfer of the subject property from Mount Carmel Health System to the property owner in November 2012. None of the parties dispute the arm's-length nature of the subject sale; however, the BOE and property owner disagree on the issue of recency of such sale.

Before we address the recency of the subject sale, we must first discuss two preliminary issues. First, we reject the property owner's contention, raised at the BOR hearing by Smith and at this board's hearing by the property owner's counsel, that the $7,012,000 purchase price included the transfer of two parcels. A review of the conveyance-fee statement and limited-warranty deed highlights that only one parcel,

010-000814, i.e., the subject property, transferred for $7,012,000. As such, we conclude that the subject property was the only parcel included in the subject sale. Second, we must also reject the property owner's argument that we cannot consider the relevance of the subject sale because the BOR rejected it and, instead, reduced the subject property's value based upon the property owner's evidence, based upon the *Bedford* rule. The *Bedford* rule does not apply when the central issue is whether the $7,012,000 sale of the subject property in December 2012 was indicative of its value as of the tax lien date. "When 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, and the *Bedford* rule does not apply." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, at ¶11. We proceed, therefore, to evaluate whether the subject sale was recent to the tax lien date.

In *Akron* the 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." Id. at ¶26. However, in a footnote in *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, the court noted that solely focusing on the passage of 24 months between the sale and tax lien dates, without considering other factors, would misinterpret the court's ruling in *Akron*. In doing so, the court reaffirmed that there was no presumption of recency accorded "to a sale when (1) the auditor had performed the required reappraisal for the tax year at issue, (2) the sale was more than 24 months before the lien date of the reappraisal year, and (3) the auditor had declined to use the sale in the reappraisal. Here, the auditor *did use the sale, rather than disregard it*; under the reasoning of *Akron City School Dist.*, the distinction is significant and makes the holding of that case inapplicable here." (Emphasis sic.) Id. at ¶19, fn.4.

Likewise, we find that *Akron* does not apply to this matter because (1) the auditor had *not* performed the required sexennial reappraisal for tax year 2015, (2) the subject sale was *not* more than 24 months before the lien date of the reappraisal year, and (3) the auditor had *not* declined to use the sale in the reappraisal. It is important to note that in Franklin County, the sexennial reappraisal occurred in tax year 2011, which occurred prior to the subject sale, and would not occur again until tax year 2017. In this matter, the relevant sexennial reappraisal had not yet occurred. Although tax year 2015 was *not* the reappraisal year, we note that the county auditor apparently relied upon the subject sale to determine the subject property's $7,012,000 value, which further reinforces the inapplicability of *Akron*. See, also *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1612. Based upon the foregoing, we find that the subject sale was recent to the tax lien date. As such, we find that the subject sale is presumptively the value of the subject property for the tax lien date.

Having found that the property owner failed to rebut the presumption that the subject sale was recent, arm's-length sale that indicates the subject property's value, we next consider Smith's appraisal report. Although the property owner did not advance the argument that the subject sale price reflected the value of the underlying leases in place at the time of the sale, we proceed to evaluate the appraisal report to determine if there is sufficient evidence to rebut the subject sale. See *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, at ¶34 ("The February 2013 sale price, which Terraza does not dispute, is the *best evidence* of the property's true value, subject to rebuttal. *** R.C. 5713.03 does not now '*require*[ ] an inquiry into whether a lease in place reflects market rent at the time of a sale,' as Terraza maintains in its first proposition of law. *** Market rent becomes relevant only if an opponent presents it as evidence in an attempt to rebut a sale price." (Emphasis sic.)).

Under the sales comparison approach, Smith compared the subject property to five other medical office buildings in Franklin and Fairfield counties, which sold between October 2013 and June 2016. After adjusting the comparable sales for differences with the subject property, Smith concluded the subject property would garner between $120 and $130 per square foot or between $6,693,840 and $7,251,660 on the open market. He ultimately concluded to an indicated value, under the sales comparison approach, of $6,900,000 as of January 1, 2015. Under the income approach, he relied upon five medical office building

properties that were leased, or available for lease, in Franklin County. After adjusting the comparable leased properties for differences with the subject property, Smith determined that the subject property's potential gross income to be $836,730 based upon potential rental income. He then deducted $92,040, or 11% of potential gross income, for vacancy, and deducted $12,551, or 1.50% of potential gross income, for credit loss, to conclude to a net rental income of $732,139. To that number, he added $385,659 for expense reimbursements to conclude to total effective gross income of $1,117,798. From that number, he deducted $463,066 of expenses, which included items such as insurance, utilities, and a management fee, to conclude to a net operating income of $654,732. He then capitalized the net operating income at 9.85%, including a tax additur, to conclude the subject property's value, under the income approach, to be $6,600,000 as of January 1, 2015. He reconciled the indicated values, giving primary weight to the income capitalization approach to value, and finally concluded the subject property's value to be $6,700,000 as of January 1, 2015.

As we review Smith's appraisal report and testimony, we note that his indicated range of value under the sales comparison approach supports the $7,012,000 sale price of December 2012. He concluded to a range in value between $120 and $130 per square foot or between $6,693,840 and $7,251,660. The subject property sold for $125.70 per square foot, i.e., $7,012,000/55,782 square feet. Furthermore, nothing in his sales comparison approach indicates that there was a change in market conditions between the impending 24 months, 28 days between the sale and tax lien dates. In fact, Smith's sales comparison approach indicates that the market was substantially similar during those times.

Moreover, we find nothing in Smith's income approach that necessitates rejection of the subject sale. As an initial matter, there was no analysis regarding the influence of the underlying leases to the subject sale price. He concluded that the subject property garnered $15.09 in contract rent as of the tax lien date; however, he concluded to market rent of $15. We find that $0.09 difference to have a negligible impact on the potential rental income, i.e., approximately $5,020, and effective gross income, i.e., approximately $4,393. As such, we conclude that the contract rent basically mirrors market rent and does not require rejection of the subject sale.

After reviewing the BOR hearing, it appears that Smith placed much importance on Mount Carmel Hospital Systems' decision to open two medical facilities in other areas of Franklin County. However, according to him, that decision was not announced until August or September 2016 and there was no indication that these facilities had opened at the time of the BOR hearing in September 2016. He failed to demonstrate how announcements made approximately 18 months *after* tax lien date affected the subject property's value on the tax lien date and he certainly failed to demonstrate how announcements made approximately 45 months *after* the subject sale affected the subject property's value on tax lien date. Notably, there was no indication whether information about these two potential medical facilities was or was not available to the parties to the sale of December 2012 and had an impact on the parties' decision-making. Although he speculated about the future impact that these two facilities would have on the subject property *at some point in the future*, "[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.

The property owner also argued that changes in the subject property's occupancy rate necessitated rejection of the subject sale. We disagree. The record demonstrates that the subject property's occupancy rate remained stable between the sale and tax lien dates at approximately 87%. See Statutory Transcript at BOR Hearing Exhibit 2; BOR Hearing Audio at Testimony of William McVeigh.

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, through Smith's appraisal report and testimony, that the subject sale was a recent, arm's-length transfer and that the BOR erred by solely focusing on the 24-month timeframe between the sale and tax lien dates. Absent an

affirmative demonstration that the $7,012,000 sale in December 2012 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:

TRUE VALUE

$7,012,000

TAXABLE VALUE

$2,454,200

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

SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1451
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, August 6, 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 dismissed the underlying complaint that challenged the value of the subject property, parcel 040-015700-00, 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.

The subject property was initially assessed at $110,300. The BOE filed a complaint, which requested that the BOR revalue the subject property at $280,000 based upon the price at which it transferred in January 2017. The property owner did not file a counter-complaint. At the BOR hearing on the matter, the BOE and property owner appeared through counsel to submit argument and/or evidence in support of their respective positions. In its presentation, the BOE submitted the conveyance-fee statement and general warranty deed, which memorialized the $280,000 transfer of the subject property from Peggy L. Dawson to Simone and Lowe Real Estate LLC, the property owner in this matter, in December 2016. Based upon the sale

documents, the BOE requested that the subject property's value be increased to reflect the sale price. In its presentation, the property owner argued that the character of the subject property had changed between the tax lien and sale dates and submitted several documents in support of its argument. Based upon the documents, the property owner requested that, instead, the BOR retain the subject property's initially assessed value.

According to the BOR decision hearing, the BOR voted to dismiss the BOE's complaint because the subject property had not been created by the tax lien date and, therefore, was not on the county auditor's tax list and treasurer's duplicate ("tax list") for tax year 2016. The BOR subsequently issued a written decision to that effect and the BOE appealed to this board. At the hearing before this board, only the BOE appeared to supplement the record with additional argument and/or evidence. In doing so, the BOE argued that, contrary to the BOR's conclusion, the subject property was included on the tax list for tax year 2016 which demonstrated that the underlying complaint was jurisdictionally valid. Neither the property owner nor the county appellees appeared at the hearing.

County boards of revision are quasi-judicial bodies created by statute and, as such, only have the limited powers conferred by statute. *Swetland Co. v. Evatt,* 130 Ohio St. 6 (1941); *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision,* 87 Ohio St.3d 363 (2000). R.C. 5715.11 sets forth the jurisdiction of county boards of revision, which provides in relevant part: "The county board of revision shall hear complaints relating to the valuation or assessment of real property *as the same appears upon the tax duplicate of the then current year.*" (Emphasis added.) To properly invoke the jurisdiction of a board of revision, a complainant must comply with the requirements of R.C. 5715.19. In relevant part, R.C. 5715.19(A)(1) identifies the specific determinations of the county auditor that may be challenged and the time for such challenges. R.C. 5715.19 (A)(1)(d) provides: "The determination of the total valuation or assessment of *any parcel that appears on the tax list,* except parcels assessed by the tax commissioner pursuant to section 5726.06 of the Revised Code." (Emphasis added.) Furthermore, the tax list is created by a county auditor and is comprised of real and public utility property located in the county. R.C. 319.28.

In this case, we find the certified copy of the tax list, submitted by the BOE at this board's hearing, sufficiently demonstrated that the subject property was included on the tax list for tax year 2016. In doing so, we conclude that the BOE's increase complaint properly invoked the jurisdiction of the BOR and, therefore, the BOR committed legal error when it dismissed the complaint. See e.g., *MC MSB LLC C/O Nexcore Group v. Delaware Cty. Bd. of Revision* (Jul. 14, 2016), BTA No. 2015-1580, unreported.

Based upon the foregoing, we remand this matter to the BOR with instructions to consider the evidence submitted at its hearing and to issue a decision on the value of the subject property as of January 1, 2016.

OHIO BOARD OF TAX APPEALS

APPALACHIAN GROUTING SERVICES, INC., (et. al.),	CASE NO(S). 2017-1281
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
BELMONT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - APPALACHIAN GROUTING SERVICES, INC.
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Entered Monday, August 6, 2018

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

This matter comes before this board upon a notice of appeal filed by Appalachian Grouting Services, Inc. ("Appalachian") from a decision of the Belmont County Board of Revision ("BOR"). 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.").

Appalachian filed six separate complaints against the valuation of real property requesting decreases in value for six parcels, i.e., parcel numbers 36-01100.000, 30-00568.000, 29-03925.000, 35-00362.000, 32-03976.000, and 26-03895.000, for tax year 2016. At the BOR hearing, Cody Barack and Roger Barack appeared on behalf of Appalachian and explained that the parcels were deeded to Appalachian in October 1997 by quitclaim deed from CSX Transportation, Inc. However, they explained that they did not acquire title to the underlying land – only to the non-realty on the land, i.e., stone. After reviewing the matter, the BOR issued decisions valuing each parcel at $0 for tax year 2016.

On appeal, Appalachian seeks a refund of real estate taxes paid for the five preceding years, indicating that similar refunds had been granted to others in similar situations in the county. H.R. at 12-13. At this board's hearing, counsel for the county appellees agreed that a mechanism does exist for refunding prior years' taxes based on a "clerical error," and that, in other situations, such refunds may have been given after the

filings of affidavits from those owners with the county recorder indicating that title to the property had changed due to reversionary clauses. Id. at 8-9. No such affidavits appear to have been filed in relation to the subject parcels. The absence of such filings, the county argues, precludes the auditor from refunding prior years' taxes under the clerical error statute in this matter.

Pursuant to R.C. 319.35, the county auditor may correct "clerical errors" in the tax list and, under R.C 319.36, the auditor may refund amounts erroneously charged or collected for the preceding five years. The Supreme Court explained in *Sheldon Road Associates, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 131 Ohio St.3d 201, 2012-Ohio-581, that clerical errors "may encompass errors concerning the owner's name, the valuation, the description, or the 'quantity of any tract or lot.'" Id. at ¶31, quoting R.C. 5713.19. The court further acknowledged the language of R.C. 319.35, indicating that a clerical error is one that "can be corrected by the county auditor from the inspection or examination of documents in the county auditor's office or from the inspection or examination of documents that have been presented to the county auditor and have been recorded by the county recorder." Id. at ¶30.

Appalachian acknowledged that no recorded affidavits or other documents clarifying who owns title to the subject real property have been filed. In the absence of any such documents, we are unable to conclude that the auditor could find a "clerical error" in the listing of the titled owner. Appalachian is therefore not entitled to a refund of prior years' taxes under the clerical error statute. Moreover, as to the valuation of the subject real property, the jurisdiction of the board of revision is limited to the year complained of, i.e., tax year 2016. It has no authority to refund taxes for prior years, or to change the valuation for prior years. See *Sheldon Road,* supra; R.C. 5715.19.

Based upon the foregoing, we find that the BOR and this board lack jurisdiction to grant the relief requested by Appalachian. As the only issue properly before us is the board of revision's valuation of the subject parcels, by which Applachian is not aggrieved, we find no justiciable issue. See *Kelsch v. Hamilton Cty. Bd. of Revision* (Feb. 7, 2003), BTA No. 2002-T-1271, unreported. Accordingly, this matter is hereby dismissed.

OHIO BOARD OF TAX APPEALS

CHRIS JACKSON, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-2146 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CHRIS JACKSON
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For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Wednesday, August 22, 2018

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

The above-named appellant appeals decisions of the board of revision ("BOR"), which determined the value of the subject properties, R72 06002 0006, R72 06002 0011, R72 06002 0039, 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 this board's show cause order dated March 13, 2018, and the county appellees' associated response.

However, before we can consider the merits of this appeal, we must first determine whether the property owner invoked the jurisdiction of this board and the BOR. In the show cause order dated March 13, 2018, 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 owner failed to file notice of the appeal in this matter with the county board of revision. We directed the property owner to come forward with evidence to demonstrate that notice of the appeal was, indeed, filed with the BOR within the timeframe to do so. The property owner did not respond to the show cause order.

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 owner failed to come forward with any evidence to demonstrate that he filed a copy of the notice of appeal with the BOR.

Accordingly, based upon the foregoing, we conclude that the property owner failed to invoke this board's jurisdiction because he failed to follow the requirements of R.C. 5717.01.

OHIO BOARD OF TAX APPEALS

TRIEQUITIES, LLC, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-416 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TRIEQUITIES, LLC
Represented by:
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TRIEQUITIES, LLC
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DUBLIN, OH 43017

For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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COLUMBUS, OH 43215

Entered Wednesday, August 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 county board of revision ("BOR") has not yet issued a final decision on appellant's application for remission of real property tax late-payment penalty. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

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.

The county appellees attached to their motion the affidavit of the BOR clerk, which states that no decision has been rendered on appellant's application for remission. Accordingly, 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

MDC COAST I, LLC, (et. al.), Appellant(s), vs. UNION COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2016-2088 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MDC COAST I, LLC
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MARYSVILLE EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION
Represented by:
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DUBLIN, OH 43017

Entered Friday, August 24, 2018

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

The appellant property owner, MDC Coast I, LLC ("MDC"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 29-0023057.0010 and 29-0023057.0017, 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 written argument of the parties.

The subject property consists of roughly 26.641 acres of land improved with a 355,000 square foot building, of which about 32,000 square feet (9%) represents finished office area. The subject's total true value was initially assessed at $10,308,840. The appellee board of education ("BOE") filed a complaint

with the BOR seeking an increase in value to $19,000,000. The tenant of the property, Sumitomo Electric Wiring Systems, Inc. ("Sumitomo"), filed a countercomplaint in support of maintaining the auditor's values, purportedly on behalf of MDC. At the BOR hearing, the BOE provided evidence that MDC purchased the property in December 2015 for $19,000,000, and argued that the sale price is the best evidence of the true value of the subject property as of the tax lien date. The BOE also objected to Sumitomo's participation in the appeal, arguing that the countercomplaint should be dismissed because as the tenant, Sumitomo lacked standing to file. In response, Sumitomo asserted that it had authority to challenge tax matters pursuant to its lease agreement and was acting as the agent for MDC. The BOR allowed Sumitomo to present its case, asking for additional argument on the issue following the hearing.

Sumitomo contested the reliability of the sale price, relying on testimony from William Lefebvre, general manager of Sumitomo's contracts and compliance department. Sumitomo also presented the testimony and written report of Robert J. Weiler, Sr., MAI, who opined that the value of the property was $13,500,000 as of January 1, 2015. Sumitomo challenged the reliability of the sale price as evidence of value, arguing that it reflected the value of the income stream and not simply the real property. Lefebvre explained that it previously had been leasing space in three different locations with leases nearing their end and had acquired new business. To consolidate operations to one location, Sumitomo decided to seek a developer to build a new location that could accommodate its warehouse, testing, and office space. At that time, Sumitomo entered into a lease that it now claims reflects an above-market rental rate. The building was completed in October 2014 for a total cost of $13,488,850, according to the development budget included in Weiler's report. In December 2015, MDC then purchased the subject property for $19,000,000. Sumitomo asserts that this purchase reflected the value of the lease in place and not the real property.

As further evidence, Weiler prepared an appraisal for the BOR hearing. In this appraisal, Weiler considered the cost, income, and sales comparison approaches to value, which indicated values of $13,500,000, $11,875,000, and $13,315,000, respectively. Though the final reconciliation of value in the report indicates that he disregarded the cost approach, it is clear (and he so testified) that it formed the primary basis for his ultimate conclusion of $13,500,000 as of January 1, 2015. Weiler also testified that the subject's rental rate, which he indicated was $4.18 per square foot, exceeded market rent, which he concluded was $3.75. The BOE cross-examined Weiler and challenged aspects of his methodology, maintaining that the sale price established the subject's value, and the reliability of the sale had not been rebutted.

The BOR issued a decision increasing the initially assessed valuation to $19,000,000 and dismissing Sumitomo's countercomplaint. From this decision, MDC filed the present appeal contesting the BOR's increase in value. The propriety of the BOR's dismissal of the countercomplaint has not been litigated on appeal. A hearing was convened before this board, at which Lefebvre and Weiler again appeared in an effort to demonstrate that the sale price reflected the value of Sumitomo's lease and not the value of the real property. MDC also provided an affidavit from the Executive Vice President, General Counsel, and Secretary of MDC, which was admitted into evidence but limited in evidentiary weight because the individual was not present at either hearing to be made available for cross-examination or further questioning from this board or the BOR. Weiler's appraisal changed somewhat between the BOR hearing and this board's hearing, though the ultimate opinion of value and conclusion that the sale price reflected above-market rents remained unchanged. The BOE cross-examined MDC's witnesses and argued that it failed to rebut the presumption that the recorded sale price established the true value of the subject property. Following the hearing, MDC and the BOE submitted written argument in support of their respective positions.

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 MDC purchased the subject property from Sumary Investment, LLC, in an arm's-length transaction on or about December 9, 2015 for a reported sale price of $19,000,000. For the reasons explained in more detail below, 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.

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 MDC as the opponent of the sale to establish why its purchase price is not 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 Weiler's ultimate conclusion of value, we must first find that MDC has rebutted some aspect of the sale. In this case, MDC has specifically argued that it purchased the income stream, and the above-market lease led to a sale price that exceeded the subject's true market value.

To support its claim, MDC relies on testimony from Lefebvre regarding his opinion of the lease rate and the negotiation of the built-to-suit lease, testimony and report from Weiler regarding market conditions, and an affidavit from the Executive Vice President, General Counsel, and Secretary of MDC. Notably, despite its terms being central to MDC's case, Sumitomo's lease was not provided for this board's review. As such, we are unable to independently determine whether its terms conform to the market. See *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-2046. Furthermore, the record lacks any reliable first-hand account regarding the sale negotiations or the motivations of either party to the transaction. We note that although the affidavit was admitted into the record, it was done so for the limited purpose of providing the basis for Weiler's opinion and we give it no weight as to the truth of the statements made therein.

In this case, the facts in the record developed before the BOR vary somewhat from the facts presented at the hearing before this board. In both venues, Lefebvre expressed his opinion that the lease rate exceeded what would be standard in the market, as did Weiler through his testimony. At the BOR, Weiler indicated that the subject's rent was $4.18 per square foot (triple net) and that $3.75 per square foot was market rent. At this board, Lefebvre confirmed that for the first five years of the lease, which included the tax lien date, the subject's rental rate was $3.80 per square foot (triple net). Weiler's updated appraisal reflected this number, but his opinion of market rent reduced to $3.50. Although the comparable lease data changed somewhat, Weiler did not explain in detail why he made these changes. In its brief, MDC indicated it was due to questions from the BOR. While this may be an explanation as to why Weiler considered additional information, it does not explain how this new information changed his opinion of market rent. Upon review of the comparable lease rates in both reports, we cannot conclude that either the $3.80 per-square-foot rent on the tax lien date or the $4.18 per-square-foot rent Sumitomo was contracted to pay in the sixth through

tenth year of the lease exceeded market conditions for the subject property. Both rental rates fall within the range in each report: $2.45 (triple net) to $4.50 (modified gross) at the BOR, and $2.45 (triple net) to $4.95 (triple net) before this board. While the subject's rental rate may be at the high end of this range, this can be explained by the percentage of office space and age of the building. Weiler testified that office space leases at a higher rate than warehouse space, and a building with more office space generally sells at a higher price. Looking at the data available in the report, the subject property's 9% office space is above average, which would reasonably result in a higher rental rate. Similarly, the subject property is a brand new building, only two months old on the tax lien date. A comparison of the rental rate of the subject to those of properties ranging in age from 1980 to 2014 with unknown office areas, would support a market rent at the higher end of the range. Accordingly, we find that despite his statements to the contrary, Weiler's report does not support a finding that the subject's rental rate exceeded market conditions.

Because the subject property was constructed just months before the tax lien date, Weiler also relied heavily on the development costs to support his finding that the sale was not a reliable indication of the subject property. The cost to develop the property forms the basis for two separate but related claims. First, Weiler contends that the lease rate is above-market based on the average rate of return for a developer. This may explain why he opined that the lease rate was above-market even when his conclusion of market rent (and the subject's rent) varied among the two reports. Second, because the sale price was so much higher than the cost to develop the property, in his opinion, the purchase price was driven by the lease that encompassed the high rate of return. Based on these conclusions, Weiler disregarded the sale and relied on the cost to develop the property.

We find that Weiler's conclusions regarding his focus on the rate of return and his subsequent reliance on the cost approach do not invalidate the sale as best evidence of value. Initially, we note that Weiler stated that the rental rate equates to an 11% rate of return. This is true for years 6-10 of the lease ($4.18 per square foot), but not the rate in effect on the tax lien date. The rate of $3.80 per square foot that was in place on the tax lien date and the first five years of the lease calculates to a 10% rate of return based on the budgeted cost of construction provided in the report. Whether this 10% (or even 11%) return is above-average is unclear. Significantly, Weiler has included no data regarding average rates of return for development of this or any other type of real estate project. Thus, this conclusion that the lease is above-market because it represents a superior rate of return for the developer is not supported by corroborating evidence and cannot serve as the basis to rebut the validity of the sale. As such, we are left with the market data found in Weiler's income approach, which we previously found supported that the subject's lease rate was not appreciably above market.

Weiler's emphasis on the cost of development as the leading indicator of value also lacks a key component of the cost approach: entrepreneurial incentive or profit. Weiler's opinion relies heavily on the development budget, which he included in his report. As Weiler pointed out, this budget includes a line item for "Developer Overhead, Supervision & Fee" in the amount of $300,000, or roughly 2.2% of the total budget. This line item is a "soft" or indirect cost that accounts for the developer's costs associated with undertaking the project. This does not include the entrepreneurial incentive the developer sought to make the project worth undertaking, which translates into entrepreneurial profit once development is complete and the profit (or loss) is realized. See The Appraisal of Real Estate 573 (14th Ed.2013). Without the anticipation of some economic "reward," a developer would have no incentive to undertake a new building project. Id. A project's entrepreneurial profit is defined as the difference between the total cost of development and its market value. Id. The developer's realization of this profit depends on "how well the entrepreneur has analyzed the market demand for the property, selected the site, and constructed the improvements." Id. Thus, a developer's profit, which correlates directly to the property's market value, reflects not only the cost of development but also the market demand for that particular property. Market value and purchase price often relate to supply and demand associated with the characteristics of the real property itself, such as location or available alternatives, and not simply the terms of a lease that may or may not be in place. As such, even a considerable profit does not necessarily show the buyer "overpaid" or render a sale unreliable where the lease is otherwise consistent with market conditions. Rather, the entrepreneurial profit shows that

the developer made a good business decision to develop a property with a higher market value than cost of

construction.

In this case, the entrepreneurial profit equates to roughly $5,511,150, or the difference between the $19,000,000 sale price and the $13,488,850 cost of development. The record does not contain any analysis as to what would be considered "average" for properties in this market, and this board has no basis upon which it can find that this project's profit is too high. The testimony shows that there was limited market availability for this type of property, which is why Sumitomo sought a developer to build one. The size of the facility and above-average office space differentiated the subject property from others in the area and evidently filled a gap in real property availability. The developer was apparently able to construct the property in a timeframe and for a budget that met the needs of the market. As we have found that the lease did not exceed market rates, the profit received by the developer when it sold the subject property does not alone negate the reliability of the sale.

Accordingly, we find that MDC has failed to meet its burden and the December 2015 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:

PARCEL NUMBER 29-0023057.0010

TRUE VALUE

$6,057,400

TAXABLE VALUE

$2,120,090

PARCEL NUMBER 29-0023057.0017

TRUE VALUE

$12,942,600

TAXABLE VALUE

$4,529,910

OHIO BOARD OF TAX APPEALS

GREGORY TERRENCE AND JULIE ANN LINK, (et. al.),	CASE NO(S). 2018-580
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - GREGORY TERRENCE AND JULIE ANN LINK
Represented by:
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3782 BEACON WOODS DRIVE
CLEVES, OH 45002

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, August 27, 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. 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 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 county appellees attached to their motion the affidavit of the clerk to the BOR, asserting that

appellants' notice of appeal was filed with the Hamilton County Board of Revision thirty-one days after the mailing of the BOR's decision. 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

CAPITAL LAND 1031/16 LLC, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-572

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CAPITAL LAND 1031/16 LLC
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
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230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Monday, August 27, 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 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

CAMPBELL JOHN & CRANFORD, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-584

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

Entered Monday, August 27, 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 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 county appellees attached to their motion the affidavit of the clerk to the BOR asserting that appellants'

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

PAUL MILLER, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-806

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PAUL MILLER
7411 RIDGEFIELD RD.
PARMA, OH 44129

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, August 27, 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 and 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's notice of appeal was filed with this board fifty-nine days after the mailing of the BOR's decision, and that is was not filed at all 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

AFFORDABLE MEDICAL EDUCATION HOUSING ASSN NP, (et. al.),	CASE NO(S). 2018-429
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - AFFORDABLE MEDICAL EDUCATION HOUSING ASSN NP
Represented by:
CATHLEEN SOLOMON
CEO
13940 CEDAR RD. #113
UNIVERSITY HEIGHTS, OH 44118

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, August 27, 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 and 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 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

BUCKEYE TERMINALS LLC, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2014-4958

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BUCKEYE TERMINALS LLC
Represented by:
NICHOLAS M.J. RAY
VORYS, SATER, SEYMOUR AND PEASE LLP
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P.O. BOX 1008
COLUMBUS, OH 43216-1008

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

BOARD OF EDUCATION OF THE SOUTH-WESTERN CITY SCHOOL DISTRICT
Represented by:
KIMBERLY G. ALLISON
RICH & GILLIS LAW GROUP, LLC
6400 RIVERSIDE DRIVE, SUITE D
DUBLIN, OH 43017

Entered Monday, August 27, 2018

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

This matter is again before the Board of Tax Appeals upon a decision and journal entry issued by the Supreme Court in *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664. In said decision, the court determined that this board's decision, which valued the subject property, parcel 140-000084-00, for tax years 2011 through 2013, was unreasonable and unlawful. In doing so, the court reversed our decision and remanded the matter for an independent determination of the subject property's value. Acting under pertinent provisions of R.C. 5717.04, we consider this matter once again upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of this board's hearing, the court's directive, and the parties' written argument, as filed on remand.

This matter emanates from a complaint filed by the board of education ("BOE"), which requested that the subject property's value be increased from its initially assessed value of $1,825,700 to $8,493,000 for tax year 2011. The board of revision ("BOR") held a hearing on the matter, at which time the BOE and property owner submitted evidence in support of their positions. The BOE submitted a conveyance fee statement and deed to demonstrate the $8,492,911 transfer of the subject property to the property owner in June 2011. The property owner submitted the testimony of its property tax manager, Flora Davis, and employees of Ernst & Young, Robert Stall and Mark Molepske, who were involved in allocating the $166,000,000 transfer of thirty-three oil and gas terminals for accounting purposes, which included the subject property. Their testimony indicated that the $8,493,000 purchase price provided on the initial conveyance fee statement was erroneous. Instead, they testified, the conveyance fee statement should have provided $1,921,084 as the purchase price, as indicated by a recently filed amended conveyance fee statement and supported by a spreadsheet prepared by the property owner, contemporaneous with the $166,000,000 bulk sale, for purposes of transfer tax. The BOE objected to their testimony about the subject sale, asserting that it amounted to unreliable hearsay. The BOR issued a decision that increased the subject property's value to $8,493,000 for tax years 2011, 2012, and 2013. Thereafter, the property owner appealed to this board.

At the hearing before this board, the property owner submitted the testimony of appraiser Ronald M. Eberly, Jr., who testified consistent with his appraisal report, which considered the market and cost approaches to valuing real property, and opined the value of the subject property to be $1,445,000 as of January 1, 2011. (Though the property owner also submitted the testimony of Louis Spisak, the court affirmed our decision not to consider elements of his testimony, and associated hearing exhibits, based upon their hearsay nature.) After the parties submitted written argument, and supplemented the record with the sale documents submitted by the BOE at the BOR hearing, this board issued a decision that concluded that the subject property should be valued consistent with the $8,493,000 sale in June 2011, for tax years 2011, 2012, and 2013. Thereafter, the property owner appealed to the Supreme Court.

In its decision in *Buckeye Terminals*, the court determined that this board erred when it failed to determine whether the property owner had demonstrated that the purchase price reported on the original conveyance fee statement, $8,492,910, accurately reflected the subject property's value. The court concluded that the property owner had, indeed, made such demonstration. However, the court recognized the "contradictory valuations" contained in the record, i.e., the $1,921,084 purchase price memorialized on the amended conveyance fee statement, as supported by testimony of Robert Stall and Mark Molepske from Ernst & Young; the spreadsheet schedule of all elements of the overall $166,000,000 sale, maintained by Buckeye Terminals, which allocated $3,016,041 to the subject property; and Eberly's appraisal report, which opined the value of the subject property to be $1,445,000 as of January 1, 2011. *Buckeye Terminals*, supra, at ¶43. The court has directed this board, on remand, to weigh the conflicting evidence and to determine the subject property's value. Accordingly, we revisit the evidence previously submitted at the hearings before the board of revision and before this board.

We begin our analysis with the amended conveyance fee statement, which memorialized the $1,921,084 transfer of the subject property from The Standard Oil Company to Buckeye Terminals in June 2011. Normally, upon presentation of sale documents, a rebuttable presumption is created that a sale is the best indication of real property value. See *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, at ¶¶32-34. However, we question whether the property owner's claimed allocation of $1,921,084, of the overall $166,000,000 purchase price, actually reflected the subject property's value. According to testimony from Stall and/or Molepske, there were various elements to the sale, i.e., liabilities, assets, real and personal property, goodwill, of thirty-three oil and gas terminals. In *Consol. Aluminum Corp. v. Monroe Cty. Bd. of Revision*, 66 Ohio St. 2d 410 (1981), the court accepted this board's finding that the complexities of that transaction necessitated rejection of a claimed allocation of the lump-sum purchase price. The evidence in this matter demonstrates the complexities of the sale, which included the

sale of an ongoing business with various types of property and multiple parcels. As such, we conclude that facts and circumstances of the overall sale, and its corresponding allocation to the subject property, are so complex that the parties' allocation of the sale price should be disregarded.

The testimony from Stall and/or Molepske indicated that the allocations of the overall $166,000,000 purchase price had more to do with following Generally Accepted Accounting Principles (more commonly referred to as "GAAP") than with determining the actual value of the subject property. Either Stall or Molepske testified that determining real property value, for property tax purposes, was not a consideration in the analysis when determining how to allocate the overall purchase price. We have generally rejected valuations of real property performed for purposes other than ad valorem tax purposes. See, e.g., *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported, at 7. See, also *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 132 Ohio St.3d 371, 2012-Ohio-2844, at ¶24 ("It is true that we have upheld the use of an allocated sale price in part because the allocation 'was based on negotiations between the parties.' *W.S Tyler Co.*[*v. Lake Cty. Bd. of Revision*], 57 Ohio St.3d 47, 49 *** [(1990)]. But 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. Id." (Parallel citation omitted.)). Furthermore, we note that the allocation of the overall $166,000,000 included goodwill. We have repeatedly rejected sales that include allocations to goodwill when there has been no 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, 2011-Ohio-2258, at ¶33. Therefore, because of this failure, we are unable to discern whether any portion of the overall allocation to goodwill should have been allocated to the subject property. Taken together, we must conclude that the claimed allocation of $1,921,084 is not the best indication of the subject property's value.

We now turn to the probative nature of the spreadsheet, retained in the property owner's business records, which claimed that $3,016,041 of the overall purchase price was allocated to the subject property. Testimony at the BOR, from Davis, indicated that the spreadsheet was compiled for purposes of paying transfer taxes. As we indicated above, we have generally rejected valuations of real property performed for purposes other than ad valorem tax purposes. See, *Matuszewski*, supra. For this reason, we conclude that the spreadsheet was not competent and probative evidence to demonstrate the subject property's value.

We next turn to the appraisal report performed by Eberly, which developed the sales comparison and cost approaches to valuing real property. Under the sales comparison approach, he first determined that "[t]he subject's primary gross building area of 17,419 SF only utilizes 6.5 acres of the site which computes to a [land to building ratio] of 16.25:1. Thus 6.5 acres has been allocated out of the 37.7545 acre site for comparison purposes." Hearing Record, Exhibit 1 at 30. He proceeded to compare the subject property to four comparable sales that occurred in Franklin County, Ohio between July 2009 and September 2011. After comparing the subject property's features with the features of the comparable properties, he made qualitative adjustments for factors such as land-to-building ratio, age, amount of finished office area, and clear height. In doing so, he concluded to $20.00 per square foot, which he applied to the 17,419 gross building area, to conclude to a value of $348,380 for the 6.5 acre site. He continued his analysis to value the remaining 31.255 acres at $35,000 per acre based upon the land sale analysis discussed under the cost approach, to conclude to a value of $1,093,925. Eberly finally concluded that the subject property's entire 37.7545 acres, inclusive of its improvements, should be valued at $1,440,000 as of January 1, 2011.

Under the cost approach, Eberly first developed a value of the land portion of the subject property's 37.7545 acres by comparing it to six vacant land sales located in Fairfield, Franklin, and Madison counties and, after adjusting for differences, concluded to a land value of $35,000 per acre, or $1,320,000. Next, he determined depreciation from all sources, i.e., external, functional, and physical, for the subject property to be 89% given its age. He then relied upon the Marshall Valuation Service to analyze the contributory value of the improvements situated on the subject property, which he concluded to be $1,083,314. To that number, he added 10% ($108,331) for yard improvements, to preliminarily conclude to $1,191,646 for all

improvements. After adding the associated soft costs, $119,165, he derived a replacement cost new value of $1,310,810. He then deducted $1,183,074 to reflect the total accrued depreciation to conclude to a depreciated value of $127,736 for all of the improvements. To that number, he added $1,321,408 to reflect the value of the subject property's 37.755 (rounded) acres at $35,000 per acre. Eberly finally concluded that the subject property's value to be $1,450,000 as of January 1, 2011. Eberly reconciled the indicated values, giving equal weight to both approaches to value, to finally conclude the subject property's value to be $1,445,000 as of January 1, 2011.

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. 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. Cuyahoga Cty. 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).

Upon review, we find Eberly's appraisal report to be competent and probative evidence of the subject property's value. As an initial matter, we note that the BOE did not assert that his appraisal report was based upon legal error and our review failed to glean such fatal shortcoming. *City of Columbus Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 700, 2016-Ohio-8375. Although the BOE asserted that Eberly failed to consider the allocated purchase price from the June 2011 sale in the sales comparison approach and inappropriately relied upon a receivership sale as a comparable property (comparable sale #1), we find no error to his analysis. Given the discussion above about the questionable nature of the allocated sale price, as indicated on the amended conveyance fee statement, we conclude that, in this instance, it was appropriate for Eberly to ignore such sale in his sales comparison approach. Furthermore, because Eberly determined that the receivership sale (comparable #1) was adequately exposed to the market, we conclude that his inclusion of such sale does not necessitate rejection of the appraisal report. We also reject the BOE's argument that development of the cost approach was inappropriate given that the subject property's was thirty-six years old. Eberly testified that the subject property could be considered a special purpose property "as a tank farm." Hearing Record at 54. Based upon the unique features of the subject property, and its specialized use, we agree that it could be considered a special purpose property. See *Rite Aid of Ohio, Inc. v. Washington Cty. Bd. of Revision*, 146 Ohio St.3d 173, 2016-Ohio-371. As such, the cost approach, as developed in the appraisal report, was appropriate.

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 $1,921,084 sale price as reflected on the amended conveyance fee statement and the $3,016,041 sale price reflected on the property owner's spreadsheet, compiled for purposes of transfer tax, are not the best indication of the subject property's value. Instead, we find that the subject property should be valued consistent with the appraisal report performed by Eberly.

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2011, January 1, 2012, and January 1, 2013:

TRUE VALUE

$1,445,000

TAXABLE VALUE

$505,750

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
230 EAST NINTH STREET, SUITE 4000
CINCINNATI, OH 45202

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.

OHIO BOARD OF TAX APPEALS

NORWAYNE LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-810
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MEDINA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - NORWAYNE LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
KARRIE M. KALAIL
PETERS, KALAIL & MARKAKIS CO., LPA
6480 ROCKSIDE WOODS BLVD. SOUTH
SUITE 300
CLEVELAND, OH 44131-2222

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

OHIO STATION REALTY , LLC & OHIO STATION NASSIM LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

Entered Tuesday, September 4, 2018

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

The appellees, Ohio Station Realty, LLC & Ohio Station Nassim LLC ("appellees"), move to dismiss this matter on the basis that said appellees filed an appeal with the Medina County Court of Common Pleas prior to the appeal filed by the board of education with this board. 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 July 23, 2018, the appellant board of education filed an appeal with this board from a decision issued by the Medina County Board of Revision, i.e., BOR No. 17-009A. The appellees' motion argues that Ohio Station Realty, LLC & Ohio Station Nassim, LLC filed an appeal from the same decision with the Medina

County Court of Common Pleas on July 10, 2018. Attached to the motion to dismiss is a copy of such appeal, captioned as *Ohio Station Realty, LLC & Ohio Station Nassim, LLC v. Medina Cty. Bd. of Revision & Medina Cty. Auditor*, case no 18CIV0697. The copy reveals that the appeal was filed by appellees with the Medina County Clerk of Courts on July 10, 2018.

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, we find that this board does not have jurisdiction over this matter. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ARCHIE STRAUSS, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-437

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ARCHIE STRAUSS
4300 SUPERIOR AVENUE
CLEVELAND, OH 44103

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, September 4, 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

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1562
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:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

FREPAT PROPERTIES LLC
Represented by:
E. CARROLL THORNTON
MANCHESTER NEWMAN & BENNETT
201 EAST COMMERCE STREET, ATRIUM LEVEL TWO
YOUNGSTOWN, OH 44503

Entered Tuesday, September 4, 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 67-49817, 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 $202,250. The BOE filed a complaint with the BOR, which requested that the subject property be revalued at $400,000, to reflect the price at which it transferred in February 2016. The property owner 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 its presentation, the BOE submitted a conveyance-fee statement and limited-warranty deed, which demonstrated the $400,000 transfer of the subject property from Rohrer Holdings, LLC to Frepat Properties LLC in January 2016. In its presentation, the property owner presented an appraisal report performed by Michael J. Flak, who opined the value of the subject property to be $215,000 as of the tax lien date. Flak did not, however, appear at the hearing to testify and, as a result, the BOE objected to any consideration of the appraisal report on hearsay grounds. Fred and Pat Moran also appeared at the hearing to testify about the facts and circumstances that culminated in the subject sale, i.e., a desire to have a greater presence in the Akron, Ohio market. On cross examination, Fred or Pat Moran testified that the parties agreed to transfer the existing business situsedon the subject property for $800,000, and allocated $400,000 to the business franchise and $400,000 to the subject property. The BOR voted to accept Flak's appraisal report as the best indication of the subject property's value and subsequently issued a written decision to that effect.

[3] The BOE appealed to this board. At this board's hearing, only the property owner appeared, through Fred Moran, to supplement the record with additional evidence. Both the BOE and county appellees waived their appearance; however, the BOE submitted written argument in lieu of attending the hearing.

[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). In *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23 (1989), the Supreme Court explained that a qualifying sale for tax purposes 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." Id. at 25. 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 begin our analysis with the subject sale. None of the parties dispute the basic details of such sale. *Lunnv. 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 find, therefore, that the sale documents created a rebuttable presumption that the $400,000 price at which the subject property transferred in January 2016 reflected its value as of the tax lien date.

[6] The property owner argued that compelling business interests required it to purchase the subject property. 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 interested parties to the underlying transaction were faced with "survival on one hand and swift and sure corporate death on the other hand ***." Id. See, also, *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 107 Ohio St. 3d 250, 2005-Ohio-6434.

[7] Here, the record is devoid of any evidence that the property owner had no real choice but to purchase the subject property. In fact, the testimony at the BOR hearing and at this board's hearing indicated that the property owner chose to purchase the subject property in order to maximize its return on its advertising dollars. 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 or its "swift and sure

corporate death." We conclude, therefore, that *Lakeside* has no application to this matter. See, also

Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, 10th Dist. Franklin No. 15AP-549, 2016-Ohio-4554; *Katabi Invs. Ltd. v. Franklin Cty. Bd. of Revision* (July 3, 2013), BTA No. 2010-L-3842, unreported.

[8] We also find the property owner's motive for purchasing the subject property to be unpersuasive. All buyers and sellers have subjective motives in any transaction. We acknowledge the property owner's argument that it overpaid for the subject property; however, "[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.

[9] We acknowledge that the property owner attempted to meet its burden with Flak's appraisal report, which valued the subject property at $215,000 as of the tax lien date. However, the appraisal report is an insufficient basis to reject the subject sale, for two main reasons. First, there is no indication that Flak compared the subject sale's $400,000 sale price to the market as of the tax lien date. Second, Flak failed to testify at the BOR hearing or this board's hearing and, as a result, the record is devoid of any testimony about the underlying data and methodologies used to derive his final conclusion of value. Because his testimony is notably absent, we are left to speculate as to the basis for his analysis and conclusions. As such, we find 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.") Compare *Emerson v. Erie Cty. Bd. of Revision*, 149 Ohio St. 3d 148, 2017-Ohio-865 (the court approved the use of a hearsay appraisal report *to support* the assertion that a sale price reflected fair market value).

[10] We further acknowledge that an appraisal report *may* be utilized to determine the arm's-length character, recency, and voluntariness of a particular sale, see *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 470, 2016-Ohio-757, at ¶20, as well as to determine whether a particular sale price reflects value attributable to a lease in place at the time of such sale, see *Terraza 8, LLC v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. However, nothing in Flak's appraisal report implicates those very important factors of the subject sale or otherwise require us to reject such sale. *Columbus City Schools Bd. of Edn.*, supra at ¶20 ("[T]he 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.").

[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"). 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 $400,000 sale in January 2016 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 and that the BOR's decision was in error. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7 ("[O]ur case law has repeatedly instructed the BTA to eschew a presumption of validity of the BOR's value ***.").

[12] 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:

TRUE VALUE

$400,000

TAXABLE VALUE

$140,000

OHIO BOARD OF TAX APPEALS

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1561
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Represented by:
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Represented by:
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JAMES R. LAWSON (VENDOR), BENEFICIAL BUILDING SERVICES INC. (VENDEE)
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AKRON, OH 44314

Entered Tuesday, September 4, 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, parcels 67-54391 and 67-41580, 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 a combined value of $93,570. The BOE filed a complaint with the BOR, which requested that the subject property be revalued at $200,000. The property owner, James Lawson, 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 its presentation, the BOE submitted a land-installment contract, which demonstrated that the property owner, James Lawson as the seller, and Beneficial Building Services ("BBS"), as the buyer, entered into a land-installment contract in June 2016, to transfer the subject property to BBS upon the

satisfaction of monthly payments of $2,024.90 beginning on June 30, 2016, and a final payment of any unpaid principal and accrued interest on June 30, 2026. In his presentation, James Lawson detailed his ownership history of the subject property until he sold it to BBS, owned by his son Gregory Lawson, and his business partner. Gregory Lawson also testified that the parties allocated $97,970.64 of the $200,000 land installment contract price to the subject property and allocated $102,029.36 to refinancing previous debt payments due to Mr. James Lawson. According to the BOR decision hearing, the BOR voted to value the subject property at $98,000 based upon "testimony and evidence" and subsequently issued a decision to that effect. This appeal ensued.

[3] At this board's hearing, only the property owner appeared to submit additional argument and/or evidence into the record. In doing so, both James and Gregory Lawson reiterated the testimony about the circumstances surrounding the land-installment contract. Both the BOE and county appellees waived their appearance at the hearing.

[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] 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. Cf. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588.

[6] Here, the terms of the land-installment contract are undisputed. The record is, however, devoid of any evidence to demonstrate that the subject property has transferred to BBS in satisfaction of the land-installment contract. 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.

[7] We also note that there has been no demonstration that the land-installment contact was entered into at arm's-length given the familial relationship between James and Gregory Lawson, see *Emerson v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 148, 2017-Ohio-865, and the specter of financial duress, see *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 134 Ohio St.3d 529, 2012-Ohio-5680.

[8] Having concluded that the BOE's evidence is insufficient to justify an increase in the subject property's value, we now turn to the BOR's decision to increase the subject property's value to $98,000. Though it is unclear exactly what "testimony and evidence" the BOR relied upon to reach its decision, to the extent that the BOR relied upon the $97,970.64 allocated to the subject property in the negotation of the land-installment contract, we find the BOR decision to be in error for the previously stated reasons.

[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 land-installment contract, upon which the BOE and BOR relied, is not indicative of the subject property's value. In doing so, we conclude that the BOE failed to satisfy the evidentiary burden on appeal and that the BOR erred in its decision to increase the subject property's value to $98,000. 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; *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-919.

[10] 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 67-54391

TRUE VALUE

$12,840

TAXABLE VALUE

$4,490

PARCEL NUMBER 67-41580

TRUE VALUE

$80,730

TAXABLE VALUE

$28,260

OHIO BOARD OF TAX APPEALS

JOHN RITENOUR, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-510

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHN RITENOUR
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
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HAMILTON COUNTY
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CINCINNATI, OH 45202

Entered Wednesday, September 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 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 county appellees attached to their motion the affidavit of the clerk to the BOR, asserting that appellant's notice of appeal was filed with the Hamilton County Board of Revision thirty-five days after the mailing of its decision. Such filing does not meet the mandatory requirement of R.C. 5717.01 that notice of the appeal be filed thirty days after the mailing of the BOR's decision. 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

ROSSFORD EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1375
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
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For the Appellee(s) - WOOD COUNTY BOARD OF REVISION
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GO GREEN OH LLC
C/O RYAN LLC ATTN: M. CINEFRA
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Entered Wednesday, September 5, 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 P57-300-260000030000, 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 $5,750,000. The BOE filed an increase complaint with the BOR seeking an adjustment in value to $12,868,900. At the BOR hearing, the BOE presented a deed and conveyance fee statement evidencing an October 7, 2016 sale of the subject property for $12,868,900, 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 to establish value. An appraiser from Lexur Appraisal appeared and testified that he had unsuccessfully attempted to contact the buyer and seller to the transaction, as well as the agent currently listing the subject property for rent. He was able to discern, however, that a portion of the subject property was currently listed at $2.25 per square foot, which

would tend to support the auditor's values based on a pro forma he completed. No report or supporting documentation was offered or included in the transcript certified to this board. The BOR members also discussed a prior year's BOR case and 2015 sale of the subject property that appears to have provided the basis for the auditor's values. The BOR issued a decision increasing the initially assessed valuation to $7,736,100, indicating that it did so to reconcile the income approach and the October 2016 sale. 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 October 2016 sale price. The BOE also objected to any consideration of the appraiser's statements below or documentation the appraiser purported to rely upon because it was never introduced or made part of the record. The county appellees appeared in support of the BOR's value, arguing that it has discretion to reject a sale pursuant to R.C. 5713.03. 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, ¶¶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 the subject property transferred from Perrysburg OH (959 5th) LLC to Go Green (OH) LLC on October 7, 2016 for $12,868,900. It is likewise undisputed that the subject property previously transferred from Ace One LTD to Perrysburg OH (959 5th) LLC on March 25, 2015 for $5,750,000, apparently the basis for the auditor's values. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1612, ¶11 (for purposes of real property valuation, the effective date of a sale is the date the conveyance-fee statement is filed in the county auditor's office). There has been no express challenge to the reliability of either sale. In *Terraza*, supra, the court held that that 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. Id. at ¶¶31-34. As such, the burden still lies with the opponent of a sale to establish why the 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 the reliability of the appraiser's conclusion of value, which provided the basis for the BOR's decision, we must first find that the reliability of both sales has been rebutted.

No one has expressly challenged any aspect of either sale, but recency is inherently at issue because there were multiple transactions. When a property is subject to more than one arm's-length transfer near the tax lien date, the sale that occurred closer to the tax lien date provides the best evidence of the subject's value. *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, paragraph one of the syllabus. To determine which sale was closer to the tax lien date, "the auditor should use the date that the real property conveyance fee statement is filed in the auditor's office as the sale date of the property." Id. In

this case, the March 25, 2015 sale was 282 days before the tax lien date, while the October 7, 2016 sale took place 280 days after January 1, 2016. The October 2016 sale, therefore, should be utilized to establish the subject's value.

We recognize 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., 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"). In this case, the record shows that the subject property transferred on two separate occasions, both within close proximity to the tax lien date, though at drastically different prices. The record does not contain any evidence describing a change in circumstances or market conditions that would explain the $7,118,900 difference between the two sales, which occurred just 18 months apart. Thus, despite this difference in price, there is nothing for this board to conclude that either of the sales reflected a property or market that was so drastically different from the tax lien date that the sale price was not reliable. Accordingly, we find the existing record demonstrates that the October 2016 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

$12,868,900

TAXABLE VALUE

$4,504,120

OHIO BOARD OF TAX APPEALS

PAG ASHLAND RV LLC, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2017-1214

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PAG ASHLAND RV LLC
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For the Appellee(s) - ASHLAND COUNTY BOARD OF REVISION
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ASHLAND CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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Entered Wednesday, September 5, 2018

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

Appellant property owner PAG Ashland RV LLC ("PAG") appeals a decision of the Ashland County Board of Revision ("BOR") which increased the true value of parcel P43-014-A-001-00 for tax year 2016. 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 record of the hearing ("H.R.") before this board.

The subject property is operated as a mobile home park. The auditor valued the parcel at $2,500,000 for tax year 2016. The Ashland City School District Board of Education ("BOE") filed a complaint against the valuation requesting an increase in value to $2,950,000, to reflect the amount for which the property was

reported as having sold in September 2016. The BOE submitted a copy of the recorded conveyance fee statement and deed as evidence of the sale.

No one appeared on behalf of PAG at the BOR hearing; however, its counsel submitted a written statement asserting that the September 2016 sale was a transfer of both the subject real property and the non-realty situated on the property, i.e., the mobile homes. PAG requested that the total sale price be reduced by the tax values of the mobile homes, totaling $210,620. It submitted copies of the manufactured tax bills purportedly for the mobile homes on the subject property as proof of their values. Counsel for the BOE noted that the tax bills indicate the owner of the homes is Ashland Estates, HMB Property Management (neither the seller nor the buyer in the September 2016 transaction), and that there has been no recorded transfer of title to the mobile homes. The BOE further argued that no allocation to personal property was made on the conveyance fee statement, and requested that the full reported sale price of $2,950,000 be the basis for valuing the subject real property as of tax lien date. The BOR accepted the full reported sale price as the best evidence of value, and increased the value of the subject property to $2,950,000.

PAG thereafter appealed to this board. At this board's hearing, PAG's counsel again argued that the reported sale price included items other than real property, and asked that the subject property be valued at a reduced sale price of either $2,729,380 (using the mobile homes' tax values) or $2,700,266 (using the NADA values for the mobile homes, see H.R., Ex. C). In addition to the tax bills previously submitted to the BOR, PAG submitted copies of NADA reports of each mobile home's purported value, as well as a summary of such data, a copy of the purchase agreement, and a copy of the closing statement. H.R., Exs. C-F. The BOE objected to this board's consideration of any evidence not previously submitted to the BOR, in accordance with R.C. 5715.19(G). We hereby overrule the objection. The record indicates that PAG did not file a complaint with the BOR. The requirement in R.C. 5715.19(G) that a *complainant* provide to the BOR "all information or evidence within ***its knowledge or possession" is therefore not applicable to PAG. *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 36, 43 (1997), overruled on other grounds, *Cummins Property Services, L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473. See also *Duke Realty Ltd. Partnership v. Franklin Cty. Bd. of Revision* (May 19, 2000), BTA No. 1997-A-143, unreported; *McCall v. Franklin Cty. Bd. of Revision* (Oct. 16, 1998), BTA No. 1997-P-122, unreported. However, for the reasons that follow, we do not find the additional evidence submitted on appeal rebuts the presumption accorded to the recorded sale price.

As the appellant before this board, PAG 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. As applicable to this matter, because the BOE has presented documentation of a recorded sale, PAG bears to the burden to "demonstrate that the reported value does not properly reflect the true value of the" real property. *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664, ¶20-21. See also *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687 (discussing the significance of conveyance fee statement disclosures).

Notably, PAG has not presented any testimony regarding the sale, including whether non-realty items were included in the transfer or were included in the $2,950,000 reported sale price. The unauthenticated purchase agreement submitted at this board's hearing indicates that the subject real property sold along with four other mobile home parks and improvements. H.R., Ex. E at 1. It further indicates that the transfer included "personal property including all *park owned* mobile homes." Id. However, as the BOE noted, the tax bills for the mobile homes submitted by PAG indicate that the homes are owned by Ashland Estates, HMB Property Management. There is no explanation in the record before us of the relationship (if any) between that entity and the seller or buyer in the September 2016 transaction. Moreover, while the purchase agreement indicates that a schedule of such personal property was attached, such document was not submitted. It is therefore unclear whether the mobile homes located on the subject property were the subject of the purchase agreement submitted to this board.

Given the limited evidence in the record before us, we are unable to conclude that the $2,950,000 reported

sale price should be reduced based on an allocation to non-realty. We find that PAG 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, 2016, were as follows:

TRUE VALUE

$2,950,000

TAXABLE VALUE

$1,032,500

OHIO BOARD OF TAX APPEALS

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

Appellant(s), vs.

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

CASE NO(S). 2017-1187

(REAL PROPERTY TAX) DECISION AND ORDERAPPEARANCES:

For the Appellant(s) - DUBLIN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KAROL C. FOX
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

METRO PLACE VALLEY EQUITY GROUP, LLC
6851 S. HOLLY CIRCLE, STE. 240
CENTENNIAL, CO 80112

Entered Wednesday, September 5, 2018

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

[1] This matter is now considered upon appellant's motion to remand to the Franklin County Board of Revision ("BOR") with instructions to dismiss the underlying complaint for lack of jurisdiction. Specifically, appellant argues that the complaint was filed by a non-attorney agent who committed the unauthorized practice of law in doing so, and, further, had no independent standing to file a complaint under R.C. 5715.19. The appellee property owner, Metro Place Valley Equity Group, LLC ("Metro Place") did not respond to the motion. A hearing was convened before this board, though the pending motion was not addressed, and neither Metro Place nor the county appellees appeared.

[2] The record reveals that the underlying complaint indicated it was filed by "Stevens & Associates" as "tax agent" on behalf of Metro Place. The complaint appears to have been signed by Carol Hughett, operations manager for Stevens & Associates. At the BOR hearing, Todd Stevens appeared on behalf of Metro Place; he indicated he had no ownership interest in Metro Place. The BOR issued a decision finding value in accordance with Metro Place's request, and the appellant appealed to this board.

[3] 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. There is no dispute that Metro Place has standing to file the complaint as the owner of the property. However, it does not appear that either Stevens & Associates, Ms. Hughett, or Mr. Stevens are attorneys licensed to practice in Ohio or are authorized by R.C. 5715.19(A) to file on behalf of Metro Place. See *Menos v. Cuyahoga Cty. Bd. of Revision* (Apr. 11, 2013), BTA No. 2012-Q-5127, unreported.

[4] Agents not identified in R.C. 5715.19(A) commit the unauthorized practice of law by filing complaints on behalf of another and, by doing so, fail to invoke the jurisdiction of the BOR. *Sharon Village Ltd. v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479 (1997); *Cleveland Metro. Bar Assn. v. Wallace*, 147 Ohio St.3d338, 2016-Ohio-5603; *DH Partners, LLC v. Cuyahoga Cty. Bd. of Revision* (Jan. 4, 2018), BTA No. 2017-161, unreported. Such is the case in this matter. Mr. Stevens does not appear to be an attorney licensed in Ohio, nor is there any indication in the record that he is one of the enumerated agents authorized to file complaints. The underlying complaint filed on behalf of Metro Place, therefore, failed to properly invoke the jurisdiction of the BOR.

[5] Based upon the foregoing, the appellant's motion is well taken and this matter is hereby remanded to the Franklin County Board of Revision with instruction to vacate its decision finding value for the subject property and dismiss the underlying complaint (the practical effect being reinstatement of the auditor's initial valuation).

OHIO BOARD OF TAX APPEALS

ORANGE CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1707
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
Represented by:
JOHN P. DESIMONE
KADISH, HINKEL & WEIBEL
1360 EAST 9TH STREET, SUITE 400
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

MARK MILSTEIN AND ROBERT MILSTEIN
Represented by:
STEVEN R. GILL
SLEGGS, DANZINGER & GILL CO., LPA
820 WEST SUPERIOR AVENUE, 7TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, September 6, 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 882-25-006, 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, vacant land, was initially assessed at $124,600. The property owners filed a complaint with the BOR, which requested that the subject property be revalued at $5,000 purportedly to reflect its limited building potential. The BOE filed a countercomplaint, which objected to the request. At the BOR hearing on the matter, both parties appeared to submit argument and/or evidence in support of their respective positions. Property owner Robert Milstein submitted the report and testimony of Paul Van

Curen, who opined the value of the subject property to be $27,000 as of January 1, 2016. Both Milstein and Van Curen explained that the subject property is utilized by an adjacent property, which is located in a neighboring county. The BOR voted to reduce the subject property's value to $27,000, consistent with Van Curen's appraisal report and testimony and subsequently issued a written decision to that effect. The BOE appealed to this board.

None of the parties availed themselves of the opportunity to submit additional evidence at a hearing before this board. Instead, they opted to submit written argument to fully assert their respective positions. In its submission, the BOE argued that Van Curen's appraisal report was not competent and probative evidence of the subject property's value because it was based upon alleged comparable properties that were, in fact, incomparable to the subject property. In their submission, the property owners argued that the rule derived from *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio -5237 (" *Bedford* rule") required the BOR to come forward with affirmative evidence of the subject property's value and, because the BOE failed to do so, this board should affirm the BOR's decision.

"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. One way in which an appellant may meet its burden is by showing that the BOR erred when it reduced a property's value from the amount first determined by the auditor, see, *Vandalia-Butler City School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 106 Ohio St.3d 157, 2005-Ohio-4385; however, the Supreme Court has carved out a narrow exception to this general rule, known as the *Bedford* rule. *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237. Under the *Bedford* rule, when the BOR adopts a new value based on the owner's evidence, it has the effect of "shift[ing] 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 has 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 Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶9-11. In this matter, we find that the four elements of the *Bedford* rule were satisfied at the BOR level and, as consequence, the BOE was required to come forward with affirmative evidence of the subject property's value.

On appeal, however, the BOE waived appearance at this board's hearing and, therefore, did not offer any new evidence to prove a value other than that decided by the BOR. Though the BOE submitted written argument to assert that Van Curen failed to appraise the subject property in light of its utility to the adjacent property, it failed to come forward with any evidence or law to demonstrate the impropriety of failing to do so. Compare *Lutheran Social Servs. of Cent. Ohio Village Hous., Inc. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 125, 2017-Ohio-900. The BOE also asserted that it was inappropriate for Van Curen to rely upon comparable properties that were buildable lots, unlike the subject property; however, the BOE failed to come forward with evidence that there were sales of non-buildable lots within the market. See *Parmalat Bakery Group v. Ashland Cty. Bd. of Revision* (Aug. 12, 2005), BTA No. 2004-M-792, unreported. See, generally, *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. at Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶15 ("Mere speculation is not evidence.").

We find that that property owner's appraisal evidence was competent and probative evidence of the subject property's value and that the BOR properly relied upon it to reach its decision. As such, the *Bedford* rule

applied and the BOE was required to come forward with affirmative evidence of value. See, also *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶8-11. Because of its failure to do so, 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, 2016, are as follows:

TRUE VALUE

$27,000

TAXABLE VALUE

$9,450

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

CLOVERLEAF LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-811
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MEDINA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CLOVERLEAF LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
KARRIE M. KALAIL
PETERS, KALAIL & MARKAKIS CO., LPA
6480 ROCKSIDE WOODS BLVD. SOUTH
SUITE 300
CLEVELAND, OH 44131-2222

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

OHIO STATION REALTY , LLC & OHIO STATION NASSIM LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
2355 AUBURN AVENUE
CINCINNATI, OH 45219

Entered Thursday, September 6, 2018

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

The appellees, Ohio Station Realty, LLC & Ohio Station Nassim LLC ("appellees"), move to dismiss this matter on the basis that said appellees filed an appeal with the Medina County Court of Common Pleas prior to the appeal filed by the board of education with this board. 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 July 23, 2018, the appellant board of education filed an appeal with this board from a decision issued by the Medina County Board of Revision, i.e., BOR No. 17-009A. The appellees' motion argues that Ohio Station Realty, LLC & Ohio Station Nassim, LLC filed an appeal from the same decision with the Medina

County Court of Common Pleas on July 10, 2018. Attached to the motion to dismiss is a copy of such appeal, captioned as *Ohio Station Realty, LLC & Ohio Station Nassim, LLC v. Medina Cty. Bd. of Revision & Medina Cty. Auditor*, case no 18CIV0698. The copy reveals that the appeal was filed by appellees with the Medina County Clerk of Courts on July 10, 2018.

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, we find that this board does not have jurisdiction over this matter. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DAVID O'BRIEN, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-407

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DAVID O'BRIEN
4865 DUBLIN 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, 20TH FLOOR
COLUMBUS, OH 43215

Entered Thursday, September 6, 2018

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

The county appellees move to dismiss this matter for lack of jurisdiction, asserting that no decision has been rendered by the Franklin County Board of Revision ("BOR") from which appellant could appeal to this board. We proceed to consider the matter upon the notice of appeal and the county's arguments. Appellant did not respond to the motion.

On May 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 an affidavit from the BOR clerk stating 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

SUSAN E. THOMAS, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-666 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SUSAN E. THOMAS
OWNER
1557 WHITCOMBE WAY
COLUMBUS , OH 43228

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, September 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 application for remission with the county 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 July 9 20, 2018, the appellant filed an application for remission with this board. Appellant did not include a copy of a board of revision decision. The county appellees attached to their motion certification that there is no record of a decision issued in response to an application by 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 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 board of revision decision and thus this matter is premature. Accordingly,

this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

VLADISLAV KOTOV, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-500

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - VLADISLAV KOTOV
3634 PEBBLE CREEK CT.
MASON, OH 45040

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, September 6, 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

CHRISTOPHER & TIFFANY YESSAYAN, (et. al.),	CASE NO(S). 2018-830
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CHRISTOPHER & TIFFANY YESSAYAN
Represented by:
CHRIS YESSAYAN
OWNERS
29009 WOLF ROAD
BAY VILLAGE, OH 44140

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 7, 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 July 24, 2018, the appellants filed with this board an application for remission of a real property tax late payment penalty. Appellants did not include a copy of a county board of revision ("BOR") decision. The county appellees attached to their motion documentation from the fiscal officer indicating 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 BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

PAM ISON NYE CHRIS NYE, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-109

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PAM ISON NYE CHRIS NYE
Represented by:
PAM NYE
6702 ELMERS CT
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, September 10, 2018

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

[1] The above-named appellants appeal a decision of the board of revision ("BOR"), which denied an application for remission of late payment penalty assessed on the real property tax bill for the second half of 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 appellants 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 because they paid off their mortgage and the mortgage lender failed to notify the county auditor that the mortgage had been satisfied and, therefore, to send future property tax bills to the appellants. The BOR denied the request for remission of the penalty because it had previously remitted the late payment penalty for an untimely payment of the property tax bill for the first half of tax year 2016. Thereafter, the appellants 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 limited argument and evidence in the record. See *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985).

[3] On appeal, the burden is on the appellants 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 appellants have 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.

[4] Relevant to this matter, R.C. 5715.39(B)(5) provides that the late payment penalty shall be remitted "[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." In this matter, there is no evidence to demonstrate when the appellants satisfied their mortgage and whether the property tax bill for the second half of tax year 2016 was the first property tax bill due after such mortgage was satisfied. We note the assertions made in the appellants' underlying application for remission of the late payment penalty; however, the record is devoid of any corroborating evidence to support such assertions. 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, appellants' statements in their 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. See also R.C. 323.13 ("Failure 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)(1) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay.")

[5] Furthermore, it appears that the BOR considered whether the appellants had demonstrated that their failure to timely pay the property tax bill for the second half of tax year 2016 was "due to reasonable cause and not willful neglect." The statutory transcript indicates that the appellants had a prior late payment of property taxes, i.e., for the property tax bill for the first half of tax year 2016. 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. 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. Because the appellants had a prior late payment of property taxes, we find that remission of the late payment penalty for the second half of tax year 2016 to be inappropriate.

[6] Based upon the foregoing, we affirm the BOR's decision to deny the appellants' request for remission of the late payment penalty for property tax bill for the second half of tax year 2016.

OHIO BOARD OF TAX APPEALS

JODY PLACEK, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-84

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JODY PLACEK
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CLEVELAND, OH 44113

Entered Monday, September 10, 2018

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

[1] This matter is now considered upon a motion filed by the county appellees to dismiss the appeal as premature. It appears that in March 2017, the Cuyahoga County Auditor approved 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 448-13-073. On February 2, 2018, the appellant property owner, Jody Placek, filed an appeal with this board indicating that in addition to the receipt of the tax reduction going forward, she should have received it for the entire time since she purchased the property in 2010. As such, Placek seeks reimbursement for what she claims was an overpayment for tax years 2010 through 2016. On February 28, 2018, the auditor sent a Certificate of Denial for 2011-2016, explaining that the owner-occupancy credit can only be granted for one prior year and that there was no county error. The county appellees now move to dismiss the appeal on the basis that Placek did not file a complaint with the board of revision ("BOR"), prior to appealing to this board. As such, the county appellees argue that Placek's appeal is premature and should be dismissed. Placek has not responded to the county appellees' motion.

[2] 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 county BOR is mailed. Thus, any appeal made before the BOR properly issued a decision is premature. In this case, it appears that Placek filed an appeal to this board without first going through the BOR process.

[3] Generally, R.C. 323.152(B) provides for a 2.5% reduction in the taxes levied on any homestead, and 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 application is denied, the auditor is required to notify the applicant using the Certificate of Denial and inform the applicant of the reasons for denial. R.C. 323.154. This denial 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." R.C. 323.154. Although it is unclear as to whether or when Placek filed an application for the owner-occupancy reduction because no applications are included in our record, it is clear that she received both a Certificate of Approval for 2017 and a Certificate of Denial for 2011 through 2016 (though it appears that a credit for 2016 may have been issued pursuant to R.C. 323.153(B) when 2017 was approved). Prior to appealing to this board, Placek was required to appeal the denial to the board of revision through the filing of a complaint. Without a decision regarding such a complaint, the appeal to this board is premature.

[4] 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 prematurely, 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

ALLIANCE CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1880
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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Entered Monday, September 10, 2018

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

The appellant board of education ("BOE") appeals a decision of the Stark County Board of Revision ("BOR"), which determined the value of the subject property, parcels 115387, 107400, 107403, 107404, 107405, 107407, 111818, 107406, and 107399, for tax year 2016. 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.

The subject property was initially assessed a combined value of $1,227,400. The BOE filed a complaint with the BOR, which requested that the subject property be revalued at $1,417,500. The property owners filed a counter-complaint, which objected to the request. At the BOR hearing on the matter, only counsel

for the BOE appeared to submit argument and/or evidence. In doing so, the BOE submitted a conveyance fee statement and limited warranty deed, which memorialized the transfer of the subject real property for $1,417,500 from JEAA Enterprises, LLC to Daniel J. and Karen Robb in June 2016. Based upon the sale documents, the BOE requested that the subject property be revalued accordingly. At the BOR decision hearing, the BOR voted to retain the subject property's initially assessed, combined value of $1,227,400 based upon the "evidence submitted and the testimony provided." The BOR subsequently issued a written decision to that effect and this appeal ensued.

On appeal, though this matter was initially scheduled for a merit hearing, this board canceled the hearing after both the BOE and property owner disclosed their intent to rely upon the record developed before the BOR. The parties opted to file written argument to more fully assert their respective positions. In its submission, the BOE argued that it had provided sufficient evidence to demonstrate that the subject property had been the subject of a recent, arm's-length transfer, which the property owners had failed to rebut. Conversely, in their submission, the property owners argued that the BOE failed to demonstrate that the subject sale reflected the subject property's fee simple interest. However, the property owners requested that, to the extent that this board finds that the subject sale was reflective of the subject property's value, we remand this matter to the BOR to allow the parties to submit additional evidence. The county appellees did not file 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). 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).

We begin our analysis with the subject sale. The presentation of the conveyance fee statement and limited warranty deed created a rebuttable presumption that the subject sale was a recent, arm's-length transfer indicative of the subject property's value. *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. None of the parties challenge the arm's-length character, recency, or voluntariness of such sale. We therefore find that it is the best evidence of the subject property's value as of tax lien date.

Although the property owners do not dispute that the subject property transferred to them for $1,417,500 in June 2016, in an attempt to rebut the subject sale, they argue that the BOE had the burden to provide evidence beyond the sale documents to demonstrate that the subject sale occurred between parties acting at arm's-length, that the subject property was offered on the open market, and that the subject sale price reflected the fee simple interest. The Supreme Court has considered and rejected these same arguments in *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415:

> "Terraza argues that the BOE submitted no evidence showing that the February 2013 sale price reflected the value of the unencumbered fee-simple estate. ***
>
> "*** [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. Once the BOE provided basic documentation of the sale, Terraza had the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value. *See Cincinnati School Dist.* at 327-328.
>
> "***

> "*** The February 2013 sale price, which Terraza does not dispute, is the *best evidence* of the property's true value, subject to rebuttal. *** R.C. 5713.03 does not now '*require*[ ] an inquiry into whether a lease in place reflects market rent at the time of a sale,' as Terraza maintains in its first proposition of law. (Emphasis added.) Market rent becomes relevant only if an opponent presents it as evidence in an attempt to rebut a sale price." Id. at ¶¶ 31-34

We find the court's statements applicable to this matter and likewise reject the property owner's arguments here.

It should be noted that, although the property owners' were afforded two opportunities to submit evidence in support of their positions, they failed to attend any of the hearings in this matter. Therefore, we decline their invitation to remand this matter to the BOR to provide them with a third opportunity to do so.

By virtue of our decision to value the subject property consistent with the $1,417,500 sale of June 2016, it is unnecessary for us to discuss the impropriety of the BOR's decision to reject the subject sale based upon "evidence submitted and testimony provided" given that the sale documents comprised the only evidence submitted at the hearing and that there were no witnesses at the hearing to provide testimony.

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 burden before the BOR and before this board when it submitted documents that memorialized the subject sale. Because neither the property owners nor the county appellees provided any evidence to rebut the presumption accorded to the subject sale, we find that it was the best indication of the subject property's value as of the tax lien date. We have utilized the percentages reflected in the auditor's original assessment to allocate the sale price among the subject parcels. 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 subject property's true and taxable values, as of January 1, 2016, were as follows:

Parcel Number 115387

True Value: $1,346,240

Taxable Value: $471,180

Parcel Number 107400

True Value: $7,160

Taxable Value: $2,510

Parcel Number 107403

True Value: $7,390

Taxable Value: $2,590

Parcel Number 107404

True Value: $7,620

Taxable Value: $2,670

Parcel Number 107405

True Value: $4,740

Taxable Value: $1,660

Parcel Number 107407

True Value: $9,590

Taxable Value: $3,360

Parcel Number 111818

True Value: $21,940

Taxable Value: $7,680

Parcel Number 107406

True Value: $5,660

Taxable Value: $1,980

Parcel Number 107399

True Value: $7,160

Taxable Value: $2,510

OHIO BOARD OF TAX APPEALS

JOHN P. DOWNER, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2017-1874

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHN P. DOWNER
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Entered Monday, September 10, 2018

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

Appellant John P. Downer appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number O67 51216 0003, 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 $146,630. Downer filed a complaint with the BOR seeking a reduction in value to $105,000. The BOR convened a hearing, at which Downer relied on evidence of a July 2016 sale of the subject property, and argued that the sale price provided the best evidence of the subject's value. Although Downer was not present to testify, his counsel provided a settlement statement and explained the circumstances of the sale. The BOR issued a decision maintaining the initially assessed valuation, finding that the sale was not an arm's-length transaction because there was no testimony from the buyer and the property was not listed on the market at the time of the transaction. From this decision, Downer filed the present appeal.

At the hearing convened before this board, Downer presented a purchase agreement and an affidavit from the seller, in addition to his own testimony regarding the circumstances of the transaction. According to Downer,

he was looking for a location for his business, and discovered that the subject property had been

vacated by the seller. The property had been listed by a broker, but the listing had expired. Downer negotiated directly with the seller of the property, and the parties agreed to a sale price of $105,000.

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.

It is undisputed that Downer purchased the subject property from Midwest Spine Interventionist, LLC on July 28, 2016 for $105,000. Although the BOR indicated that it found the sale was not arm's-length, the county appellees did not participate on appeal to provide the basis for such finding, nor can we find any basis in the statutory transcript certified on appeal. There is no suggestion that the parties were not typically-motivated, and the only challenge was due to the expiration of the property's listing. Initially, a property's lack of exposure to the open market does not negate the arm's-length nature of a sale. See *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶29 ("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."). Moreover, in this case, it appears that the property was, in fact, exposed to the market for some period of time while it was listed but failed to sell. Accordingly, we find that the county appellees have failed to show that the July 2016 sale was not a qualifying transaction for purposes of establishing the true value 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, 2016, were as follows:

TRUE VALUE

$105,000

TAXABLE VALUE

$36,750

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1801
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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MEWAEL AFEWERKI
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Entered Monday, September 10, 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 numbers 010-096914-00, 010-040569-00, and 010-086187-00, 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's total true value was initially assessed at $172,600. The appellee property owner filed a complaint with the BOR seeking a reduction in value to $95,000. A mediation was convened with the property owner, which resulted in a decision from the BOR for a total value of $103,000. After that decision was issued, the BOE received notice of the complaint and filed a countercomplaint in support of maintaining the auditor's values. A hearing was then convened before the BOR, at which the BOE was present, but the owner did not attend. A member of the BOR indicated that there was no evidence of value in the file from the property owner because nothing had been attached to the complaint and that anything presented during the mediation was confidential and privileged. The BOE asserted that the first decision

was void ab initio because the BOE did not receive proper notification of the complaint and consequently did not have an opportunity to file a countercomplaint prior to the mediation and subsequent decision. The BOE argued that the BOR's earlier decision must be vacated, and that because the property owner had not met its burden to prove a new value through the presentation of competent and probative evidence, the auditor's values should be maintained. The BOR issued a decision reducing the initially-assessed valuation to $103,000, indicating that the value was based on the original mediation despite its acknowledgment that the information presented at the mediation was confidential and privileged. The BOE appealed that decision to this board, and argued that the BOR's decision was improper because the record did not contain any evidence to support its decision. The BOE asserted that the auditor's values should, therefore, be reinstated.

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 has emphasized, however, that this board cannot defer to the BOR and treat its assignment of value as presumptively valid, as we must "independently evaluate the evidence to determine the value of the subject property." *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384, ¶19.

In the present case, there is no competent and probative evidence upon which we can rely to adjust the auditor's value. We recognize that the property owner may have offered evidence during the mediation that would support a change in value, but because it was not properly submitted, we are unable to independently review it and cannot simply defer to the BOR. We also acknowledge that the property record card for parcel number 010-086187-00 references a November 13, 2013 sale of the property, but the notes indicate that it was an auction sale and the owner has presented no additional evidence to show that it was nonetheless an arm's-length transaction that may be used to establish the subject's value. See *Olentangy Local School Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. Accordingly, we find that there is no probative evidence in the record that tends to negate the county auditor's original valuation. Under these circumstances, we must reinstate the auditor's original values. *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018- Ohio-918, ¶¶17-18.

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 010-096914-00

TRUE VALUE

$75,200

TAXABLE VALUE

$26,320

PARCEL NUMBER 010-040569-00

TRUE VALUE

$60,000

TAXABLE VALUE

$21,000

PARCEL NUMBER 010-086187-00

TRUE VALUE

$37,400

TAXABLE VALUE

$13,090

OHIO BOARD OF TAX APPEALS

BARRON PROPERTY K, LLC, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2017-1619

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BARRON PROPERTY K, LLC
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CLEVELAND HEIGHTS-UNIVERSITY HEIGHTS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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CLEVELAND, OH 44114

Entered Monday, September 10, 2018

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

The property owner, Barron Property K, LLC ("Barron"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 684-01-029, 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.

The subject property was initially assessed at $271,600. Barron filed a complaint with the BOR, which requested that the subject property be revalued at $138,000, purportedly to reflect the price at which it transferred in May 2016. 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. In its presentation, Barron submitted the testimony of Sean McMillion, a managing member of the entity that owned Barron. He explained that a member of the prior owner, 3056 Chadbourne Rd. LLC ("Chadbourne"), was the successful bidder at a sheriff's auction to purchase the subject property for $138,000 but was unable to obtain financing to complete the transaction. As a result, McMillion testified, Chadbourne sought a substitute buyer for the transaction, which eventually culminated in Barron providing mortgage financing to Chadbourne. According to McMillion, the parties contemplated that such arrangement would only be temporary in nature until Chadbourne could deed the subject property to Barron. Shortly after purchasing the subject property, Chadbourne conveyed it to Barron by way of a deed in lieu of foreclosure. The BOE cross-examined McMillion and argued that the record was devoid of any evidence of an arm's-length transaction. The BOR determined that the transfer of the subject property from Chadbourne to Barron was not indicative of the subject property's value and subsequently issued a written decision that retained the initially assessed value. This appeal ensued. At the hearing before this board, only Barron appeared to supplement the record with additional evidence. McMillion essentially reiterated the testimony previously provided 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). 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, it is undisputed that the subject property twice transferred recent to the tax lien date. The subject property initially transferred from the county sheriff to Chadbourne, via auction, for $138,000 and then from Chadbourne to Barron by way of a deed in lieu of foreclosure; both transfers occurred in April 2016. We have repeatedly held that transfers of real property via sheriff sales or deeds in lieu of foreclosure proceedings are forced sales because the sellers are usually under financial distress. See, e.g., *68 St. Three MC, LLC v. Hamilton Cty. Bd. of Revision* (Sept. 1, 2017), BTA No. 2016-2287, unreported. R.C. 5713.04 provides in relevant part that "the price for which such real property would sell at auction or forced sale shall not be taken as a criterion of its value." However, the Supreme Court has held that R.C. 5713.04 is not an absolute bar. 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 sellers. *See* [*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 conclude that the BOE and county appellees have satisfied their burden to establish that the both transactions, i.e., from the sheriff to Chadbourne and from Chadbourne to Barron, were forced sales. We now turn to Barron's heavier burden to demonstrate that either of the sales was an arm's-length transaction between typically motivated parties. As it relates to the first transaction, though McMillion testified that there were other bidders at the sheriff's auction, there is no indication that he had firsthand knowledge of its circumstances given that he did not become involved with the subject property until *after* Chadbourne was the successful bidder at the sheriff's auction. As a result, his testimony about the sheriff's auction is 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 find, therefore, that the transaction between the county sheriff and Chadbourne was not an arm's-length transaction. As it relates to the second transaction, the record is devoid of any evidence that demonstrates that the transfer of the

subject property occurred as the result of the parties acting as typically motivated market participants, i.e., each party acting to maximize its position in the subject sale. We conclude that the transaction between Chadbourne and Barron was not an arm's-length transaction.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's vale. *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 sales upon which Barron relied were not arm's-length transactions indicative of the subject property's value. As such, we must conclude that Barron 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, 2016, were as follows:

TRUE VALUE

$271,600

TAXABLE VALUE

$95,060

OHIO BOARD OF TAX APPEALS

GAHANNA-JEFFERSON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1178
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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465 WATERBURY LLC
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Entered Monday, September 10, 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 025-009311-00, 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.

The subject property, a five-suite office condominium, was initially assessed at $710,000. The property owner filed a complaint with the BOR, which requested the subject property be revalued at $389,000. The BOE filed a countercomplaint, 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. In its presentation, the property owner submitted the testimony of Robert McNitt, a member of the corporate property owner. He testified that a neighboring office condominium unit, located at 453 Waterbury Court,

had sold for $389,000 in May 2016, which was the basis of the property owner's request, and that the subject property and neighboring property had a similar "footprint." However, he repeatedly acknowledged that the neighboring property was a better, more "attractive" property, in part, because it was equipped with an elevator. The BOE cross-examined McNitt and objected to portions of his testimony related to the $389,000 sale of the neighboring office condominium because he was not personally involved in the sale and, therefore, did not have any firsthand knowledge of its circumstances. The BOR subsequently issued a decision, which reduced the subject property's value to $389,000, based upon the sale of the neighboring property, and this appeal ensued.

At the hearing before this board, both parties appeared through counsel to supplement the record with additional argument and/or evidence in support of their respective positions. In its presentation, the BOE argued that the record did not support the BOR's decision because the property owner failed to provide competent, credible, and probative evidence of the subject property's value. As a consequence, the BOE argued, the subject property's initially assessed value should be reinstated. The BOE also objected to the property owner's presentation of new evidence on appeal because it failed to first provide that information at the BOR hearing, pursuant to R.C. 5715.19(G), and because it failed to disclose that information prior to this board's hearing, consistent with the case management schedule prescribed by Ohio Adm. Code 5717-1-07(A)(2). The property owner counter-argued that it had disclosed such information during discovery and that the BOE was not prejudiced by any failures on the part of the property owner. The attorney examiner deferred ruling and allowed the property owner to proffer its evidence. In its presentation, the property owner submitted additional testimony from McNitt who essentially reiterated the testimony provided at the BOR hearing. In support of its arguments, the property owner submitted a Geographic Information System map (accessed on March 5, 2018) as well as information from the county auditor's website about the subject property and two neighboring properties, which related to tax year 2017.

Before we consider the merits of this appeal, we must first dispose of the deferred objections raised at this board's hearing. As noted above, the BOE objected to the property owner's evidence pursuant to R.C. 5715.19(G) and Ohio Adm. Code 5717-1-07(A)(2). As it pertains to McNitt's testimony, we deny the BOE's objections because his testimony was largely duplicative of his BOR testimony. However, as it relates to the property owner's documentary evidence, Exhibits A-D, the objections are sustained pursuant to Ohio Adm. Code 5717-1-07(A)(2). The property owner was required, but failed, to disclose its evidence 180 days after the notice of appeal was filed, i.e., on or before February 5, 2018. We have previously noted our expectation that litigants familiarize themselves with this board's rules. E.g., *Modern Dev. Corp. v. Franklin Cty. Bd. of Revision* (Jul. 14, 2016), BTA No. 2015-1847, unreported. It should be noted, however, that even if we were to consider these documents, we would not have found them to be relevant to the issue of the subject property's value as of January 1, 2016. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461, at ¶20 ("As a matter of both case law and elementary principles, each tax year should be determined based on the evidence presented to the assessor that pertains to that year.")

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 review 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.

In reviewing this matter on appeal, we are mindful that the Supreme Court has reaffirmed that "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." *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶35. The Court further clarified, however, "[t]o 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'). But the *Bedford* [*Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449,

2007-Ohio-5237] rule addresses circumstances in which the board of revision relies on specific and plausible evidence to reach a valuation different from that originally found by the auditor." (Parallel citation omitted.) Id. at ¶38. In *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, the court noted the four elements required to invoke the *Bedford* rule:

> "First, the *Bedford* rule applies in a case in which the property owner either filed the original complaint*** or filed a countercomplaint. *** Second, the *Bedford* rule applies when the
>
> board of revision has ordered a reduced valuation based on competent evidence offered by the property owner. *** Third, the *Bedford* rule applies when the board of education is the
>
> appellant before the BTA ***. ***
>
> "***
>
> "The fourth and final element of the *Bedford* rule is that the board of revision's determination of value is based on appraisal evidence rather than a sale price offered as the property value." (Internal citations omitted.) Id. at ¶¶9-11.

Based upon our review of the record, we must conclude that the *Bedford* rule does not apply to these proceedings because the second and fourth elements were not satisfied.

The property owner solely relied on the $389,000 sale of a neighboring property in May 2016 in its attempt to demonstrate that the subject property should also be valued at $389,000. This board has repeatedly held that unadjusted comparable sales data is not competent, credible, and probative evidence of value. See e.g., *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (Jul. 28, 2017), BTA Nos. 2016-1332 et al., unreported; *Scaglione v. Cuyahoga Cty. Bd. of Revision* (Jan. 15, 2013), BTA Nos. 2012-Y-1084 et seq., unreported. McNitt repeatedly acknowledged that he lacked firsthand knowledge of the sale of the neighboring property, and as such, his testimony about the sale of the neighboring property amounts to unreliable hearsay. *Worthington City Schools Bd. of Edn. v. Franklin County Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶19 ("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 2011-Ohio-6173, ¶¶19-20."). See also *Raymond v. Raymond*, 10th Dist. Franklin No. 11AP-363, *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. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning.").

Furthermore, the record is replete with McNitt's statements that the subject property was dissimilar from the neighboring property that sold in May 2016. He repeatedly stated that the neighboring property was a better property because of its features, which differed from the subject property's features, despite the similarity of their "footprint." For example, the subject property does not have an elevator but the neighboring property does. No effort was made to determine how this particular difference affected the subject property's value. With nothing more than 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). See, *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002, at ¶13 ("the BTA actually rejected the [unadjusted comparable sales data] on the ground that the evidence was not probative, because it did not adjust for differences in the properties, *id.* at *3. We have already held that that determination was reasonable and lawful."). Compare *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 700, 2016-Ohio-8375.

We note that there was vague testimony from McNitt about the rental income derived from the subject property. To the extent that the property owner asserted that the amount of rental income necessitated a reduction to the subject property's value, we find this argument unpersuasive. The property owner failed to provide information about market rents and market expenses such that this board could determine whether the subject property's performance reflected the market in which it competed on the tax lien date. *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552 (1996).

Having found the property owner's evidence to be insufficient, we now turn to the propriety of the BOR's decision. *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384, at ¶15 ("It is clear from the BTA's decision that it failed to conduct an independent review of the evidence to determine the value of the subject property. *** Instead, the BTA merely deferred to the BOR, treating the BOR's assignment of value as presumptively valid."). According to the BOR decision hearing, the BOR explicitly relied upon the $389,000 sale of the neighboring property to reach its decision to value the subject property at $389,000. We note that the BOR also explicitly noted that there was at least one, major difference between the properties, i.e., the elevator, which it explicitly decided to ignore. For the reasons stated above, we are constrained to conclude that the BOR's decision was erroneous. Furthermore, the record is notably absent of any evidence to demonstrate that the BOR conducted a field check to determine whether valuing the subject property consistent with the $389,000 sale of a neighboring property was appropriate particularly when McNitt repeatedly testified that there were many differences between the properties.

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 provide competent, credible, and probative evidence of the subject property's value and, as a result, the BOR's decision is unsupported. The record contains insufficient evidence to justify a 45% reduction to the subject property's value. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094, at ¶20 (concluding that the property owner's evidence "reflected a reduction of 62 percent from the fiscal officer's original valuation, and the character of the property called for careful scrutiny of [the property owner's evidence] that advocated so great a reduction."). Because of the insufficiency of the evidence in the record, we are constrained to reinstate the subject property's initially assessed value. *South-Western City School Dist. Bd. of Edn.*, supra, at ¶18 ("We have held that the BTA acts appropriately in departing from the BOR's value when that value cannot be replicated. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ***, ¶ 35. Here, the BTA assigned a value that *** could be achieved only through artifice.")

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:

TRUE VALUE

$710,000

TAXABLE VALUE

$248,500

OHIO BOARD OF TAX APPEALS

SHERRY TRAVER, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2017-1897

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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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
COLUMBUS, OH 43215

Entered Tuesday, September 11, 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 late payment penalty assessed on the first 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 first 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 life events, and misplacing the relevant property tax bill, led to the untimely payment of the property tax bill. The BOR denied the request for remission of the penalty because the appellant had untimely paid the property tax bill for the second half of tax year 2013. 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 limited argument and evidence in the record. See *Black v. Cuyahoga Cty. Bd. 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 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).

[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(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." The statutory transcript demonstrates that the appellant had a prior late payment of property taxes, i.e., for the property tax bill for the second half of tax year 2013. 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. Even if a property owner's situation is sympathetic, if it does not fall within a prescribed fact pattern, remission ofthe late payment penalty is inappropriate.*Labuda v. Tracy*(June 18, 1993), BTA No. 1992-M-416,unreported. Because the appellant had a prior late payment of property taxes, we find that remission of the late payment penalty for tax year 2016 to be inappropriate.

Based upon the foregoing, we affirm the BOR's decision to deny the appellant's request for remission of the late payment penalty of the first half real property tax bill for tax year 2016.

OHIO BOARD OF TAX APPEALS

GREEN LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1706
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Tuesday, September 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 property, parcel 28-07399, 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 written argument submitted by the parties.

The subject property was initially assessed at $1,498,350. The property owners filed a complaint with the BOR, which requested that the subject property be revalued at $800,000. The complaint disclosed that the

subject property had been the subject of an $836,299 transfer in December 2015. The BOE filed a counter-complaint, which objected to the request. The counter-complaint disclosed that the subject property had been the subject of two transfers, an $800,000 sale and an $836,299 sale, in 2015.

At the hearing before the BOR, both parties appeared through counsel to submit argument and/or evidence in support of their respective positions. In their presentation, property owner Stan Manolakis testified that he and his wife first became aware of the subject property when it was owned by the prior owner(s) who was experiencing financial difficulties. The prior owner lost the subject property through foreclosure proceedings and the new owner put it up for sale. Mr. Manolakis testified that they were successful bidders, via the online auction website "Hubzu," to purchase the subject property for $800,000, plus an additional $36,299 in buyer's premium and fees, in November 2015. On cross-examination he testified that he was unaware, at the time, whether there were other bidders; however, he subsequently learned that he and his wife were the sole bidders. There was some discussion about conflicting information about the identity of the seller involved in the transfer because the sale documents, submitted by the property owners, identified Ocwen Loan Servicing, LLC as the seller but the property record card identified Wells Fargo Bank as the seller. The BOR subsequently issued a decision that reduced the subject property's value to $836,300 and this appeal ensued.

Although this matter was scheduled for a merit hearing before this board, all parties waived their appearance at such hearing. Instead, the BOE and property owners opted to submit written argument to more fully articulate their respective positions. In its submission the BOE argued that the property owners had failed to satisfy the heavier burden to demonstrate that the property owners' purchase of the subject property was an arm's-length transaction between typically motivated parties. Conversely, in their submission, the property owners argued that it was the BOE, not the property owners, who had failed to meet its evidentiary burden before the BOR and before this board. They asserted that they had produced sufficient evidence to conclude that their purchase of the subject property was an arm's-length transfer, indicative of the real property value.

Before we consider the merits of this appeal, we must first dispose of preliminary issue. Despite waiving the opportunity to supplement the record with new evidence at this board's hearing, the BOE and property owners nevertheless attached documents to their merit briefs. A review of the statutory transcript indicates that these documents were not submitted at the BOR hearing. Because the documents were produced outside the hearing context, we cannot consider them in our analysis. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996); *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Apr. 23, 2018), BTA No. 2016-390, 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 R.C. 5715.19(G).

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 review 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.

The record demonstrates that the subject property was the subject of two sales, which could be considered "recent" to the tax lien date, i.e., the property owners' $836,299 (inclusive of buyer's premium and fees) purchase of the subject property in November 2015 and the $800,000 transfer of the subject property, via foreclosure proceedings or sheriff sale, to "Wells Fargo Bank Trustee" in July 2015 (as noted on the property record card). We begin our analysis with the property owners' purchase of the subject property because it

was the sale most recent to the tax lien date. See *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision,* 124 Ohio St.3d 481, 2010-Ohio-687.

In this matter, none of the parties dispute that the property owners purchased the subject property by way of an online auction. As a consequence, such sale appears to have been a 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." However, the Supreme Court has held that R.C. 5713.04 is not an absolute bar to establish a property's 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 [*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.

In this matter, we find that the BOE satisfied its burden to show that the underlying transaction was a forced sale. We now turn to the property owners' heavier burden to demonstrate that their auction purchase of the subject property was an arm's-length transaction between typically motivated parties. Based upon our review of the record, we find that they have not satisfied their burden. There is very little evidence about the marketing of the subject property beyond Mr. Manolakis's testimony that he saw a "for sale" sign in the subject property's yard approximately one week before the auction. There is no evidence that there were multiple offers to purchase the subject property such that the seller could maximize the sale price. There is no evidence whether the auction in this matter was a "reserve auction," by which the seller could reject offers that it deemed to be too low, or was an "absolute auction," by which the seller had to accept the highest bid regardless of whether such offer was too low. As such, we must conclude that the property owners failed to demonstrate that their $836,299 purchase of the subject property was an arm's-length sale.

The matter before us is very different than the cases to which the property owners cite in their merit brief, i.e.,*Columbus City Schools Bd. of Edn. v. Franklin Cty.Bd. of Revision* Sept. 21, 2017), BTA No2016-1356, unreported, and *The IRA Lady, LLC v. Lorain Cty. Bd. of Revision* (June 22, 2017), BTA No. 2016-876, unreported. In those cases, we concluded that the property owners had successfully rebutted the presumptions accorded to forced sales with documentary and testimonial evidence that demonstrated extensive marketing, multiple purchase offers, and/or the seller's right to reject offers. As previously noted, the record in this matter is void of similar evidence. Moreover, these cases are in line with the court's decisions in *Olentangy*, supra, and *Schwartz v. Cuyahoga Cty. Bd. of Revision*, 143 Ohio St.3d 496,2015-Ohio-3431, in which the court placed great weight on the evidence about competitive bidding and/or negotiations.

We next consider whether the prior transfer of the subject property, the $800,000 transfer of the subject property to Wells Fargo Bank (or Ocwen Loan Servicing, LLC) in July 2015, was indicative of the subject property's value. It is undisputed that this particular sale is a foreclosure sale and presumed to be a forced sale pursuant to R.C. 5713.04. The record is devoid of any information that would allow us to conclude that this particular sale was a voluntary transaction.

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 owners failed to rebut the presumption that their purchase of the subject property though an online auction was a forced sale and, therefore, not indicative of the subject property's value. As a consequence, we must conclude that the evidence submitted at the BOR hearing was insufficient and, therefore, the BOR's decision to reduce the subject property's value to reflect the auction sale price is unsupported. Because there is no other evidence of value contained in the record, we are constrained to reinstate the subject property's initially assessed value. See *FirstCal Indus. 2 Acquisitions , L.L.C. v. Franklin Cty. Bd. of Revision,* 125 Ohio St.3d 485, 2010-Ohio-1921.

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:

TRUE VALUE

$1,498,350

TAXABLE VALUE

$524,420

OHIO BOARD OF TAX APPEALS

GARY M. LICHTENFELD NKA APPS PROPERTIES LLC, (et. al.),	CASE NO(S). 2017-1474, 2017-1475
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - GARY M. LICHTENFELD NKA APPS PROPERTIES LLC
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Entered Wednesday, September 12, 2018

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

Appellant appeals to this board from two decisions of the Cuyahoga County Board of Revision ("BOR") determining the values of parcel numbers 132-22-065 and 134-11-007, for tax year 2016. We consider the matters upon the notices of appeal and the statutory transcripts certified by the fiscal officer pursuant to R.C. 5717.01. All parties waived their appearances at a hearing before this board.

At the outset, we must address the county appellees' motion to dismiss. The underlying complaints were both filed by an attorney and listed Gary M. Litchtenfeld as the owner and complainant; however, the parties do not dispute that Mr. Lichtenfeld was deceased at the time the complaints were filed. Appellant's attorney indicates in his response to the motions that he was contacted by Mr. Litchtenfeld's heirs. Following Mr. Litchtenfeld's death, in May 2017, title to the parcels was transferred to Apps Properties, LLC.

The county appellees argue that R.C. 5715.19(A) does not confer standing on a deceased owner to file a complaint against the valuation of real property. We find no reason to find that the mortality of a titled owner is determinative of his standing. There is no dispute that, on the date the complaints were filed, Mr. Lichtenfeld held title to the subject properties. To the extent the county appellees challenge appellant's counsel's authority to file the complaints on behalf of Mr. Lichtenfeld's heirs, they have presented no

evidence in support of any such challenge. See *T. Ryan Legg Irrevocable Trust v. Testa*, 149 Ohio St.3d 376, 2016-Ohio-8418, ¶15 ("[w]hen an attorney files an appeal, it is presumed he has the requisite authority to do so."). The county's motions to dismiss are therefore denied.

Turning to the merits, the fiscal officer initially valued parcel number 132-22-065 at $27,300, and parcel number 134-11-007 at $44,700, for tax year 2016. Appellant's complaints requested decreases in value to $18,350 and $24,370, respectively. At the BOR hearings, counsel for Mr. Litchtenfeld and Apps Properties, LLC, explained that, at the time the complaints were filed, Mr. Litchtenfeld's estate was still in probate and that Alisa Apps, owner of Apps Properties LLC, inherited the properties and gained title by way of probate deeds dated May 9, 2017. Counsel indicated that the requested decreases in value were based on a review of comparable sales and the properties' conditions; he also submitted income approaches to value using the properties' actual incomes and descriptions of the deferred maintenance for each property. The BOR found the evidence insufficient to support reductions in value, and issued decisions finding no changes in value warranted. Appellant thereafter appealed both decisions 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. Although the best evidence of a property's value is a recent, arm's-length sale, there is no evidence in the records before us that either of the subject parcels have been the subject of an arm's-length sale recent to tax lien date. We therefore turn to the evidence presented by appellant to the BOR.

Appellant presented three types of information to the BOR, none of which we find probative of the properties' values. First, appellant primarily relied on averaging comparable sales. This board has previously found "the simple averaging of *** sales to be suspect." *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported. There is no indication that any adjustments were made to the comparables. As the Eighth District noted in *Carr v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, ¶11, "[t]here has to be some parity, or method of establishing parity, between the properties before sales have any meaning." Further, as one BOR member noted during the hearing on parcel number 132-22-065, the fiscal officer's records showed several of the comparables as not being "verified" sales. In the absence of information confirming the sales and adjusting them to the subject properties, we find appellant's sales approaches to value are not probative of value. See *Schutz v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1588, ¶16.

Second, we likewise find appellant's income approaches lacking. Appellant relied solely on the subject properties' actual incomes. In the absence of any market information, we find such information is not probative of value as of tax lien date. See *Olmsted Falls Village Assn. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996).

Third, appellant cites the deferred maintenance issues present at the subject properties; however, no effort was made to quantify the effect of such defects on the value of the property. "Without affirmative evidence of the [properties' values] or specific analysis of how the [properties' conditions] affected [their values], any evidence of defects in the [properties] is inconsequential." *Schutz*, supra, at ¶17. See also *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996).

Based upon the foregoing, we find appellant has failed to meet its burden to prove its right to the decreases in value requested. 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 132-22-05

TRUE VALUE

$27,300

TAXABLE VALUE

$9,560

PARCEL NUMBER 134-11-007

TRUE VALUE

$44,700

TAXABLE VALUE

$15,650

OHIO BOARD OF TAX APPEALS

JAN AND JEFF COLE, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-162

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JAN AND JEFF COLE
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
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Entered Wednesday, September 12, 2018

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

The property owners appeal a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 609-0007-0111-00, for tax year 2017. 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, a two-family building, was initially assessed at $165,400. The property owners filed a complaint with the BOR, which requested that the subject property be revalued at $120,000. A statement detailing defects to the subject property was provided with the complaint. Property owner Jan Cole appeared at the BOR hearing on the matter. She testified as to the condition of the subject property and about her experience before the BOR on a prior year's complaint. In support of the complaint, she submitted a "Z-estimate" of the subject property's value, $146,878, from the website Zillow.com, which also provided a list of alleged comparable properties. The BOR members noted that they did not find the information to be credible. Susan Spoon, an appraiser in the county auditor's office, also testified about her conclusion that the subject property's initial value should be retained. As the hearing ended, the BOR members voted to retain the subject property's initial value of $165,400; a written decision to that effect was subsequently issued. The property owners then appealed to this board.

Before we consider the merits of this appeal, we must first dispose of a preliminary issue. While this matter was pending, the property owners supplemented the record a number of times with several different documents, including an opinion of value derived from appraisal software from the "Mercury Network," an appraisal report performed by appraiser Ron Sears that valued the subject property as of February 12, 2018,

unadjusted comparable sales data, repair estimates, and a "Property Report" from the website CincyMLS.net. Because these documents were not presented at the hearing before the BOR and because no hearing was requested before this board, we cannot consider these documents in our analysis. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 16 (1996) ("After the BTA hearing, Nestle submitted a copy of a resolution and quitclaim deed by the Franklin County Commissioners. Because these documents were not part of the original record from the BOR and were submitted after the BTA hearing, they must be disregarded by the BTA."); *Neon Rave, LLC v. Franklin Cty. Bd. of Revision* (Apr. 19, 2016), BTA No. 2015-1298, unreported ("As noted, the appellant did not request a hearing before this board. However, it attached written argument and a number of documents to its notice of appeal. Because the documents were produced outside the hearing context and were clearly offered for their evidentiary value, we cannot consider them.").

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). There is no indication in the record before us that the subject property has recently transferred.

Based upon the evidence submitted at the BOR hearing, we must conclude that the property owners failed to satisfy the evidentiary burden on appeal. As noted above, the property owners submitted a "Z-estimate" from Zillow.com to support their assertion that the subject property had been overvalued. This board has previously found the use of "eppraisals" from "Zillow.com," or other similar sites, is unreliable. See, e.g., *Beverly v. Cuyahoga Cty. Bd. of Revision* (Feb. 26, 2013), BTA No. 2012-Y-398, unreported, at fn.3 ("This board has previously considered the utility of appraisal analyses garnered from Internet-based services lacking sufficient foundation and determined that we could accord them no weight in our determination of value. See *Cors v. Montgomery Cty. Bd. of Revision* (Jan. 25, 2008), BTA No. 2006-K-1195, unreported. See, also, *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 130 Ohio St.3d 230, 2011-Ohio-3362."). We also find Ms. Cole's testimony about the defects of the subject property, i.e., the disrepair of the garage, to be equally unavailing. *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, at ¶7 ("There 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.)); *Schutz v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1588, ¶17.

We note that even if we were able to consider the documents the appellants submitted outside the record, we would have found them to be insufficient. Because the opinion of value derived from appraisal software from the "Mercury Network" and the "Property Report" from the website CincyMLS.net are akin to the "Z-estimate," we do not find them to be competent, credible, or probative for the reasons provided above. Because appraiser Ron Sears failed to testify at a hearing before the BOR or before this board, we find his appraisal report to be unreliable hearsay, and further, would it find it not probative of value as of the tax lien date because it opines value as of a date thirteen months later. *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997); *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported; *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of* Revision, 75 Ohio St.3d 552, 555 (1996). Because the unadjusted comparable sales data failed to account for differences with the subject property, i.e., location, condition, and number of apartment units, and failed to demonstrate relevancy to the January 1, 2017 tax lien date, we do not find it to be competent, credible, or probative evidence of the subject property's value. *Wearn v. Cuyahoga Cty. Bd. of Revision* (May 22, 2018), BTA No. 2017-1159, unreported, at 3 ("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)."). Because we have repeatedly held that dollar-for-dollar costs do not necessarily directly correlate to value, we do not find the repair estimates to competent, credible, and probative evidence of the subject property's value. See *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997); *Schutz*, supra, at ¶17.

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 $120,000, as indicated on the underlying complaint, or any other value less than the initially assessed value of $165,400. It is therefore the order of this board that the subject property's true and taxable values, as of January 1, 2017, are as follows:

TRUE VALUE

$165,400

TAXABLE VALUE

$57,890

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

C & R PROPERTY MANAGEMENT, LLC, (et. al.),	CASE NO(S). 2017-1127, 2017-1128
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - C & R PROPERTY MANAGEMENT, LLC
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
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BEDFORD CITY SCHOOLS BOARD OF EDUCATION AND OLMSTED FALLS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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Entered Wednesday, September 12, 2018

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

The appellant property owner, C&R Property Management, LLC ("C&R"), appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 795-37-028 and 263-10-027, for tax year 2016. 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 C&R's written argument.

The subject properties were initially assessed at total true values of $121,900 and $136,800, respectively. C&R filed decrease complaints with the BOR seeking reduction in value to $66,100 and $70,100, respectively. The appellee boards of education ("BOE") filed countercomplaints in support of maintaining

the fiscal officer's values. The BOR convened a hearing, at which C&R presented evidence that the subject properties transferred in November 2016, and argued that the sale prices established the value of the subject properties, acknowledging that both sold pursuant to sheriff's sales related to foreclosure proceedings. C&R further argued that even if the sale prices themselves were not considered reliable evidence, the appraisals performed for sheriff sales provide a more accurate value than the values resulting from the mass appraisal process. The BOE argued that neither the sheriff sales nor the sheriff appraisals provide reliable evidence of value for ad valorem tax purposes. The BOR issued decisions maintaining the initially assessed valuations, which led to the present appeals.

A hearing was convened before this board, at which C&R again argued in favor of reliance upon the appraisals performed for the sheriff sale, and the county appellees and BOE appeared to argue against C&R's position. C&R provided the Sheriff's Inspection & Opinion of Value Report for both properties, along with evidence in support of its contention that these documents should function as prima facie evidence of value, rebuttable by any independent evidence of value that may be offered by the appellee parties in these matters. C&R argues that the appraisal author(s) should not be required to appear to testify in order to consider their opinions of value. The appellee parties argued that neither the sales themselves nor the opinion of value reports prepared in conjunction with the sales provide reliable evidence of value. The county appellees assert that unlike the mass appraisal process, the valuation of a property for a sheriff's sale is done for a different purpose, specifically as part of a transaction that is presumptively invalid for establishing the value of a property for purposes of ad valorem taxation. The county appellees further point to the lack of information or testimony regarding the appraisers' methodology. The BOE argued that C&R provided inadequate legal authority and inadequate evidence to support a change to the law and create a presumption in favor of a sheriff's appraisal.

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. 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]."

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, although C&R purchased the subject properties in November 2016, it is undisputed that it did so at sheriff's auctions after the properties were foreclosed upon. This type of sale is considered a forced sale, and generally does not provide a reliable basis to value a property. *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 455, 458 (1997). This characterization as a forced sale is not an absolute bar, but rather creates a rebuttable presumption that the transaction was not arm's-length. *Olentangy Local School Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. In this case, however, C&R provided no additional evidence about the circumstances of the sales that would allow this board to find that either "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. 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). In the present appeals, C&R argues that the Sheriff's Inspection and Opinion of Value Report and Land Appraisal form a reliable basis for this board to determine value. These

documents opine that the value of parcel number 795-37-028 was $60,000 as of July 2016 and the value of parcel number 263-10-027 was $105,000 as of June 2016, respectively. The Supreme Court has recently explained that it was legal error for a board of revision to rely on a sheriff's-sale appraisal:

> "In this case, the BOR valued the property for tax years 2012 and 2013 based on a sheriff's-sale appraisal that opined a value as of June 13, 2012. In valuing the property in direct reliance on an opinion of value that did not correspond to the tax-lien date, the BOR committed legal error in contravention of *Olmsted Falls* [*Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552 (1996)]. To be sure, even when an appraisal opines a value that does not coincide with the tax-lien date, factual information contained in that appraisal may still be regarded as furnishing potentially relevant evidence of a property's value as of the tax-lien date. *See AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 343, 2008-Ohio-2565, *** ¶ 16-17; *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*
> , 130 Ohio St.3d 230, 2011-Ohio-3362, *** ¶ 26-29. But here, the sheriff's-sale appraisal credited by the BOR contains no factual information that could furnish a basis for valuing the subject property as of the tax-lien date—it simply opines a value without any supporting facts or analysis. Nor was testimony offered to show how the appraisal's opinion of value could be applied to the tax-lien date." (Parallel citations omitted.) *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018- Ohio-919, ¶18.

The sheriff's-sale appraisals presented in the instant appeals share similar deficiencies. These valuations opine value for a date other than the tax lien date and do not include any detailed analysis, let alone a description of the appraisers' methodology and what adjustments, if any, were considered among the sales. See, e.g., *Schutz v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1588, ¶16 (holding that owner's sales data was legally insufficient to satisfy his burden of proof where he offered nothing to confirm that the sales actually occurred, and made no adjustments to relate the purported sale prices to the subject property). These documents were not accompanied by any testimony from an individual involved in valuing the property to describe his or her methodology. In fact, the only thing in the record regarding those individuals who performed these valuations are their names and the assertion that they are licensed appraisers living in Cuyahoga County. As such, not only are we are unable to independently review the basis for their conclusions, but we are also unable to independently weigh their credibility and expertise as appraisers. For these reasons, we likewise reject C&R's argument that our independent review of the appraisals is unnecessary because as agents of Cuyahoga County the value opinions of these individuals should be given equal, if not more, weight than the value determination of the fiscal officer during the mass appraisal process.

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 properties, as of January 1, 2016, were as follows:

PARCEL NUMBER 795-37-028

TRUE VALUE

$121,900

TAXABLE VALUE
$42,670

PARCEL NUMBER 263-10-027

TRUE VALUE

$136,800

TAXABLE VALUE

$47,880

OHIO BOARD OF TAX APPEALS

GENE T. PARISH REVOCABLE TRUST, (et. al.),	CASE NO(S). 2018-77
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
UNION COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - GENE T. PARISH REVOCABLE TRUST
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For the Appellee(s) - UNION COUNTY BOARD OF REVISION
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Entered Wednesday, September 12, 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 late payment penalty assessed on the real property tax bills for the first and second halves of 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 penalties, alleging that failure to timely pay the property tax bills for the first and second halves of tax year 2016 "was due to reasonable cause and not willful neglect." Instead, the appellant asserted that the tax bills had previously been mailed to Harriet Parish, who passed away in September 2016. After that time, the appellant further asserted, her mail was forwarded to her son, Tom Parish; however, he did not receive the property tax bills for the first and second halves of tax year 2016 and they were returned to the county auditor's office. In addition to considering whether the facts and circumstances alleged in the application fit within R.C. 5715.39(C), as a basis to remit the penalties, the BOR also considered whether the facts and circumstances alleged in the application fit within R.C. 5715.39(B)(3), as an additional basis to remit the penalties. The BOR determined that remission of the penalties was inappropriate under R.C. 5715.39(B)(3) because Ms. Parish's passing occurred more than sixty days *before* the date on which the property tax bills were due, in February and July 2017, respectively, and because the payment of the delinquent property tax bills were paid in October 2017, more than sixty days *after* the

property tax bills were due. The BOR also determined that remission of the penalties was inappropriate under R.C. 5715.39(C) because there was a history of late payment of property tax bills, i.e., in 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 limited argument and evidence in the record. See *Black v. Cuyahoga Cty. Bd. 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. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001).

[4] Based upon our review, we find that the appellants 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(B)(3) provides that 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." (Emphasis added.) Given the relevant dates in this matter, we agree with the BOR that remission of the late payment penalties is unwarranted. Also pertinent 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." Here, the BOR indicated that there was at least one late payment in tax year 2015. 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.

[5] Based upon the foregoing, we affirm the BOR's decision to deny the appellant's request for remission of the late payment penalties for property tax bills for the first and second halves of tax year 2016.

OHIO BOARD OF TAX APPEALS

KROGER LIMITED PARTNERSHIP I, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2016-2353

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Thursday, September 13, 2018

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

[1] The appellant property owner appeals decisions of the board of revision ("BOR"), which determined the value of the subject properties, parcel numbers 550-0183-0505-00 and 550-0183-0506-00, 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.

[2] The subject properties, contiguous parcels of vacant land comprising approximately 4.13 acres, were initially, collectively assessed at $367,110. The board of education ("BOE") filed a complaint with the BOR, which requested that the subject properties be collectively revalued at $2,450,000. The property owner did not file a counter-complaint. At the BOR hearing on the matter, the BOE and property owner

appeared through counsel to submit argument and/or evidence in support of their respective positions. In its presentation, counsel for the BOE presented a conveyance-fee statement, which memorialized the $2,450,000 transfer of the subject properties from Rave SL Tenant, LLC ("Rave") to the property owner in December 2015. Counsel also objected to the submission of any documents by the property owner, based upon hearsay, because there was no one to authenticate such documents. The BOR sustained the objection but allowed the property owner to make its presentation. Counsel for the property owner explained that it had hoped to present testimony of Monte Chesko, an employee who was personally involved in the subject sale, but he had another meeting and could not attend the BOR hearing and the property owner was unable secure a continuance. Counsel for the property owner argued that the subject sale should be disregarded because it was part of an assemblage that manifested the property owner's intent to purchase parcels adjacent to its existing business, i.e., a Kroger grocery store, for future expansion. (Counsel also noted that a third parcel was also purchased, from a different entity, as part of the assemblage though it was not the subject of the BOE's complaint.) In support of the property owner's position, counsel submitted a number of documents, which included written argument, selected portions of the purchase agreement and amendments, and aerial photographs of the area in which the subject properties are situated. Based upon the presentation, counsel argued that there was disparate bargaining positions between the property owner and Rave, which demonstrated that the subject sale was not conducted at arm's-length. An appraiser with the county auditor, Camila Heilman, testified about her review of the conveyance-fee statement, which indicated that the subject sale was a recent, arm's-length sale. The BOR concluded that there was no evidence to support the property owner's arguments and voted to accept the subject sale price of $2,450,000 as the best indication of the subject properties' values. The BOR subsequently issued written decisions that increased the value of parcel 550-0183-0505-00 to $2,379,530 and retained the value of parcel 550-0183-0506-00 at $70,470, i.e., decisions that reflected the $2,450,000 sale price, and this appeal ensued.

[3] At the hearing before this board, the property owner, county appellees, and BOE appeared through counsel to supplement the record with additional argument and/or evidence. The property owner introduced the appraisal report and testimony of appraiser Kelly M. Fried, who opined the value of the subject properties to be $1,190,000 as of January 1, 2015. Both the property owner and BOE lodged a continuing objection to any testimony from Fried about the subject sale given that she lacked firsthand knowledge, and to any consideration of the sale documents contained in the addendum of Fried's appraisal report; the attorney examiner deferred ruling and allowed the evidence to be proffered. Fried was examined, and cross-examined, about the underlying data and methodologies used to derive her final conclusion of value. (It should be noted that in her analysis, Fried considered the subject properties and the other parcel that transferred on the same day, which is not the subject of this appeal, as one economic unit, i.e., as a single, 13.789 acre site. She then proceeded to derive a price per acre, which she then applied to the subject properties' combined 4.13 acres.) Subsequent to the hearing, the parties submitted written argument to more fully assert their respective positions. In its submission, the property owner argued that it had successfully rebutted the presumption that the subject sale occurred at arm's-length based upon the relevant case law on assemblage of real property and economic duress and asserted that Fried's appraisal report more accurately reflected the subject properties' combined value as of the tax lien date. In their separate submissions, the county appellees and BOE argued that Fried relied on specious methodologies to derive her final conclusion of value and asserted that nothing in her appraisal report or testimony rebutted the presumption that the subject sale was an arm's-length sale.

[4] Before we consider the merits of this appeal, we must first dispose of preliminary issues. As noted above, attorney examiner deferred ruling on the county appellees' and BOE's continuing objection to any testimony from Fried about the subject sale given that she lacked firsthand knowledge and to any consideration of the sale documents contained in the addendum of Fried's appraisal report on authentication and/or hearsay grounds. We find the Supreme Court's recent decision in *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-2046, to be particularly instructive on this

issue. There, the court considered the propriety of this board's decision not to consider this same appraiser's statements about the facts and circumstances of a sale, topics for which she had no firsthand knowledge. In upholding our conclusion that such statements were inadmissible hearsay, the court noted:

> "The basis for Fried's statement rested solely on a conversation she had with an unnamed owner who did not testify before the BOR or the BTA. Had UTSI presented the owner as a witness, it is likely that this issue could have been avoided altogether. *See Gahanna Jefferson Pub. Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 98AP460, 1999 WL 1161, *5 (Dec. 31, 1998) (distinguishing *Almondtree* [*Apts. of Columbus, Ltd. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 87AP-1216, (June 28, 1988)]. Indeed, UTSI was on notice that this issue was looming given that the BOE raised its hearsay objection during the BOR proceedings. But UTSI evidently decided not to present the owner to testify during the BTA proceedings.
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> "****
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> "The scope of [the BTA's hearsay determination] applies to the narrow class of cases in which an appraiser acts merely as a conduit of information concerning material facts about the subject property itself ***." Id. at ¶¶36-38.

[5] In this matter, Fried's statements about the facts and circumstances of the subject sale were based upon conversations with the property owner's counsel and review of sale documents. No one with firsthand knowledge of such topics testified at the BOR hearing or at this board's hearing. We acknowledge that at the BOR hearing the property owner asserted that it sought a continuance, which was denied, to allow testimony from Chesko, however, there is no evidence in the record to support such assertion. We also acknowledge that in its initial post-hearing brief, the property owner asserted that Chesko ceased his employment with the property owner shortly before this board's hearing, however, there was no explanation for the property owner's failure to provide another witness with knowledge of the facts and circumstances of the subject sale. Because the property owner argued that there was disparate bargaining power between it and Rave, failure to provide testimony from a person with firsthand knowledge of the negotiations of the subject sale is a glaring omission. For these reasons, we sustain the outstanding hearsay objection and will not consider Fried's statements, via the appraisal report and testimony, about the facts and circumstances of the subject sale in our analysis. However, with regard to the sale documents contained in the addendum of Fried's appraisal report, the objections are overruled.

[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 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). In *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23 (1989), the Supreme Court explained that a qualifying sale for tax purposes 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." Id. at 25. 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).

[7] As an initial matter, we note that there was some indication, in Fried's testimony and appraisal report, that parcel 550-0183-0505-00 was combined with the parcel that is not the subject of this appeal; however, parcel 550-0183-0506-00 remained a separate parcel. Because the parcel combination occurred subsequent to the tax lien and sale dates, we conclude that it has no bearing on our analysis. Compare *Richman Props., L.L.C. v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 549, 2014-Ohio-2439.

[8] We begin our analysis with the subject sale. The presentation of the conveyance-fee statement 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. None of the parties challenge the recency of such sale. However, they disagree about the arm's-length nature of the subject sale. The property owner argues that it purchased the subject properties under duress, based upon compelling business interests which rendered it hostage to the sellers' price demands. We find this argument unpersuasive.

[9] 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. However, the limited nature of this holding must be recognized, since every sale of property necessarily involves a motivated seller and buyer. It is only when it is proven that one party is vested with such disparate bargaining power as to essentially hold the other party "hostage" to a particular price that a sale may be deemed to fall within the circumstances contemplated by the court in *Lakeside*. See *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision,* 107 Ohio St.3d 250, 2005-Ohio-6434. It should also be noted that while there exists situations in which a purchaser's assemblage of several properties can provide the basis for inequality in bargaining, see, e.g., *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Jan. 28, 1992), 10th Dist. Franklin Nos. 90AP-317, et al, unreported, the mere allegation of a purchaser's desire to accumulate property in a particular area is not itself tantamount to economic duress.

[10] Here, there is no evidence that any of the interested parties to the underlying transactions were faced with "survival on one hand and swift and sure corporate death on the other hand" or that compelling business circumstances, amounting to duress, required the property owner to purchase the subject properties. Though the property owner may have desired to accumulate other properties in a specific area, that fact alone does not require this board to disregard a sale. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of* Revision (June 10, 2016), BTA No. 2015-1338, unreported. There is absolutely no evidence to prove that the property owner was held "hostage" to the sellers' price demands. No one with knowledge of the negotiations testified before the BOR or this board. We are, therefore, left to speculate about this very important factor of the subject sale. *"*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 ¶15. We conclude, therefore, that *Lakeside* has no application to this matter. See, also *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 15AP-549, 2016-Ohio-4554; *Katabi Invs. Ltd. v. Franklin Cty. Bd. of Revision* (July 3, 2013), BTA No. 2010-L-3842, unreported. Furthermore, a review of Article 3.2 of the purchase agreement reveals that the property owner, as the buyer, had the option to back out of the subject sale if it was unable to buy adjacent parcels, which undercuts the argument that the property owner was held "hostage" buy the seller.

[11] We also note that, although there was some discussion about the property owner's future plans to build a "superstore" on all of the assembled properties, there is no evidence to support that contention. No one with knowledge of the property owner's plans testified before the BOR or this board.

[12] We acknowledge that the property owner could have met its burden to rebut the presumption that the subject sale occurred between typically motivated parties acting in their own self-interest through Fried's appraisal report and testimony. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 470, 2016-Ohio-757, at ¶20. However, nothing in her appraisal report and testimony

demonstrates that the property owner was faced with "survival on one hand and swift and sure corporate death on the other hand" if it did not purchase the subject properties, or otherwise demonstrates that the subject sale was not an arm's-length transaction. To the extent that Fried's appraisal analysis was premised upon the theory that assemblages, by their very nature, should be disregarded, that theory does not conform to real property valuation law in Ohio. As noted above, the mere allegation of a purchaser's desire to accumulate property in a particular area is not itself tantamount to economic duress. See, e.g., *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of* Revision (June 10, 2016), BTA No. 2015-1338, unreported;*Bd. of Edn. for Washington Local Schools v. Lucas Cty. Bd. of Revision* (Feb. 2, 2010), BTA No.2007-K-1482, unreported; *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Feb. 25, 2005), BTA No. 2003-G-663, unreported; *27981 Euclid Co., LLC v. Cuyahoga Cty. Bd. of Revision* (June 4, 2004), BTA No. 2002-R-1688, unreported; *Bd. of Edn. of Groveport Madison Local Schools v. Franklin Cty. Bd. of Revision* (Mar. 8, 2002), BTA No. 1999-R-2050, unreported; *Beachcliff Properties, Ltd. Part. v. Cuyahoga Cty. Bd. of Revision* (Feb. 22, 2002), BTA Nos. 2000-K-1348, et al., 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"). In doing so, we find that the property owner failed to rebut the presumption, through Fried's appraisal report and testimony, that the subject sale was a recent, arm's-length transfer. See, *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 470, 2016-Ohio-757, at ¶20 ("[T]he 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."). Absent an affirmative demonstration that the $2,450,000 sale in December 2015 was not a qualifying sale for tax valuation purposes, we find that it was the best indication of the subject properties' values as of tax lien date.

[13] 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 550-0183-0505-00

TRUE VALUE

$2,379,530

TAXABLE VALUE

$832,840

PARCEL NUMBER 550-0183-0506-00

TRUE VALUE

$70,470

TAXABLE VALUE

$24,660

It is the order of the Board of Tax Appeals that the subject properties be assessed in conformity with this decision and order.

OHIO BOARD OF TAX APPEALS

DEBORAH A FLETCHER, TRUSTEE, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2017-1536

(REAL PROPERTY TAX)

DECISION AND ORDER

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Entered Friday, September 14, 2018

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

The appellant property owner Deborah A. Fletcher, Trustee, appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number O67 28022 0012, 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 single-family home, which Fletcher uses as her personal residence. The subject's total true value was initially assessed at $1,020,470. Appellant filed a complaint with the BOR seeking a reduction in value to $810,194. The BOR convened a hearing, at which appellant relied on Fletcher's testimony regarding the condition of the property, a purported downward trend in the market conditions in the subject's neighborhood, the sale of a house next door, and prior attempts to sell the property. The BOR issued a decision reducing the initially assessed valuation to $914,540, rejecting the neighbor's sale because it was smaller than the subject property, but indicating that it took the condition issues into consideration. From this decision, appellant filed the present appeal.

A hearing was convened before this board, at which Fletcher appeared and again described necessary repairs to the retaining wall and pavers surrounding the subject property, asserting that they would cost

several hundred thousand dollars to repair. Fletcher explained that she actively buys, sells, and rents property in the Dayton area, and is knowledgeable about the market conditions. Fletcher testified that the values in her neighborhood had decreased, in part because the large houses are thirty years old and in need of updates and repairs. Fletcher described a property that had sold and one that had been listed, with an asking price that had fallen over time.

In the present appeal, appellant's burden was to come forward with sufficient evidence not only to show that the auditor's value was incorrect, but also to establish her proposed value as the true value of the property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1588, ¶9. Where evidence of a qualifying sale is unavailable, appraisal evidence becomes necessary, though it may be in the form of a non-expert owner's opinion of value. Id. at ¶¶11-12. Although an owner is qualified to express an opinion of value, this board nevertheless may properly reject that opinion when the evidence that forms the basis for the owner's opinion fails demonstrate the value requested. Id. at ¶20. Evidence that the *Schutz* court

deemed insufficient to support the owner's opinion included testimony about unsuccessful attempts to sell the subject property, unadjusted sales data, testimony regarding the condition of the property without affirmative evidence of the property's value of specific analysis of how the property's condition affected its value, and a remote sale of the subject property. Id. at ¶¶15-18. We find the evidence presented in this case is similarly deficient and that appellant failed to meet her burden to prove an alternative value. We note, however, that the BOR appears to have taken the subject's condition into account, and that the propriety of the BOR's decision to do so has not been challenged, as appellant now asks this board to consider the sales evidence in addition to the condition adjustment made by the BOR. As such, we will retain the BOR's values rather than reinstate the auditor's initial value. See *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620.

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

$914,540

TAXABLE VALUE

$320,090

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-2159
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, September 17, 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 102-15-009, 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 vacant, single-tenant commercial building that was previously occupied by a restaurant. The fiscal officer initially valued the subject property at $178,000. The BOE filed a complaint with the BOR seeking an increase in value to $575,000. At the BOR hearing, the BOE amended its requested value to $385,000. The BOE presented a land installment contract recorded on June 3, 2016, evidencing a sale of the property would occur after 140 monthly installments commencing July 1, 2016, for

a total purchase price of $575,000. The BOE acknowledged that this contract had been terminated and another was recorded on April 6, 2017, for a total purchase price of $385,000. The appellee property owner, GXIX LLC, explained that the first contract was voided after no monthly installments were made, and that the second contract called for payments over the course of five years, with a balloon payment due at the end. GXIX asserted that this contract was speculative and did not reflect the subject's value. GXIX explained that the treasurer had foreclosed upon the property due to delinquent taxes. Although GXIX had entered into a payment plan, any missed payments would result in the property's transfer to the land bank. GXIX also presented photographs and described the property's negative conditions. Members of the BOR challenged the BOE's reliance on a land installment contract, particularly in a situation where the contract upon which he relied was terminated without a transfer of title. 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 waived the opportunity to appear. GXIX indicated that it believed the value of the property should be reduced to $89,000, and presented an adjudication of foreclosure and delinquent tax payment plan to support the contention made at the BOR. The sole member of GXIX also testified regarding the condition of the property, explaining that he initially purchased the subject property with three other parcels roughly ten years ago, and the former restaurant has been vacant throughout the entire time he has owned it.

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. 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). Unlike a sale of the property, however, a land installment contract is merely an agreement to transfer the property and does not enjoy the presumption that the agreed upon price is best evidence of value until the sale is complete. See *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092. See, also, *Bedford City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Mar. 6, 2014), BTA No. 2013-1388, unreported.

A party seeking an adjustment to value has the burden to come forth with sufficient evidence not only to show that the fiscal officer's value is incorrect, but also to establish that its proposed value is the true value of the property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1588, ¶9. Where evidence of a qualifying sale is unavailable, appraisal evidence becomes necessary, though it may be in the form of a non-expert owner's opinion of value. Id. at ¶¶11-12. Although an owner is qualified to express an opinion of value, this board nevertheless may properly reject that opinion when the evidence that forms the basis for the owner's opinion fails demonstrate the value requested. Id. at ¶20.

In this case, in addition to the land installment contract's relied upon by the BOE, the record also contains evidence submitted by GXIX regarding the condition of the property and a foreclosure. GXIX acknowledged, however, that the property had not sold as a result of this foreclosure, and instead was subject to a repayment plan that could result in a subsequent transfer if any payments are missed. Like the land installment contract, this potential future transfer does not establish a value for the subject property. Thus, we are left with evidence of the subject property's negative physical conditions, which alone does not provide a sufficient basis to adjust the value of the property. *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996). "Without affirmative evidence of the property's value or specific analysis of how the property's condition affected its value, any evidence of defects in the property is inconsequential." *Schutz*, supra, at ¶17. As such, we find that GXIX failed to prove an alternative 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, 2016, were as follows:

TRUE VALUE

$178,000

TAXABLE VALUE

$62,300

OHIO BOARD OF TAX APPEALS

HEMMERICH REALTY LLC, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-2072 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, September 17, 2018

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

This matter comes before this board upon the appellant property owner's appeal from a decision of the Montgomery County Board of Revision ("BOR") finding value for the subject property, i.e., parcel number R72 04207 0026, for tax year 2016. 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.

The subject property was initially valued by the auditor at $134,610. Appellant Hemmerich Realty, LLC filed a complaint seeking a decrease in value to $22,000, to reflect the price for which it purchased the property in January 2017. At the BOR hearing, Matthew Hemmerich, member of the appellant, testified that he was contacted about the subject property by a realtor with whom he had made prior inquiries about purchasing property. He viewed the property, which was in "extremely poor" condition at the time of sale, including large roof leaks and extensive vandalism to the electrical systems. After several rounds of offers and counter offers, the parties negotiated a purchase price of $22,000. Counsel for the owner presented copies of the settlement statement, purchase contract, and deed, evidencing the sale of the property in

January 2017 for $22,000. Because the property was in receivership at the time of sale, counsel also presented the court order approving the sale. Counsel specifically noted that the court's order indicated that the property had been listed for public sale and that the price was fair market value.

After considering the evidence presented, the BOR rejected the $22,000 sale because it was conducted through a receiver and therefore not considered arm's-length. However, given the testimony about the condition issues present at the property, the BOR decreased the value of the property to $98,000 to reflect its condition.

Appellant thereafter appealed to this board, again requesting a decrease in value to the $22,000 sale price. Mr. Hemmerich testified at this board's hearing, essentially reiterating the testimony provided to the BOR. In response to questioning, he indicated he was unsure how long the subject property had been listed for sale, though the property had been vacant for approximately nine years. He also testified that the seller's realtor had indicated that the listing price for the property had dropped prior to her contacting him about the property. H.R. at 8. As he did at the BOR hearing, Mr. Hemmerich testified about the poor condition of the property, estimating that he spent $30,000 repairing the roof and $25,000 replacing the destroyed electrical and plumbing. Id. at 11, 13. He indicated that, as of the date of the hearing, the building did not have a certificate of occupancy. Id. at 13.

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, "when the underlying transaction is an auction or forced sale under R.C. 5713.04, a rebuttable presumption exists that the sale price is not 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, ***, at ¶ 40." (Parallel citation omitted.) *N. Canton City School Dist. Bd. of Edn. v. Stark Cty. Bd. of Revision*, 152 Ohio St.3d 292, 2018-Ohio-1, at ¶11. The presumption may be rebutted with evidence that the sale was nevertheless arm's-length, i.e., that it was voluntary, took place on the open market, and that the parties acted in their own self-interest. Id. at ¶17, citing *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989).

The subject property was sold in January 2017 by Paul Jacob, as duly appointed receiver for Nancy A. Powers and/or Nancy A. Powers IRA account. We therefore find that the sale was a forced sale, see *Nadler v. Cuyahoga Cty. Bd. of Revision* (Feb. 15, 2013), BTA No. 2012-Q-3033, unreported, and turn to the evidence to determine whether the sale was nevertheless arm's-length. Mr. Hemmerich testified at both levels that he had no prior relationship to the seller (either the prior owners or the receiver) and that the property was listed with a realtor. While he indicated had no knowledge of how long the property had been listed for sale or whether any other offers had been made, he testified that the parties went through several rounds of negotiations before arriving at a final sale price. H.R. at 8-9.

Upon review of the evidence of the circumstances of appellant's purchase of the property, we find the sale to have been arm's-length. Mr. Hemmerich testified that he and the seller went through several rounds of offers and counteroffers and that they had no previous relationship. Moreover, the court's order approving the sale states that "[t]he Property was marketed on the open market for a reasonable amount of time to gain adequate exposure to the market[,]" and "[t]he Property's true value in money, as that term in defined in R.C. 5713.01 *et seq.*, is $22,000.00 as of the date of the sale and on January 1, 2016." S.T. at Evidence. See *N. Canton*, supra, at ¶17. The evidence therefore indicates that the sale was voluntary, took place on the open market, and occurred between parties acting in their own self-interests. Particularly in light of the condition issues highlighted by Mr. Hemmerich, we find the sale price 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, 2016, were as follows:

TRUE VALUE

$22,000

TAXABLE VALUE

$7,700

OHIO BOARD OF TAX APPEALS

SPRINGFIELD LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-2014
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
LUCAS COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Monday, September 17, 2018

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

[1] This matter comes before this board upon a notice of appeal by the Springfield Local Schools Board of Education ("BOE") from a decision of the Lucas County Board of Revision ("BOR") determining the value of the subject property, i.e., parcel number 71-04531, for tax year 2016. Although a hearing was requested, the parties waived their appearances and submitted the matter on the record developed before the BOR, i.e., the statutory transcript ("S.T."), and their written arguments.

[2] The subject property is improved with a former Kentucky Fried Chicken/Long John Silver fast food restaurant. The auditor initially valued the subject property at $1,383,600. Property owner KFC Holland, LLC filed a complaint requesting a decrease in value to $675,000. In its written submission to the BOR, KFC Holland explained that it had purchased the property in December 2013 for $1,383,600. It further

indicated that the purchase also included acquisition of a lease to the then-tenant, which operated the Kentucky Fried Chicken/Long John Silver's franchise there until January 2015, when it vacated the property. Its counsel indicated that the property has been unsuccessfully listed for lease and sale by the owner. KFC Holland presented the written value opinion and testimony of broker Sean McMahon, of NAI Harmon Group, who valued the subject property $675,000, based on "a combination of recent, higher valued land comparable sales plus replication of existing basic structure cost." KFC Holland also submitted documents demonstrating its efforts to evict the prior tenant and the prior tenant's bankruptcy, and copies of its managing member's federal income tax returns demonstrating the loss of rental revenue.

[3] The BOE filed a countercomplaint in support of the auditor's value, noting that the property had recently been sold and that a full appraisal of the property had not been submitted.

[4] The BOR ultimately reduced the value of the subject property to $750,000. The exact basis of the decision is not clear from the record before us; however, the BOR's "journal entry" contains the following comments: "Value now is from leased fee sale in Dec[ember] of 2013. *** Sales of Barney's, Sears and Panda Express - very near, but all superior to subject – show area has rising values but already has all fast food restaurants. This location is inferior because too far from expressway." S.T., Ex. G.

[5] On appeal to this board, the BOE argues KFC Holland failed to meet its burden to prove its right to a decrease from the auditor's initial value. Specifically, the BOE argues that the broker's opinion of value is insufficient evidence of value, as it does not state a date for the opinion of value, does not provide any supporting data or calculations, and does not state the broker's qualifications to provide an expert opinion.

[6] The burden on appeal to this board lies with the appellant board of education to prove its right to the value requested. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. Here, the BOE challenges the BOR's decision to reduce the value of the subject property. We are mindful of our duty to independently determine value, and to eschew a presumption of validity of the BOR's value. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7. Indeed, the Supreme Court has held that this board "acts appropriately in departing from the BOR's value when that value cannot be replicated." *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, ¶18, citing *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶35.

[7] Such is the case in this matter. The basis of the BOR's reduction in value to $750,000 is not clear from the record. The owner advocated for a value of $675,000, based on its broker's opinion of value. Because we cannot discern the basis of the BOR's value, we cannot rely on it. We therefore must determine whether the property owner has provided sufficient evidence to support a decrease in value. We find that it has not.

[8] KFC Holland indicated that the basis of its requested value before the BOR was Mr. McMahon's opinion of value. We agree with the deficiencies noted by the BOE in its brief on appeal. First, Mr. McMahon failed to state in his testimony or written opinion as of what date he valued the property. (Indeed, the letter itself is not dated.) It is well established that an opinion of value must relate to tax lien date. 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). The Supreme Court recently held that it was legal error for a BOR to rely on a sheriff's sale appraisal that opined value as of a date different than tax lien date. *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-919, ¶18. There is no data within Mr. McMahon's written opinion of value that relates to the tax lien date, nor did he make any effort to relate his opinion of value to tax lien date through his testimony at the BOR hearing. See *AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 343, 2008-Ohio-2565.

[9] Second, this board has repeatedly rejected opinions of value provided by brokers, rather than real estate appraisers. Mr. McMahon acknowledged at the BOR hearing that he is not an appraiser. This board has

often cited to the Appraisal of Real Estate in rejecting opinions of value from non-appraiser real estate professionals: "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." The Appraisal of Real Estate (13th Ed.2008) 8-9. See also *Shinkle v. Ashtabula Cty. Bd. of* Revision,135 Ohio St.3d 227, 2013-Ohio-397, ¶26. Compare *Steak 'n Shake, Inc. v. Warren Cty. Bd. of Revision*, 145 Ohio St.3d 244, 2015-Ohio-4836, ¶26. Mr. McMahon's letter opining value omits several important aspects of a typical appraisal, including data on the comparable sale(s) relied upon, information about the comparable properties and adjustments to relate those properties to the subject, and a highest and best use analysis. Given KFC Holland's statements in its written argument on appeal, and at the BOR hearing, that the subject property is unique in its configuration and is unlikely to be used for another purpose, such analysis would be particularly helpful comparing the subject to other sold properties in determining the true value of the property for real estate tax purposes.

[10] Despite the BOE's arguments, KFC Holland argues that it presented further evidence to support a reduction in value. It primarily relies on the argument that the auditor's value is based on a sale that is no longer indicative of the property's value, due to the loss of its sole tenant. The Supreme Court has rejected such argument, stating: "*** the mere fact that tenants depart and are not replaced does not establish a change in market conditions, because increased vacancies may result from a number of factors, including the current owner's management practices." *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 129 Ohio St.3d 3, 2011-Ohio-2316, ¶22. A demonstrated change in market conditions may negate the utility of a sale; however, KFC Holland has presented no data in support of such an argument, to the extent it makes it. It provided two purportedly comparable sales – that of a KFC in Maumee in August 2016 for $475,000, and that of the sale of the land upon which a Panda Express was subsequently built which Mr. McMahon relied on. The limited information provided does not establish that the subject's market has so changed as to warrant a reduced value for the subject property. We note with importance that the county auditor conducted a triennial update of values in Lucas County in 2015, and found that no change to the subject property's value of $1,383,600 was warranted at that time.

[11] Based upon the foregoing, we find that KFC Holland failed to provide probative evidence to support its requested reduction in value. We further can discern no basis for the BOR's decision to reduce value and, therefore, must revert to the auditor's initial value. *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 543, 2018-Ohio-918, ¶16; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, ¶24; *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 114 Ohio St.3d 493, 2007-Ohio-4641, ¶23.

[12] 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

$1,383,600

TAXABLE VALUE

$484,260

OHIO BOARD OF TAX APPEALS

EARL MULLINS, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2017-1951

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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For the Appellee(s) - WARREN COUNTY BOARD OF REVISION
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Entered Monday, September 17, 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, parcels 08 17 427 005 and 08 17 426 001, 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 county appellees' written brief.

[2] The auditor initially, collectively assessed the subject parcels at $213,500. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $110,000. The complaint disclosed that the subject property had been the subject of a $220,000 transfer in April 2016. The BOR convened a hearing on the matter, at which time the property owner and his counsel appeared to submit argument and/or evidence in support of the complaint. Counsel for the property owner asserted that, although the property owner bought the property at a sheriff's sale for $242,000, including commissions and fees, he overpaid for the property, as supported by an appraisal report performed in August 2017. He also argued that the condition of the subject property, i.e., the uninhabitable home and natural springs located on the property, necessitated a reduction to the subject property's value. The property owner testified that he attended the sheriff sale, which was an auction, and that there were other bidders present. He acknowledged that he, like some other bidders, was most interested in the land portion of the subject property.

[3] Jeff Ward, an appraiser who works for the county auditor's office, also testified about his opinion of the subject property's condition and the subject sale. Based upon references made by counsel for the property owner and Ward, it appears that they had previously had substantial discussion about the subject property's

value. At the BOR decision hearing, the BOR noted that the owner's appraisal report indicated that the property owner had overpaid for the subject. The BOR voted to accept Ward's off the record recommendation that the BOR value the subject property at $197,820 to reflect the potential cost to rehabilitate the home to make it habitable. The BOR subsequently issued a decision that reduced the subject property's value to $197,820 and this appeal ensued. Although the parties had an opportunity to request a merit hearing before this board, none of the parties availed themselves of such opportunity. However, the property owner resubmitted the previously provided appraisal report and the county appellees submitted written argument to explain their position on this matter.

[4] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. Evident from the BOR hearing record, the parties discussed photographs, submitted by the property owner, and pictometry. However, none of this information is included in the statutory transcript. The board would like to 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, 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 records 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 School Dist. 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).

[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). 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 this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, at ¶11.

[6] In this matter, the important details of the subject sale are undisputed and the record indicates that such transfer was the result of a sheriff's auction. As such, the subject sale appears to have been a 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." However, the Supreme Court has held that R.C. 5713.04 is not an absolute bar to establish a property's 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 [*Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*], 127 Ohio St.3d 63, 2010-Ohio-4907, ***, at ¶ 34." Id. at ¶40. (Parallel citations omitted.) None of the parties rebutted the presumption that the subject sale was not indicative of the subject property's value. We proceed, therefore, to evaluate the remaining evidence in the record.

[7] Although the property owner submitted an appraisal report, which opined the subject property's value to be $150,000 as of August 2017, we do not find it to be competent, credible, or probative evidence of the subject property's value for two main reasons. First, the appraiser did not appear at the BOR hearing to authenticate the appraisal that was submitted, to testify regarding his professional credentials and the methodologies utilized in deriving the valuation conclusions, or to be questioned by members of the BOR. For example, a review of the BOR hearing record indicates that the BOR members were skeptical of the appraiser's analysis, specifically his selection of comparable properties located in dissimilar areas and his failure to adjust the comparable properties for age and location. If this board had had the opportunity to question the appraiser, we would have inquired into his failure to acknowledge the subject sale, at all, and to evaluate it in light of market conditions. "An expert's opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion." *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997). See, also, *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. 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 ***." *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 412, 2016-Ohio-1506, ¶32.

[8] Second, the appraisal opined the subject property's value as of August 2017, not as of the tax lien date, January 1, 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."). We acknowledge that the court has held that even an appraisal report that is not, on its own, a reliable indication of value may be utilized by this board to independently determine value based on the data contained in such report. See *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. In this case, however, given the deficiencies with the appraisal report as noted above, we find that the appraisal does not contain the same level of reliability as in *Copley-Fairlawn*.

[9] Having found the property owner's evidence to be insufficient, we now turn to the BOR's decision to reduce the subject property's value from $213,500 to $197,820. The BOR decision hearing indicated that the BOR based its decision on Ward's testimony at the hearing and subsequent recommendation given the condition of the home situated on the subject property. We note that the property owner's testimony confirmed the condition of the home. We find that the record sufficiently supports the BOR decision.

[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"). In doing so, we find support for a reduction from the auditor's initial valuation in Ward's recommendation to the BOR. It is, therefore, the order of this board that the subject parcels' combined true value as of January 1, 2016 is $197,820, as previously determined by the BOR. However, because the BOR did not allocate its total value between the two parcels in its decision, we hereby remand this matter to the Warren County Board of Revision to perform such allocation.

OHIO BOARD OF TAX APPEALS

HOMER S. TAFT, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2016-1101 (REAL PROPERTY TAX) DECISION AND ORDER

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ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET, 3RD FLOOR
ELYRIA, OH 44035-5642

LORAIN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ANTHONY B. GIARDINI
GIARDINI, POPLAR AND MASON, LLC
520 BROADWAY, THIRD FLOOR
LORAIN, OH 44052

Entered Monday, September 17, 2018

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

This matter comes before this board upon a notice of appeal by the appellant property owner from a decision of the Lorain County Board of Revision ("BOR"), which determined the value of the subject property, comprising ten parcels, 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, and the record of the hearing before this board ("H.R.").

The subject parcels are located along Lake Erie. The auditor initially valued the subject parcels at a total of $401,400 for tax year 2015. Appellant property owner Homer Taft filed a complaint seeking a decrease in value to $150,000, noting that the some of the property is unbuildable due to lack of utility access and isolation resulting from railroad tracks. The Board of Education of the Lorain City School District ("BOE") filed a

countercomplaint in support of the auditor's valuation; it presented no independent evidence of value. At the hearing, Mr. Taft explained that only approximately half of the subject property is buildable,

and that the cost to bring utility access to the property is well in excess of the county auditor's value, given the distance and obstacles between the subject property and utility access points.

In support of his requested decrease, Mr. Taft presented the appraisal report and testimony of Douglas Kayle, a certified residential appraiser, who opined the subject property's value to be $147,000 for January 1, 2015 through December 31, 2015. Mr. Kayle explained that he conducted a highest and best use study to conclude that the property's highest and best use was as lakefront parkland, not as developable lots, given the lack of utilities on the subject property. He based his appraised value on a sales comparison approach using six comparable sales, focusing on properties similarly without utility access, including agricultural land. Although Mr. Kayle testified that he estimated the cost of bringing utilities to the subject property at $100,000, he indicated such estimate was based on the cost of trenching, rather than boring under streets and the railroad tracks, which Mr. Taft testified would be required based on his conversations with developers. Mr. Kayle was questioned extensively by members of the BOR and by counsel for the BOE.

The BOR determined that appellant presented insufficient evidence to support a change in value, and issued a decision maintaining the auditor's initial value.

Mr. Taft thereafter appealed to this board. At this board's hearing, Mr. Taft explained the history of the subject property's valuation, beginning with his purchase of the property in 2010 for $89,100 in an absolute auction sale. Both he and the BOE had filed complaints against the property's valuation for prior years, culminating in a global settlement for the years 2010 through 2014. H.R. at 6. For 2015, Mr. Taft testified that the auditor applied an 11.5% increase to the parcels' values in accordance with the county's triennial update of values for that year. Id. Given the difficulty developing the subject property, due to its topography, size of some lots, need to access utilities approximately 800 feet away, lack of public railroad crossing, and comparable lakefront sales, Mr. Taft argued that the increase was not appropriate, and advocated for a value of $150,000. Despite marketing the property for sale on two occasions, H.R. at 33, Mr. Taft indicated he had received only one oral offer of $150,000. Id. at 29.

Mr. Taft again presented the appraisal report and testimony of Mr. Kayle, who again testified that he considered the highest and best use of the property to be as "parkland, agricultural land," due to the lack of utilities and limited access over the railroad tracks with only a private crossing. H.R. at 44. He explained that he used the term "parkland" as "being that it could not be developed as a commercial entity for houses, buildings, because it doesn't have utilities." H.R. at 67. Such use is an interim use, "[u]ntil such time as it became feasible to put utilities to the property, which it does not have." Id. at 74. In addition to his previously-submitted appraisal report, Mr. Kayle presented a letter with additional information supporting his $147,000 opinion of value. H.R., Ex. E. Specifically, he noted two sales of single-family lakefront homes in 2016 for $235,000 and $225,000, and four lakefront properties currently listed for sale from $160,000 to $395,000.

We note that both counsel for the county appellees and the BOE objected to all of appellant's exhibits for lack of relevancy and to some for lack of authentication. We hereby overrule the objections.

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, ¶6. Although the Supreme Court has reiterated that the best evidence of value is a recent, arm's-length sale of the property, *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶33, Mr. Taft concedes that his 2010 purchase of the property is not recent to tax year 2015 due to changes in the market and improvements made to the property. H.R. at 34-37. We therefore turn to appellant's evidence of value.

Mr. Taft primarily relies on Mr. Kayle's opinion of value. At the outset, we reject the appellees' arguments that Mr. Kayle's opinion is not reliable because it opines value as of the entire year of 2015. Mr. Kayle testified at this board's hearing that the market remained unchanged during that time period, and, indeed,

through May 2016. H.R. at 73, 84. None of the appellees has presented any data to contradict such opinion. While we acknowledge the typographical errors in the date of the appraisal in several places in the report, Mr. Kayle testified to such errors and clarified the effective date of his opinion of value. We do not find that these errors necessitate rejection of the appraisal.

Mr. Kayle compared the subject property to six other properties that sold in 2014 and 2016, including five without utilities (like the subject) and one with all utilities. He testified that he considered the sale of 27.12 acres of lakefront property without utilities in Sandusky to be most comparable to the subject – that property sold for $154,000 in July 2014. After adjusting for the property's size, he concluded to an adjusted value for the Sandusky property of $130,840. He applied large adjustments to the remaining five comparable sales, most notably for their considerable size difference from the subject, which ranged from 32.46 acres to 117.06 acres. Based on these sales, Mr. Kayle concluded to a value of $147,000 for the subject property for 2015.

The testimony of both the expert appraiser and the property owner, see *Smith v. Padgett*, 32 Ohio ST.3d 344, 347 (1987), is that the subject property is uniquely challenged given its topography and location adjacent to the lake and a creek, limited access across a railroad, and lack of utilities. We are unable to discern from the record before us, including from the auditor's property record cards, whether these problems were taken into account in the auditor's initial valuation of the property.

The improved lakefront sales provided by Mr. Kayle, and the additional listings, H.R., Exs. A-C, E-G, support the conclusion that the subject property is currently overvalued. This board's charge is to independently determine the value of the property based upon the evidence in the record. Here, a certified appraiser has looked to similar vacant properties that lack utilities, and opined a value well below the auditor's value. His value is further supported by the additional, improved sales of lakefront properties with full utilities, and listings of similar vacant properties with utilities. H.R., Exs. A-G.

Based upon the foregoing, we find there is sufficient evidence from which we can independently determine value, and further find that Mr. Kayle's opinion of value is competent and probative. We therefore adopt Mr. Kayle's valuation of the subject property's land. However, we note that the auditor's property record card indicates that parcel number 02-02-021-101-009 is improved with a detached garage. In the absence of any other valuation of such structure, we adopt the auditor's valuation of $11,930 and add it the allocated portion of Mr. Kayle's land valuation. We further allocate Mr. Kayle's total land value among the subject parcels in accordance with the auditor's initial valuation. 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 parcels as of January 1, 2015, were as follows:

PARCEL NUMBER 02-03-001-102-017

TRUE VALUE: $8,770

TAXABLE VALUE: $3,070

PARCEL NUMBER 02-02-021-101-002

TRUE VALUE: $7,090

TAXABLE VALUE: $2,480

PARCEL NUMBER 02-02-021-101-003

TRUE VALUE: $7,810

TAXABLE VALUE: $2,730

PARCEL NUMBER 02-02-021-101-004

TRUE VALUE: $8,360

TAXABLE VALUE: $2,930

PARCEL NUMBER 02-02-021-101-005

TRUE VALUE: $9,250

TAXABLE VALUE: $3,240

PARCEL NUMBER 02-02-021-101-006

TRUE VALUE: $8,910

TAXABLE VALUE: $3,120

PARCEL NUMBER 02-02-021-101-009

TRUE VALUE: $25,800

TAXABLE VALUE: $9,030

PARCEL NUMBER 02-02-021-101-010

TRUE VALUE: $11,570

TAXABLE VALUE: $4,050

PARCEL NUMBER 02-02-021-101-012

TRUE VALUE: $50,930

TAXABLE VALUE: $17,830

PARCEL NUMBER 02-02-021-101-048

TRUE VALUE: $21,790

TAXABLE VALUE: $7,630

OHIO BOARD OF TAX APPEALS

SCOTT GOODPASTER, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-738

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SCOTT GOODPASTER
OWNER
3545 SORRENTO DR
CINCINNATI, OH 45236

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, September 20, 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. 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 in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was not filed with the BOR. Appellant's response acknowledged that he did not send a copy of the notice of appeal to 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

MICKEY KIZER, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-623, 2018-624

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MICKEY KIZER
710 DEERWOOD DRIVE
DEFIANCE, OH 43512

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

Entered Thursday, September 20, 2018

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. 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 in these matters indicates that while appellant timely filed the appeals with this board, notices of the appeals were not filed with the BOR. Although the DTE Form 3 indicates that the BOR received this board's docketing letter on July 5, 2018, 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. Upon consideration of the existing record, these matters are determined to be jurisdictionally deficient and therefore are dismissed.

OHIO BOARD OF TAX APPEALS

JONATHAN SMITH, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-748

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JONATHAN SMITH
6376 WALDEN PONDS CIRCLE
HAMILTON, OH 45011

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, September 20, 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. 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

ROBERT GREEN, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-520

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROBERT GREEN
VP OPERATIONS
3176 MORLEY ROAD
SHAKER HTS., 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 Friday, September 21, 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

PAUL MILLER, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-445

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PAUL MILLER
Represented by:
LILLIAN MILLER
7411 RIDGEFIELD AVENUE
CLEVELAND, OH 44129

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, September 21, 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

WARREN BEACH PROPERTIES LLC, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-420

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WARREN BEACH PROPERTIES LLC
Represented by:
MOHAN JAIN
MEMBER
23800 COMMERCE PARK, SUITE A
BEACHWOOD, 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, September 21, 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

BRITTANY ANN MACKEY, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-907

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BRITTANY ANN MACKEY
Represented by:
BRITTANY MACKEY
3738 MONTICELLO BLVD.
CLEVELAND HEIGHTS, OH 44121

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, September 24, 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

BLACK DOG DEVELOPMENT, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-850

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BLACK DOG DEVELOPMENT
Represented by:
JOHN R SMITH
CO-OWNER
3634 OAKMEADOW LN
CINCINNATI, OH 45247

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, September 24, 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. 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

LIXUAN ZHENG, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-796

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LIXUAN ZHENG
1079 STREAM RIDGE LANE
CINCINNATI, OH 45255

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, September 24, 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. 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. (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 in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was not filed with the BOR. Appellant's response admits a lack of knowledge of the requirement to file a notice of the appeal with the BOR, and indicates that such filing was not made. 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

LUANN HAMILTON, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-87

(REAL PROPERTY TAX)

ORDER

APPEARANCES:

For the Appellant(s) - LUANN HAMILTON
80500 STRINGTOWN ROAD
FREEPORT, OH 43973

For the Appellee(s) - HARRISON COUNTY BOARD OF REVISION
Represented by:
T. OWEN BEETHAM
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HARRISON COUNTY
111 W. WARREN STREET
P.O. BOX 248
CADIZ, OH 43907

Entered Monday, September 24, 2018

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

The appellant property owner appeals a decision of the board of revision ("BOR"), which valued the subject property, parcel 22-0000615.000, for tax year 2016. We proceed to consider this matter based upon the notice of appeal, the limited documents provided in the statutory transcript pursuant to R.C. 5717.01, and this board's show-cause orders and any associated responses.

We glean the following information from the limited record before us. The auditor initially valued the subject property at $106,740. The property owner filed a complaint with the BOR, which requested that the subject property be revalued. The complaint noted that "[p]roperty was appraised at $21,000 for sheriff sale. I purchased the property for $43,000." (We note that the property owner attached a different complaint, dated March 31, 2017, to the notice of appeal. However, because such complaint does not bear a stamp noting receipt, there is no indication that it was actually filed with the BOR. See *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872.) The BOR issued a decision, which reduced the subject property's value to $70,790. (We note that the DTE-Form 3, certified by the county auditor, incorrectly noted that the subject property was revalued at $70,800.) Thereafter, the property owner appealed to this board.

By way of the notice of appeal, the property owner advanced arguments about the tax bill(s) associated with the subject property and asserted that she repeatedly inquired about the date on which a merit hearing

would be held before the BOR and that her efforts were rebuffed. The notice of appeal also included a number of documents submitted by the property to support her allegations. None of the parties requested an opportunity to present evidence at a hearing before this board.

Although the property owner filed the notice of appeal in this matter on February 6, 2018, the BOR failed to certify the statutory transcript to this board within 45 days of such filing. R.C. 5717.01; Ohio Adm. Code 5717-1-10(A). As a result, we were initially unable to consider the merits of this appeal. On May 11, 2018, we issued a show-cause order, which directed the county appellees to certify the statutory transcript pursuant to R.C. 5717.01. On May 14, 2018, the county appellees certified an incomplete statutory transcript, which only contained the DTE-Form 3, underlying complaint, and decision letter issued by the board of revision ("BOR"), entitled "FINAL APPEALABLE ORDER." As the result of the deficient statutory transcript, this board issued a second show-cause order, on May 30, 2018, which directed the county appellees to certify an accurate copy of the statutory transcript with specific missing documentation, i.e., "the property record card(s) associated with the subject property, parcel 22-0000615.000, for tax year 2016; the BOR hearing notice and the certified mail receipt to demonstrate that the hearing notice was sent to the complainant property owner consistent with statutory requirements; the BOR hearing record and any and all evidence submitted at such hearing; any and all evidence relied upon by the BOR to reach its decision; the certified mail receipt to demonstrate that the BOR decision was sent to the property owner consistent with statutory requirements; and a copy of the property owner's notice of appeal." *Hamilton v. Harrison Cty. Bd. of Revision* (Interim Order, May 30, 2018), BTA No. 2018-87, unreported at 1. Though we ordered the BOR to remedy the deficient statutory transcript within fourteen days of the show-cause order, i.e., on or before June 13, 2018, the BOR has neither complied with our order nor provided a written explanation for its failure to do so.

Our review of this matter has been stymied by the BOR's failure to satisfy its statutory duties. In *L.J. Smith*, supra, the Supreme Court reviewed the failure of the Harrison County Auditor and/or Harrison County Board Revision to comply with statutory requirements for the filings of complaints against real property value. In doing so, the court noted:

> "[T]he record rebuts the presumption of regularity with respect to the BOR's and the auditor's actions. The BOR failed in its duty to certify a transcript of its proceedings to the BTA once an appeal had been perfected at the BTA. R.C. 5717.01 provides, 'The 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.' The BOR also failed to comply with a specific order entered by the BTA on February 25, 2013, to produce a transcript. The BOR transcript would ordinarily contain the complaint and show that it had been filed, thereby obviating the problem arising here.
>
> "***
>
> "Finally, upon the filing of a complaint, the BOR would ordinarily schedule a formal hearing through certified-mail notice to the parties. R.C. 5715.19(C). That notice also is a jurisdictional prerequisite. *See Knickerbocker Properties, Inc. XLII v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192, ***, ¶ 18, 20. Without a transcript of the BOR's proceedings, we cannot be sure that notice was given. In short, these proceedings cannot be deemed to have been regular." (Parallel citation omitted.) Id. at ¶29, 32.

Based upon the allegations in the notice of appeal in this matter, the limited documents contained in statutory transcript, and the BOR's failure to respond to this board's May 30, 2018 show-cause order, it is clear that the BOR also acted irregularly and improperly in this matter. There is no evidence that the BOR followed any of the statutory requirements related to the filing of real property complaints. Specifically,

there is no evidence that the BOR noticed and held a hearing on the complaint, R.C. 5715.11, 5715.19(C), nor that, if such hearing did occur, it kept minutes of its proceedings and preserved any documentary evidence offered on the complaint. R.C. 5715.08. Therefore, this matter is remanded to the BOR with specific instructions to vacate its December 16, 2017 decision. The BOR is ordered to schedule this matter for a hearing, *within ninety days of this order*, and to provide notice to the complainant property owner(s), "by certified mail, not less than ten days prior to the hearing, of the time and place the same will be heard. ***." R.C. 5715.19(C). The BOR is also ordered to mail its decision by certified mail as required by R.C. 5715.20(A).

Furthermore, the timeliness and completeness of transcripts from the Harrison County Board of Revision has been, and remains, an ongoing issue, impeding the ability of this board to act efficiently and expeditiously. Continually, this board has found it necessary to issue orders to the Harrison County Board of Revision ordering it to comply with R.C. 5717.01. E.g., *Gables at Countryside Lane II, LLC v. Harrison Cty. Bd. of Revision* (Interim Order, May 18, 2016), BTA No. 2015-2307, unreported; *Clear View Townhomes, LLC v. Harrison Cty. Bd. of Revision* (Sept. 13, 2013), BTA No. 2013-172, unreported. See also *Stupak v. Harrison Cty. Bd. of Revision* (Dec. 15, 2009), BTA No. 2007-K-1215, unreported (noting complete failure to certify statutory transcript). The Harrison County Board of Revision is cautioned that further disregard of its statutory duty may result in the imposition of sanctions.

Accordingly, we hereby remand this matter to the BOR with instructions to institute proceedings consistent with this order, as outlined above.

OHIO BOARD OF TAX APPEALS

MARILYN SILCOTT, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-937

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARILYN SILCOTT
OWNER
1453 BUCKEYE CHURCH RD
JACKSON, OH 45640

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

JACKSON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
JONATHAN T. BROLLIER
BRICKER & ECKLER, LLP
100 SOUTH THIRD STREET
COLUMBUS, OH 43215-4214

Entered Monday, September 24, 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

JOAN ALLGEIER, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-241

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOAN ALLGEIER
3701 W. GALBRAITH RD #52
CINCINNATI, OH 45247

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, September 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 510-0082-0422-00, for tax year 2017. We consider this matter upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

The subject property is a garage for appellant's condominium unit (the value of the condominium unit is not at issue) and was initially assessed at $9,750. Appellant filed a complaint with the BOR seeking a reduction in value to $3,740, referencing an earlier complaint letter and describing the subject as "a glorified carport." Appellant did not appear at the BOR hearing, but submitted a listing for the sale of another condominium unit and garage with comments regarding the differences in the condominium units. Appellant also submitted a photograph of what appears to be a concrete pad with a crack through it. An appraiser from the auditor's office appeared at the hearing to testify, submitting a written report in reflecting her opinion that appellant failed to meet her burden of proof and that no change to the auditor's value was warranted. Although the complaint referenced an earlier letter, the appraiser indicated she did not have an earlier letter and it may have been during the informal review process. The appraiser also explained that the sale information submitted to the BOR was not helpful because it was a purchase of both the condominium and garage, while the subject is simply the garage. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. Appellant waived the opportunity to appear at a hearing before this board. On her notice of appeal, appellant referenced three types of parking garages in the condominium community and asserted that all three were being taxed the same, though some were attached and had private parking pads, while others were detached and had different construction.

Appellant has the burden to prove her right to a reduction in value, and is not entitled to her claimed value merely because no independent evidence of value was introduced to counter her claim. *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002, ¶9, citing *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision*, 170 Ohio St. 340, 342 (1960). In order to meet this burden, appellant must present competent and probative evidence in support of her requested reduction. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564 (2001). In this case, appellant has attempted to meet her burden through the presentation of an unadjusted sale of a condominium unit, the claim of disparate treatment, and a description of the negative aspects of the subject property. Because none of this evidence allows us to ascribe a particular value to the subject property and fails to demonstrate the impact that these factors have on the value of the subject property, we find that appellant has failed to meet her burden and we are unable to rely on the evidence to independently value the property. See *Valigore v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 302, 2005-Ohio-1733, ¶7 (holding that the BTA did not abuse its discretion when it retained the BOR's value and rejected the owner's opinion of value based on "sales of other properties without providing sufficient evidence to the BTA about the circumstances of those sales or the similarities of those other properties to his own," the assessed value of a neighbor's property, and rundown condition 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 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, 2017, were as follows:

TRUE VALUE

$9,750

TAXABLE VALUE

$3,410

OHIO BOARD OF TAX APPEALS

JACKSON LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-87
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - JACKSON 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

NEW BERLIN COMPANY LLC
Represented by:
MICHAEL STEEL
BRENNAN, MANNA & DIAMOND, LLC
75 E. MARKET STREET
AKRON, OH 44308

Entered Monday, September 24, 2018

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

The Jackson Local Schools Board of Education ("BOE") appeals from a decision of the Stark County Board of Revision ("BOR") determining the value of parcel number 10004282 for tax year 2015. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the auditor, and the record of the hearing before this board ("H.R.").

The county auditor initially valued the subject property at $1,380,800 for tax year 2015. Property owner New Berlin Company LLC filed a complaint seeking a decrease in value to $1,087,700, explaining: "The value of the land is overstated. The value of the land should be corrected to conform with the proper value certified for 2016." S.T., Ex. A. The BOE filed a countercomplaint in support of the auditor's value. At the BOR hearing, counsel for the owner explained that the auditor's tax year 2015 value assumed that the entire

4.45 acres of the subject property was developed land; however, only one acre is actually developed. The owner indicated that it brought the discrepancy to the attention of the auditor for tax year 2016, and the auditor's records were corrected. The BOE presented no independent evidence of value. According to a "Board of Revision Standard Report" included in the record:

> "The property was personally inspected by Matt Myers on 9/29/2016. No adjustments were made to the 2016 listing at that time. Adjustments to the land were made for 2016 to account for reclassification of land on the parcel. The initial listing accounted for all 4.45 acres of land as the Building Site. Typically for a commercial building located on more than 1 acre of land with less than 14,500 SF of building space the acreage allotted for classification Building site is only 1 acre. The remaining land has been corrected with 3.11 acres listed as Potential Development and .34 acres listed as Possible Flood Plain. The back of the property is within the FEMA flood plain map." S.T., Ex. J.

Relying on the county's inspection and correction of the property information, the BOR reduced the total value of the property to $1,087,700.

The BOE thereafter appealed to this board, and argued at this board's hearing that the "Board of Revision Standard Report" is not a reliable basis upon which to decrease value, given that the author of such report never testified and was never subject to cross-examination. H.R. at 6. In addition, counsel noted that Richard Hiser, a manager of the ownership entity, testified at the BOR that a mortgage "in excess of a million dollars" was taken against the property based on a financing appraisal that was not submitted to the BOR. Id. at 9. The owner submitted an exhibit demonstrating the change made by the auditor/BOR, including a reduction in the one-acre "building site" from $226,000 to $106,400; the reason indicated on the data presented was "low/wet." H.R., Ex. 1. The BOE requested that the auditor's initial valuation be reinstated given the lack of competent evidence. For its part, the owner argued that it is simply attempting to correct a mistake made by the auditor, who determined that the entire parcel was developed and valued it accordingly. The county appellees did not appear at the hearing.

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, ¶6.

We reject any argument by the BOE that the BOR's decision to reduce value must be based solely on the property owner's evidence. As the Supreme Court recently held in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 151 Ohio St.3d 458, 2017-Ohio-5823:

> "It stands to reason that just as the county auditor consults its experts in originally assessing the property, the board of revision may, when reviewing the decrease complaints that come before it, elicit evidence from consultants and staff appraisers. If, in such a case, the board of revision orders a reduction and the board of education appeals to the BTA, the board of revision as an appellee can be called upon to account for the manner in which it determined the reduced value. *See, e.g., Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ***, ¶ 18-19 (property owner subpoenaed county's consultant to testify on cross-examination at the BTA hearing)." Id. at ¶9.

See also *Olentangy Local Schools Bd. of Edn v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, ¶15.

Here, the BOR did just that – it consulted with the auditor's staff appraiser about the request made by the property owner. The appraiser personally inspected the property and made adjustments to the classification of the land based on an inaccurate listing of the entirety of the parcel as the building site, rather than the typical one acre, and based on the property being within the FEMA flood plain map. While counsel for the BOE repeatedly argued at this board's hearing that the changes made to the land values defy logic, we find

the appraiser's explanation within his report to be reasonable. In addition to dividing the parcel between building site and potential development, Mr. Myers recommended a reduction in those portions of the property that were within the flood plain and were observed to be low/wet. Notably, the BOE did not avail itself of the opportunity to subpoena Mr. Myers to testify before this board and be subject to cross-examination.

Based upon our review of the "Board of Revision Standard Report," we find that the BOR's decision to reduce value is supported by competent and probative evidence. The appraiser who authored the report personally inspected the property and sufficiently explained the basis of his recommendation. In the absence of any evidence to the contrary, 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 determined by the BOR, as follows:

TRUE VALUE

$1,087,700

TAXABLE VALUE

$380,700

OHIO BOARD OF TAX APPEALS

MICHAEL A FANTETTI, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-790

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MICHAEL A FANTETTI
Represented by:
MIKE FANTETTI
303 COUNTRY TRACE DRIVE
HARRISON, OH 45030

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 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. 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

BRENDAN DENNIS ORMOND, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-759 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BRENDAN DENNIS ORMOND
Represented by:
BRENDAN ORMOND
2847 SKYE DRIVE
FAYETTEVILLE, NC 28303

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 25, 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. 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

FAIRFIELD RENTALS, (et. al.), Appellant(s), vs. FAIRFIELD COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-647 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FAIRFIELD RENTALS
Represented by:
ROBERT PULLON
OWNER
2081 COONPATH ROAD NW
LANCASTER, OH 43130

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

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

Entered Tuesday, September 25, 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 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

FAIRFIELD RENTALS, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-646

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Represented by:
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Entered Tuesday, September 25, 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 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

IVY K. LUI, (et. al.), Appellant(s), vs. CLARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-1622 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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SAN ANSELMO, CA 94960

Entered Tuesday, September 25, 2018

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

The appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 340-07-00033-314-021, 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, the record of this board's hearing, and notice of supplemental authority submitted by the property owner.

The subject property was initially assessed at $372,380. The board of education ("BOE") filed a complaint with the BOR, which requested that the subject property be revalued at $480,000 to be consistent with the price at which it transferred in February/March 2016. The prior owner and appellant in this matter, Ivy Lui, filed a countercomplaint, which objected to the request and asserted that the $480,000 sale of February/March 2016 was not indicative of the subject property's value.

The BOR held two hearings on the matter. At the first hearing, only the BOE appeared and submitted sale documents, which demonstrated the $480,000 transfer of the subject property. Though the BOR decision was not included in the transcript, it is apparent that the BOR issued a decision after its hearing. After the BOR issued its decision, counsel for appellant informed the BOR that she did not receive notice of the hearing and requested that the BOR reschedule the hearing to allow her to participate. The BOR vacated its decision and rescheduled the hearing.

At the second BOR hearing, counsel for both the BOE and appellant appeared to submit argument and/or evidence in support of their respective positions. In its presentation, the BOE submitted a conveyance fee statement and deed, which demonstrated the $480,000 transfer of the subject property from Affinity Fletcher 102, Inc. to appellant in February/March 2016. Based upon its presentation, the BOE requested that the subject property be revalued consistent with the subject sale price. Because it anticipated that appellant would present an appraisal report and associated appraiser testimony, the BOE preliminarily objected to any evidence from the appraiser about the facts and circumstances of the subject sale based upon hearsay.

Appellant's counsel objected to the sale documents submitted by the BOE and claimed that such documents were inadmissible because they were not properly authenticated. In her presentation, appellant presented the appraisal report and testimony of appraiser Kelly M. Fried, who opined the value of the subject property to be $335,000 as of January 1, 2016. Fried testified about the underlying data, information, and methodologies used to derive her final conclusion of value. Based upon the presentation, appellant amended her opinion of value and requested that the subject property be valued consistent with Fried's appraisal report, $335,000. On cross-examination, Fried not only conceded that she had no firsthand knowledge about the facts and circumstances of the property owner's $480,000 purchase of the subject property in February/March 2016, she also had no firsthand knowledge of the facts and circumstances of the subsequent, $555,000 sale of the subject property in July 2017 and the facts and circumstances of the negotiations of the underlying lease alleged to have been in place at the time of both sales, topics which she detailed in her testimony and on page 24 of her appraisal report. As a result, the BOE reiterated its earlier objection to any consideration of Fried's discussion of these topics on hearsay grounds. In response, appellant's counsel argued that an appraiser, as an expert witness, can testify about topics for which she/he has no firsthand knowledge without such testimony being barred as hearsay. The BOR noted the objection, and response, and continued with the hearing. The BOR subsequently issued a decision, which increased the subject property's value to $480,000, consistent with the price at which appellant purchased the subject property in February/March 2016, and Ms. Lui appealed to this board.

This board held a brief hearing on this matter, at which time all of the parties appeared to submit additional argument and/or evidence into the record. In her presentation, appellant's counsel conceded that she purchased the subject property for $480,000 in February/March 2016; however, counsel argued that a recent Supreme Court case, *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, allowed an opponent of a sale to rebut such sale with appraisal evidence to demonstrate the value of the fee simple interest. Based upon her presentation, appellant requested that we conclude that she had successfully rebutted the presumptions accorded to her purchase of the subject property and, instead, value the subject property consistent with Fried's appraisal report and testimony. In its presentation, the BOE resubmitted the sale documents provided to the BOR and reiterated its objection to any reference to the facts and circumstances of the recent sales of the subject property and of negotiations of the underlying lease alleged to have been in place at the time of both sales in Fried's appraisal report and testimony before the BOR. Based upon its presentation, the BOE requested that we conclude that

appellant's $480,000 purchase of the subject property is the best indication of value and affirm the BOR's decision. In their presentation, the county appellees affirmed that the property owner's $480,000 purchase of the subject property is the best indication of the subject property's value.

While this matter was pending, appellant submitted the recent Supreme Court decision in *Bronx Park S. III Lancaster, L.L.C. v. Fairfield Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1589 as additional authority for her position.

Before we consider the merits of this appeal, we must first dispose of two preliminary issues. First, the statutory transcript certified to this board did not contain the BOE's evidence, i.e., various documents related to the 2016 and 2017 sales of the subject property. Fortunately, the BOE corrected this deficiency at this board's hearing and submitted the missing documents. We take this opportunity to remind the BOR that 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, 2011-Ohio-5078, at ¶27, fn.4. See also *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094. Therefore, the BOR should take care to ensure its evidentiary record is accurate.

Second, as noted above, the BOE repeatedly objected to any reference to the facts and circumstances of the recent sales of the subject property and of negotiations of the underlying lease alleged to have been in place at the time of both sales in Fried's appraisal report and testimony before the BOR. As will be discussed more fully below, the objection is sustained.

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). "Pursuant to R.C. 5713.01, the 'true value in money' is the basis for assessing real property and usually equates to 'market value,' meaning what the property would sell for when the buyer and seller arrive at the sale price acting as 'typically motivated market participants.' *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734, ***, ¶ 14." (Parallel citation omitted.) *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 100, 2017-Ohio-7578, at ¶19. 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*, supra. 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 this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, at ¶11.

In this matter, the record indicates that the subject property was the subject of two sales that may be considered temporally "recent" to the tax lien date: (1) the $480,000 transfer of the subject property *to* the appellant in February/March 2016 and (2) the $555,000 transfer of the subject property *from* the appellant in July 2017. In *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, at paragraph one of its syllabus, the court stated 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 $480,000 sale of February/March 2016.

Here, upon presentation of the sale documents, the BOE created a rebuttable presumption that appellant's

$480,000 purchase of the subject property was the best indication of its fee simple value as of January 1, 2016, see *Terraza*, supra, at ¶¶32-34, and the appellant does not dispute the minimal details of her $480,000 purchase of the subject property, see *Lunn*, supra; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402. As a result, the burden shifts to appellant to demonstrate that this sale did not reflect the subject property's value on the tax lien date. Appellant attempted to satisfy her burden through the appraisal report and testimony of Fried.

In her appraisal report, Fried developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, she compared the subject property's two recent sales, in February/March 2016 and July 2017, to the sales of five other restaurant properties in Clark County between July 2014 and September 2016. After adjusting all of the sales, she concluded the subject property's value to be $345,000 as of January 1, 2016. Under the income approach to value, Fried relied upon five properties that were leased in Clark and Montgomery counties since 2011 and ten properties, of various vintages and uses, available for lease in Clark County. After deriving potential gross income from rental and reimbursable income, deducting $5,319, or 7.5% of potential gross income, for vacancy and credit loss, she concluded to an effective gross rental income of $65,607. From that number, she deducted
$39,668 of expenses and concluded to a net operating income of $25,939. She next determined a range for the overall capitalization rate to be between 8.44% and 8.94%, including a tax additur of 0.19% before she finally concluded the subject property's value to be $300,000 as of January 1, 2016. She reconciled the indicated values, giving most weight to the sales comparison approach to value, and finally concluded the subject property's value to be $335,000 as of January 1, 2016.

Upon review, for three primary reasons, we find that appellant failed to rebut the presumption that the $480,000 price at which the subject property transferred in February/March 2016 is the best indication of its fee simple value as of the tax lien date. First, we note that Fried's appraisal report and testimony were rife with hearsay statements about the facts and circumstances of the property owner's $480,000 purchase of the subject property in February/March 2016 and the negotiations of the underlying lease alleged to have been in place at the time of such sale. We find the Supreme Court's recent decision in *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-2046, to be particularly instructive on this issue. There, the court considered the propriety of this board's decision not to consider this same appraiser's statements about the facts and circumstances of a sale, topics for which she had no firsthand knowledge. In upholding our conclusion that such statements were inadmissible hearsay, the court noted:

> "The basis for Fried's statement rested solely on a conversation she had with an unnamed owner who did not testify before the BOR or the BTA. Had UTSI presented the owner as a witness, it is likely that this issue could have been avoided altogether. *See Gahanna Jefferson Pub. Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 98AP460, 1999 WL 1161, *5 (Dec. 31, 1998) (distinguishing *Almondtree* [*Apts. of Columbus, Ltd. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 87AP-1216 (June 28, 1988)]. Indeed, UTSI was on notice that this issue was looming given that the BOE raised its hearsay objection during the BOR proceedings. But UTSI evidently decided not to present the owner to testify during the BTA proceedings.
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> "****
>
> "*** The scope of [the BTA's hearsay determination] applies to the narrow class of cases in which an appraiser acts merely as a conduit of information concerning material facts about the subject property itself ***." Id. at ¶¶36, 38.

In this matter, Fried's statements about the facts and circumstances of appellant's $480,000 purchase of the subject property in February/March 2016 and the negotiations of the underlying lease alleged to have been in place at the time of such sale were based upon conversations with people who failed to testify before the

BOR or before this board. Because the BOE lodged a hearsay objection to these statements at the BOR hearing (and a spirited discussion followed), appellant was on notice "that this issue was looming" and, nevertheless, chose not to present a witness with firsthand knowledge of these crucial issues at this board's hearing. For these reasons, we also conclude that Fried's statements in this matter are inadmissible hearsay, which will not be considered in our analysis.

Second, the underlying lease alleged to have been in place at the time of the sale in February/March 2016 is notably absent from the record. As a consequence, this board cannot confirm that there was, in fact, a lease in place at the time of such sale and cannot confirm the actual terms of the lease. Just as one example, in her appraisal report, Fried alleges that the sale of February/March 2016 was a sale-leaseback transaction. However, the record is devoid of any corroborating evidence to support such assertion and the property owner has not argued that such sale should be rejected on that basis. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 100, 2017-Ohio-7578. Thus, we are left to blindly rely upon the representations made by Fried about very important issues that go to the crux of our inquiry.

Third, the underlying data and methodologies in Fried's appraisal report do not require us to reject the sale of February/March 2016. In *Terraza*, the court noted that a sale "is the best evidence of the property's true value, subject to rebuttal" and that "[m]arket rent becomes relevant only if an opponent presents it as evidence in an attempt to rebut a sale price." Id. at ¶34. Fried's conclusion of market rent, $14.75 per square foot, see Fried Appraisal Report at 47, is only slightly higher than the lease rate alleged to have been in place at the time of the sale in February/March 2016, $14.62, see id. at 46. By way of the appraisal report, Fried even conceded that "the subject property is currently leased at (or near) market rates and terms." Id at 47. As such, we find that appellant has failed to submit evidence to demonstrate that the $480,000 purchase price in February/March 2016 reflected the above-market value of an underlying lease alleged to have been in place at the time of such sale.

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 appellant's evidence, Fried's appraisal report and testimony, failed to rebut the presumptions accorded to the $480,000 transfer in February/March 2016. See *Bronx Park*, supra, at ¶13 ("[T]his appeal presents a straightforward application of *Terraza*: the July 2014 sale presumptively represents the value of the unencumbered fee simple estate, but the BTA must also weigh [the property owner's] appraisal evidence."). 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 2016.

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:

TRUE VALUE

$480,000

TAXABLE VALUE

$168,000

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1550
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, September 25, 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 010-112357-00, 010-112419-00, 010-112484-00, and 010-113473-00, 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, the record of the hearing before this board, and the written argument of the appellee property owner, DBChase LLC/City National Bank ("DBChase").

[2] The subject property is a bank branch, and was initially assessed at a total true value of $967,700. DBChase filed a complaint with the BOR seeking a reduction in value to $293,050. The BOE filed a countercomplaint in support of maintaining the auditor's values. At the BOR hearing, DBChase presented evidence of a December 30, 2016 transfer, arguing that the recorded sale price constitutes the best evidence of the subject's value. DBChase acknowledged that the transfer was a part of sale-leaseback transaction, but asserted that the purchase price was based on two appraisals, neither of which were offered into evidence. The BOE did not present any independent evidence of value, but objected to the BOR's reliance on the sale because no testimony had been presented from an individual with knowledge of the sale. The BOR issued a decision reducing the initially assessed valuation to $393,100 based on the sale. From this decision, the BOE filed the present appeal. Prior to a hearing before this board, a subpoena was issued to an individual from DBChase to attend the hearing and bring various documents related to the December 2016 transfer, including the purchase agreement and any appraisals performed in conjunction with the transfer. Additionally, DBChase filed an exhibit list, attaching a deed evidencing a January 24, 2018 transfer.

[3] A hearing was convened, at which the BOE argued that the December 2016 transfer was not reliable evidence of value because it was a sale-leaseback transaction. The BOE likewise argued that the January 2018 transfer was not properly before the board because it not disclosed prior to the appellees' disclosure deadline pursuant to the board's rules and had not been offered at a hearing. DBChase waived its appearance, relying on the December 2016 transfer, or the January 2018 transfer, in the alternative. No one from DBChase appeared in compliance with the subpoena, and the BOE requested that this board either exclude the information regarding the January 2018 transfer or bifurcate the hearing and enforce the subpoena. We hereby deny the BOE's requests, noting that none of the evidence offered by DBChase provides a reliable indication 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). 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*, 150 Ohio St.3d 527, 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 a sale price of the subject property established its value, the factors attending that issue must be determined de novo by this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

[5] First, we find that the December 2016 transaction is not reliable evidence of value. The Supreme 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. See also *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 325, 2017-Ohio-8817, ¶16. In the present appeal, DBChase 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 counsel stated that the sale price was based on two appraisals, but neither appraisal was provided and 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). Compare *Emerson v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 148, 2017-Ohio-865 (holding that a certified appraisal may be used to show that a purchase price in a sale between related parties reflected true value). Accordingly, we find that DBChase has failed to meet its burden and further find that the sale is not reliable evidence of value.

[6] Second, we find that the January 2018 sale does not provide reliable evidence of value. Procedurally, the deed filed by DBChase was submitted outside of this board's rules and not properly in our record because

DBChase waived the opportunity to appear at the hearing to offer the deed into evidence. 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 this board erred by not offering further proceedings to allow the admission of new evidence where the sale was contemplated and discussed at the time of the hearing but completed afterward). Even if we were to consider the deed as evidence, however, it could not furnish a reliable basis to adjust the subject's value because it does not include the sale price.

[7] No additional evidence upon which this board may rely to independently determine value has been offered. Additionally, because the BOR's decision to reduce the subject's value based on the sale-leaseback transaction was legally incorrect, we must reinstate the auditor's values. See, e.g., *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-918 (holding that where the record contains no probative evidence for this board to perform an independent valuation of the property, the auditor's value may be properly reinstated).

[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:

PARCEL NUMBER 010-112357-00

TRUE VALUE $52,300

TAXABLE VALUE $18,310

PARCEL NUMBER 010-112419-00

TRUE VALUE $753,300

TAXABLE VALUE $263,660

PARCEL NUMBER 010-112484-00

TRUE VALUE $147,700

TAXABLE VALUE $51,700

PARCEL NUMBER 010-113473-00

TRUE VALUE $14,400

TAXABLE VALUE $ 5,040

OHIO BOARD OF TAX APPEALS

NOVITA INDUSTRIES, LLC, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2014-4243, 2014-4424

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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BOARD OF EDUCATION OF THE LORAIN CITY SCHOOL DISTRICT
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Entered Tuesday, September 25, 2018

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

This consolidated matter is again pending before the Board of Tax Appeals upon receiving a decision and judgment entry issued from the Supreme Court in *Novita Industries, L.L.C. v. Lorain Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-2023. In said decision, the court reversed this board's decision, in part, and remanded the matter to allocate the $750,000 aggregate value amongst the thirteen parcels that comprise the subject property.

Therefore, in accordance with the court's mandate, it is the order of this board that the subject property's true and taxable values are as follows as of January 1, 2012, January 1, 2013, and January 1, 2014:

True Value: $709,230

Taxable Value: $248,230

Parcel Number: 02-00-051-134-002

True Value: $3,500

Taxable Value: $1,230

Parcel Number: 02-00-051-134-003

True Value: $3,500

Taxable Value: $1,230

Parcel Number: 02-00-051-134-004

True Value: $3,500

Taxable Value: $1,230

Parcel Number: 02-00-051-134-005

True Value: $3,500

Taxable Value: $1,230

Parcel Number: 02-00-051-134-006

True Value: $3,500

Taxable Value: $1,230

Parcel Number: 02-00-051-134-007

True Value: $3,500

Taxable Value: $1,230

Parcel Number: 02-00-051-134-008

True Value: $3,420

Taxable Value: $1,200

Parcel Number: 02-00-051-134-009

True Value: $3,270

Taxable Value: $1,150

Parcel Number: 02-00-051-134-010

True Value: $3,270

Taxable Value: $1,150

Parcel Number: 02-00-051-134-011

True Value: $3,270

Taxable Value: $1,150

Parcel Number: 02-00-051-134-012

True Value: $3,270

Taxable Value: $1,150

Parcel Number: 02-00-051-134-013

True Value: $3,270

Taxable Value: $1,150

OHIO BOARD OF TAX APPEALS

DAYTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-2273
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - DAYTON CITY 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) - 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

HEROES & LEGENDS LLC
45 ARCADIAN DRIVE
SPRINGBORO, OH 45066

Entered Tuesday, September 25, 2018

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

[1] Appellant Dayton City Schools Board of Education ("BOE") appeals from a decision of the Montgomery County Board of Revision ("BOR") determining the value of parcel number E20 17503A0046 for tax year 2016. 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 argument.

[2] The auditor valued the subject property at $122,820 for tax year 2016. The BOE filed a complaint seeking an increase in value to $190,000, to reflect the price for which the property was reported as having sold in April 2016, and attached a copy of the conveyance fee statement memorializing such sale. The appellee owner, Heroes & Legends LLC, filed a countercomplaint seeking to maintain the auditor's initial value. At the BOR hearing, counsel for the owner argued that the conveyance fee statement was completed in error, and failed to indicate that the $190,000 sale price was for the entire ongoing concern of the restaurant/bar on the property, including equipment, inventory, licenses, and goodwill, in addition to the subject real

estate. The owner submitted the fully-executed asset purchase agreement, including closing statement, as evidence of the allocation. Counsel and Linda McKenzie, a member of the owner, testified that the entire going concern had previously sold in November 2012 for the same price, and that the parties to the April 2016 transaction used the same allocation of the sale price as the prior transaction. The portion allocated to real property was $120,000 in both transactions.

[3] After considering the evidence, the BOR found that no change in value was warranted, noting the presentation of the asset purchase agreement demonstrating allocation of the purchase price.

[4] The BOE appealed to this board. In its written argument, it argues that there was no evidence that the parties negotiated the allocation of the full purchase price to the items specified in the asset purchase agreement, nor was there any evidence of the basis for parties' allocation in the prior transaction. The BOE further argued that goodwill should not be excluded from the sale price, as the owner presented no evidence that the goodwill could be transferred or retained separately from the real property. (The BOE also noted that the amount allocated to goodwill in the asset purchase agreement differs from the amount in the closing statement; however, it appears the closing statement's allocation of $40,000 is the correct allocation. Appellant's Written Argument at fn.12.) The BOE asks this board to value the subject property at the full reported sale price - $190,000.

[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. There is no indication that Heroes & Legends LLC disputes the arm's-length nature or recency of the sale. Instead, it argues that the total reported sale price was in error, and that, instead, this board should accept the parties' allocation to real estate as indicated in the asset purchase agreement.

[6] As the opponent of using the full reported sale price to value the property, Heroes & Legends LLC bears the burden to prove the propriety of an allocation to real estate. *RNG Properties, Ltd. v. Summit Cty. Bd. of Revision*, 140 Ohio St.3d 455, 2014-Ohio-4036, ¶36. See also *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of* Revision, 152 Ohio St.3d 86, 2017-Ohio-7664. In addressing the owner's burden, the court explained, in *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 151 Ohio St.3d 109, 2017-Ohio-7650:

> "The burden is not a heavy one; the owner must typically be able to point to '"corroborating indicia"' in the record that supports the allocation. *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 1, 2014-Ohio-853, ***, ¶ 42, 46-47, quoting *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio S5.3d 188, 2013-Ohio-3028, ***, ¶ 18. The burden may be satisfied if the 'best available evidence' supports the proposed reduction from the full sale price. *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011-Ohio-2258, ***, ¶ 18, 27. In evaluating the sufficiency of the proof, the allocation agreed to by the parties to the asset purchase agreement is 'relevant' in allocating for tax purposes, but it 'is not sufficient by itself, because the motivations behind the allocation are crucial to a determination of its propriety for tax-valuation purposes.' *RNG Properties* at ¶ 37. In other words, the mere fact that the parties to a bulk sale of assets have agreed to allocate a particular amount to real estate does not by itself establish the propriety of the allocation." (Parallel citations omitted.) Id. at ¶10.

[7] The only evidence presented by Heroes & Legends LLC in this matter is the asset purchase agreement, and the testimony of Ms. McKenzie (and counsel) that the parties utilized the allocation to real property from the seller's earlier acquisition of the property. There is no indication whether any appraisal of either the real or personal property was completed in connection with either the April 2016 or the November 2012 sale. Indeed, counsel for the BOE questioned Ms. McKenzie during the BOR hearing about whether the partiesplaced any values on the items of equipment that transferred; she indicated that the parties simply used

the prior sale's allocation for all items. We further acknowledge the BOE's argument that no goodwill should be allocated from the price paid for real estate, as there is no evidence that the 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, 2011-Ohio-2258, ¶ 33. Compare *Arbors East RE, L.L.C. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1611. Given the absence of any information about the motivation behind the original allocation (from the November 2012) used in the April 2016 sale, we conclude the record before us lacks sufficient evidence to support an allocation below the full reported sale price of $190,000.

[8] Based upon the foregoing, we find the BOE has satisfied its burden on appeal to prove that the full reported sale price is the best evidence of the subject real 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, 2016, were as follows:

TRUE VALUE

$190,000

TAXABLE VALUE

$66,500

OHIO BOARD OF TAX APPEALS

JASON KELLY DIMACCHIA, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-467

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JASON KELLY DIMACCHIA
20255 WESTOVER AVENUE
ROCKY RIVER, OH 44116

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, September 27, 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

RICHARD J. KNAPP AND VIRGINIA E. MATTINGLY, (et. al.),	CASE NO(S). 2018-493
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - RICHARD J. KNAPP AND VIRGINIA E. MATTINGLY
410 ACACIA CIRCLE
LYNDHURST, 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 Thursday, September 27, 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 appellants' 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 in this matter indicates that while appellants timely filed the appeal with this board, a notice of the appeal was not filed with the BOR. Appellants' response indicates that such filing was not made. 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

YAELS HOUSE LLC, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2017-1748

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - YAELS HOUSE 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:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, October 1, 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 684-23-033, for tax year 2016. 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 auditor initially valued the subject property at $123,100. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $50,000 purportedly to be consistent with the price at which it transferred in September 2012. Though the BOR scheduled this matter for hearing, no one appeared on behalf of the property owner. Instead, the property owner submitted sale documents, which memorialized its $50,000 purchase of the subject property in September 2012, and comparable sales data. The BOR determined that the subject sale was too remote from the tax lien date of January 1, 2016, that there was no indication how the comparable sales data related to the subject property, and that the record was void of any income and expense information related to the subject property. The BOR subsequently issued a decision that retained the subject property's initially assessed value and this appeal ensued. Although neither the property owner nor the county appellees opted to submit additional evidence at a hearing before this board, the property owner submitted several documents with its notice of appeal. We discern that these are the same documents submitted to, and considered by, 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). 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] The property owner purchased the subject property in September 2012 for $50,000. 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 the sexennial reappraisal. Furthermore, in *Cleveland Mun. Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Jan. 9, 2018), BTA No. 2017-336, unreported, we applied the court's reasoning in *Akron* to sales occurring more than 24 months before a triennial update. Id. at 3 ("[W]e 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."). Here, the subject sale occurred nearly 28 months before the triennial update of values in Cuyahoga County (January 1, 2015), and nearly 40 months before the tax lien date at issue in this matter (January 1, 2016). Because the property owner failed to come forward with evidence to demonstrate that market conditions were unchanged between the sale and tax lien dates, we find that the subject sale is too remote to be indicative of the subject property's value as of January 1, 2016.

[5] We next consider the property owner's comparable sales data. 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 with the subject property. See, generally, The Appraisal of Real Estate (13th Ed. 2008). For example, the property record card indicates that the home on the subject property is of Cape Cod design and includes three bedrooms, one and one-half baths, partially-finished basement, and a total of 1676 square feet of living space. The alleged comparable sales are of varying designs, with varying numbers of bedrooms, bathrooms and square footage; however, no attempt was made to relate those sales to the subject property's features and to the tax lien date of January 1, 2016. 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. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning."). 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).

[6] Likewise, we find the property owner's calculation of an average price per square foot, based upon unadjusted comparable sales, to be unpersuasive. We have previously stated that: "[w]e *** find the simple averaging of the two sales to be suspect. An appraiser is to make adjustments to his sale comparable to account for differences in size, location, and other factors to bring the sales in line with what would be expected for the subject." *Matuszewski*, supra, at 9.

[7] 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 conclude that the property owner failed to provide 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 are as follows as of January 1, 2016:

TRUE VALUE

$123,100

TAXABLE VALUE

$43,090

OHIO BOARD OF TAX APPEALS

GEORGE R. SATTIEWHITE, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-605

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GEORGE R. SATTIEWHITE
Represented by:
GEORGE SATTIEWHITE
OWNER
17617 WILDWOOD LANE
CLEVELAND, OH 44119

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, October 1, 2018

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

This appeal is now considered upon the county appellees' motion to dismiss this matter, which we will construe as a motion to affirm the decision issued by Cuyahoga County Board of Revision ("BOR"). Specifically, the county appellees argue the underlying complaint was the second complaint filed within the same three-year interim period. Appellant did not reply to the motion. We decide the matter upon the motion and the statutory transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01.

R.C. 5715.19(A)(2) expressly limits the number of times a complainant may file a complaint within an applicable three-year period, but allows multiple filings under certain circumstances. "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). See, also, *Hamilton Manor Partners v. Brown*, 12th Dist. Butler No. CA93-04-080 (Sept. 27, 1993). "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).

The applicable interim period in Cuyahoga County is 2015, 2016, and 2017; the first of these years having been the one in which the triennial update was completed. See, generally, R.C. 5713.01(B), 5715.33, and 5715.34. Attached to the county appellees' motion is documentation showing that on December 22, 2017,

the Cuyahoga County BOR issued a decision finding no change in value for parcel number 113-05-309, for tax year 2016. The record shows that shortly thereafter, on January 4, 2018, appellant filed a tax year 2017 complaint against the valuation of real property for the same subject property. Appellant did not indicate any of the circumstances required in R.C. 5715.19(A)(2) as justification for the filing of a second complaint in the same interim period. The BOR issued a decision dismissing the tax year 2017 complaint for lack of jurisdiction due to multiple filings within the same triennium.

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

ALFORD, THOMAS AND MARY, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-776

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ALFORD, THOMAS AND MARY
Represented by:
THOMAS ALFORD
317 GROVE ROAD
WOODLAWN, 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 Tuesday, October 2, 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. This matter is now decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' 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 in this matter indicates that while appellants timely filed the appeal with this board, notice of the appeal was not filed with the BOR until thirty-three days after the BOR's decision was mailed. Appellants' response does not dispute the such fact. Instead, appellants argue that equitable principles should allow this

board to ignore the jurisdictional defect and reach the merits of the valuation decision. As an administrative body, this board does not have equitable jurisdiction. *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564, 569 (1953). The statutory requirements for filing a notice of appeal from a decision of a county board of revision are mandatory and jurisdictional. *Bd. of Edn. of Mentor v. Bd. of Revision*, 61 Ohio St.2d 332 (1980).

Based upon the foregoing, we find appellants failed to comply with the statutory requirements for filing an appeal to this board, by failing to file notice of the appeal with the Hamilton County Board of Revision within thirty days of the mailing of its decision, i.e., July 27, 2018. 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

ALLIANCE CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1288
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
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

J.R. HEIN, LLC
Represented by:
MATTHEW R. HUNT
KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO., LPA
4775 MUNSON STREET, N.W
P.O. BOX 36963
CANTON , OH 44735-6963

Entered Wednesday, October 3, 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 115453, 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.

The auditor initially valued the subject property at $793,900. The BOE filed a complaint with the BOR, which requested an increase to the subject property's value, purportedly to reflect the $1,279,800 price at which it

transferred in February 2014. The complaint also noted that the BOR had previously adopted the subject sale as the best indication of the subject property's value for tax year 2014. The property owner

filed a counter-complaint, which objected to the request. The counter-complaint noted that the property owner would provide evidence in support of its opinion of value of $793,900.

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 BOE submitted a conveyance-fee statement that memorialized the $1,279,800 transfer of the subject property to the property owner in February 2014. Counsel also noted that the issue of the subject property's value had previously been before the BOR for tax years 2014 and 2015 and that the BOR had accepted the subject sale as the best indication of value for those years. However, counsel noted that the county auditor had changed the value for tax year 2016, a decision with which the BOE disagreed. Based upon the presentation, the BOE requested that the BOR reestablish the subject property's $1,279,800 sale price as the best indication of its value. Counsel for the property owner noted the property owner's desire to withdraw the counter-complaint. The BOR voted to increase the subject property's value to $832,700 based upon a staff appraiser's recommendation and subsequently issued a written decision to that effect. The BOE then appealed to this board.

At this board's hearing, only the BOE appeared, through counsel, to supplement the record with additional argument and/or evidence. In doing so, counsel for the BOE argued that the BOR committed error by relying upon the staff appraiser's recommendation when such appraiser did not testify at the BOR hearing and when no evidence was presented to rebut the presumption that the subject sale was a recent, arm's-length transfer. 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. 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). In *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23 (1989), the Supreme Court explained that a qualifying sale for tax purposes 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." Id. at 25. 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. None of the parties dispute the basic details of such sale. *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 find, therefore, that the conveyance-fee statement created a rebuttable presumption that the $1,279,800 price at which the subject property transferred in February 2014 reflected its value as of the tax lien date.

In this matter, the BOR decided not to rely on the sale and, instead, relied on a staff appraiser's recommendation to increase the subject property's value to $832,700 because "[c]ost model reflects a market value of $260.54 a square foot, which is more accurately aligned with the current sales of similar banks. *** Recommend the 2017 cost model market value [of $832,700] due to the expiration of the previous override and the accuracy in the cost model price per square foot." Statutory Transcript at Recommendation. For a number of reasons, we conclude that it was an insufficient basis to reject the subject sale.

First, the record is devoid of any indication of the staff appraiser's identity and, as a result, we do not know who authored the recommendation. Second, we are unable to discern the underlying data and methodologies used to derive the conclusion that the subject property should be valued at $832,700. Though the staff appraiser noted reliance on "cost model," the record is devoid of any evidence of the "cost model" that reflected a value of $260.54 per square foot or the "cost model" that supported her or his recommendation of $832,700.

Third, although we acknowledge that the staff appraiser's recommendation included two alleged comparable sales, the record is devoid of any evidence to demonstrate that these sales were adjusted to account for differences with the subject property. For example, according to the property record card, the subject property is comprised of approximately 2.13 acres and is improved with a bank/credit union building, in excellent condition, that was two or three years old on the tax lien date; however, the two comparable sales were at least forty years old, and seemingly in less than excellent condition, and comprised of substantially less acreage. There is no indication that the staff appraiser adjusted the comparable sales to reflect such significant differences in age, condition, and size. See, e.g., *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, at *13 ("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).

Fourth, the staff appraiser's recommendation failed to demonstrate that the changes to the property record card for tax year 2017 were relevant to tax year 2016, the year at issue. The staff appraiser's recommendation noted that "[c]orrections made to 2017 record available in Work File;" however, the work file is not included in the statutory transcript, nor did the BOR indicate whether it reviewed such information. 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. Because the staff appraiser's recommendation was not competent and probative, there was no basis for the BOR to reject the subject sale.

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 neither the property owner nor the BOR rebutted the presumption that the subject sale was a recent, arm's-length transfer. Absent an affirmative demonstration that the $1,279,800 sale in February 2014 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 and that the BOR's decision was in error. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7 ("[O]ur case law has repeatedly instructed the BTA to eschew a presumption of validity of the BOR's value ***.").

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:

TRUE VALUE

$1,279,800

TAXABLE VALUE

$447,930

OHIO BOARD OF TAX APPEALS

DANIEL B. DUCCA, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-240

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DANIEL B. DUCCA
7042 OAK STREET
CHAGRIN FALLS, OH 44022

For the Appellee(s) - GEAUGA COUNTY BOARD OF REVISION
Represented by:
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GEAUGA COUNTY
231 MAIN ST., SUITE 1A
CHARDON, OH 44024-1293

Entered Wednesday, October 3, 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 03-016500 and 03-016600, for tax year 2017. 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 parcels, one of which is improved with appellant's personal residence, and one of which is improved with a portion of the subject's driveway, garage, and landscaping. The auditor initially valued the subject property at $205,200. Appellant filed a complaint with the BOR seeking a reduction in value to $180,000. The BOR convened a hearing. Though it is unclear exactly who was present, other than appellant, because they were not introduced at the onset of the hearing, it appears that the auditor's chief appraiser, Christopher Greenawalt, attended. Appellant explained that when he purchased the subject property in 2011, he was unaware that it was comprised of two separate parcels. Appellant asserted that the smaller parcel should be valued at $0 because it could not be sold separately from the other parcel to be developed. Appellant also discussed the assessed values for other properties near the subject, asserting that they supported the requested reduction. Greenawalt discussed an "alternative sales analysis" prepared for the hearing, considering properties that had sold and were similar to the subject property, noting that they were located in the same school district as the subject property, unlike some of those offered by appellant. Appellant challenged the comparability of these sales because they were further from the subject and had larger lot sizes than the properties for which he offered assessed values. It was

also suggested to appellant that he combine the two parcels, so the value of the smaller parcel could be included with the parcel improved with appellant's home. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

This board convened a hearing, at which appellant reiterated his arguments, providing a map of the subject's area, a floorplan for the subject property, and printouts from the auditor's website to show the assessed values for other homes near the subject. Appellant also asserted that the market has been relatively flat since he purchased the subject in October 2011 for $175,000, so the auditor's value is too high, even taking into consideration any updates he has made since them. On cross-examination from the county appellees, appellant admitted updating the exterior of the property, including the siding, landscaping, and either a porch or a roof extension, depending on who was characterizing the improvement. Appellant also acknowledged that he had installed air conditioning, but denied making any additional updates to the interior of the home. The county appellees offered testimony from Greenawalt, who also indicated that the county was unable to confirm whether the interior had been updated because his office was denied permission to enter the subject property. Greenawalt also described the comparable sales he relied upon and the adjustments made, which he asserted supported the auditor's value. The county appellees also offered aerial photographs to demonstrate the nature of the updates made to the exterior of the property since appellant's 2011 purchase.

In the present appeal, appellant's burden was to come forward with sufficient evidence not only to show that the auditor's value is incorrect, but also to establish that his proposed value as the true value of the property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d, 2018-Ohio-1588, ¶9. Where evidence of a qualifying sale is unavailable, appraisal evidence becomes necessary, though it may be in the form of a non-expert owner's opinion of value. Id. at ¶¶11-12. Although an owner is qualified to express an opinion of value, this board nevertheless may properly reject that opinion when the evidence that forms the basis for the owner's opinion fails demonstrate the value requested. Id. at ¶20. Thus, because appellant cannot simply challenge the auditor's value, we must consider whether the evidence in the record independently supports an alternative value.

In this case, appellant relied on his 2011 purchase price and the assessed values for other properties near the subject. Initially, we find that sale price from appellant's purchase does not form a reliable basis upon which this board may establish value. Although there is no "bright line" test as to whether a sale is recent to or remote from a given tax lien date, when a sale occurs more than 24 months before a tax lien date and is reflected on the property record case maintained by the auditor, it is presumed to be too remote when the auditor determined a different value during the sexennial reappraisal. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. These circumstances apply to the present case, as the sale took place more than 24 months prior to the tax lien date, and the auditor determined a different value for tax year 2017, which was the year for which he performed the countywide reappraisal. Consequently, appellant did not benefit from a presumption of recency and was required to present evidence to show that the market conditions or the character of the property remained unchanged between the 2011 sale and January 1, 2017. Appellant, however, did not offer evidence of market conditions. Furthermore, it appears that changes were made, at a minimum, to the exterior of the property and air-conditioning was added. Accordingly, we find that appellant failed to show that the 2011 sale is reliable evidence of value for tax year 2017.

We likewise find that appellant failed to meet his burden through the presentation of the assessed values of nearby properties. 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. "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." *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).

The county appellees submitted Greenawalt's sales comparison analysis, which provides a range of sale prices, both adjusted and unadjusted. Greenawalt chose the three most comparable properties and made quantitative adjustments to account for differences in size, condition, and amenities. Following these adjustments to the three most comparable sales, Greenawalt concluded to an indicated value in a range from $195,900 to $209,200, noting that the subject's initially assessed value ($205,200) fell within this range. We find that this report provides further support for the auditor's value, and that appellant's challenges are not sufficient to discredit Greenawalt's analysis or the auditor's initial 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, 2017, were as follows:

PARCEL NUMBER 03-016500

TRUE VALUE

$186,600

TAXABLE VALUE

$65,310

PARCEL NUMBER 03-016500

TRUE VALUE

$18,600

TAXABLE VALUE

$6,510

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-2274
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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CLEVELAND, OH 44114

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

IMP PARTNERS LLC
14615 LORAIN AVENUE
CLEVELAND, OH 44111

Entered Thursday, October 4, 2018

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

[1] The Cleveland Municipal School District Board of Education ("BOE") appeals to this board from a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel number 027-27-001 for tax year 2016. Although the BOE requested a hearing before this board, the BOE and the county appellees waived their appearances at the hearing. The appellee property owner has not participated on appeal. We therefore consider the matter upon the notice of appeal and the statutory transcript certified pursuant to R.C. 5717.01. *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985).

[2] The subject property consists of 3.941 acres improved with five buildings, including four industrial buildings and one retail building. The fiscal officer initially valued the subject property at $735,700 for tax year 2016. Property owner IMP Partners, LLC filed a complaint seeking a decrease in value to $500,000 (later amended to $460,000), based on the condition of the property and an appraisal of the property in 2010 for $566,000. The BOE filed a countercomplaint in support of maintaining the fiscal officer's value.

[3] At the BOR hearing, the BOR members first questioned the owner's member, James Irwin, about the jurisdictional sufficiency of the complaint, noting that IMP Partners, LLC had previously filed a complaint for tax year 2015. Typically, a complainant may file only one complaint during a three-year period. R.C. 5715.19(A)(2). Based on Mr. Irwin's testimony that the change in occupancy, i.e., the sole occupant vacated the property in mid-2015, occurred after the tax lien date relevant to the prior complaint, the BOR determined that IMP Partner's 2016 complaint was jurisdictionally proper. R.C. 5715.19(A)(2)(d); *Glyptis v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 597, 2018-Ohio-1437; *Soyko Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 2014-Ohio-4511. The BOE has made no argument on appeal regarding the BOR's jurisdictional determination, and we find no error in the BOR's decision finding that it had jurisdiction.

[4] On the merits of the subject property's valuation, Mr. Irwin testified that the property remains vacant, and was listed at the time of the hearing for $575,000. He indicated he had received no offers. IMP Partners presented the appraisal report and testimony of Douglas Firca, MAI, who opined a value for the property of $460,000. Although his written report indicated the opinion of value was as of January 1, 2015, Mr. Firca testified that the date was a typographical error and that, in fact, his opinion of value was as of January 1, 2016. Mr. Firca indicated, and Mr. Irwin's testimony confirmed, that three of the four industrial buildings were in poor condition, and that the remaining industrial building and retail building were in average condition. He developed his opinion of value by using the sales comparison and income capitalization approaches to value. He separately analyzed the industrial buildings and the retail buildings, given their differences, relying on different comparable sales, rents, and capitalization rates. Because of lack of access and extensive vandalism to "building 4," Mr. Firca determined it was a detriment to the marketability of the property and opined its value to be $0. After reconciling his total sales comparison approach value of $457,000, and his income capitalization approach value of $465,000, Mr. Firca opined a total value for the subject property of $460,000 as of tax lien date.

[5] Although the BOE cross-examined Mr. Firca and Mr. Irwin, it provided no independent evidence of value.After considering the evidence presented, the BOR found Mr. Firca's opinion to be the best opinion of value and decreased the value of the subject property to $460,000 as of January 1, 2016.

[6] In its notice of appeal to this board, the BOE again advocates for the fiscal officer's initial valuation.

[7] 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. Franklin 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.

[8] 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. We acknowledge that "a board of education need not prove a new value when a board of revision's determination of value is infected with legal error." *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-919, ¶16. But here, the BOE has not

alleged, nor do we find, any legal error in the BOR's determination or in Mr. Firca's appraisal report. We therefore find that the BOE has failed to meet its burden on appeal.

[9] 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

$460,000

TAXABLE VALUE

$161,000

OHIO BOARD OF TAX APPEALS

CEM LLC, (et. al.),

Appellant(s), vs.

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

CASE NO(S). 2018-358

(REAL PROPERTY TAX) DECISION AND ORDERAPPEARANCES:

For the Appellant(s) - CEM LLC
Represented by:
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ALTERRA REAL ESTATE ADVISORS
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
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FRANKLIN COUNTY
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COLUMBUS, OH 43215

Entered Thursday, October 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 denied an application for remission of a real property tax late payment penalty assessed for the first half of tax year 2017. We proceed to consider this matter based upon the notice of appeal and the record certified pursuant to R.C. 5717.01.

[2] In Franklin County, property tax bills for the first half of tax year 2017 were due on or before January 22, 2018. According to the application, the appellant realized that it had inadvertently failed to pay the associated tax bill and paid it immediately on February 14, 2018. The appellant subsequently applied for remission of the late payment penalty, asserting that its failure to timely pay the property tax bill was based upon "reasonable cause and not willful neglect." It asserted that problems with its banking institution led to the mistake. The county treasurer recommended denial, and the county auditor denied the request based upon the appellant's prior history of late property tax payments, i.e., the property tax payment for the second half of tax year 2016. The application was then forwarded to the BOR to consider whether the appellant had demonstrated reasonable cause for failing to timely pay the property tax bill; the BOR determined that it had not satisfied such burden. The BOR issued a decision, which denied the appellant's application and this appeal ensued. None of the parties to this appeal availed themselves of the opportunity to submit evidence at a hearing before this board. Though the appellant submitted a number of documentsalong with its notice of appeal, we cannot consider such documents because they were not submitted at ahearing before this board.

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 certified by the auditor under R.C. 5717.01. See *Black v. Cuyahoga Cty. Bd. 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 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).

[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. 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 priorincidence 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 appellant conceded that the payment for the first half of tax year 2017 was untimely paid. Though the appellant argued that it should not be responsible for the prior late payment of the property tax bill for the second half of tax year 2016, because it was not at fault for the delinquency, the fact remains that the appellant had a prior late payment of property taxes for tax year 2016. But see *Milford Bowling Lane Inc., v. Zaino* (May 30, 2003), BTA No. 2003-V-201, unreported.

[5] Furthermore, though the appellant explained the prior late payment in its written argument submitted with the notice of appeal, 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 thescrutiny 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, the appellant's statements in its 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.*, supra; *Executive Express, Inc. v. Tracy* (Nov. 5, 1993), BTA No. 1992-P-880, unreported. Thus, we find that remission of the late payment penalty is inappropriate in this matter.

[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 first half of tax year 2017.

OHIO BOARD OF TAX APPEALS

MICHELLE WASSERMAN, (et. al.),

Appellant(s), vs.

ATHENS COUNTY BOARD OF REVISION, (et. al.), Appellee(s).

CASE NO(S). 2018-334

(REAL PROPERTY TAX) DECISION AND ORDERAPPEARANCES:

For the Appellant(s) - MICHELLE WASSERMAN
5068 DEEP HOLLOW ROAD
COOLVILLE, OH 45723

For the Appellee(s) - ATHENS COUNTY BOARD OF REVISION
Represented by:
ZACHARY SAUNDERS
ASSISTANT PROSECUTING ATTORNEY
ATHENS COUNTY
1 SOUTH COURT STREET
ATHENS, OH 45701

Entered Thursday, October 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 denied an application for remission of the real property tax late payment penalty assessed for the first half of tax year 2017. 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 made a check payment for the property tax bill for the first half of tax year 2017. The county treasurer subsequently alerted the appellant, by letter, that because of an error in writing the check, there was a $200 outstanding balance due. The treasurer's letter specifically noted that the property tax bill for the period was $1,279.55; however, the appellant's check was written in the amount of $1,079.55 because "[t]he legal line on your check was written missing the 'two hundred dollars'. This amount was taken off parcel F010010015202[, the subject property]. Since our due date has past, a 10% penatly[sic] will be added to the $200, bring[sic] the total to $220.00" Statutory Transcript at Letter Dated March 9, 2018. See R.C. 1303.17 ("If an instrument contains contradictory terms, typewritten terms prevail over printed terms, handwritten terms prevail over both typewritten and printed terms, and words prevail over numbers"). The appellant applied for remission of the late payment penalty, alleging that she timely mailed the payment on March 2, 2018, which was before the payment due date of March 5, 2018. Alternatively, the appellant alleged that failure to timely pay the property tax bill was based upon "negligence or error of the auditor or treasurer" and/or "reasonable cause and not willful neglect." By way of the application, the appellant asserted that she inadvertently wrote the check with a mistake and that the treasurer's office failed to make her aware of the mistake more quickly, i.e., on March 5, 2018 instead of March 13, 2018. If someone had contacted her by telephone, she further asserted, then she would have immediately rectified the error andthe property tax payment would not have been considered late. The appellant suggested that, in the interest of fairness, the

treasurer should have given her a ten-day grace period to rectify the error. Upon review of the application, the treasurer determined that remission of the late payment penalty was inappropriate given the appellant's arguments and noted that her check did not provide her telephone number. The BOR subsequently denied the appellant's request for remission of the late payment penalty. This appeal ensued. By way of her notice of appeal, the property owner essentially reiterated the arguments raised in the initial application for remission of the late payment penalty. However, on appeal, she argued that she should have been given a twelve-day grace period, instead of the ten-day grace period referred to in the initial application, to pay the $200 balance due for the property tax bill. We note that none of the parties availed themselves of the opportunity to submit evidence at a hearing before this board.

[3] Before we address the merits of this appeal, we must dispose of two preliminary issues. First, it appears that the statutory transcript is incomplete. Specifically, attached to her notice of appeal, the appellant submitted a letter from the treasurer dated March 9, 2018 by which he alerted the appellant of the error with the check payment for the property tax bill for the first half of tax year 2017. This letter should have been included in the statutory transcript. See R.C. 5715.08; R.C. 5717.01; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078. Although this letter was not submitted at a hearing before this board, see *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996), we will consider it in our analysis given the deficient statutory transcript, see *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664, ¶11.

[4] Second, as noted above, none of the parties availed themselves of the opportunity to submit evidence at a hearing before this board. As a result, the record is devoid of any evidence to support the assertions contained in the appellant's application for remission and the notice of appeal. We have 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." *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. Though there is no evidence to support the appellant's assertions, we will proceed to address the merits of her arguments.

[5] 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).

[6] 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. First, the appellant argued that R.C. 5715.39(B)(1) required remission of the late payment penalty. R.C. 5715.39(B)(1) provides that the penalty shall be remitted when "[t]he taxpayer could not make timely payment of the tax because of the negligence or error of the county auditor or county treasurer in the performance of a statutory duty relating to the levy or collection of such tax." We have previously held that remission of the late payment penalty was appropriate when the taxpayer demonstrated that the error with a check payment occurred *after* the *properly written* check was received by the treasurer and that such error was on the part of the treasurer or the banking institution. *Milford Bowling Lane Inc., v. Zaino* (May 30, 2003), BTA No. 2003-V-201, unreported. See also *Billups v. Zaino* (May 9, 2003), BTA No. 2002-M-2150, unreported. Here, there is no evidence to support the assertion that the appellant's untimely payment was the result of negligence or error by the auditor or treasurer. Unfortunately, this matter emanates from the appellant's negligence or error in writing the check payment for the property taxes for the first half of tax year 2017, which occurred *before* the check was received by the treasurer. To the extent that the appellant asserted that failure to provide her earlier notice of the error on her check payment constituted negligence or error on the part of the treasurer, we find no merit to such argument. The letter dated March 9, 2018 from the treasurer demonstrates that the appellant was alerted within days of mailing the erroneous check payment, as she alleged, on March 2, 2018. Therefore, on this basis, we find that remission of the late payment penalty is inappropriate.

[7] Second, the appellant argued that R.C. 5715.39(B)(4) required remission of the late payment penalty. R.C. 5715.39(B)(4) provides that the penalty shall be remitted when "[t]he taxpayer demonstrates that the full payment was properly deposited in the mail in sufficient time for the envelope to be postmarked by the United States postal service on or before the last day for payment of such tax. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the date of payment of such tax." See also *Mears v. Zaino* (Aug. 31, 2001), BTA No. 2001-P-280, unreported (affirming a decision to deny remission of the late payment penalty when the taxpayer failed to come forward with evidence to demonstrate that the check payment for real property tax was timely mailed). Here, beyond the assertions in the application and notice of appeal, there is no evidence "that the full payment was properly deposited in the mail." In fact, it is undisputed "that the full payment," i.e., $1,279.55, was *not* properly deposited in the mail because the appellant conceded that the check payment was not for the full amount due because of her inadvertent error. See *Naito v. Zaino*(Aug. 25, 2000), BTA No. 2000-P-524, unreported (affirming a decision to denyremission of the late payment penalty when the taxpayer noted the date on which he mailed the check payment was after due date for the property tax bill). Therefore, on this basis, we find that remission of the late payment penalty is inappropriate.

[8] Third, the appellant argued that R.C. 5715.39(C) required remission of the late payment penalty. R.C. 5715.39(C) provides, in relevant part, that the board of revision shall remit a penalty when "that the taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Though we sympathize with the appellant, the facts and circumstances of this matter do not rise to the level of reasonable cause. Therefore, on this basis, we find that remission of the late payment penalty is inappropriate.

[9] 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 first half of tax year 2017.

OHIO BOARD OF TAX APPEALS

WILLIAM S. JOHNSON, (et. al.), Appellant(s), vs. CLARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-828 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Thursday, October 4, 2018

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

[1] The appellant property owner, William S. Johnson, appeals a decision of the board of revision ("BOR"), which denied his complaint contesting the auditor's denial of his application for a reduction in taxes pursuant to R.C. 323.152(A)(1), commonly known as the homestead exemption, and R.C. 323.152(B), commonly known as the owner-occupancy tax reduction, for the subject real property, parcel number 090-12-00030-000-029, 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, the record of the hearing before this board, and the parties' written arguments.

[2] Johnson filed an application to receive a homestead exemption in 2011, for a property in Clark County, Ohio. The auditor granted the application, and Johnson received a reduction in taxes for that property until May 2016, when the auditor sent a letter notifying Johnson that the auditor was removing the tax reduction for 2016 because Johnson had established his principal place of residence in Greene County. Johnson filed a complaint with the BOR appealing the auditor's action Following a hearing, the BOR affirmed the auditor's decision, and Johnson appealed to this board. Johnson challenges the auditor's decision on two grounds: (1) that he was not properly notified that his 2016 homestead exemption application was denied because the auditor did not use the form required by R.C. 323.154, and (2) that he qualified for the homestead exemption and owner-occupancy reduction because he met the requirements under the statute.

[3] Generally, R.C. 323.152 provides for reduction in the taxes levied on any homestead, defined as 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). To receive the full reduction under R.C. 323.152(A) (commonly, the homestead exemption), the owner of a "homestead" must meet certain additional requirements, and will also receive a partial exemption (commonly, the owner-occupancy reduction). In order to obtain these tax reductions, 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). Once filed, an application for reduction "constitutes a continuing application for a reduction in taxes for each year in which the dwelling is the applicant's homestead." R.C. 323.153(A)(1),(2).

[4] After an application is filed, "[t]he county auditor shall approve or deny an application for reduction under section 323.152 of the Revised Code and shall so notify the applicant not later than the first Monday in October. Notification shall be provided on a form prescribed by the tax commissioner. If the application is approved, upon issuance of the notification the county auditor shall record the amount of reduction in taxes in the appropriate column on the general tax list and duplicate of real and public utility property and on the manufactured home tax list. If the application is denied, the notification shall inform the applicant of the reasons for the denial." R.C. 323.154. Once an application for reduction has been approved, it serves as prima-facie evidence that the applicant is entitled to the reduction in taxes on the basis of the information contained in the original application unless a new application is filed or the owner provides notification that he or she no longer qualifies for the reduction. R.C. 323.153(A)(3). The applicant is also under an affirmative obligation to notify the auditor if circumstances change and the applicant is no longer qualified for the reduction in taxes. R.C. 323.153(C)(1). Thus, under this framework, once an application is approved, it functions as a continuing application for each subsequent year, until denied by the auditor using the process set forth in R.C. 323.154 or until an applicant notifies the auditor that he or she is no longer eligible for the tax reduction.

[5] Although he filed the complaint, Johnson argues that the BOR lacked jurisdiction to consider the matter because the auditor did not use the correct form to timely deny his application. When the auditor denies an application for reduction, the applicant can appeal this decision to the BOR, and this appeal "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." R.C. 323.154. We initially note that to find the BOR lacked jurisdiction would have the effect of denying Johnson the right to appeal the auditor's decision because the auditor did not follow the statutory directive to use the form prescribed by the tax commissioner. The court has held that an auditor (or board of revision) may not benefit from his or her own negligence in failing to follow a statute. *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094. Here, there is no dispute that Johnson filed a complaint, and the county appellees have not challenged any aspect of this complaint. Accordingly, we reject Johnson's claim that the BOR lacked jurisdiction. Compare *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio2872 (holding that the BOR lacked jurisdiction despite the auditor's failure to comply with statutory requirement to certify a transcript because the property owner could not demonstrate it had filed a complaint).

[6] We next turn to the propriety of the BOR's decision denying Johnson's complaint and finding that there was no valid tax year 2016 application. The county appellees' argument that there was no application for 2016 is based on the theory that an auditor can retroactively terminate a continuing application if he or she later determines that the applicant was not entitled to the full or partial reduction. In this case, Johnson filed an application in 2011 for tax years 2010 and 2011. The auditor granted this application, and Johnson continued to receive both the full and partial tax reductions each year through 2015. On May 6, 2016, the auditor sent a letter to Johnson notifying him that the auditor was removing his homestead exemption for tax year 2016 because Johnson had established his principal residence in Greene County, referencing a 2013 decision from this board finding that Johnson qualified for a homestead exemption for a property in Greene County for tax years 2010 and 2011. See *Johnson v. Greene Cty. Bd. of Revision* (May 31, 2013), BTA No. 2012-Q-5109, unreported. The county appellees point to an applicant's ongoing duty to notify

the auditor of any changes in circumstances that would disqualify the applicant from receiving the reduction, and argue that when an applicant fails to fulfill this duty, it effectively terminates the continuing application. There is no support for this outcome in the statute.

[7] As previously noted, an owner who has filed an application for reduction is under an affirmative duty to notify the relevant county auditor that he or she is no longer qualified for the reduction in taxes if his or her circumstances change. R.C. 323.153(C)(1). Knowingly making a false statement for purposes of obtaining a reduction in real property taxes or failing to notify the county auditor of changes that have the effect of maintaining or securing a reduction in taxes is prohibited. R.C. 323.153(D) and (E). An individual who violates this prohibition "is guilty of a misdemeanor of the fourth degree." R.C. 323.99. Additionally, any person convicted of violating R.C. 323.153(D) or (E) cannot receive any reduction in taxes on due on the homestead "for a period of three years following the conviction." R.C. 323.152(E). Although the statute provides for the recoupment of the owner-occupancy reduction if the auditor later discovers that the owner was not entitled to the reduction and failed to notify the auditor, R.C. 323.153(C)(3), there is no similar reference to recoupment of a homestead exemption. Nor is there any reference to an auditor's ability to retroactively invalidate a prior year's application or continuing application. Thus, regardless of the intent of the owner, the only way for an auditor to "terminate" a continuing application for the homestead exemption is to issue a proper denial pursuant to R.C. 323.154. If a county wishes to pursue criminal charges against an owner who violated the statute, there may be additional prospective consequences, but there is no indication that such is the case in the present appeal. Quite simply, even if an owner purposely withheld information that would disqualify him or her from receiving the tax reduction, the statute does not give the auditor the authority to retroactively invalidate an owner's application. Consequently, we find that absent a proper notification from the auditor to the contrary, Johnson's 2011 application continued in place for tax year 2016.

[8] Next, we must look at the May 6, 2016 letter and determine whether the letter was an adequate denial. To reach a conclusion on this issue, we must only look to the plain language of the statute, which provides that the notification "*shall* be provided on a form prescribed by the tax commissioner." (Emphasis added.) R.C. 323.154. In this case, it is undisputed that the auditor did not use the form prescribed by the tax commissioner, i.e. the Homestead Exemption and Owner-Occupancy Reduction Certificate of Denial (DTE form 106A). Because the statute directs the auditor to use a specific form, we find that the use of the form is a requisite to give effect to the auditor's denial. R.C. 323.154. To find otherwise would render this portion of the statute meaningless. Here, it is undisputed that the auditor failed to use this form, and, therefore, failed to properly notify Johnson that his application was denied for tax year 2016.

[9] It is therefore the order of this board that the decision of the Clark County Board of Revision is hereby reversed because the auditor did not issue a valid denial of Johnson's continuing application. The practical effect of this decision is that Johnson's tax reduction will continue in effect until such time as a proper denial is issued.

OHIO BOARD OF TAX APPEALS

TANWEER BURHANUDDIN & SHUNTAE COTTINGHAM, (et. al.),	CASE NO(S). 2018-27
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 4, 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 109-05-032, for tax year 2016. 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 $66,300. A complaint was filed with the BOR, which requested that the subject property be revalued at $12,000 based upon interior and exterior defects, as well as the condition of neighboring properties. At the BOR hearing on the matter, the property owner's spouse appeared to submit argument and evidence in support of the complaint. In doing so, he provided written argument to explain the basis of the complaint and pictures to highlight the condition of the subject property. The BOR members provided a list of unadjusted comparable sales data. Based upon the evidence presented, the BOR voted to reduce the subject property's value to $44,400. The appellants then appealed to this board, again seeking to have the subject property revalued at $12,000.

While this matter was pending, the property owner submitted a letter from Cuyahoga County Fiscal Officer's Real Property Department, dated May 31, 2018, indicating that the fiscal officer had reviewed the subject property's value for tax year 2016, the year at issue, and determined that the subject property should be valued at $31,000 instead of $66,300. The county appellees did not respond to the property owner's filing.

Based upon the representation that the fiscal officer has changed the value for the tax year at issue, we remand

this matter to the BOR to consider the effect of the fiscal officer's change to the value of the subject property for tax year 2016.

OHIO BOARD OF TAX APPEALS

PLAIN LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1287
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

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Entered Thursday, October 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 5201281, 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.

The auditor initially assessed the subject property at $128,600. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $40,000. The BOE filed a counter-complaint, which objected to that request. At the BOR hearing on the matter, both the property owner and BOE appeared to submit additional argument and/or evidence. Susan Lindsley, the property owner's corporate secretary, appeared on its behalf. She testified as to the facts and circumstances of the property owner's purchase of the subject property in 2009 or 2010, as well as the condition of the subject property. In doing so, she argued that the subject property should be valued consistent with the price the property owner paid for the subject property, $60,000, because although the economy had improved since

the subject sale, the subject property's condition had not. On cross-examination by the BOR, she acknowledged that she did not have firsthand knowledge of the property owner's purchase of the subject property because she only recently became employed by the property owner. The BOR voted to reduce the subject property's value to $94,300, purportedly based upon a staff appraiser's recommendation, and this appeal ensued. Only the BOE appeared at the hearing before this board to supplement the record with additional argument and/or evidence. In doing so, the BOE argued that the record was devoid of competent and probative evidence to support the BOR's decision to reduce the subject property's value to $94,300 and requested that this board reinstate the subject property's initially assessed value. No one appeared on behalf of the property owner or the county appellees.

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 property owner claims that the subject property should be valued consistent with the price at which it transferred in 2009. The record offers conflicting evidence about the price at which the subject property transferred: the property record card notes a $0 transfer in June 2009; Lindsley testified that the property owner paid $60,000 for the subject property in 2009; and the staff recommendation notes a $46,200 transfer. Nevertheless, we conclude that the price at which the property owner purchased the subject property, regardless of the amount, is not indicative of the subject property's value because it appears that such sale occurred at an auction and was too remote to the tax lien date of January 1, 2016. See *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, at ¶40 ("R.C. 5713.04 establishes a 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."); *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, at ¶26 ("[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."). In this matter, the property owner did not come forward with any evidence to demonstrate that market conditions remained the same or were stable between the sale date in June 2009 and the tax lien date of January 1, 2016.

The property owner also claims that the condition of the subject property necessitates a reduction to its value. There was no evidence about how any of the alleged defects affected 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 ¶7. Likewise, this board has repeatedly rejected the argument that defects, not quantified by a proper appraisal, are sufficient 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.

Having found that the property owner failed to satisfy its burden before the BOR, we proceed to evaluate the propriety of the BOR's decision to value the subject property at $94,300. See *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, at ¶15 (holding 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."); *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, at ¶7 ("[O]ur 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."). The staff appraiser's recommendation noted "[c]orrections in 2017 are applicable in the 2016 tax year. After adjustments the 2017 cost model value of $103,200 is the most accurate market value for the 2016 tax year. *** Land adjusted due to offset if Route 62 and low laying rear land with poor drainage. Based on typical adjustment for rear land[.] Retail portion of building adjusted with a 40% functional depreciation based on outdated structure. Compared to typical mattress and furniture stores in the surrounding area, subject is significantly outdated. At least 40% of current retail portion would need remodeled to bring building up to par. At least 20% of the rest of the building would need to be updated to be consistent with similar structures- thus a 20% reduction was placed on the other portions of the building."

As noted above, the BOR indicated that its decision was based upon a staff appraiser's recommendation. We note, however, that the BOR's value decision of $94,300 differs from the staff appraiser's recommendation value of $103,200. The record is devoid of any evidence to support valuing the subject property at $94,300. *Sapina v. Cuyahoga County Bd. 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."). Accord *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 152 Ohio St.3d 122, 2017-Ohio-8384, at ¶18 ("We have held that the BTA acts appropriately in departing from the BOR's value when that value cannot be replicated.") Therefore, on this basis, we cannot affirm the BOR's decision.

Upon review, we do not find the staff appraiser's recommendation to be a sufficient basis to reduce the subject property's value, for a number of reasons.

First, we are unable to discern the underlying data and methodologies used to derive the conclusion that the subject property should be valued at $103,200. See *Cannata v. Cuyahoga Cty. Bd. of Revision,* 147 Ohio St.3d 129, 2016-Ohio-1094. Based upon references to "cost model" and "typical adjustment," we glean that the staff appraiser *may* have relied upon the sales comparison and cost approaches to valuing real property. However, the record is devoid of any supporting information about "typical mattress and furniture stores," "similar structures," and "functional depreciation" and contains incomplete analyses. For example, under the sales comparison approach, appraisers typically employ qualitative or quantitative adjustments to comparables selected to align, and compare, the comparable properties to the subject property. See *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported at 7 ("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."). In this instance, however, the staff appraiser's comparable sales data was not provided to this board. As a consequence, we are left to speculate about the appraiser's criteria for a "typical" mattress and furniture store or the "typical adjustment for rear land" in his conclusion that the subject property should be revalued at $103,200. Further, it is unclear whether the "2017 cost model" was akin to a cost approach to valuing real property given the reference to "40% functional depreciation." However, to the extent that the "2017 cost model" was, indeed a cost approach, we are unable to discern the basis for the staff appraiser's development of such approach given that the improvement situsued on the subject property was approximately 68 years old on the tax lien date. See *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision,* 113 Ohio St.3d 281, 2007-Ohio-1948, at ¶12, ("The 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').). Furthermore, "[w]here a [party] asserts that functional depreciation should be considered in valuing [real] property for the purpose of taxation, the burden is upon the [party] to prove such depreciation". *Rollman & Sons Co. v. Hamilton Cty. Bd. of Revision,* 163 Ohio St. 363 (1955), paragraph one of the syllabus.

Second, the staff appraiser failed to demonstrate that the changes to the property record card for tax year 2017 were relevant to tax year 2016, the year at issue. 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 v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26 (1997). See also *Massillon City Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Nov. 29, 2017), BTA No. 2016-1926, unreported (this board reversed this BOR decision for the above-stated reasons).

As a result of these cumulative deficiencies, and in the absence of any testimony from its author to explain the methodologies and data used, and the conclusion reached, we do not find the staff appraiser's recommendation to be particularly competent, credible, or probative.

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. 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; *Sapina*, supra.

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

$128,600

TAXABLE VALUE

$45,010

OHIO BOARD OF TAX APPEALS

HILLIARD CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1275
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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COLUMBUS, OH 43215

Entered Thursday, October 4, 2018

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

The appellant Hilliard City Schools Board of Education ("BOE") appeals from a decision of the Franklin County Board of Revision ("BOR") determining the value of parcel number 274-000342-00 for tax year 2016. We proceed to consider the matter upon the notice of appeal, the statutory transcript ("S.T.") certified by the auditor, and the record of the hearing before this board ("H.R.").

The auditor initially valued the subject parcel at $982,600 for tax year 2016. The appellee property owner, Ballantrae Woods, LLC, filed a complaint against the valuation seeking a decrease in value to $433,750, indicating that the property had sold for that amount in June 2016 in an arm's-length transaction. The BOE filed a countercomplaint asking that the auditor's initial value be maintained. At the BOR hearing, counsel

for the owner indicated that the subject property was listed for sale on the open market and was purchased in an arm's-length transaction. He explained that the subject property was one of the last tracts of land in the Ballantrae development, which was purchased to be developed into 46 single-family lots and 90 condominium units. Counsel for the BOE questioned owner's counsel, and the auditor's representative, on a lot split that appeared to have taken place around the time of the sale but was not effective until tax year 2017. Owner's counsel explained that the recorded plat included a road (Churchman Road) to be built on the property, the cost for which the developer was at least partially responsible. The BOR ultimately found the sale to be the best evidence of value, and decreased the value of the property to $433,750 as of January 1, 2016. The BOE thereafter appealed to this board.

At this board's hearing, counsel for the BOE argued that the subject property changed between January 1, 2016 and the date of the sale, rendering the sale remote from tax lien date. Specifically, the 2016 tax list and duplicate indicates that the subject parcel contained 18.205 acres; however, the purchase contract and settlement statement indicated that only 16.433 acres transferred. H.R., Exs. 1-2. Counsel for the owner countered that the final plat for the development (of which the subject parcel is part) contemplated the roadway, i.e., Churchman Road, through the parcel, and that, therefore, the property that was ultimately purchased in June 2016 was essentially the same as the property as of tax lien date.

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 subject parcel transferred from Edwards Golf Communities LLC to Ballantrae Woods LLC on June 30, 2016 for $433,750. There appears to be no dispute that the transfer was arm's-length in nature. While it is true that a recent, arm's-length sale of a property is the best evidence of value, see *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, a substantial change in the character of a property between the date of sale and tax lien date may render it remote and, therefore, not the best evidence of value. See *Richman Properties, L.L.C. v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 549, 2014-Ohio-2439; *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473. The BOE argues that the recorded acreage for the subject parcel on tax lien date, i.e., 18.205 acres, differs from the amount indicated in the purchase agreement, i.e., "14.465 acres (14.35 acres net of the portion located in the churchman road right of way)." H.R., Exs. 1, 2. The owner counters that the entirety of the subject parcel was purchased, and that any difference in acreage is a result of the dedication of a roadway easement.

Upon review of the evidence in the record before us, we agree that the subject property changed between tax lien date and the date it transferred to Ballantrae Woods, LLC in June 2016. The final plat for the dedication of Churchman Road and easements, although approved by the City of Dublin in December 2015, was not recorded until January 14, 2016 – after tax lien date. H.R., Ex. A. The result of the plat approval was that the subject parcel's acreage was decreased by 2.82 acres for Churchman Road, 0.686 acres for Cosgray Road, and 0.047 acres for other various easements. Id. We therefore find that the subject property changed between tax lien date and the date of the June 2016 sale to Ballantrae Woods. It appears that a parcel split occurred, effective for tax year 2017, reflecting the loss of acreage to the road and other easements; however, as of January 1, 2016, no such split had occurred.

Our inquiry does not end, however. In *Richman Properties*, supra, at ¶33, the court instructed that a change in the property can defeat the recency of a sale, if it affects the value of the property. Here, the sale of the subject parcel appears to have been contemplated as early as 2014, as evidenced by the dates on the purchase contract and amendments, and Mr. Coppel's testimony. H.R., Ex. 1; S.T. at audio. The purchase

contract contemplated the Churchman Road right-of-way, and the dedication was approved prior to tax lien date. There is no indication that the portion dedicated to the right-of-way would have any separate value, such that the value of the subject parcel would increase or decrease as a result of the subsequent parcel split. Indeed, although the parties amended the purchase contract twice, no change was made to the ultimate purchase price of $433,750. As this board noted in *Bd. of Edn. of the Heath City Schools v. Licking Cty. Bd. of Revision* (Sept. 21, 2010), BTA No. 2007-M-879, unreported, "the board may consider both 'pre- and post' tax lien date events in the valuation equation. *Youngstown Sheet & Tube Co. v. Mahoning Cty. Bd. of Revision* (1981), 66 Ohio St.2d 398." Id. at 8. In that case, we found that reconfiguration of the property, dedication of a right of way, and execution of a lease prior to the transfer of the property "were factors that affected the completion of the project, not the price for which the project was sold." Id. at 9. We find the same to be the case in this matter. We find the BOE's citation to our decision in *Town Square Ltd. Partnership v. Franklin Cty. Bd. of Revision* (Aug. 22, 2016), BTA No. 2015-1234, unreported, does not necessitate a different result, as that case involved the implementation of a condominiumization plan, not the finalization of a road dedication contemplated prior to tax lien date by the parties to the sale, as here.

Based upon the foregoing, we find the June 2016 sale of the subject property for $433,750 to be an arm's-length transaction recent to tax lien date, and 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

$433,750

TAXABLE VALUE

$151,810

OHIO BOARD OF TAX APPEALS

MARLINGTON LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2314
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Thursday, October 4, 2018

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

The Marlington Local Schools Board of Education ("BOE") appeals to this board from a decision of the Stark County Board of Revision ("BOR") that determined the value of the subject property, i.e., parcel number 7701273, 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, and the transcript of the hearing before this board.

The auditor initially valued the subject property at $6,337,100 for tax year 2015. The appellee property owner in this matter, Trilogy Real Estate Partners, LLC ("Trilogy"), filed a complaint against the valuation, seeking a decrease to $3,370,000, based on an appraisal for that amount performed for financing purposes as of 2010. The BOE filed a countercomplaint seeking to retain the auditor's initial valuation.

At the BOR hearing, Rexford Roseberry, member of Trilogy, testified that the building was originally constructed in 2005 for a total cost of $4,800,000, which included some equipment, and the land was

acquired for approximately $350,000. He further indicated that Trilogy added a mezzanine for storage in 2010 for a cost of between $10,000 and $15,000. Trilogy relied on the 2010 financing appraisal for $3,370,000 in support of its requested decrease in value. Counsel for the BOE objected to reliance on the appraisal given that it provided an opinion of value five years removed from tax lien date, and further indicated his disagreement with the auditor's staff report, though he did not further explain his disagreement. Much of the remaining discussion at the hearing related to the abatement of taxes on the building as a result of an agreement with the City of Alliance, none of which is relevant to our determination of the property's value for real property taxation purposes. The BOR ultimately voted to decrease the value of the subject property to $3,300,000, in accordance with the auditor's recommendation.

The BOE appealed to this board, and argued at this board's hearing that the BOR's decision was not supported by any competent and probative evidence of value. Specifically, counsel for the BOE argued that the appraisal submitted by the owner is as of a date too removed from tax lien date, and that the ten-year-old construction costs are not relevant for tax year 2015. He further argued that no weight should be given to the auditor's staff appraiser's report, because the author was not available to be cross-examined about his conclusions, and questioned the 50% market influence adjustment arrived at in the staff appraiser's report given that the resulting value is substantially similar to the value opined in the appraisal for Trilogy's lender in the 2010. Based on its arguments, the BOE asks this board to reinstate the auditor's initial valuation. Neither Trilogy nor the county appeared at this board's hearing or presented any argument in support of its position.

In our review of this matter, we are mindful of the Supreme Court's repeated instructions that we "eschew a presumption of validity of the BOR's value" and instead perform our own independent weighing of the evidence in the record. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7. Although, in some cases, the BOR's value (rather than the auditor's) serves as the "default" value on appeal and the burden is placed on the BOE to present evidence of a different value, see *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶6, here, the BOR appears to have based its decision to reduce value on its own evidence, rather than the owner's. The BOE is therefore not required to present its own evidence of value on appeal, and, instead, may rely on arguments regarding the sufficiency of the BOR's decision.

We agree with the BOE that the limited evidence presented by Trilogy is an insufficient basis up on which to reduce value. Although Trilogy primarily relied on an appraisal of the property for $3,370,000 in 2010, only one page of that appraisal report was submitted to the BOR and is in the record before us for review. The one page we are able to review fails to contain sufficient information for us to determine whether the opinion of value, though notably five years removed from tax lien date, is probative of value in this matter. *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-919, at ¶18. While we acknowledge that Mr. Roseberry also testified to the cost of constructing the building on the property and the cost to acquire the underlying land, we also agree with the BOE that such costs, which occurred ten years prior to tax lien date, are not probative of value for purposes of our consideration in this matter. See *W. Carrollton City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 150 Ohio St.3d 215, 2017-Ohio-4328.

The BOR, however, relied on its own evidence in reducing value. At the outset, we reject the BOE's argument that such report is not properly considered because it was not the subject of testimony at the BOR hearing. The Supreme Court has found on multiple occasions that it is proper for a board of revision to consult its own experts in valuing real property, even where those experts were not available to be cross-examined. *Columbus City Schools*, supra, at ¶9; *Olentangy Local Schools Bd. of Edn v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, ¶15. However, the court has cautioned that "the board of revision as an appellee can be called upon to account for the manner in which it determined the reduced value." *Columbus City Schools*, supra, at ¶10.

The auditor's staff appraiser's report upon which the BOR relies, authored by appraiser Gary Ziegler,

indicates that based on a field inspection of the property, a 50% market influence adjustment was made. Notably, the evidence considered by the appraiser in the report is not included – instead, the report references "the GDZ Report 2 under the appeals tab in ACS." S.T., Ex. J at 2. We find no GDZ Report in the record certified on appeal. We therefore confine our review to the staff appraiser's report as submitted.

The staff appraiser's report explains that its scope is to "[s]upport the listing change made to the property by comparing the market value noted in the recommendation to other comparable properties using two approaches to value: Sales Comparison Approach and Income Approach." Id. Mr. Ziegler relied on four comparable sales from 2014 and 2015, which sold for unadjusted prices of between $23.16 to $39.44 per square foot. He indicated he relied most heavily on sales #2 and #4; of the two remaining sales, one occurred as part of a foreclosure proceeding, and the other was part of a sale-leaseback transaction. After weighting sales #2 (as adjusted) and #4 (no adjustments made), he concluded to a value of $3,446,000 for the subject property. Mr. Ziegler indicated in his report that the income approach was developed "as a check of reasonableness," and resulted in a value of $3,349,000. Although the source of his income figures is unclear, he indicates the expense and capitalization rates were "extracted from other outside fee appraisals" listed in his report. After reconciling the two values, and looking at appraisals of other, purportedly similar properties, Mr. Ziegler concluded to a final value of $3,300,000.

Mr. Ziegler's opinion of value is a 50% reduction from the auditor's initial valuation and, as such, calls for careful scrutiny. *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094, ¶20. Because Mr. Ziegler did not testify before the BOR or this board, we are limited in our review of his credibility as expert offering an opinion of the subject property's value. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported; compare *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485. At the outset, we find Mr. Ziegler's reliance on other appraisals of other properties inappropriate, as we are unable to determine whether the properties that were the subjects of those appraisals were similar to the subject property, and whether those appraisals were credible and reasonable. Further, the basis of Mr. Ziegler's rent information is unclear and we are unable to evaluate whether the expense and capitalization rate information pulled from other fee appraisals is appropriate for use in determining the subject property's value. We therefore place no weight on his income approach and turn to his sales comparison approach.

Mr. Ziegler essentially relies on the mean of two comparable sales, with moderate weight also given to a foreclosure sale, i.e., comparable sale #1. We find any weight given to comparable sale #1 to be inappropriate, as it appears to have been a forced sale. See R.C. 5713.04; *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. The report contains little information about the remaining two sales, i.e., #2 and #4. The source of the sale information is unclear, and there is no indication whether Mr. Ziegler verified the terms of the sales with either the parties to the sales or the brokers/realtors involved in the transactions. This board has previously rejected reliance on unverified sale information. See, e.g., *Overstreet v. Hamilton Cty. Bd. of Revision* (Feb. 15, 2002), BTA No. 2001-V-639, unreported. See also The Appraisal of Real Estate (14th Ed.2013) at 385. Further, without more information about the sales and the properties themselves, we are unable to evaluate whether the limited adjustments made were, in fact, warranted and sufficient. For example, Mr. Ziegler made a 5% upward adjustment to sale #2 for interior height; however, he does not include in his data what the interior height was for that sale. Further, he lists the year built for sale #2 as "1978-1993," but fails to explain when and what improvements were made to warrant such a range, nor how the age compares to the subject to warrant a 10% upward adjustment.

Without the ability to question Mr. Ziegler about his appraisal methodologies and the underlying data, in accordance with the concerns raised above, we are unable to conclude that his opinion of value is credible and probative of the subject property's value as of tax lien date. As the Supreme Court noted in *Cannata*, supra, at ¶15, the examination of an appraiser is of "obvious potential significance *** in determining the probative value of the appraisal report." We acknowledge that, in certain cases, the absence of an appraiser's testimony may not bar us from considering an appraisal report where the record contains indicia of reliability for the content of the report. *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 130 Ohio St.3d 230, 2011-Ohio-3362, ¶21. See also *Copley-Fairlawn*, supra. Here, however, the only

indicia of reliability is the BOR's reliance on the report. There appears to have been no discussion of the report during the BOR hearing, or during the BOR's decision hearing, and the county appellees have made no effort to support the BOR's decision on appeal, either by appearing at this board's hearing or by submitting written argument. Based upon the concerns described above, we conclude that Mr. Ziegler's report is not probative of the 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

$6,337,100

TAXABLE VALUE

$2,217,990

OHIO BOARD OF TAX APPEALS

JOHN MASNOVI, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2017-1722

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, October 10, 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, parcel number 821-29-044, for tax year 2016. We proceed to consider this matter based upon the notice of appeal and the statutory transcript certified pursuant to R.C. 5717.01.

The fiscal officer initiallly assessed the subject property at $668,400. The property owners filed a complaint with the BOR, which requested that the subject property be revalued at $349,995. At the BOR hearing on the matter, property owner John Masnovi argued that the land portion of the subject property should be valued at $89,000 consistent with the price at which the property owners purchased it, as a vacant lot, in 2012. He further argued that the $89,000 purchase price was more reflective of the land value, because of a utility easement encumbering the subject property, and that comparable properties indicated that the subject property should be valued at a far lower value. Mr. Masnovi testified that the subject property may have been appraised as part of a home-equity line of credit from a bank. The BOR members confirmed that the home situated on the subject property was newly constructed and inquired about construction costs or documents evidencing construction costs. They also requested that Mr. Masnovi supplement the record, after the hearing, with the previously mentioned appraisal report. The BOR hearing worksheet indicates that, upon review of the appraisal report, the BOR voted to accept it as competent and probative evidence of the subject property's value and subsequently issued a decision to reduce the subject property's value to $560,000 as of January 1, 2016. This appeal ensued, which requested that the subject property be revalued at $454,000.

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*, 153 Ohio St.3d 23, 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.

We begin our analysis with the property owner's argument that the land portion of the subject property should be valued consistent with the price at which it transferred, as a vacant lot, in 2012. However, we reject this argument because the character of the subject property at the time of such sale was not the character of the subject property on the relevant tax lien date. The vacant lot underwent a material change, i.e., the construction of the home, during the intervening period between the sale date in 2012 and the tax lien date of January 1, 2016. See, generally, *W. Carrollton City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 150 Ohio St.3d 215, 2017-Ohio-4328, at ¶9 ("Relevant here is the exception providing that a sale price 'shall not be considered the true value of the property sold if subsequent to the sale * * * [a]n improvement is added to the property.' R.C. 5713.03(B)."); *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932. Compare *Beechwood II, L.P. v. Clermont Cty. Bd. of Revision*, 12th Dist. Clermont. No. CA2011-04-033, 2011-Ohio-5449.

We next consider the property owner's appraisal evidence, which was performed in conjunction with mortgage financing. Appraiser William J. Doyle developed the sales comparison approach to value to conclude the value of the subject property to be $560,000 as of February 8, 2016. Doyle did not testify at the hearing before the BOR or at a hearing before this board to authenticate the appraisal report, to testify regarding his professional credentials and the underlying data and methodologies used in deriving his value conclusion, or to be questioned by members of the BOR or this board's attorney examiner. The absence of the appraiser's testimony is of particular importance here, where, for example, Doyle failed to make adjustments to the alleged comparable sales to account for site size, design style, and age and there is no explanation in the text of the appraisal report to explain these failures. As the court 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 ***." *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 146 Ohio St.3d 412, 2016-Ohio-1506, at ¶32. Furthermore, it is particularly notable that the appraisal report failed to develop the cost approach to valuing real property given that construction of the home situated on the subject property was complete less than one year of the tax lien date. *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, at ¶12 ("The 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')." 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. In addition, 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).

We next consider the property owner's unadjusted comparable sales data. 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*, supra. Here, there was no attempt to adjust the properties to account for any differences among the properties. See, generally, The Appraisal of Real Estate (14th Ed.2013). For example, the alleged comparable sales, all of which occurred in 2017, are of various vintage with varying numbers of bedrooms, bathrooms and garage space; however, no attempt was made to relate those sales to the subject property's features and with the tax lien date of January 1, 2016. The record is also devoid of any evidence of the condition of the alleged comparable properties, which would be of particular importance given that the home situated on the subject property was newly built on the tax lien date. 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. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning."). 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 as not probative).

We next consider the property owner's argument that negative characters of the subject property, i.e., the utility easement, necessitates a reduction to the subject property's value. In *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, the court noted the lack of competent and probative evidence "that established how [the alleged] 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.

In sum, we find the arguments and evidence upon which the property owner relied to be insufficient bases to adjust the subject property's value.

We now turn to the propriety of the BOR's decision to reduce the subject property's value to $560,000, consistent with Doyle's appraisal report. 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 ¶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 citation omitted.) *Worthington City Schools*, 140 Ohio St.3d 248, 2014-Ohio -3620, at ¶38. See also *Copley-Fairlawn City School Dist.*, supra, at ¶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 County 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. For the previously stated reasons about the substantive deficiencies with Doyle's appraisal report, we find that the BOR improperly relied upon his appraisal report to reduce the subject property's value to $560,000.

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 within the appraisal report.

See *Copley-Fairlawn City School Dist.*, supra ¶¶24-25. However, because of the limited testimony in the record about the appraisal report, specifically about the property owner's and lending institution's reliance upon it and the substantive deficiencies of the appraisal report, as discussed above, we find that Doyle's appraisal report does not contain a sufficient level of credibility and reliability that would allow us to independently determine the subject property's value.

Accordingly, based upon the record before us, 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 and also find that the BOR erred when it reduced the subject property's value values based upon an unauthenticated, hearsay appraisal report. Because the evidence in the record is not competent, probative, and reliable, we are constrained to reinstate the auditor's initially assessed value for the tax lien date at issue. *Vandalia-Butler*, supra, at ¶¶21, 24; *Olentangy Local Schools Bd. of Edn. v. Delaware County Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, at ¶20; *Sapina v. Cuyahoga County Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, at ¶35; *Shinkle*, supra, at ¶28. See also *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094, at ¶¶13-14.

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

$668,400

TAXABLE VALUE

$233,940

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

ELIYAHU & PEARL ABRAMOWITZ, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-137

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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Entered Friday, October 12, 2018

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

The property owners appeal a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 721-23-003, for tax year 2016. We proceed to consider this matter based upon the notice of appeal and the statutory transcript.

The subject property was initially assessed at $140,100. The property owners filed a complaint with the BOR, which requested that the subject property be revalued at $135,000. Though the BOR scheduled the matter for hearing, the property owners did not appear. Instead, they submitted a number of documents, including written argument that asserted that neighboring properties were assessed at values lower than the subject property and that the roof on the home was in disrepair, comparable sales data, and tax bills of neighboring properties and the subject property. The BOR determined that the evidence was insufficient to support a reduction of the subject property's value and subsequently issued a written decision that retained its initially assessed value. This appeal ensued. None of the parties availed themselves of the opportunity to submit additional argument and/or evidence at a hearing before this board. However, we acknowledge that the property owners resubmitted the written argument previously provided to 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). In instances where a property has not been the subject of a recent, arm's-length sale, this board must review 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.

As an initial matter, we note that the property owners' complaint references their $137,000 purchase of the subject property in 2010 (though the property record card notes that they paid $136,500). We do not find this sale to be reflective of the subject property's value because it was too remote from the tax lien date 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.

We begin our review with the evidence property owners' evidence and written argument submitted at the BOR hearing. First, they argue that there was a disparity between the subject property's assessed value and neighboring properties' assessed values and that such disparity necessitates reduction to the subject property's value. 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).

Second, they argue that the disrepair of the roof of the home necessitates reduction to the subject property's value. However, the property owners have failed to demonstrate, and to quantify, how the condition of the roof impacted the subject property's value. *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, at ¶7 ("There 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.'").

Third, they seemingly argue that the comparable sales data demonstrate that the subject property has been overvalued. 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 with the subject property. See, generally, The Appraisal of Real Estate (13th Ed.2008). For example, the subject property includes a colonial style, three bedroom, one and one-half bathroom home, with a basement, that was in average condition on the tax lien date. The alleged comparable sales, all of which occurred at various times in 2016, have varying numbers of bedrooms, bathrooms and square footage; however, no attempt was made to relate the features of the alleged comparable properties to the subject property's features and with the tax lien date of January 1, 2016. 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. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning."). 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).

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 the argument and evidence submitted to the BOR, we conclude that the property owners 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, 2016:

TRUE VALUE

$140,100

TAXABLE VALUE

$49,040

OHIO BOARD OF TAX APPEALS

REVCO DISCOUNT DRUG CENTERS/WEC 99D-17 LLC, (et. al.),	CASE NO(S). 2017-1636, 2017-1735
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Friday, October 12, 2018

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

The property owner, Revco Discount Drug Centers/WEC 99D-17 LLC ("Revco"), and board of education ("BOE") have appealed a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 001-28-030, for tax year 2016. This matter is now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, and Revco's written argument.

The subject property is a 0.88-acre lot improved with a freestanding 10,125-square-foot retail building constructed in 1999 and operated as a CVS Pharmacy. The fiscal officer initially assessed the subject's total true value at $1,000,000. Revco filed a complaint with the BOR seeking a reduction in value to $660,000. The BOE filed a countercomplaint in support of maintaining the fiscal officer's value. At the

BOR hearing, Revco presented testimony and a written report from appraiser Richard G. Racek, Jr., MAI, who opined that the subject's true value was $730,000 as of January 1, 2016. Revco amended its requested value to $730,000, consistent with Racek's report. Racek first described the subject property and its location on the far-west side of Cleveland, noting that the area is largely improved with older apartment buildings and single-family homes. Racek then explained his sales-comparison approach, describing the comparable sales and any necessary adjustments, including a property-rights adjustment for a property earning more income that the subject could support. Racek concluded that this approach indicated a value of $710,000 (rounded) as of January 1, 2016. Racek also described his income approach to value, indicating that he believed the actual rental rate paid by CVS of $17.34 per square foot far exceeds the rent the market would support, concluding to a market rent of $7.50. Racek then applied a 5% vacancy and credit loss reduction, 4% reduction for management and administrative costs, and $0.50 per square foot reduction for replacement reserves, all resulting in a net operating income of $64,192. Racek applied a capitalization rate of 8.5% capitalization rate, resulting in a value of $755,000 (rounded). Racek gave both approaches roughly equal weight, concluding to a rounded value of $730,000.

The BOE provided a list of unadjusted sales of other drug stores and cross-examined Racek about the comparability of the properties utilized in both approaches based on their demographics, locations, occupants, and whether they were free-standing buildings or in-line spaces. During this cross-examination, Racek described negative conditions experienced by the subject property, primarily issues with crime. The BOE argued that by relying on properties with second-generation tenants, in-line shopping center stores, and locations in inferior areas of Cleveland, Racek has utilized a "dark store theory," wherein, according to the BOE, a property is valued as though it is vacant, regardless of occupancy, age, or condition. Because of this, the BOE argued that Racek's appraisal is not reliable evidence of value. The BOR members questioned some of Racek's adjustments and commented that his conclusion of market rent was skewed to the lower rate, though Racek testified that the subject's location supported his chosen rate.

The BOR issued a decision maintaining the initially assessed valuation. According to the BOR's Oral Hearing Journal Summary, the BOR found that the appraisal was not probative evidence of value, referring to the challenges to Racek's sale and rental comparables, adjustments, and conclusion at the lower range of the comparable values. From this decision, Revco and the BOE filed the present appeals, but waived the opportunity to present additional evidence before this board. Revco argues that through the income and sales-comparison approaches to value, Racek concluded to the fee simple value of the subject property and this board should adopt his opinion of value. The BOE did not provide written argument in support of its 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). 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, Revco relies on Racek's appraisal, while the BOE relies on its list of sales and

cross-examination seeking to show that Racek's appraisal is not reliable evidence because it understates the value of the subject property. 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.

Initially, we find that Racek's sales comparison approach is not probative evidence of value. When a property sells with a lease in place, there must be some investigation as to whether such a lease conforms to market conditions. See *Lowe's Home Ctrs., Inc. v. Washington Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-1974, reconsideration pending. The proper adjustment, however, is not based on a comparison to the subject property. Rather, the effect of the lease on the comparable property must be considered based on the market in which that comparable sale is located. "[W]hen a '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 property would sell for,' [*Rite Aid of Ohio, Inc. v. Washington Cty. Bd. of Revision*, 146 Ohio St.3d 173, 2016-Ohio-371,] ¶20." *Lowe's*, supra, at ¶24. To adjust a comparable sale based on the rent the subject property could achieve and then again to account for differences in the markets of the properties (whether location or temporal) could result in a duplication of the appropriate adjustment. Based on not only his written appraisal but also his testimony at the BOR hearing, it is clear that Racek adjusted the sales of leased properties based on whether the subject property could achieve the same rents rather than whether the rents were consistent with the market in which they were located. Accordingly, we find that this could result in a misleading conclusion of value. Because Racek relies on qualitative adjustments rather than provide any quantitative analysis, we are unable to discern the effect that this may have on his ultimate conclusion. Thus, we reject Racek's sales-comparison approach altogether.

Despite the challenges raised by the BOE and BOR, we find that Racek's income approach is competent and probative evidence of value upon which we may rely to value the property. Although the properties in Racek's summary of comparable leases vary in their physical comparability to the subject property and Racek concluded to a market rent on the low end of the range, we find that Racek adequately supported his decisions. Racek explained that the subject is impacted by crime, demographic challenges due to its location, and the age of the building. While we recognize the list of sales provided by the BOE, they have not been adjusted to account for differences and are not probative evidence of value. See *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002. Accordingly, upon review of the record before us, we find that Racek's income approach 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

$755,000

TAXABLE VALUE

$264,250

OHIO BOARD OF TAX APPEALS

MUSKINGUM RIVER DEVELOPMENT, LLC, (et. al.),	CASE NO(S). 2016-2244, 2016-2319
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MORGAN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Friday, October 12, 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 0300065901, 0300060900, 0300061600, 0300065300, and

0300065400, 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 auditor initially valued the subject property, a coal-fired electrical power plant, at a combined value of $28,160,930. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $174,611. 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 to present argument and/or evidence in support of their respective positions. In his opening statement, counsel for the property owner explained that the subject property was partly located in Morgan County (the parcels at issue in this matter) and partly located in Washington County (parcels not at issue here). In its presentation, the property owner submitted the testimony of Tim Lamp, a member of the property owner. He testified that the subject property had significant environmental problems that had to be remediated and that the property owner purchased the subject property, the Washington County parcels, and non-realty items including the costs to remediate the environmental issues affecting the subject property. He testified that such sale resulted in a negative sale price of at least $40,000,000 from AEP Generation Resources, Inc. ("AEP") in August 2015. Of that number, he testified, $174,612 (rounded) was allocated to the purchase of the subject property. He explained that the agreement between the parties provided two "pots" of money from which the property owner would draw in order to remediate the environmental problems. According to him, any residual monies would go to the property owner; conversely, any cost overruns would be the responsibility of the property owner. In support of the complaint, the property owner submitted a packet of documents, which included a confidential proposal by the property owner to purchase the subject property, settlement agreement, allocation of value between the counties calculated after the subject sale, and exhibits submitted by the BOE to the Washington County Board of Revision at its hearing related to the parcels located in Washington County, amongst other documents. Counsel for the BOE cross-examined Lamp. He conceded that he had limited involvement in the subject sale and another member of the property owner had been more involved, that the property owner had not provided all of the underlying documents related to the subject sale, and that he was unaware how the parties allocated value for any of the items included in the subject sale, i.e., demolition costs, equipment, real estate value, and scrap value. Upon cross-examination by the BOR members, Lamp also conceded that the character of the subject parcels, mostly industrial land, differed from the nature of the parcels located in Washington County, mostly hunting land. The BOR voted to retain the subject property's initially assessed value and these appeals ensued.

The property owner alleged that it received the BOR's decision via email, in contravention of R.C. 5715.20(A), several weeks after the BOR's decision was allegedly mailed by regular mail. Without waiving the certified mailing requirements of R.C. 5715.20(A), the property owner filed an appeal with this board, which was docketed as BTA No. 2017-2244. After that time, the BOR mailed its decision by certified mail, as required, and the property owner filed another appeal with this board, which was docketed as BTA No. 2017-2319. The property owner filed an unopposed motion to consolidate the appeals, which we granted.

At the hearing before this board, only the property owner appeared to supplement the record with additional argument and/or evidence. In the property owner's presentation, appraiser Martin L. Hunter testified as to his written appraisal report, which valued the industrial parcels at $8,000 per acre and the park land parcel (parcel number 0300060900) at $4,000 per acre, for a combined value of $399,080 as of January 1, 2015. The property owner requested that we carry the tax year 2015 value forward into tax year 2016, the second year of the triennial period. There was no appearance by the BOE or county appellees at the hearing. Subsequent to the hearing, the property owner submitted written argument to more fully assert its position. Neither the BOE nor the county appellees submitted written argument.

Before we consider the merits of this appeal, we must dispose of two preliminary issues. As noted above, the property owner requested that we carry our decision value forward to tax year 2016, the second year of

the triennial period in Morgan County. However, the only BOR decision before us relates to tax year 2015 and our review will be limited to that year. See *Life Path Partners, Ltd. v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 238, 2018-Ohio-230; *MDM Holdings, Inc. v. Cuyahoga Cty. Bd. of Revision,* 152 Ohio St.3d 555, 2018-Ohio-541. Also, it should be noted that it appears that parcels 0300065300 and 0300065400 were combined at the time of the allocated sale in August 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 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).

Here, although the record includes sale documents memorializing the subject sale, we reject such sale as the best indication of the subject property's value. Normally, the presentation of sale documents creates a rebuttable presumption that a sale is the best indication of real property value. See *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415, at ¶¶32-34. The court has also held that the best indication of value is the proper allocation of a bulk sale price, rather than an appraisal ignoring the contemporaneous sale. *Conalco, Inc. v. Monroe Cty. Bd. of Revision,* 50 Ohio St.2d 129 (1977), paragraph two of the syllabus. However, the court in *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921, acknowledged:

> "[T]he 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. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249, ***, ¶15 (in a bulk-sale case, a 'question arises beyond the basic pronouncement of*Berea*: 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.')." (Parallel citation omitted.) Id. at ¶16.

The*FirstCal* court further acknowledged that this board is not always required to accept the parties' allocation of a bulk sale price, particularly where the sale involved a complex transaction involving both real and personal property assets. Id. at ¶18, citing*Consol. Aluminum Corp. v. Monroe Cty. Bd. of Revision*, 66 Ohio St.2d 410 (1981).

While normally this board would accept the parties' allocation of such a sale price, here, we question the parties' allocation.The facts and circumstances of the overall sale, e.g., the environmental remediation agreement between the buyer and seller and the "negative" purchase price, are so complex that we are not able to determine the entirety of the transaction, and whether the allocation of value to the real property in the transaction bore any real relation to its real property value. Notably, the parties failed to provide the parties' "Definitive Agreement" referenced during the BOR hearing, or a witness with personal knowledge of the specifics of the sale transaction.

Moreover, we question the allocation made by the parties between the Washington County parcels and the subject Morgan County parcels. It appears that the allocation was done simply by taking the total sale price allocated to real property and dividing it among the parcels on an acre-by-acre basis. However, as Mr. Lamb and Mr. Hunter testified, the character of the parcels differed greatly between the two counties, with the Washington County parcels being mostly farmland, and the Morgan County subject parcels being mostly industrial. Mr. Hunter's appraisal analysis bears out that the differences in character have bearing on

the parcels' respective values, as his opinion of value for the industrial subject parcels was twice his opinion of value for the "park land" subject parcel. In the absence of evidence supporting a proper allocation of the sale price for real property tax purposes, we turn to appellant's appraisal evidence.

Hunter commenced his valuation assignment by determining that the subject property's continued use as a coal-fired electric plant was no longer financially feasible. As a consequence, he determined that there were multiple highest and best uses based upon the varying character of the subject parcels, i.e., industrial land and park. He solely developed the sales comparison approach for the industrial parcels, 0300065901, 0300061600, 0300065300, and 0300065400, which compared the industrial parcels at issue with four comparable properties, some also with environmental concerns, located in North Carolina, Illinois, and Indiana that sold between 2013 and 2015. After considering and adjusting the comparable properties for differences with the subject property, such as stage of remediation and location, he concluded to a range in value from $8,525 per acre to $10,294 per acre. Because he concluded that the subject property was inferior to all of the comparables, Hunter concluded to a value below the low end of the range, $8,000 per acre, for the industrial parcels as of January 1, 2015. For the remaining parcel, 0300060900 (referred to as Tract 29), he determined that such parcel was "not easily categorized" because it was "not woods, not farms, and not industrial." Hearing Record at Exhibit A at page 106. He noted that this area was previously used as a recreational area, with "a ball park and a few shelters, none of which have any contributory value unless to[sic] was sold as a park. Currently this site is being offered at $5,500 per acre but there have been no interests[sic] thus far. I have also priced this parcel [at] $4,000 per acre," for the sole park land parcel, as of January 1, 2015. Id.

Upon review, we find Hunter's appraisal report to be competent and probative evidence of the subject property's value. We note that neither the BOE nor the county appellees came forward to assert that his appraisal report was based upon legal error and our review failed to glean any such fatal shortcoming. *City of Columbus Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 700, 2016-Ohio-8375.

However, we note discrepancies between the acreages provided on the conveyance fee statement and property record cards, and the acreage provided in Hunter's appraisal report, for parcels 0300060900 and 030006160. The deed, conveyance fee statement, and property record cards note that parcel 0300060900 was comprised of 20.049 acres and parcel 0300061600 was comprised of 3.753 acres. Hunter's appraisal report notes that parcel 0300060900 was comprised of 11.87 acres of park land and parcel 0300061600 was comprised of 1.0 acre of industrial land. Although there is a document in the statutory transcript, provided by the property owner at the BOR hearing, that provides the same acreage as Hunter's appraisal report, the origin of the document is unclear. We find the recorded sale documents and auditor's property records to be more reliable. However, the discrepancies in acreage in Hunter's report can easily be rectified given that his report provided a per acre value for the two different land types. We therefore modify his ultimately determination of value by applying his per acre value to each parcel based on the acreage noted on the auditor's records and each parcel's character.

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 evidentiary burden on appeal to provide competent and probative evidence of the subject property's value through Hunter's appraisal report and testimony. However, relying upon the appraisal report's conclusion of value for the different land types, we will correct the errors in the appraisal report for the acreage for two of the parcels at issue, 0300060900 and parcel 0300061600, to find value consistent with the acreage provided on the property record card and conveyance fee statement.

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 0300065901 (24.74 acres of industrial land)

TRUE VALUE: $197,920

Taxable Value: $69,270

Parcel Number 0300060900 (20.049 acres of park land)

True Value: $80,200

Taxable Value: $28,070

Parcel Number 0300061600 (3.753 acres of industrial land)

True Value: $30,020

Taxable Value: $10,510

Parcel Number 0300065300 (2.96 acres of industrial land)

True Value: $23,680

Taxable Value: $8,290

Parcel Number 0300065400 (15.25 acres of industrial land)

True Value: $122,000

Taxable Value: $42,700

OHIO BOARD OF TAX APPEALS

CANTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-2004
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CANTON CITY SCHOOLS BOARD OF EDUCATION
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KL PARTNERS
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Entered Friday, October 12, 2018

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

The Canton City Schools Board of Education ("BOE") appeals to this board from a decision of the Stark County Board of Revision ("BOR") that determined the value of the subject property, i.e., parcel number 243601, for tax year 2015. Although the BOE and appellee property owner have represented several times during the pendency of this matter that they were attempting to settle, this board has not received any final documentation of such settlement despite allowing ample time for the parties to file such documentation. As it appears the parties have been unable to arrive at a settlement agreement, we proceed to consider the matter on its merits based on the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the BOE's written brief.

The auditor initially valued the subject property, a 180-unit apartment complex, at $1,905,200. The BOE filed a complaint seeking to increase the property's value to $6,075,000, in accordance with a reported sale of the property for that amount in December 2015. At the hearing, counsel for the BOE presented a conveyance fee statement and deed evidencing the December 2015 sale, and asked that the property be valued at the $6,075,000 sale price.

Although the appellee property owner, KL Partners, LLC, did not file a countercomplaint, it was represented at the BOR hearing by counsel and part-owner, John Paulsen. Mr. Paulsen testified that the subject property was purchased in an arm's-length transaction for the amount reported; however, he indicated that the analysis that resulted in the reported sale price was based on inaccurate information provided by the prior owner. Specifically, he indicated that, although information from the prior owner suggested that the property was 97% occupied, it was in fact only 75% occupied. He testified that 60 tenants had been evicted since KL Partners purchased the property, and that the vacated units could not be immediately rented due to substantial needed maintenance, beyond normal turnover costs. He estimated the total deferred maintenance at approximately $500,000. Given the condition and vacancy issues discovered after the sale, Mr. Paulsen opined that the value of the property was between $4,000,000 and $4,500,000. KL Partners presented an excerpt from the financing appraisal performed by Colliers International, a vacancy report as of September 2016, and a depreciation schedule, in support of its requested value.

On the audio recording of its decision hearing, the BOR members voted to increase the value of the subject property to $4,000,000 based on testimony from the ownership about the vacancy, deferred maintenance, and issues unknown to KL Partners at the time of sale. The BOE has appealed to this board, again requesting the property be valued at the full reported sale price of $6,075,000.

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.

There appears to be no dispute that the December 2015 transaction was a recent, arm's-length sale. The parties to the sale were unrelated, each appears to have been acting in its own self interest, and the property was marketed with a broker. See *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). KL Partners asks that we nevertheless reject the sale, based on the misrepresentations of the seller. This board has previously rejected such arguments, even where a seller fraudulently misrepresented occupancy levels and rental rates. *Cleveland Mun. Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Jan. 4, 2018), BTA No. 2017-369, unreported. See also *Old Village Ohana, LLC v. Franklin Cty. Bd. of Revision* (Jan. 29, 2013), BTA No. 2010-Y-1151, unreported; *Granville Village Apts., Inc. v. Franklin Cty. Bd. of Revision* (Mar. 12, 2004), BTA No. 2002-V-1972, unreported. "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.

KL Partners asks that this board disregard the recent sale and, instead, accept the opinion of one of its members, Mr. Paulsen, who opined a value range of $4,000,000 to $4,500,000. KL Partners relies on the testimony of Mr. Paulsen, excerpts from the Colliers appraisal, a vacancy report as of September 2016, and a 2015 depreciation schedule. We find none of this evidence sufficient to overcome the presumption accorded the December 2015 sale. Only two pages of the Colliers appraisal (the Executive Summary) were presented, and the limited information on those pages indicates that the subject property was 97.8% occupied as of October 21, 2015; the source of the information is unclear. The vacancy report presented by KL Partners is as of September 20, 2016; it is unclear how this information relates to tax lien date or whether it reflects the subject's market as of that date. As we stated in *Whitaker v. Miami Cty. Bd. of*

Revision (Feb. 12, 2013), BTA No. 2012-Y-2567, unreported, reliance on the subject's actual experience is insufficient to support a change in value where no efforts is made to correlate such experience to the market, "the utility of which is to ensure a property's claimed performance is not the result of poor management." While Mr. Paulsen testified about the condition of the property and the number of repairs that need to be made, it is not clear how his opinion of value relates to the costs of repairs, i.e., he estimated the cost at $500,000, but advocates for a more than $2,000,000 reduction from the sale price. See *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996) (dollar-for-dollar costs do not necessarily correlate to value); *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588. In the absence of an appraisal that quantifies the effect of the condition issues on the value of the property, we do not find evidence of needed repairs sufficient to overcome the sale price. Finally, it is unclear how the depreciation schedule relates to the utility of the sale in valuing the property.

We note that the BOR Standard Report included in the statutory transcript contains the opinion of staff appraiser Gary Ziegler who, after reviewing the evidence presented and personally inspecting the property, recommended that the property be valued at the December 2015 sale price of $6,075,000.

It is this board's duty to independently determine the value of property. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996). Based upon our review of the evidence in the record, we find the presumption that the December 2015 sale price is the best evidence of the subject property's value as of January 1, 2015 has not been successfully rebutted. We find the sale to be recent and arm's-length and the best evidence of 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

$6,075,000

TAXABLE VALUE

$2,126,250

OHIO BOARD OF TAX APPEALS

USPG PORTFOLIO SIX LLC AND KOHL'S ILLINOIS, INC. (KOHL'S DEPARTMENT STORES, INC.), (et. al.), Appellant(s), vs. CLARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-2066 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - USPG PORTFOLIO SIX LLC AND KOHL'S ILLINOIS, INC. (KOHL'S DEPARTMENT STORES, INC.)
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Entered Monday, October 15, 2018

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

[1] Appellants USPG Portfolio Six LLC ("USPG") and Kohl's Illinois, Inc. (Kohl's Department Stores, Inc.) ("Kohl's") appeal a decision of the board of revision ("BOR"), which dismissed the complaint filed against the value of the subject real property, parcel number 330-06-00006-300-024, for tax year 2016. The appellee board of education ("BOE") filed a motion to affirm the dismissal, to which USPG and Kohl's responded and requested a hearing on the issue. The parties then waived the opportunity to appear at the

hearing scheduled before this board, stipulating to the admission of a lease, and submitting additional written argument. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the parties' written argument, and the stipulated exhibit.

[2] On March 30, 2017, a complaint was filed with the BOR, on which USPG was named as the owner of the property and Kohl's as the complainant on line 2. On line 5, the complainant's relationship to the property if not owner was identified as "Owner of Property in County pursuant to R.C. 5715.19." At the BOR hearing, the BOE argued that the BOR should dismiss the complaint for lack of jurisdiction because Kohl's was the tenant occupying the subject property and did not own any property in the county. Kohl's responded that it had proper standing to file the complaint by reiterating its assertion that it owned other property in the county. The BOR gave Kohl's the opportunity to provide proof of such ownership, but after none was provided, dismissed the complaint. USPG and Kohl's appealed to this board. USPG and Kohl's argue that the complaint at issue properly vested jurisdiction with the BOR because Kohl's was authorized to file as the agent of USPG pursuant to their lease. The BOE contends that the lease's authorization for Kohl's to pursue real property tax matters is not sufficient to create standing to file a complaint.

[3] The BOR properly found that before it could reach the merits of the complaint it must first determine that the complainant has standing to file. *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision*, 86 Ohio St.3d 181, 183 (1999), citing *Buckeye Foods v. Cuyahoga Cty. Bd. of Revision*, 78 Ohio St.3d 459, 461 (1997) ("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.'"). Kohl's has raised two different arguments as to the basis for its standing to file the complaint. At the BOR, Kohl's asserted that it had independent standing to file as the owner of real property in the county, though it provided no evidence in support of this claim. Before this board, Kohl's has effectively abandoned this argument, presumably because it does not, in fact, own any property in Clark County. Because there is no evidence to support this contention, we reject this argument and will not address it any further. On appeal, USPG and Kohl's raise the argument that Kohl's acted as the agent for USPG and properly filed the complaint, offering the lease as evidence that Kohl's was authorized pursue the matter. But regardless of the language in the lease, Kohl's status as lessee of the subject property does not give it independent standing to file a complaint. *Diley Ridge Med. Ctr. v. Fairfield Cty. Bd. of Revision*, 141 Ohio St.3d 149, 2014- Ohio-5030, ¶13 (citing the court's precedent regarding a long-term lessee's lack of statutory authority to file a complaint and noting that "the statute 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."). We find, therefore, that Kohl's did not have independent standing to file the complaint.

[4] On appeal, USPG and Kohl's assert that the complaint was jurisdictionally sufficient based on their agency relationship, asserting that Kohl's was filing on behalf of USPG and relying on *Toledo Pub. Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision*, 124 Ohio St.3d 490, 2010-Ohio-253 ("*Vistula*"). In *Vistula*, the court held that a property manager (through an attorney) was authorized to file a complaint as an agent for the owner. USPG and Kohl's argue that just as the contractual status permitted the property manager to file a complaint, Kohl's lease permitted it to file a complaint on behalf of USPG. This interpretation of *Vistula*, however, ignores the first part of the court's decision: that the property manager indicated that it was filing on behalf of the owner on the face of the complaint. In this case, we cannot reach the same conclusion. Similar to *Vistula*, the purported agent listed itself as the "complainant if not owner" on line 2 of the complaint. Unlike the complaint in *Vistula*, in this case, Kohl's asserted an independent basis for standing on line 5, i.e., that it owned other property in the county, rather than assert an agency relationship. USPG and Kohl's point to the response on line 7, which states that the principal use of the property is as a "Kohl's Storeroom," serves such a purpose, but we disagree. There is nothing about this statement that indicates Kohl's was acting as an agent and not in its own capacity, particularly where it named independent grounds for its own standing on line 5. Finally, although USPG has joined Kohl's in appealing the decision of the BOR, in order to invoke the BOR's jurisdiction, an amended complaint clearly identifying USPG as the complainant would have had to have been filed before the filing deadline, in this case, March 31, 2017. See *Performing Arts School of Metro. Toledo, Inc. v. Wilkins*, 104 Ohio St.3d 284, 2004- Ohio-6389.

[5] Based upon the foregoing, we must conclude that Kohl's filed the complaint in this matter but failed to show that it had standing to do so. We find, therefore, that the BOR properly determined that it lacked jurisdiction to consider the value of the property. As a result, we grant the BOE's motion and hereby affirm the BOR's decision to dismiss the complaint.

OHIO BOARD OF TAX APPEALS

CATHY GAMMARINO, TRUSTEE, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1303 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CATHY GAMMARINO, TRUSTEE
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
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Entered Tuesday, November 27, 2018

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

This matter is considered upon the Hamilton County Auditor's motion to dismiss, which this board construes as a motion to affirm the dismissal of the underlying complaint by the Hamilton County Board of Revision ("BOR").

The statutory transcript certified by the auditor in this matter indicates that the underlying complaint was filed on March 30, 2018, by "complainant if not owner" Al Gammarino, as a "party affected." The owner of the property listed on the compliant is "Cathy Gammarino, TR." As the auditor notes in his motion, the complaint underlying this appeal is the second complaint filed against the valuation of parcel number 609-0013-0023-00 for tax year 2017. On January 30, 2018, another complaint was filed by Al Gammarino as a "party affected," listing "Charles Goodall" as the owner of the property. Both complaints sought a value of $22,000. The BOR conducted proceedings on the January 30 complaint, and rendered a decision on May 23, 2018 decreasing the value of the subject parcel. Mr. Gammarino appealed the BOR's May 23, 2018 decision to this board, and this board docketed the appeal as BTA No. 2018-622; it remains pending. The BOR then conducted separate proceedings on the March 30 complaint, holding a hearing on July 30, 2018, and ultimately dismissing the March 30 complaint as an improper second filing.

The auditor asks this board to, essentially, affirm the dismissal of the second complaint as an improper second filing pursuant to R.C. 5715.19(A)(2). In response, Mr. Gammarino argues that both complaints

were properly brought by two separate individuals with individual standing – Mr. Gammarino as a party affected (based on his payment of the taxes on the property), and Ms. Gammarino, as the owner of the property.

At the outset, we reject Mr. Gammarino's argument that he has standing to file either complaint as a "party affected" pursuant to R.C. 5715.13. 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 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 Cty. Bd. of Revision* (Nov. 17, 2009), BTA No. 2007-M-1726, unreported, at 4. See also *Conneaut Dev. Co. v. Ashtabula Cty. Bd. of Revision* (Apr. 23, 2018), BTA No. 2017-1824, unreported. R.C. 5715.19(A) currently provides the following individuals may file a complaint against the valuation of real property:

> "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 4701.01 of the Revised Code, a general or residential real estate appraiser licensed under Chapter 4735. of the Revised Code, who is retained by such 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;
> ***."

Mr. Gammarino testified at the hearing on the January 30 complaint that he owns real property in Hamilton County. We therefore find he has standing to file a complaint against the valuation of real property in Hamilton County, including the subject property.

While Mr. Gammarino argues that he filed the March 30 complaint on behalf of Ms. Gammarino, the face of the complaint indicates the contrary. Mr. Gammarino did not file as her agent; instead, he listed himself on line 2 as the "complainant if not owner," and left line 3 (requesting "complainant's agent") blank. Compare *Beavercreek Towne Station, L.L.C. v. Greene Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4300. We therefore find that Mr. Gammarino filed two complaints against the valuation of the same parcel in the same tax year. To the extent the complaints are not duplicative, we find such second filing runs afoul of the prohibition in R.C. 5715.19(A)(2) against filing multiple complaints within a single interim period. We therefore affirm the BOR's dismissal of the March 30, 2018 complaint underlying this matter.

However, we note the practical effect of this decision is minimal, given that the valuation of the subject parcel for tax year 2017 remains pending before this board in BTA No. 2018-622, in which both Mr. Gammarino and Ms. Gammarino are parties. *Gammarino v. Hamilton Cty. Bd. of Revision* (Interim Order, Nov. 16, 2018), BTA No. 2018-622, unreported.

OHIO BOARD OF TAX APPEALS

JPMCC 2006-LDP7 CENTRO ENFIELD, LLC, (et. al.),	CASE NO(S). 2016-1340
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
LORAIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

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Entered Monday, October 15, 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 06-24-030-000-123, 06-24-030-000-124, 06-24-030-000-125, 06-24-030-000-126, 06-24-030-000-127, 06-24-031-107-128, and 06-24-031-107-035, 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, any motions and related responses, the record of this board's hearing, and any written argument submitted by the parties.

The auditor initially valued the subject property, a regional shopping mall and outlots, at a combined true value of $26,594,710. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $10,000,000. The affected board of education ("BOE") filed a countercomplaint,

which objected to the request.

At the BOR hearing on the matter, the property owner and BOE appeared through counsel to submit argument and/or evidence in support their respective positions. The property owner asserted that recent foreclosure proceedings involving the subject property indicated that the subject property was financially struggling, which necessitated a reduction to its value. The BOE noted the property owner's failure to submit evidence to demonstrate the propriety of reducing the subject property's value. The BOR voted to retain the subject property's initially assessed value, based upon insufficient evidence, and subsequently issued a written decision to that effect. Thereafter, the property owner appealed to this board.

At this board's merit hearing, the property owner, county appellees, and BOE appeared through counsel to supplement the record with additional argument and/or evidence. As the hearing commenced, the parties were provided an opportunity to be heard on a previously filed motions for sanctions, filed by the property owner against the county appellees and their appraiser, Thomas D. Sprout. During the arguments, counsel for Sprout orally requested that this board should sanction the property owner's counsel. The attorney examiner deferred ruling and proceeded with the hearing. Prior to the conclusion of the hearing, counsel for the county appellees orally requested that we sanction the owner's appraiser, Richard G. Racek, Jr., by excluding his testimony, for his failure to provide a copy of his work file under a proper subpoena. The attorney examiner deferred ruling. (It should be noted that while this matter was pending, the parties filed additional motions for sanctions, which proceeded to hearing. This board subsequently issued a decision on those competing motions for sanctions, not the motions for sanctions filed just before this board's hearing, in *JPMCC 2006-LDP7 CENTRO ENFIELD, LLC v. Lorain Cty. Bd. of Revision* (Interim Order, Apr. 23, 2018), BTA No. 2016-1340, unreported.)

In its presentation, the property owner submitted the appraisal report and testimony of appraiser Racek, who opined the value of the subject property to be $12,250,000 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. In its presentation, the county appellees presented the testimony of Sprout who was examined, and cross-examined, about his critique of Racek's appraisal report.

Subsequent to the hearing, the parties submitted written argument to more fully articulate their positons. In its submissions, the property owner conceded that case law requires us to consider Sprout's testimony though it argued that we should accord his testimony no weight given that he performed no independent analysis to derive a conclusion on the subject property's value as of the tax lien date. Instead, the property owner argued, we should rely upon Racek's appraisal report, which accurately reflected market in which the subject property would have operated on the tax lien date. In their submissions, the county appellees argued that the many shortcomings in Racek's appraisal report, as identified by Sprout, rendered it useless *unless* we reconfigure the appraisal report to account for those shortcomings. In its submissions, the BOE also argued that the cumulative errors in Racek's appraisal report rendered it unreliable and should be totally disregarded.

Before we consider the merits of this matter, we must first dispose of preliminary issues. As noted above, this board convened a sanctions hearing as the merit hearing commenced. We first consider the dueling motions for sanctions advanced by the property owner and counsel for Sprout. Upon review, we deny each party's motion for sanctions. A review of the record demonstrates that, in this instance, the parties properly utilized the tools of litigation, i.e., motions to quash and objections to motions to quash, to advance their respective positions.

Likewise, we deny the county appellees' motion for sanctions against Racek for failing to provide a copy of his work file consistent with our order in *JMPCC 2006-LDP7 Centro Enfield, LLC, v. Lorain Cty. Bd. of Revision* (Interim Order, June 2, 2017), BTA No. 2016-1340, unreported. Counsel for the county appellees was provided an opportunity to review the work file during the hearing. See *SFA Folio Collections, Inc. v. Tracy* (Interim Order, Apr. 28, 1993), BTA No. 1991-K-295, unreported. There was some indication that

Racek did not provide a copy of his work file because payment was not provided to him *prior* to this board's hearing. However, we have previously held that lack of advance payment for compiling documents under subpoena is not an excuse for failing to comply with the subpoena. See *WCI Steel, Inc. v. Wilkins* (Interim Order, May 21, 2007), BTA No. 2005-V-1565, unreported.

We note that the property owner attached a document to its initial post-hearing brief. Because this document was not submitted a hearing before this board, the document will be stricken from 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); *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 must also reject the property owner's contention that Sprout is biased in favor of his client and that appraisal review testimony is an improper form of evidence. See *Johnston Coca-Cola Bottling Co. v. Hamilton Cty. Bd. of Revision*, 149 Ohio St.3d 155, 2017-Ohio-870, at ¶35 ("Coca-Cola's main criticism—that Thoreson had a personal financial incentive to render an opinion favorable to his employer—applies equally to Coca-Cola's own appraisers, who presumably were paid for their services. Nothing in the record suggests that any of the appraisers involved in this case were biased because they received payment for their professional services."); *Sears, Roebuck & Co. v. Franklin Cty. Bd. of Revision*, 144 Ohio St.3d 421, 2015-Ohio-4522, ¶21 ("Even if a board of education elects not to commission its own appraisal, it might in a proper case offer a different type of evidence: an expert review of the owner's appraisal. Here, the school board claims that the owner's appraisal is deeply flawed. Under such circumstances, the school board could hire an expert to perform an 'appraisal review' to highlight the errors. *See* Appraisal Institute, *The Appraisal of Real Estate* 590 (13th Ed.2008) ('The primary function of an appraisal reviewer is not to appraise the subject property but to examine the contents of a report and form an opinion as to its adequacy and appropriateness')."). We will, therefore, review Sprout's testimony and accord it 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, 130 (1977). In instances where a property has not been the subject of a recent, arm's-length sale, this board must review 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*, 153 Ohio St.3d 23, 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.

The record indicates that the subject property was the subject of a $0 transfer in February 2016; however, there was some indication at the BOR hearing that such transfer was the result of foreclosure proceedings or the threat of foreclosure proceedings. Because of the specter of duress in the transaction and because of the absence of evidence to demonstrate that the transaction was, indeed, an arm's-length transfer, we do not find it reflective of the subject property's value. We proceed, therefore, to evaluate the property owner's evidence, i.e., Racek's appraisal report and testimony, and the county appellees' evidence, i.e., Sprout's appraisal review testimony.

We begin our analysis with Racek'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 "for mixed use development," and, as improved, would be its present use, "as a multi-tenant retail facility." In his sales comparison approach, he compared the subject property's characteristics to six other multi-tenant retail properties (shopping malls and strip centers) that sold in various counties in Ohio between December 2013 and November 2016. He adjusted the comparable properties to account for differences with the subject property, for items such as occupancy rate and net

operating income per square foot, and derived effective gross income multipliers and capitalization rates for each comparable property based upon its respective income data. After analyzing the information, he concluded to a value for the subject property of $11,825,000, or $20 per square foot, as of January 1, 2015. In his income approach, Racek relied upon four other multi-tenant retail properties that were leased, or available for lease, in various counties in Ohio to determine market rent of $11 per square foot. After applying the market rent to the subject property's 591,167 square feet, he determined the subject property's potential gross income to be $6,502,837, from which he then deducted $1,105,482, or 17.0% of potential gross income for vacancy and credit loss, to conclude to an effective gross income of $5,397,355. He proceeded to deduct $3,251,419 for expenses to conclude to a net operating income of $2,145,936, which he capitalized at 16.93%, including a tax additur, to conclude the subject property's value to be $12,675,000 as of January 1, 2015. He reconciled the indicated values, "giving considerable weight" to the sales comparison approach, to finally conclude the subject property's value to be $12,250,000 as of January 1, 2015.

As noted above, Sprout testified about the shortcomings that he perceived with Racek's appraisal report. With regard to Racek's sales comparison approach, Sprout testified that such approach was unreliable because it relied upon some distressed sales and because it overly relied upon retail strip centers instead of mall properties. With regard to Racek's income approach, Sprout testified that such approach was equally unreliable, and understated the subject property's value, because vacancy and collection loss was the result of "double dipping" and lacked market support, because the operating expenses were not specifically enumerated, and because the capitalization rate did not accurately reflect the risk associated with the subject property given its vacancy rate on the tax lien date. He also disagreed with Racek's decisions to consider the subject property as one economic unit when it includes separately parceled outlots that could be sold separate and apart from the shopping mall, and to give the sales comparison approach equal weight in the final reconciliation of value given that the subject property is an income-producing property.

Upon review, we find merit to some of Sprout's critiques of Racek's income approach to value. Specifically, we agree with Sprout that Racek's income approach is problematic in two very important ways. First, we agree that the gross potential income "double dipped" as it relates to vacancy and collection loss. Racek essentially relied upon the subject property's actual income to derive potential gross income, which presumably reflected the nonpayment of rent. For example, at this board's hearing, he testified that Best Buy, "the third largest occupant in the mall *** pay[s] zero rent, zero reimbursement for common area expenses, and the only thing they're paying is their pro rata share of real estate taxes. So you have a store that's over 40,000 square feet physically occupied but generating no revenue." Hearing Record at 29. A review of the comparative income statements in the addendum of the appraisal report suggests various types of rental agreements and/or "rent relief" were utilized. As such, we find that it was inappropriate for Racek to further reduce the subject property's potential gross income to reflect vacancy and collection loss. It should also be noted that the appraisal report lacks market information, regarding vacancy and collection loss, such that we could determine whether the 17% vacancy and collection loss utilized by Racek actually reflected the market. Second, we agree that the operating expenses should have been enumerated. For example, Racek failed to list his expenses, whether by category, i.e., fixed or variable, or by specific type, i.e., management fees and maintenance. By failing to provide which expenses were considered in his analysis, we are unable to discern whether the alleged expense comparables were, in fact, comparable to the subject property.

Although we have previously held that it is appropriate to value income-producing property using the income approach, we find Racek's sales comparison approach is the best indication of the subject property's value given the subject property's age and financial condition. The county appellees and BOE argued that the sales comparison approach was unreliable because it relied, in part, on comparable sales that may have occurred under financial duress. Given the subject property's history of financial distress, we cannot say that Racek committed error by comparing it to other shopping mall properties that also had a history of financial distress.

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 sales comparison approach contained in Racek's appraisal report satisfied the property owner's 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:

PARCEL NUMBER 06-24-030-000-123

TRUE VALUE: $5,564,450

TAXABLE VALUE: $1,947,560

PARCEL NUMBER 06-24-030-000-124

TRUE VALUE: $1,398,350

TAXABLE VALUE: $489,420

PARCEL NUMBER 06-24-030-000-125

TRUE VALUE: $491,950

TAXABLE VALUE: $172,180

PARCEL NUMBER 06-24-030-000-126

TRUE VALUE: $380,250

TAXABLE VALUE: $133,090

PARCEL NUMBER 06-24-030-000-127

TRUE VALUE: $218,380

TAXABLE VALUE: $76,430

PARCEL NUMBER 06-24-031-107-128

TRUE VALUE: $1,012,840

TAXABLE VALUE: $354,490

PARCEL NUMBER 06-24-031-107-035

TRUE VALUE: $2,758,780

TAXABLE VALUE: $965,570

OHIO BOARD OF TAX APPEALS

BOARD OF EDUCATION OF THE SOUTH-WESTERN CITY SCHOOLS, (et. al.),	CASE NO(S). 2014-2259
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

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Entered Monday, October 15, 2018

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

[1] This matter is before the Board of Tax Appeals upon remand from the Supreme Court of Ohio, which issued a decision and judgment entry in *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384, which vacated this board's June 22, 2015 decision and order and held that we erred by failing to perform an independent review of the evidence to determine the value of the subject property. Id. at ¶15. In doing so, the court remanded this matter for additional proceedings consistent with its decision.

[2] On remand, we offered the parties an opportunity to submit additional legal argument in support of their respective positions; only the appellant board of education ("BOE") availed itself of the opportunity. We proceed, therefore, 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 ("H.R."), and any written argument submitted by the parties.

[3] The subject property, parcel number 570-224757-00, was initially assessed a true value of $113,300 for tax year 2011. The property owner filed a complaint with the BOR, which requested that the subject property be valued at $57,000. The BOE filed a counter-complaint, which objected to the request. The BOR held a combined hearing involving the subject property and other parcels owned by or affiliated with the same property owner, which are not the subject of this appeal, for multiple tax years. Both the property owner and BOE appeared at the hearing to submit evidence and/or argument in support of their respective positions. The property owner's son testified that the subject property was residential property, which she rented to a relative for an amount equal to the mortgage payment. The property owner submitted unadjusted comparable sales data, provided by a realtor, to demonstrate that the subject property had been overvalued. Because the property owner had filed complaints challenging the subject property's value for tax years 2011, 2012, and 2013 and because the property owner failed to allege and to demonstrate an exception to the prohibition against filing multiple complaints in a three-year interim period, counsel for the BOE moved to dismiss the complaints for tax years 2012 and 2013 as impermissible multiple filings pursuant to R.C. 5715.19(A)(2). Counsel for the BOE also noted that the many of the alleged comparable sales relied upon by the property owner were sales from the Secretary of Housing and Urban Development ("HUD").

[4] At the BOR decision hearing, the BOR members noted the unadjusted comparable sales data submitted by the property owner, and recognized the BOE's argument that many of the sales were HUD sales, and further noted that they reviewed other sales in the area of the subject property. The BOR members voted to dismiss the complaint(s) for tax years 2012 and 2013 pursuant to R.C. 5715.19(A)(2). After conducting its own sales comparison and income approaches to value, the BOR members voted to reduce the subject property's value to $65,000 and subsequently issued a formal decision, which recognized such reduction *for tax year 2011 only*, and this appeal ensued.

[5] While this matter was first pending before this board, the BOE subpoenaed a representative or representatives of the BOR and Franklin County Auditor who conducted the sales and income approaches to value referenced in the BOR decision hearing, as well as the underlying documentation and notes demonstrating how the BOR arrived at its decision to reduce the subject property's value to $65,000. The county appellees filed a motion to quash the subpoena, which claimed judicial mental process privilege. The motion to quash was denied.

[6] The BOE, property owner, and county appellees appeared at this board's hearing. Counsel for the county appellees orally requested that this board reconsider our order, which denied the motion to quash, to which counsel for the BOE responded by arguing that the BOR's failure to satisfy its statutory duty to maintain a complete record led to the subpoenas. The attorney examiner deferred ruling and allowed any subpoenaed witnesses to testify.

[7] Christine Holdrieth, Supervisor of Appraisal in the Franklin County Auditor's office, testified in response to the subpoena. Counsel for the county appellees registered a continuing objection to Holdrieth's testimony and proceeded to object to most of the questions asked of Holdrieth. To the extent that the objections were not overruled or sustained, the attorney examiner deferred ruling and allowed Holdrieth to answer the questions. Holdrieth testified that she, most likely, conducted the sales and income approaches to value, which the BOR relied upon to decide to reduce the subject property's value. In doing so, she testified, she derived a gross rent multiplier ("GRM") for the area in which the subject property was located and multiplied the GRM by the annual amount of the rent received for the subject property. Holdrieth did concede, however, that, beside the evidence submitted by the property owner, the statutory transcript failed to include the information obtained by her or other BOR members, i.e., the unadjusted comparable sales that were obtained subsequent to the BOR hearing and the information regarding the GRM.

[8] The parties submitted written argument subsequent to the board's hearing. By way of its written argument, the BOE argued that the BOR's decision was not based upon competent and probative evidence but was, instead, based upon faulty, unreliable data that could not be replicated on appeal. The county appellees conversely argued that the BOE failed to submit competent and probative evidence of the subject

property's value and, instead, attempted to shift its evidentiary burden onto the BOR. On remand, the BOE submitted additional written argument that expanded upon its position.

[9] Before we consider the merits of this appeal, we must first address two preliminary issues. First, we must rule on the county appellees' motion for reconsideration of the order that denied their motion to quash the subpoenas, which was raised at this board's hearing. Upon consideration of the motion for reconsideration, we find no basis to reconsider our original order, nor do we find any legal argument properly before this board, not already addressed, particularly given the nature of the questions asked of Holdrieth at this board's hearing. See *Matthews v. Matthews*, 5 Ohio App.3d 140 (1981). Furthermore, we overrule the county appellees' outstanding objections raised at the hearing. We find that the questions of Holdrieth were relevant to the nature of this appeal and did not violate the judicial mental process privilege. As a consequence, the county appellees' motion to strike Holdrieth's testimony is also denied. Accordingly, we will consider the *entire* record developed at this board's hearing.

[10] Second, we note with importance that the Franklin County Board of Revision failed to satisfy its statutory duty to maintain a record capable of being reviewed on appeal, by specifically excluding the evidence relied upon to reach its decision. R.C. 5715.08; R.C. 5717.01; *Sapina v. Cuyahoga Cty. Bd. 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."). Evident from this board's hearing, the BOR failed to satisfy such duties. It is important to note that parties and various tribunals rely upon boards of revision to fulfill their statutory duties. 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, 2011-Ohio-5078, ¶27, fn.4.

[11] 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). See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. The record does not disclose a recent, arm's-length sale of the subject property; therefore, we begin our analysis with the sufficiency of the property owner's evidence and the propriety of the BOR's decision.

[12] As noted above, the property owner relied upon unadjusted comparable sales data to support her opinion of the subject property's value. 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 account for unique aspects and differences between 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 (14th Ed.2013). For example, the unadjusted comparable sales submitted by the property owner span a number of years, from 2010 to 2013; however, no attempt was made to relate those sales with the tax lien date of January 1, 2011. They also differ significantly in age; the subject was built in 1994, but many of the comparable properties were ten years newer. While some of the listing data provides insights into the particular characteristics of the properties, we are unable to discern from the data whether the conditions of the comparable properties were similar to the subject. 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. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning."); *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 as not probative). We also note that all the comparable sales bear the notation "HUDVA," indicating that they may have been distressed sales under the auspices of HUD or the Secretary of Veterans Affairs. Sales from both entities have been found not to be arm's-length in nature and therefore not reflective of market value. See *Schwartz v. Cuyahoga Cty. Bd. of Revision*, 143 Ohio St.3d 496, 2015-Ohio-3431 (HUD sales are forced sales); *Blocksom v. Columbiana Cty. Bd. of Revision* (Apr. 29, 1994), BTA Nos. 1993-H-609, 1993-M-795, unreported (sales by VA occur under duress). Indeed, Holdrieth testified at this board's hearing that the BOR viewed the owner's comparable sales as "subject to question," because they were "all low sales." H.R. at 37. Based upon the foregoing, we are unable to rely on the property owner's comparable sales evidence to determine the subject property's value.

[13] Because we have found the property owner's evidence to be lacking, we next consider the appropriateness of the BOR's decision, giving it no presumption of validity. *South-Western City School Dist.*, supra, at ¶14. As noted above, Holdrieth testified that she, most likely, conducted the sales and income approaches to value, which the BOR relied upon to decide to reduce the subject property's value. Upon review, we are unable to replicate the BOR's analysis and, therefore, cannot affirm it. *Sapina*, supra. See also H.R. at 56 (Holdrieth acknowledging that she could not replicate the BOR's value). Though the record indicated that Holdrieth considered additional comparable sales in her analysis under the sales comparison approach, such information is absent from the record. Indeed, no information about the sales relied on by Holdrieth/the BOR is in the record before us to review. We cannot, therefore, confirm whether this analysis supported the BOR's decision to reduce the subject property's value to $65,000. *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094 (holding that this board committed plain error by relying on material evidence that was missing from the record). To the extent Holdrieth/the BOR relied on the purportedly comparable sales presented by the owner, we do not find them probative for the reasons previously stated.

[14] Furthermore, we do not find that the analysis under income approach to value, using the GRM, supported the BOR's decision to reduce the subject property's value to $65,000. The missing GRM document, submitted at this board's hearing, demonstrates that different neighborhoods have different GRMs. However, the record is devoid of any information that identifies the different neighborhoods and that provides the underlying data and methodologies used to derive the various GRMs. The absence of such information in this case is especially problematic due to our inability to review the GRM analysis with respect to the properties utilized and their similarity to the subject property, including expense ratios and the basis for their reported rental income. Moreover, the average year built for the subject's neighborhood is listed as 1973, compared to the subject's year built of 1994, and the GRM data for the subject's neighborhood appears to be based on an average of 3 bedrooms, 1 full bath, compared to the subject's 4 bedrooms, and 2 full baths. 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. 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). The record does not contain enough information for this board to analyze the propriety of relying on the GRM chosen by the BOR, nor are we able to determine whether a different GRM from the list provided is appropriate for valuing the subject property.

[15] 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's unadjusted comparable sales data did not satisfy the evidentiary burden before the BOR or before this board. Similarly, we find that the BOR's decision to reduce the subject property's value, based upon the GRM, was in error because it is unsupported by the record as developed before the BOR or by the record developed at this board's hearing. As a consequence

of the BOR's fallacious decision, we are unable to replicate the BOR's decision. *South-Western City School Dist.*, supra, at ¶18 ("We have held that the BTA acts appropriately in departing from the BOR's value when that value cannot be replicated. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ***, ¶ 35."). We are constrained, therefore, to reinstate the subject property's initially assessed value.

[16] It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2011:

TRUE VALUE

$113,300

TAXABLE VALUE

$39,660

OHIO BOARD OF TAX APPEALS

DIANE LOTTMAN, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-536, 2018-735

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
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CINCINNATI, OH 45202

Entered Monday, October 15, 2018

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

These matters come before this board upon two notices of appeal filed by appellant Diane Lottman from a decision of the Hamilton County Board of Revision ("BOR") determining the value of parcel number 182-0001-0212-00 for tax year 2017. These are the third and fourth appeals by appellant from the same BOR decision. The two previous appeals, docketed as BTA Nos. 2018-257 and 2018-262, were dismissed by this board for lack of jurisdiction on June 21, 2018. *Lottman v. Hamilton Cty. Bd. of Revision* (June 21, 2018), BTA Nos. 2018-257, 262, unreported.

The county appellees move this board to dismiss the two present matters for lack of jurisdiction, as well. While the two previous appeals were dismissed for failure to file notice of the appeal with the BOR, the county appellees assert that the two present matters are also untimely. The county appellees further move this board to sanction appellant for repetitive, vexatious, and frivolous appeals. This board held a hearing on the motion for sanctions; however, only counsel for the county appellees appeared.

The BOR decision from which these appeals, and the prior two appeals, emanate was mailed to appellant on March 9, 2018. Pursuant to R.C. 5717.01, an appeal from a decision of a county board of revision may be taken to this board within thirty days after the decision is mailed. In these matters, the deadline to file an appeal with this board was April 9, 2018. The present appeals were filed on June 21, 2018 (BTA No. 2018-536) and July 16, 2018 (BTA No. 2018-735). Both appeals were clearly filed after the statutory deadline.

"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). By failing to timely file with this board, appellant has failed to properly invoke our jurisdiction. The county appellees' motions to dismiss are therefore well taken.

To the extent appellant filed the present appeals intending to seek reconsideration of our June 21, 2018 order dismissing her two prior appeals, we likewise lack jurisdiction. This board may reconsider its decision when the movant calls to the attention of the tribunal an obvious error in the decision, or raises an issue for consideration that was either not considered or was not fully considered. *Matthews v. Matthews*, 5 Ohio App.3d 140 (1981). Appellant made no argument in either of the notices of appeal here that our prior decision was in error. Further, the time within which this board may reconsider its decision has passed. "An administrative board or agency *** has jurisdiction to reconsider its decision until the actual institution of a court appeal therefrom or until the expiration of the time for appeal, in the absence of a specific statutory limitation to the contrary." *State ex rel. Borsuk v. Cleveland*, 28 Ohio St.2d 224, 227 (1972), paragraph one of the syllabus. The time to appeal from this board is within thirty days of our decision, i.e., by July 23, 2018. R.C. 5717.04. Therefore, to the extent appellant filed these appeals to seek reconsideration, this board is without authority to grant such request.

Having found we are clearly without jurisdiction over these appeals, we turn to the county appellees' motion for sanctions. The county argues that "[a]ppellant's continued filings of notices of appeal, in a case that has already had opportunity to be presented and determined, are abusive of the appellate process and backlog the BTA's docket." Motion for Sanctions at 4. We agree. However, the Supreme Court held in *Snodgrass v. Testa*, 145 Ohio St.3d 418, 2015-Ohio-5364, ¶35, that this board lacks authority to sanction frivolous or bad faith conduct, outside the context of discovery. Moreover, this board has consistently stated its intent to impose the minimal sanction necessary to achieve the appropriate conduct and noted our desire to avoid the harshest of sanctions, i.e., dismissal of the appeal. Based upon the above discussion, these appeals are subject to dismissal nothwithstanding the county appellees' motion for sanctions. We therefore find no further sanctions are necessary. Appellant is cautioned, however, that further filings with this board without a good faith basis may result in monetary sanctions, including attorney fees. *Leach v. Hamilton Cty. Bd. of Revision* (Jan. 5, 2001), BTA Nos. 2000-M-1049 through 2000-M-1256, unreported.

It is the order of this board that these appeals are hereby dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

AFFORDABLE MEDICAL EDUCATION HOUSING ASSOCIATION NP, (et. al.),	CASE NO(S). 2018-430
Appellant(s),	(REAL PROPERTY TAX)
vs.	ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - AFFORDABLE MEDICAL EDUCATION HOUSING ASSOCIATION NP
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Entered Monday, October 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 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 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."). 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).

Upon review of the record and the motion, this board finds that appellant failed to file the notice of the appeal with the board of revision. Accordingly, the motion is granted and this matter is dismissed.

OHIO BOARD OF TAX APPEALS

SCOTT WM SMITH, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-378 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SCOTT WM SMITH
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For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
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Entered Monday, October 15, 2018

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

The appellant property owner appeals to this board from a decision of the Montgomery County Board of Revision ("BOR") determining the value of parcel number K46 00911 0017 for tax year 2017. We proceed to consider the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and appellant's written argument. We note that appellant submitted to this board information about purportedly comparable sales after filing his notice of appeal. Because such information was not submitted at a hearing before this board, and was not previously provided during the BOR proceedings, we will not consider it in rendering our value determination. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996); Ohio Adm. Code 5717-1-16(A).

The auditor initially valued the subject property at $174,420 for tax year 2017. Appellant filed a complaint seeking a decrease in value to $138,657, based on application of his analysis of the sale prices of other nearby properties. At the BOR hearing, appellant testified that he chose properties in the same area as the subject, with similar square footage and age, omitting any outlying high and low sales, and determined that the subject should be valued at $64.92/sf rather than $82.86/sf, as determined by the auditor. After considering the evidence presented, the BOR determined that a decrease in value to $167,230 was warranted, based on the sale of a property near the subject (381 N. Gebhart Church Road) in May 2016 for $179,000.

On appeal to this board, appellant again requests a value of $138,657 based on the comparable sales he previously presented to the BOR. In response to the BOR's decision to value the subject property based on the sale of 381 N. Gebhart Church Road, appellant argues that the properties are not comparable, as the subject lacks a finished basement. He further argues that the county has not submitted detailed evidence to support the BOR's/auditor valuations, while he has presented a detailed analysis.

As the appellant in this matter, the burden is on the 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, ¶6. As the Supreme Court recently reiterated in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-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 ¶12, quoting *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶23.

Appellant relies on a list of purportedly comparable sales to support his request for a decrease in value. We do not find such list probative. The list contains very little information about the sales, other than the address, square footage, sale date, and sale price. Appellant has not explained the circumstances of the sales, including whether they were arm's-length, nor has he provided enough information about the properties themselves to allow this board to determine whether they are, indeed, comparable to the subject. This board has repeatedly stated that, without a reliable analysis of such data, e.g., 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; *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported.

Having found that appellant's evidence does not support a decrease in value, we turn to the BOR's decision to reduce the subject property's value to $167,230. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823 (admonishing this board to eschew a presumption of validity of the BOR's value and instead perform our own independent weighing of the evidence in the record.) The only basis given for the BOR's decision is the sale of the property at 381 N. Gebhart Church Road. It is unclear whether the BOR made adjustments to the purportedly comparable sale to arrive at its determination of value, what such adjustments were and their basis, and who made such adjustments. As with appellant's evidence, we are unable to determine whether such property is comparable to the subject. Indeed, appellant notes in his written argument that the subject property lacks a finished basement, unlike the BOR's comparable sale. Without more information about the BOR's analysis of this single comparable sale, we are unable to replicate its value. As the Supreme Court instructed in *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶35, where this board cannot replicate a BOR's reduced value, we cannot use it to value the property. In the absence of any other probative evidence of value, we must reinstate the value originally 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, 2017, were as previously determined by the auditor, as follows:

TRUE VALUE

$174,420

TAXABLE VALUE

$61,050

OHIO BOARD OF TAX APPEALS

HOMERICK, DAVID C., (et. al.), Appellant(s), vs. MORROW COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-212 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HOMERICK, DAVID C.
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For the Appellee(s) - MORROW COUNTY BOARD OF REVISION
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Entered Monday, October 15, 2018

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

This matter is before the Board of Tax Appeals upon the filing of a notice of appeal, filed by the appellant property owner, regarding the value of parcels L32-001-00-330-00 and L32-001-00-330-01 for tax year 2017. After reviewing the limited record before us, i.e., the notices of appeal and attachments, it appeared that the board of revision ("BOR") had not issued a decision from which the appellant could appeal to this board. On July 24, 2018, we issued a show cause order directing the appellant to show cause why this matter should not be dismissed for lack of jurisdiction, because the notice of appeal was not filed within thirty days after notice of the decision of the county board of revision is mailed, as required by R.C. 5717.01. Although the appellant was provided fourteen days to respond to the show cause order, he failed to respond.

R.C. 5717.01, provides, in relevant part:

> "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, or authorized delivery service, with the board of tax appeals and with the county board of revision." (Emphasis added.)

The requirements of R.C. 5717.01 are specific and mandatory. When a statute confers the right of appeal,

adherence to the terms and conditions set forth is essential to the enjoyment of the right conferred. *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946). In order to invoke this board's jurisdiction, an appellant must meet the statutory requirements for filing a notice of appeal from a decision of a county board of revision. *Bd. of Edn. of Mentor v. Bd. of Revision*, 61 Ohio St.2d 332 (1980).

Based upon the record before us, we find that the board of revision has not yet issued a decision from which the appellant could appeal. As a consequence, the appeal is premature and this board lacks jurisdiction to consider this matter. Therefore, this matter is dismissed.

OHIO BOARD OF TAX APPEALS

BEACHWOOD CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-871
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - BEACHWOOD CITY SCHOOLS BOARD OF EDUCATION
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SHELBOURNE CP, LLC
Represented by:
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CLEVELAND, OH 44113

Entered Monday, October 15, 2018

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

Appellant Beachwood City Schools Board of Education ("BOE") appeals from a decision of the Cuyahoga County Board of Revision ("BOR") determining that no change in value was warranted for three parcels, i.e., parcel numbers 742-15-011, 742-15-036, and 742-14-026, for tax year 2015. We consider the matter upon the notice of appeal, the statutory transcript certified by the fiscal officer, and the record of the hearing before this board. Although the parties requested a post-hearing briefing schedule, and this board extended the schedule twice at their request, no written argument has been submitted.

The subject parcels are improved with two office buildings and a bank branch. The fiscal officer initially valued the three parcels at a total of $5,358,000 for tax year 2015. The BOE filed a complaint seeking an increase in the parcels' total value to $8,500,000, to reflect the price for which they purportedly transferred

in September 2015. Although appellee property owner Shelbourne CP, LLC ("Shelbourne") did not file a countercomplaint, it appeared through counsel at the BOR hearing. At the hearing, counsel for the BOE relied on documentary evidence of the September 2015 sale, including a press release announcing the transfer for $8,500,000, CoStar reports of the transfer, a deed indicating title to the parcels transferred in September 2015, and a mortgage against the parcels for $6,500,000 dated August 26, 2015. Shelbourne argued that such information was not sufficient to prove that the parcels had recently sold in an arm's-length transaction, noting that the recorded conveyance fee statement indicated that the transfer was exempt because it was "by a subsidiary corporation to its parent corporation for no consideration, nominal consideration or in sole consideration of the cancellation or surrender of the subsidiary's stock." S.T., Ex.
F. Shelbourne further argued that the press release did not identify the property sold by address or parcel number, and that the CoStar reports did not indicate how/whether the sale information was verified.

After considering the arguments and evidence, the BOR determined that there was uncertainty regarding the transfer and the consideration paid, and found that no change in value was warranted. S.T., Ex. E.

On appeal to this board, the BOE again advocates for valuing the subject parcels at $8,500,000. As further support for the sale price, at this board's hearing, the BOE presented an appraisal of the property by CBRE. H.R., Ex. A. The appraisal was prepared by for financing purposes and opined a value for the leased fee interest of $8,700,000 as of June 19, 2015. Counsel for the BOE noted that the appraisal mentions that the property was under contract to Shelbourne Chagrin, LLC for $8,500,000. H.R. at 7; H.R., Ex. A at 1. Shelbourne waived its appearance at the hearing.

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. 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. Based on the general warranty deed presented by the BOE, it is clear that title to the subject parcels transferred in September 2015. The nature of the transfer, however, is not clear. The conveyance fee statement indicates that the transfer was between related corporate entities and involved either no consideration or the transfer of stock/membership interests.

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, 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, appeal pending, 8th Dist. No. CA-18-107199. In this matter, little information about the transaction is in the record before us. The BOE has not presented a purchase agreement, nor has it submitted the testimony of any individual involved in the transfer. In the absence of such information, we are unable to conclude that the September 2015 transfer of title to the subject property was a sale for purposes of real property valuation purposes.

We further find that neither the CBRE financing appraisal nor the mortgage submitted by the BOE are probative of the subject property's value on tax lien date. We note that, in a proper case, a financing appraisal and/or a mortgage may provide support for finding a recent, arm's-length sale. See *Emerson v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 148, 2017-Ohio-865 (financing appraisal prepared at time of sale rebutted presumption that sale was not arm's length); *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3023 (mortgage used to support allocation of sale price to real property). However, here, the nature of the transfer in September 2015 is unclear, and the BOE has failed to present any proper

evidence to support its argument that the transfer was a recent, arm's-length sale. To the extent it relies on the statements in the financing appraisal report about a possible sale, we reject such argument, as it relies on hearsay. *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-2046 (affirming this board's rejection of an appraiser's statements regarding the arm's-length nature of a sale).

We do not find the CBRE financing appraisal, on its own, probative of value, especially in the absence of the testimony of its author or the testimony of someone associated with the owner about the reliance placed on such report. Compare *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 130 Ohio St.3d 230, 2011-Ohio-3362*; Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485. Although the report states that the property was under contract at the time it was written, it is unclear whether the report was to be used in connection with the sale. H.R., Ex. A at 1. Compare *Emerson*, supra. The Supreme Court, in *Copley-Fairlawn*, supra, held that the financing appraisal report in that matter negated the auditor's valuation and that this board should have relied on the data within the report to determine value where a representative of the owner testified about the reliance placed on the report by its lending institution. Id. at ¶20-24. However, here, unlike in *Copley-Fairlawn*, we have no testimony from anyone connected with the ownership about the reliance placed on the CBRE appraisal. The report is addressed to Natixis Real Estate Capital LLC. Although we acknowledge that the mortgage submitted by the BOE during the BOR hearing is between Natixis and Shelbourne, the record does not indicate whether the CBRE appraisal was the basis for such mortgage. In the absence of such testimony about the reliance placed on it, we give no weight to the financing appraisal report. *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058 (affirming this board's decision declining to rely on a financing appraisal in the absence of testimony about its preparation and use).

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 742-14-026

TRUE VALUE

$202,500

TAXABLE VALUE

$70,880

PARCEL NUMBER 742-15-011

TRUE VALUE

$2,695,000

TAXABLE VALUE

$943,250

PARCEL NUMBER 742-15-036

TRUE VALUE

$2,460,500

TAXABLE VALUE

$861,180

OHIO BOARD OF TAX APPEALS

LORAIN COUNTY SAVINGS & TRUST COMPANY NKA FIRSTMERIT BANK, NA (FIRSTMERIT CORPORATION), (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2017-678

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LORAIN COUNTY SAVINGS & TRUST COMPANY NKA FIRSTMERIT BANK, NA (FIRSTMERIT CORPORATION)
Represented by:
STEVEN R. GILL
SLEGGS, DANZINGER & GILL CO., LPA
820 WEST SUPERIOR AVENUE, 7TH 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

WESTLAKE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MEGAN K. ROBERTS
ULMER & BERNE LLP
SKYLIGHT OFFICE TOWER
1660 WEST 2ND STREET, SUITE 1100
CLEVELAND, OH 44113-1448

Entered Monday, October 15, 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, parcel 211-14-020, for tax year 2015. We proceed to consider this matter based upon the notice of appeal, the statutory transcript, and any written argument submitted by the parties.

The fiscal officer initially valued the subject property, an operating bank branch, at $634,300. The property owner filed a complaint with the BOR requesting that the subject property be revalued at $400,000. The affected board of education ("BOE"), filed a countercomplaint objecting to the request. At the 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 amended its opinion of value to $500,000. He asserted that First Merit Bank and Huntington Bank merged, and Huntington Bank became the surviving entity. To effectuate the merger, according to counsel, the parties engaged an appraiser to value the various First Merit Bank locations included in the merger and for financial reporting purposes. He also noted that the bank situsued on the subject property ceased operations in 2016. Counsel for the property owner submitted a packet of dockets, which included written argument, Form 8-K filed with the Securities and Exchange Commission, press releases and newspaper articles, and an appraisal report performed by appraisers at CBRE Inc. ("CBRE") that valued the subject property at $500,000 as of June 9, 2016. Counsel for the BOE asserted that the complaint was premature to the extent that the merger was considered a sale for property tax purposes. She also noted that the $500,000 valuation may not be indicative of the subject property's value because of changes to the subject property between the tax lien date of January 1, 2015 and the valuation date in June 2016, i.e., the subject property changed from an operating bank branch to a closed bank branch. She further noted that the property owner had failed to provide financial information about the subject property relevant to the tax lien date.

One BOR member voiced his concerns with the facts as presented by counsel for the property owner and his inability to question any of the appraisers from CBRE. According to the BOR hearing worksheet, the BOR considered the following: "[t]he complainant appeared through counsel and supplied documentary evidence as support for the requested value. The complainant supplied a non tax lien dated appraisal for the Boards consideration. BOE appeared through counsel seeking to maintain the Fiscal Officer's value. The Board considered the evidence supplied and find that the complainant has not met their burden of proof; no revision." The BOR subsequently issued a decision, which retained the subject property's initially assessed value, and this appeal ensued.

Though the property owner initially requested an opportunity to submit additional evidence at a hearing before this board, on the eve of the hearing, it waived the opportunity to do so. Instead, the property owner opted to submit written argument to more fully assert its position that the merger between First Merit Bank and Huntington Bank amounted to a "sale," for tax valuation purposes and that the $500,000 allocated value to the subject property, for accounting purposes, was the best indication of its value as of the tax lien date. Neither the BOE nor the county appellees submitted written argument.

Before we consider the merits of this appeal, we must first dispose of a preliminary issue. Though the property owner waived the opportunity to submit new evidence at a hearing before this board, it attached documents to its written argument. A review of the statutory transcript indicates that these documents were not submitted at the BOR hearing. Because these documents were not submitted within the hearing context, they must be disregarded. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996). Compare *Emerson Network Power Energy Sys., N. Am., Inc. v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 369, 2016-Ohio-8392, ¶19-21 (holding that this board erred by not allowing further proceedings to allow the admission into the record of evidence of transfer to supplement evidence of an impending sale that was already in the record).

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). In instances where a property has not been the subject of a recent, arm's-length sale, this board must review 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*, 153 Ohio St.3d 23, 2018-Ohio-1588, at ¶¶11-13; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* ("*Team Rentals*"), 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.

We begin our analysis with the claimed "sale" of the subject property, i.e., the merger between First Merit Bank and Huntington Bank. Though there is no dispute that the there was a merger between the two entities, we note that no one with firsthand knowledge of the facts and circumstances of the merger testified before the BOR or before this board. 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; however, 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 Assocs. LTD v. Cuyahoga Cty. Bd. of Revision* (June 25, 2014), 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, appeal pending, 8th Dist. No. CA-18-107199. Here, there is no evidence in the record that, subsequent to the merger, the sole purpose of Huntington Bank was to own the subject property. As such, we find that the merger transaction did not constitute a "sale" of the subject property for property tax purposes.

We next consider the appraisal report, which valued the subject property as of June 9, 2016. Though the appraisal report failed to value the subject property as of the tax lien date of January 1, 2015 and the appraiser did not testify, we will review it to determine whether the appraisal report contains sufficient information to allow us to fulfill our statutory duty to weigh the evidence. *Team Rentals*, supra. The appraisal report was performed by three appraisers, Christian M. Smith, Steven P. Hodge, and Colin M. Fisher, for CBRE. They developed the cost approach, the sales comparison approach, and the income capitalization approaches to valuing real property. Under the cost approach, they added the vacant land value, $350,000, to the replacement cost of the building, $257,070, to conclude the subject property's rounded value to be $610,000. Under the sales comparison approach, they determined market value by comparing the subject property's features to the features of five other properties, some of which were current or former bank branches, which sold, or were offered to be sold, between October 2014 and July 2016. After doing so, they applied their determination of market value, $226.86/square foot, to the subject property's 2,204 square footage, to conclude the subject property's value to be $500,000. Under the income capitalization approach to value, they concluded to effective gross income of $63,670 (comprised of $43,738 of net rental income and $20,232 of expense reimbursements) and operating expenses of $21,960 (comprised of real estate taxes, insurance, common area maintenance, management and reserves for replacement). They then capitalized the resultant net operating income of $42,010 at 8.75% to conclude to the subject property's value to be $480,000. They reconciled the indicated values, placing primary weight on the sale comparison approach, to finally conclude the subject property's value to be $500,000 as of June 9, 2016.

Upon review, we find the CBRE appraisal report not to be competent and probative evidence of the subject property's value. As an initial matter, we note that none of the appraisers testified at the BOR hearing or the hearing scheduled before this board. The appraisal of real property is not an exact science and is instead simply an opinion, the reliability of which depends upon the basic competence, skill, and ability demonstrated by the appraiser. *In re Houston*, 12th Dist. Madison No. CA2004-01-003, 2004-Ohio-5091; *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported. In the absence of an appraiser'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. However, we acknowledge that the court has held that even where the opinion of value is not a reliable indication of value, the appraisal report may be utilized by this board to independently determine value based on the data within. See *Team Rentals*, supra, at ¶¶24-25. In this case, however, we find that the appraisal report does not contain the same level of reliability as the appraisal report in *Team Rentals*, for two primary reasons. First, although there was no testimony from the appraiser in *Team Rentals*, the court's decision relied upon the testimony from the owner/managing member who testified about the reliance both he and a banking institution placed on the appraisal report to refinance a mortgage. Here, there was no testimony from the property owner about the reliance placed upon the CBRE appraisal report. Though counsel for the property owner made a number of assertions about the

facts and circumstances of the First Merit Bank-Huntington Bank merger and the purpose and reliance of the CBRE appraisal report, no one with firsthand knowledge testified at the BOR hearing or the scheduled hearing before this board. "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).

Second, the appraisal report provided a truncated analysis and, as a result, the record is devoid of much of the underlying data the appraisers used to derive their conclusion of value. Specifically, under the sales comparison and income capitalization approaches to value, though there are bare assertions that the comparable properties "required some adjustment," there is no information about the adjustments or the various factors considered to make such adjustments. Were the sales comparables adjusted for market conditions? Were the lease comparables adjusted to reflect whether the comparables were at the beginning, end or middle of their lease terms? Because this crucial information was not provided, amongst other important elements of analysis, we are left to speculate. Similarly, the appraisal report is lacking information, i.e., published surveys and information from market participants, to support the 8.75% capitalization rate to which the appraisers concluded. We also note that there is insufficient market information that would allow us to make the appraisal report's data relevant to the tax lien date of January 1, 2015.

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"). After reviewing the argument and evidence submitted by the parties, we are constrained to find that the property owner failed to satisfy its 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

$634,300

TAXABLE VALUE

$222,010

OHIO BOARD OF TAX APPEALS

SELIN MARIADHAS, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-857

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SELIN MARIADHAS
Represented by:
SELIN WALTZ
7256 THOMAS DRIVE
MADEIRA, OH 45243

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, October 18, 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. (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 timely filed such notice with the BOR. The county appellees attached to their motion the affidavit of the clerk to the BOR, asserting that appellant's notice of

appeal was filed thirty-four days after the mailing of the BOR's decision. 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

GLEN HURYN, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-1119

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GLEN HURYN
Represented by:
JARED KIEHL
1474 EARHEART AVENUE
AKRON, OH 44320

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

COPLEY-FAIRLAWN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KARRIE M. KALAIL
PETERS, KALAIL & MARKAKIS CO., LPA
6480 ROCKSIDE WOODS BLVD. SOUTH
SUITE 300
CLEVELAND, OH 44131-2222

Entered Monday, October 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. (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 county appellees attached to their motion the affidavit of the Executive Assistant to the BOR, asserting that appellant's notice of appeal was not filed with the Summit 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

DARLENE MOORE, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-903

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DARLENE MOORE
722 WEST COURT ST.
CINCINNATI, OH 45203

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, October 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. (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. 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

MARGARET A. SULLIVAN, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-1025

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARGARET A. SULLIVAN
752 CEDAR POINT
CINCINNATI, OH 45230

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, October 24, 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. 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

REX R OVERSTREET, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-992

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - REX R OVERSTREET
Represented by:
REX OVERSTREET
P. O. BOX 14296
CINCINNATI, OH 45250

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, October 24, 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 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 in this matter indicates that notice of the appeal was not filed with the BOR within the statutory thirty-day period. Appellant's response admits a lack of knowledge of the requirement to file a notice of the

appeal with the BOR, and indicates that such filing has since been made. However, appellant did not provide documentation to demonstrate that such filing was timely filed. Further, there is no indication that such filing was made within thirty days of the mailing of the BOR's decision, i.e., by August 31, 2018.

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

DOYLE B SMITH, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-952

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DOYLE B SMITH
Represented by:
DOYLE SMITH
2845 CYPRESS WAY
CINCINNATI, OH 45212-2447

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, October 24, 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 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. 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. Although appellant responded that the notice of appeal was properly filed, he did not provide documentation demonstrating that notice of the appeal was filed with the BOR. We therefore are unable to conclude that appellant complied with the statutory filing requirements.

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

RON SCHMIDT, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-904 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RON SCHMIDT
OWNER
11170 OLD COLERAIN AVE.
CINCINNATI, OH 45252

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, October 24, 2018

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

The county appellees move to dismiss this matter beause appellant failed to file notice of the appeal 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 county appellees attached to their motion the affidavit of the clerk to the BOR, asserting that appellant did not file 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

PATRICK DONOGHUE, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-716

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PATRICK DONOGHUE
266 MELROSE AVE.
BOARDMAN, OH 44512

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

Entered Wednesday, October 24, 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

WILLIAM S. JOHNSON, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-74

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WILLIAM S. JOHNSON
Represented by:
WILLIAM JOHNSON
P.O. BOX 62
CLIFTON, OH 45316

For the Appellee(s) - CLARK COUNTY BOARD OF REVISION
Represented by:
WILLIAM D. HOFFMAN
ASSISTANT PROSECUTING ATTORNEY
CLARK COUNTY
50 EAST COLUMBIA STREET, SUITE 449
SPRINGFIELD, OH 45502

Entered Wednesday, October 24, 2018

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

[1] The appellant property owner, William S. Johnson, appeals a decision of the board of revision ("BOR"), which denied his complaint contesting the auditor's recoupment of a reduction in taxes pursuant to R.C. 323.152(A)(1), commonly known as the homestead exemption, and R.C. 323.152(B), commonly known as the owner-occupancy tax reduction, for the subject real property, parcel number 090-12-00030-000-029, for tax years 2010, 2013, 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, and the record of the hearing before this board.

[2] Johnson filed an application to receive a homestead exemption in 2011, for a property in Clark County, Ohio. The auditor granted the application, and Johnson received a reduction in taxes for that property until May 2016, when the auditor sent a letter notifying Johnson that he was removing the tax reduction for 2016. The auditor indicated that Johnson's Clark County property no longer qualified because Johnson had established his principal place of residence in Greene County, referencing a 2013 decision from this board finding that Johnson qualified for a homestead exemption for a property in Greene County for tax years 2010 and 2011. See *Johnson v. Greene Cty. Bd. of Revision* (May 31, 2013), BTA No. 2012-Q-5109, unreported. On March 2, 2017, the auditor then sent Johnson a letter indicating that his office had discovered that Johnson was not entitled to either the homestead exemption or owner-occupancy reduction for tax years 2010, 2013, 2014, and 2015 because he was also receiving a homestead exemption and owner-occupancy reduction in Greene County during those years. The auditor further indicated that Johnson was under a duty to advise the auditor that he did not qualify for the reductions but failed to do so.

[3] As a consequence, the auditor imposed a charge against the property in the amount by which the taxes were reduced plus interest. Johnson then filed a complaint with the BOR appealing the auditor's attempt to recoup the tax reduction. Following a hearing at which the auditor presented several witnesses showing Johnson's ties to Greene County during the years at issue, the BOR affirmed the auditor's decision, and Johnson appealed to this board. Johnson challenges the auditor's decision, arguing that the March 2017 letter was an improper and untimely denial of the prior years' reductions because the auditor did not follow the proper procedure and was barred by the statute of limitations from doing so at that time. Johnson stated that he moved from Greene County to Clarke County in mid-2012, and further argues that he was not prohibited from receiving homestead reductions in multiple counties simultaneously.

[4] Generally, R.C. 323.152 provides for reduction in the taxes levied on any homestead, defined as 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). To receive the full reduction under R.C. 323.152(A) (commonly, the homestead exemption), the owner of a "homestead" must meet certain additional requirements, and will also receive a partial exemption (commonly, the owner-occupancy reduction). In order to obtain these tax reductions, 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). Once filed, an application for reduction "constitutes a continuing application for a reduction in taxes for each year in which the dwelling is the applicant's homestead." R.C. 323.153(A)(1),(2).

[5] After an application is filed, "[t]he county auditor shall approve or deny an application for reduction under section 323.152 of the Revised Code and shall so notify the applicant not later than the first Monday in October. Notification shall be provided on a form prescribed by the tax commissioner. If the application is approved, upon issuance of the notification the county auditor shall record the amount of reduction in taxes in the appropriate column on the general tax list and duplicate of real and public utility property and on the manufactured home tax list. If the application is denied, the notification shall inform the applicant of the reasons for the denial." R.C. 323.154. 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 he or she no longer qualifies for the reduction. R.C. 323.153(A)(3). The applicant is also under an affirmative obligation to notify the auditor if circumstances change and the applicant is no longer qualified for the reduction in taxes. R.C. 323.153(C)(1). Thus, under this framework, once an application is approved, it functions as a continuing application for each subsequent year, which would have to be denied by the auditor using the process set forth in R.C. 323.154 or when an applicant notifies the auditor that he or she is no longer eligible for the tax reduction.

[6] The county appellees have invoked the applicant's affirmative duty to notify the relevant county auditor that he or she is not qualified for a reduction in taxes if his or her circumstances change pursuant to R.C. 323.153(C)(1). Additionally, knowingly making a false statement for purposes of obtaining a reduction in real property taxes or failing to notify the county auditor of changes that have the effect of maintain or securing a reduction in taxes is prohibited. R.C. 323.153(D) and (E). An individual who violates this prohibition may be charged with a misdemeanor of the fourth degree, and any person convicted of such a violation cannot receive any reduction in taxes due on the homestead "for a period of three years following the conviction." R.C. 323.99; R.C. 323.152(E). The statute provides a mechanism for the recoupment of the partial reduction for an owner-occupant if the auditor later discovers that the owner was not entitled to the reduction and failed to notify the auditor (R.C. 323.153(C)(3)), but there is no similar reference to recoupment of a full homestead exemption. Nor is there any reference to an auditor's ability to retroactively invalidate a prior year's application or continuing application. Consequently, regardless of the intent or actions of the owner, in order to "terminate" a continuing application for either the homestead exemption or the owner-occupancy reduction, an auditor must issue a proper denial pursuant to R.C. 323.154. A county may pursue criminal charges against an owner who violated the statute, which could result in additional prospective consequences for the following three years, but there is no indication that any criminal charges

were filed in the present appeal. Quite simply, even if an owner purposely withheld information that would disqualify him or her from receiving the tax reduction, the statute does not give the auditor the authority to retroactively invalidate an owner's application. As there is no indication that the auditor issued such a denial at any time for the tax years at issue prior to the March 2017 letter, we find that Johnson's 2011 application continued in effect through tax year 2015.

[7] Having rejected the county appellees' contention that Johnson did not have a valid continuing application for any of the relevant tax years, we must evaluate Johnson's argument that the county is barred from now asserting that he was not entitled to receive the reduction in taxes because the auditor knew or should have known that he was receiving the full and partial reductions in Greene County as early as 2012. While we agree that the auditor cannot recoup Johnson's earlier reductions, we reject Johnson's claim that some statute of limitations bars such recovery, as the statute contemplates the ability to recoup multiple years of an owner-occupancy tax reduction and does not limit the amount of time the auditor may look back. R.C. 323.153(C)(3) states: "If the county auditor or county treasurer discovers that the owner of property not entitled to the reduction in taxes under division (B) of section 323.152 of the Revised Code failed to notify the county auditor as required by division (C)(1) of this section, a charge shall be imposed against the property in the amount by which taxes were reduced under that division for *each tax year* the county auditor ascertains that the property was not entitled to the reduction and was owned by the current owner." (Emphasis added.) Instead, our determination that the auditor's recoupment was improper in this matter reflects a finding that the auditor's right to recoup a prior year's reduction did not apply to the present circumstances.

[8] Initially, we again highlight that there is no remedy in the statute to recoup the full reduction under R.C. 323.152(A), i.e., the homestead exemption. As such, any action taken by the auditor to do so was improper. Likewise, any interest associated with such a charge is not authorized by the statute. Therefore, we find that Johnson's appeal of the auditor's recoupment of the homestead exemption is well-taken and reverse this aspect of the auditor's decision for all tax years at issue.

[9] Next, we must consider the auditor's recoupment of the owner-occupancy reduction for the tax years at issue. In order to recoup the reduction in taxes, the auditor must show two things: (1) that the owner of a property was not entitled to the owner-occupancy reduction, and (2) that the owner failed to notify the auditor as required by R.C. 323.152(C)(1). Thus, we do not reach the issue of whether Johnson improperly received the reduction unless we find that he had a duty to notify the auditor of a change and failed to do so.

[10] R.C. 323.152(C)(1) provides: "If, in any year *after* an application has been filed under division (A)(1) or (2) of this section, the owner does not qualify for a reduction in taxes on the homestead or on the manufactured or mobile home set forth on such application, the owner shall notify the county auditor that the owner is not qualified for a reduction in taxes." (Emphasis added.) As we review the plain language of the statute, Johnson was under an ongoing duty to notify the county if he did not qualify for the reduction as set forth on his application for any year *after* it was filed (such as a change in residence). As such, the recoupment cannot apply to tax year 2010, as this was not a year *after* the application was filed. With respect to tax years 2013, 2014, and 2015, Johnson had a duty to notify the county if the facts asserted as the basis for his application changed.

[11] In addition to information regarding the type of application and type of home, the homestead application seeks information regarding the applicant's relationship to the property (e.g., individual named on the deed, purchaser under a land installment contract, life tenant under a life estate, etc.), and includes a line calling for the applicant to provide the address and county if the applicant or the applicant's spouse owns a second or vacation home. When Johnson signed his 2011 application, he declared under penalty of perjury that "(1) I occupied this property as my principal place of residence on Jan. 1 of the year(s) for which I am requesting the homestead exemption, (2) I currently occupy this property as my principal place of residence, (3) I did not acquire this homestead from a relative or in-law, other than my spouse, for the purpose of qualifying for the homestead exemption, and (4) I have examined this application, and to the best of my knowledge and belief, this application is true, correct and complete."

[12] Johnson does not dispute that he failed to disclose the Greene County property on his initial application. Regardless of whether that residence should have been disclosed and would have prevented him from validly receiving the reduction in Clark County, no one disputes that his ownership and occupancy of the Greene County residence preceded the 2011 application. Indeed, the county appellees offered evidence of Johnson's voting history, which shows that he had been a regular voter in Greene County from 1981 through 2015. At best, the only change that may have occurred after the 2011 application was that Johnson began to reside full-time at the Clark County property. Although the decision issued by this board in 2013 found that the Greene County property qualified as his "homestead" and principal residence, this was based on facts that were present at the time the 2011 Clark County application was filed. Accordingly, even if Johnson improperly received the owner-occupancy reduction based on a false or misleading application in 2011, the auditor has not shown any change to Johnson's ability to receive the reduction on the homestead as set forth on his initial application. Again, the fact that this board deemed that Johnson owned and occupied the Greene County property as his principal residence may have been grounds for the Clark County auditor to properly reject Johnson's continuing application or perhaps file a criminal charge, but those are not the actions before us in this matter, nor did the auditor take such actions.

[13] Upon careful review of the statute and the facts of this case, we must find that the auditor exceeded his authority by attempting to recoup the owner-occupancy reduction for any of the tax years because the auditor has not shown that Johnson failed to notify the auditor of a change as required by R.C. 323.153(C)(1).

[14] It is therefore the order of this board that the decision of the Clark County Board of Revision is hereby reversed, and that the Clark County Auditor improperly imposed a charge against the property for the reduction of taxes and accrued interest for tax years 2010, 2013, 2014, and 2015.

OHIO BOARD OF TAX APPEALS

DEAN DIETZ, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-891, 2018-949

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEAN DIETZ
OWNER
713 TIMBER CREEK RD
SAGAMORE HILLS, OH 44067

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

Entered Thursday, October 25, 2018

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 decided upon the motions and the parties' responses 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.").

The county appellees attached to their motion the affidavit of the Executive Assistant to the BOR, asserting that appellant's notice of appeal was not filed with the Summit County Board of Revision. The owner contends, in response, that he mailed a copy of his notice of appeal to the BOR and attached a copy of the certified mail receipt showing that it was delivered to and signed for by Todd Miller. The county appellees

attached to their reply, the affidavit of the Executive Assistant stating that Todd Miller is not employed by the Summit County Board of Revision.

As the Supreme Court noted in *Elkem Metals Co. v. Washington Cty. Bd. of Revision*, 81 Ohio St.3d 683, 687 (1998), " '[a] paper is filed when it is delivered to the proper official and by him received and filing.' " Id. at ¶10, quoting *United States v. Lombardo*, 241 U.S. 73, 76 (1916). See also *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872, ¶21. Based on the responses from the appellant and the county appellees, we find no evidence that notice of these appeals was received by the Summit County Board of Revision.

Upon consideration of the motion and the responses thereto, we must conclude that this board does not have jurisdiction to consider these appeals. Accordingly, the county appellees' motion is well taken. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

CHRIS MCCRAY, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-1266, 2018-1267

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CHRIS MCCRAY
Represented by:
CHRIS M. MCCRAY
9202 MARLEBURY END
POWELL, OH 43065-7852

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, October 29, 2018

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

These matters are now considered upon the county appellees' motions to dismiss the present appeals as premature. The county appellees assert that no decisions have been issued in regard to appellant's applications for remission of real property tax late payment penalties. Appellant did not respond to the motions. These matters are now decided upon the motions and appellant's notices of appeal.

On September 6, 2018, the appellant filed applications for remission with this board. Appellant did not include a copies of board of revision decisions, nor the application forms indicate any such decisions. The county appellees attached to each motion the affidavit of the clerk to the Franklin County Board of Revision, asserting that there is no record of decisions issued for the applications filed with this board.

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 motions, we find that the appellant has not appealed from board of revision decisions and thus these matters are premature. Accordingly, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

RONALD & LISA WILSON, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1084 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RONALD & LISA WILSON
Represented by:
LISA WILSON
OWNER
5882 TARTON CIR. S.
DUBLIN, OH 43017

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, October 29, 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 on the real property tax remission penalty remission application referenced by the appeal. Appellants did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On August 17, 2018, the appellants filed an application for remission with this board. In the space available for the county board of revision's decision, the application is blank. Appellants have presented no other evidence of a decision having been rendered on the application. The county appellees attached to their motion the affidavit of the clerk to the Franklin County Board of Revision that there is no record of a decision issued for the application.

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 complianc 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

REX R OVERSTREET, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-993

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - REX R OVERSTREET
Represented by:
REX OVERSTREET
P. O. BOX 14296
CINCINNATI, OH 45250

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, October 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. 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 within the statutory thirty-day period. Appellant's response admits a lack of knowledge of the requirement to file notice of the appeal with the BOR, and indicates that such filing has since been made. However, appellant did not

provide documentation to demonstrate that such filing was timely made, i.e. by August 13, 2018.

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

VORHERR DAVID L & DORA JEAN, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-955

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - VORHERR DAVID L & DORA JEAN
Represented by:
DAVID L. VORHERR
5968 CHEVIOT ROAD
CINCINNATI, OH 45247

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, October 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. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellants' 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 in this matter indicates that while appellants timely filed the appeal with this board, they filed notice of the appeal with the board of revision on August 24, 2018, i.e., forty-four days after the mailing of the BOR's decision. Despite the assertions made in appellants' response, R.C. 5717.01 requires that notice

of the appeal be filed within thirty days of the board of revision's decision with *both* this board *and* the board of revision. The record is clear that appellants failed to filed within thirty days with the board of revision.

Accordingly, the county appellees' motion is well taken and this matter is hereby dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

CALEB & BRITTANY BYRLEY, (et. al.), Appellant(s), vs. WARREN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-395 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CALEB & BRITTANY BYRLEY
OWNER
1744 SANDY COURT
SPRINGBORO, OH 45066

For the Appellee(s) - WARREN COUNTY BOARD OF REVISION
Represented by:
CHRISTOPHER A. WATKINS
ASSISTANT PROSECUTING ATTORNEY
WARREN COUNTY
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LEBANON, OH 45036

Entered Monday, November 5, 2018

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

The appellants appeal a decision of the board of revision ("BOR"), which denied their application for remission of penalties associated with late payment of property taxes for the second half of tax year 2015 and first and second halves of tax year 2016. 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.

The appellants applied for remission of the late payment penalties, alleging they failed to timely pay the property tax bills for second half of tax year 2015 and first and second halves of tax year 2016, "because the mortgage lender failed to notify the treasurer that the mortgage was satisfied and the [bills were] not sent to the taxpayer." See Statutory Transcript at Application. As a result, they argued that their failure to timely pay the property tax bills was not based upon willful neglect but was based on reasonable cause. In doing so, the appellants asserted that they believed that the property taxes were included in their (refinanced) mortgage payments. They also noted that they paid the delinquent property tax bills upon notice of the delinquencies. The treasurer reviewed the application and recommended granting the appellants' request for remission as to the second half of tax year 2015 but denying their request for remission as to the first and second halves of tax year 2016. The BOR considered the appellants' application and subsequently issued a written decision, which granted the appellants' request for remission as to the second half of tax year 2015 but denied their request for remission as to the first and second halves of tax year 2016. The appellants then appealed to this board.

By way of their notice of appeal, the appellants asserted that "[i]t was unknown taxes on the property were

not paid until we received a letter from the Prosecutor's office. After receiving this information, the tax in question was taken care of immediately." See Notice of Appeal. The county appellees submitted written argument that asserted that failure to receive the property tax bills did not relieve the appellants' from timely payment of such tax bills. None of the parties availed themselves of the opportunity to submit evidence at a hearing before this board.

Upon review, we find that the appellants have failed to demonstrate that the facts and circumstances of this matter qualify for remission of the late payment penalties for the first and second halves of 2016 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 remission of the late payment penalties would be appropriate under R.C. 5715.39(B)(5), which specifically provides that the late payment penalty shall be remitted if, "[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.) Although there is no evidence that a mortgage had been satisfied, we note that the BOR granted the request to remit the late payment penalty for the first payment due, i.e., for the property tax bill for the second half of tax year 2015, after satisfaction of the prior mortgage based upon the appellants' assertions. The statute does not provide for granting requests for late payments of subsequent tax periods. Therefore, under R.C. 5715.39(B)(5), we find that the appellants have failed to demonstrate that they are entitled to remission of the late payment penalties for the first and second halves of tax year 2016.

We next consider whether the remission of the late payment penalties would be appropriate 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, i.e., the payment for the second half of tax year 2015. 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 appellants do not satisfy R.C. 5715.39(C). The appellants argued that they did not receive the property tax bills for the first and second halves of tax year 2016 and, therefore, they should not be responsible for the penalties for late payment of such tax bills. However, it appears that they failed to update the tax mailing address with the treasurer's office, after refinancing their mortgage, and failed to practice due diligence in their property tax obligations. R.C. 323.13 provides that "[a] change in the mailing address of any tax bill shall be made in writing to the county treasurer. *** Failure 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)(1) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay."). Therefore, under R.C. 5715.39(C), we find that the appellants have failed to demonstrate that they are entitled to remission of the late payment penalties for the first and second halves of tax year 2016.

Based upon the foregoing, we affirm the BOR's decision to deny the appellants' request for remission of the late payment penalties associated with the real property tax bills for the first and second halves of tax year 2016.

OHIO BOARD OF TAX APPEALS

SAM MANN, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2014-3407

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SAM MANN
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5247 WILSON MILLS ROAD, #334
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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

Entered Monday, November 5, 2018

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

This matter is once again before the Board of Tax Appeals upon remand from the Supreme Court of Ohio, which issued a decision and judgment entry in *Mann v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 197, 2017-Ohio-8820, vacating this board's August 3, 2015 decision and order. This board had rejected the evidence and argument presented by the appellant property owner and retained the values initially assessed by the fiscal officer and maintained by the board of revision ("BOR"). The court vacated our decision in its entirety and directed this board to evaluate the evidence of a November 2009 sale, but did not discuss the propriety of this board's findings regarding the property owner's other evidence and arguments. On remand, we offered the parties an opportunity to submit additional written argument, but neither the property owner nor the county appellees responded.

The subject property is a single-family home identified on the fiscal officer's records as parcel number 683-11-056. The fiscal officer initially assessed the subject's total true value at $88,600 for tax year 2013, and the property owner filed a complaint seeking to decrease the value to $6,000. The property owner moved the BOR for an order calling various individuals from the county to appear at the BOR hearing, which was effectively denied through the BOR's refusal to act or rule on the motion. At the BOR hearing, the property owner argued that the true value of the subject property is best reflected by the purchase price from a March 2010 sale. The property owner also offered a newspaper article questioning the accuracy of the fiscal officer's assessed values for tax year 2012 and information regarding the budget for Cleveland

Heights, the municipality in which the subject is located. The property owner submitted a list of sales of properties purported relied upon by the fiscal officer during the countywide reappraisal to challenge their comparability to the subject, though he did not submit a competing list with properties professing to be more similar. Counsel indicated that he suspected those properties were not comparable to the subject, but stated that he did not look them up and that he had no first-hand knowledge of the condition of the subject property or the owner's purchase thereof. Neither the owner nor an individual with first-hand knowledge of the subject property appeared to testify. The BOR issued a decision maintaining the initially assessed valuation after finding no justification for a change in value. From this decision, the property owner appealed to this board.

This board convened a hearing, at which the property owner challenged the fiscal officer's valuation and the BOR's adoption thereof. The property owner argued that because the fiscal officer's value is not reliable and the BOR's procedure was inadequate to allow a proper challenge to this value, this board must rely on the owner's evidence to determine value. In his attempt to show the flaws with the fiscal officer's values and the BOR's process, the property owner offered testimony from the BOR administrator, administrator of the computer-assisted mass appraisal (CAMA) system used for the sexennial reappraisal, and executive administrator for the Ohio Department of Taxation's Division of Tax Equalization, which approves each county's detailed plan for its sexennial reappraisal process. Vladimir Victor, an individual that works with the property owner to rehabilitate properties such as the subject, testified regarding the subject property's condition and transfer history, as well as mortgages that were taken by the owner and were secured by the subject property as collateral. The county appellees did not present independent evidence of value, relying on cross-examination of the witnesses and argument that the initially assessed value should be retained because the property owner failed to meet his burden of proof.

Although this was addressed in our earlier decision and was not discussed on appeal, because the previous decision was vacated, we again consider the county appellees' motion for payment of witness fees and travel expenses for witnesses subpoenaed to attend this board's hearing by the property owner and live outside of Franklin County. In relevant part, Civil Rule 45(B) states: "If the witness being subpoenaed resides outside the county in which the court is located, the fees for one day's attendance and mileage shall be tendered without demand." We have previously held that such fees, if required, may be tendered to the subpoenaed individual subsequent to service of a subpoena. *WCI Steel, Inc. v. Wilkins* (Interim Order May 21, 2007), BTA No. 2005-V-1565, unreported. The record is devoid of any indication that the associated fees have been paid, therefore, we grant the county appellees' motion and order the property owner to remit payment to Shelley Davis and Joseph Toledo for their costs associated with travel to this board's hearing.

The court has explained that in appeals regarding the valuation of real property, the burden of proof standards are well settled:

> "'[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." (Footnote omitted.) *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶12.

Thus, it was incumbent upon the property owner in the present appeal not to merely challenge the fiscal

officer's valuation, but rather to provide competent and probative evidence that an alternative value reflects the true value of the subject property. See, also, *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶10 ("The county, therefore, needed to present evidence supporting the fiscal officer's valuation only if Schutz first carried his burden by presenting evidence of a different value for the property.").

As the court pointed out in its decision instructing this board to consider the November 2009 transfer of the subject property, "a price from a recent arm's-length sale is not conclusive evidence of a property's value, but it nevertheless 'constitute[s] the best evidence of the property's value.' *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, *** ¶ 18, 39; *see also Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664, *** ¶ 15." *Mann*, supra, at ¶12. Although the court did not comment on whether it was proper for this board to disregard a March 2010 transfer because we found it was neither recent nor arm's-length, it held that this board "defaulted in its duty to engage in a sufficient discussion of the evidence" by ignoring an earlier transfer from MDA Fund VIII, LLC to Gevaldig Enterprises, LLC in November 2009 for $6,000. Id. at ¶13.

Although there is no "bright line" test as to whether a sale is recent to or remote from a given tax lien date, when a sale occurs more than 24 months before a tax lien date and is reflected on the property record card maintained by the fiscal officer, it is presumed to be too remote when the fiscal officer determined a different value during the sexennial reappraisal. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. These circumstances apply to the present case, as the November 2009 sale took place more than 24 months prior to the January 1, 2013 tax lien date, and the fiscal officer determined a different value for tax year 2012, which was the year for which he performed the countywide reappraisal. Consequently, the property owner did not benefit from a presumption of recency and was required to present evidence to show that the market conditions and the character of the property remained unchanged between the 2009 sale and January 1, 2013. The property owner, however, did not offer this type of market information. This analysis similarly applies to the March 2010 sale, notwithstanding the fact the sale took place among related parties and the property owner did not provide any evidence to show that the sale was nevertheless reliable evidence of value. See, e.g., *Emerson v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 148, 2017-Ohio-865 (holding that a certified appraisal can be used to show that the purchase price in a sale between related parties reflected fair market value). Consequently, we find that neither the November 2009 sale nor the March 2010 sale is reliable evidence of value.

Finally, we acknowledge that a formal appraisal prepared by and attested to by a qualified expert is not required for the property owner to meet his burden of proof in the absence of a qualifying sale. See *Schutz*, supra, at ¶12. The evidence presented, however, must be legally sufficient to prove the property owner's proposed value or allow this board to perform an independent valuation of the property. Id. at ¶13. In addition to the challenges made to the fiscal officer's assessment of the property and the remote sales of the property, the property owner presented Victor's testimony regarding the poor condition of the property. In the absence of specific evidence of value, such testimony does not constitute sufficiently probative evidence to establish a reduced value for the subject property. "Without affirmative evidence of the property's value or specific analysis of how the property's condition affected its value, any evidence of defects in the property is inconsequential." Id. at ¶17. See also *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996).

Accordingly, based upon our review of the record, we find that the property owner has failed to provide sufficient evidence to establish his requested value. Furthermore, we find that the evidence provided is not sufficient to allow this board to independently conclude to a value other than that initially determined by the fiscal officer.

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

$88,600

TAXABLE VALUE

$31,010

OHIO BOARD OF TAX APPEALS

M&F LEXINGTON, LLC, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1311 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - M&F LEXINGTON, LLC
Represented by:
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GREENWOOD, IN 46143

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

HILLIARD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
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DUBLIN, OH 43017

Entered Wednesday, November 7, 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. 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 clerk to the BOR, asserting that appellant's notice of appeal was not filed with the Franklin County Board of Revision. Appellant's response included an affidavit from the paralegal of appellant's counsel asserting that she mailed the notice of appeal to the BOR; however, it did not provide documentation to demonstrate that such filing was mailed or that it was timely made, e.g., a certified mailing receipt. The burden is on appellants to prove not only that notice of the appeal was *sent* to the BOR, but also that it was *received*. *Proterra, Inc. v. Cuyahoga Cty. Bd. of Revision* (July 11, 2017), BTA No. 2017-401, unreported, citing *Miller v. Plain Dealer Publishing Co.*, 8th Dist. Cuyahoga No. 101335, 2015-Ohio-1016, ¶13. See also *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, 96 Ohio St.3d 170, 2002-Ohio-4032, ¶10. They have failed to do so.

To the extent appellants argue that the BOR was notified of the appeal through this board's docketing letter, the Supreme Court has rejected such argument. *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.

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

RICHARD MARTIN, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1022 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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

Entered Wednesday, November 7, 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 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

MARK OBRENOVICH, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-650

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARK OBRENOVICH
P.O. BOX 16903
CLEVELAND , OH 44116-0903

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

Entered Wednesday, November 7, 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 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

CINCINNATI CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2018-1396
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) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
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HAMILTON COUNTY
230 EAST NINTH STREET, SUITE 4000
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OTR HOUSING ASSOCIATES, LTD
Represented by:
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OTR HOUSING ASSOCIATES, LTD
Represented by:
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Entered Thursday, November 8, 2018

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

The appellee property owner, OTR Housing Associates, Ltd. ("OTR"), moves this board to dismiss this matter for lack of jurisdiction. OTR argues that it perfected an appeal from the Hamilton County Board of

Revision's ("BOR") decisions on the value of parcel numbers 080-0002-0094-00, et al. for tax year 2017 with the Hamilton County Court of Common Pleas twenty-one days before the Cincinnati City School District Board of Education ("BOE") filed the present appeal, from the same BOR decisions, with this board. As such, OTR argues, the common pleas court has exclusive jurisdiction over the matter. The BOE does not dispute the underlying facts in its response; instead, it argues that this board is not required to dismiss this matter.

Two avenues are provided in statute for appealing from a decision of a county board of revision. R.C. 5717.05 provides that a property owner may appeal such decision to the county court of common pleas, and R.C. 5717.01 provides that the property owner or the board of education may appeal to this board. In the event appeals to both tribunals are filed, R.C. 5717.05 provides:

> "When 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." (Emphasis added.)

Thus, this board's lack of authority over this matter is clear. An appeal was clearly filed with the court of common pleas first; therefore, it has *exclusive* jurisdiction of the appeal and this board lacks jurisdiction over the BOE's later-filed appeal. *Oak Hills Local School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 134 Ohio St.3d 539, 2012-Ohio-5750, ¶21 ("We do not have authority to ignore the statutory limitation on the BTA's jurisdiction.").

Notwithstanding the language of R.C. 5717.01, the BOE argues that this board need not automatically dismiss its appeal here, pointing to its inability to file a cross-appeal in the court of common pleas. To the extent the BOE fears it may lose its right to review of the board of revision's decisions, such issue was addressed by the Supreme Court in *Tower City Properties v. Cuyahoga Cty. Bd. of Revision*, 49 Ohio St.3d 67 (1990).

Based upon the foregoing, we find OTR's motion well taken and agree that this board lacks jurisdiction over this matter. It is therefore the order of this board that this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

THOMAS AND ROBERTA ANDERSON, (et. al.),	CASE NO(S). 2018-951
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 ROBERTA ANDERSON
OWNERS
9495 GLEN DRIVE
BRECKSVILLE, OH 44141

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 Thursday, November 8, 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. Appellants 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 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.").

A review of the statutory transcript certified to this board indicates that the appellants did not file a copy of the notice of appeal with the BOR, but, instead sent the notice of the appeal to the Cuyahoga County Court

of Common Pleas. As the Supreme Court noted in *Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision*, 96 Ohio St.3d 170, 2002-Ohio-4032, ¶10, quoting *United States v. Lombardo*, 241 U.S. 73, 76 (1916), "[a] paper is filed when it is delivered to the proper official and by him received and filed." See, also, *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872, ¶21. It is the appellants' responsbility to address the notice of appeal accurately, to ensure timely filing with the BOR. The record in this matter indicates that they failed to do so.

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

JAN A. BURKHARD, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2017-784

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JAN A. BURKHARD
OWNER
8517 RD. N.
NAPOLEON, OH 43545

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

Entered Thursday, November 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 real property, parcel number 23-350008-0100, 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 single-family home and the appellant property owner's personal residence. The auditor initially assessed the subject's total true value at $220,660, and the property owner filed a complaint with the BOR seeking a reduction in value to $169,589. At the BOR hearing, the property owner appeared in support of his requested reduction, asserting that the auditor's initial value was based on inaccurate square footage and that he calculated a new value based on the corrected square footage. The auditor confirmed that an appraiser with the company contracted to do the countywide reappraisal visited the property and provided a new sketch after measuring the subject property. These new measurements were then input into the computer-assisted mass appraisal (CAMA) system, which resulted in a reduced value. The BOR issued a decision reducing the initially assessed valuation to $203,070, which is the calculated value resulting from the corrected measurements. From this decision, the property owner filed the present appeal. At the hearing before this board, the property owner appeared and again argued that the value should be recalculated based on the percentage decrease in the subject property's assessed square footage. The county appellees provided a copy of the property record card that shows the basis for the BOR's value, asserting that the CAMA system takes into account a number of variables, and the valuation is not a direct price per square foot as applied to the subject's square footage. The property owner also argued that the error to the subject's measurements is an example of a larger, perhaps statewide, problem with the CAMA

system's calculation of properties with a layout similar to the subject property. Because the BOR considered the reduced size of the subject property when it reduced the value of the subject property, the county appellees assert that the BOR's decision should be affirmed.

As the party challenging the BOR's decision, the appellant property owner has the burden to prove his right to a reduction from the BOR's value. *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002. To satisfy this burden, the property owner must produce competent and probative evidence to establish the correct value of the subject property. Id. at ¶9. Thus, it was incumbent upon the property owner in the present appeal not to merely challenge the valuations of the auditor and BOR, but rather to provide competent and probative evidence that an alternative value reflects the true value of the subject property. *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818.

The property owner attempts to meet his burden through a computation reducing the auditor's initial value to account for a 40.92% reduction in the size of the second story. The number utilized by the property owner is based on the "dwelling computation" portion of the property record card. A comparison of the original and updated property record cards reveals that the site visit resulted in changes to the sketch of the whole subject property and not simply the square footage of the second story. For instance, the size and value of the dwelling decreased, but the value of the exterior fixtures increased based on the new measurements. Consequently, we find that to rely solely on the change to the size of the second story would disregard a portion of the information gleaned by the appraiser during the visit to and measurement of the subject, which would result in an undervaluation of the property. Correspondingly, we find that the record shows that BOR's value properly considers accurate size and dwelling characteristics and best reflects the value 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, 2016, were as follows:

TRUE VALUE

$203,070

TAXABLE VALUE

$71,070

OHIO BOARD OF TAX APPEALS

PATTON JAMI ITIAVKASE, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-410 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PATTON JAMI ITIAVKASE
Represented by:
BEM ITIAVKASE
5960 SUNRIDGE DR.
CINCINNATI, OH 45224

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, November 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 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"). In response, the appellant argues that she reasonably relied on information she received from the BOR about the process to appeal its decision and that she was unaware that she had to file a copy of the notice of appeal with the BOR. She further noted her attempt to rectify the problem after becoming aware of the deficiency.

R.C. 5717.01 provides, in relevant part, that an appeal may 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. 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.").

To the extent that the appellant claims that she received faulty direction concerning the appeal process, we

note that estoppel does not apply against the state, even where an employee makes a misleading or confusing statement. See, e.g., *Amer. Handling Equip. Co. v. Kosydar*, 42 Ohio St.2d 150 (1975); *Recording Devices, Inc. v. Bowers*, 174 Ohio St. 518 (1963). Moreover, it appears that the appellant filed the notice of appeal without the assistance of counsel, which does not excuse the failure to file the notice of appeal with the BOR. An election by an individual to proceed pro se does not result in the application of a lesser standard than that applied to parties represented by counsel and they must, therefore, be prepared to accept the results of their mistakes and errors. See, e.g., *In re Application of Black Fork Wind Energy, L.L.C.*, 138 Ohio St.3d 43, 2013-Ohio-5478, ¶22. See, also, *Phelps v. Ohio Atty. Gen.*, 10th Dist. Franklin No. 06AP-751, 2007-Ohio-14; *Midkiff v. Kuzniak*, 7th Dist. Mahoning No. 08-MA-74, 2008-Ohio-6356.

Furthermore, the appellant cannot cure the jurisdictional defect by, now, filing a copy of the notice of appeal with the BOR. The record indicates that the BOR mailed its decision on April 20, 2018; therefore, the deadline for filing a copy of the notice of appeal with the BOR was on or before May 21, 2018. See R.C. 5717.01.

Upon review of the record, the motion, and the appellant's response, 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

PATRICK VERKLEY, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-1161, 2018-1747

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PATRICK VERKLEY
3710 MAPLE PARK AVENUE
CINCINNATI, OH 45209

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, November 14, 2018

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. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). These matters are decided upon the motion, the statutory transcript certified by the county auditor, 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 county appellees attached to their motion the affidavit of the clerk to the BOR, asserting that appellant's notices of appeal were 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 these matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

JOHN W. FELDHAUS, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-1213

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHN W. FELDHAUS
Represented by:
JOHN W. FELDHAUS, OWNER
3830 FOREST AVE.
CINCINNATI, 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
CINCINNATI, OH 45202

Entered Wednesday, November 14, 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 and with this board. 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 auditor, 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, including the affidavit of the clerk to the BOR, shows that appellant's notice of the appeal was

filed with this board and with the Hamilton County Board of Revision sixty days after the mailing of the BOR's decision. The appeal is therefore untimely. 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.

OHIO BOARD OF TAX APPEALS

SEDAMSVILLE HERITAGE, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1136 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SEDAMSVILLE HERITAGE
Represented by:
JOHN KLOSTERMAN
OWNER
5615 SIDNEY RD
CINCINNATI , OH 45238

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, November 14, 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 decided upon the motion, the statutory transcript certified by the county auditor, 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 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

CHRIS PERKINS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-2267 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CHRIS PERKINS
OWNER
17410 ST. CLAIR AVE.
CLEVELAND, OH 44110

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 SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Wednesday, November 14, 2018

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

The appellant property owner appeals from a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of five parcels, i.e., parcel numbers 116-26-002, 116-26-001, 116-26-003, 116-26-004, and 116-26-005, for tax year 2016. 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."), at which only appellant appeared.

The subject parcels are improved with retail buildings (parcel numbers 116-26-002, 116-26-003, and 116-26-005), a commercial warehouse building (parcel number 116-26-001), and a vacant lot used for parking (parcel number 116-26-004). The fiscal officer initially valued the subject parcels at a total of $155,800 for tax year 2016. The Board of Education for the Cleveland Municipal School District ("BOE") filed a complaint against valuation seeking a total increase in the parcels' values to $180,000, based on a reported sale of the parcels for that amount in May 2016. The BOE presented CoStar and CoreLogic

reports, as well as the recorded general warranty deed as evidence of the sale. Only counsel for the BOE appeared at the hearing. After considering the evidence presented, the BOR determined that the sale was the best indication of the parcels' values as of tax lien date.

On appeal to this board, appellant does not dispute that he purchased the parcels in May 2016 for $180,000. He explained at this board's hearing that he has operated a restaurant business on parcel number 116-26-002 for the past 13 years, and purchased that property out of concern for losing the location of his business. H.R. at 6-7. He testified that the prior owner was elderly and looking to liquidate assets, and offered the parcels to appellant and ultimately financed the sales himself. Id. at 7-8. Appellant testified that the total sale price includes the cost of the seller financing. Id. at 9. As to the properties themselves, appellant indicated that there are significant condition issues, such that most of the units, with two exceptions, are not and cannot be rented until repairs are completed. He presented an appraisal of all five parcels, authored by appraiser Leroy Richards, CRA, for $117,000 as of July 16, 2018. H.R., Ex. A. He also presented comparable sales of other properties he obtained from the county fiscal officer's website. H.R., Ex. B. Based on the evidence and testimony he presented, appellant requested that the increase in value be reversed.

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 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. However, the presumption that a recent arm's-length sale is the best evidence of value can be rebutted. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32.

Appellant argues that the May 2016 sale of the subject parcels is not reflective of their true values due to his prior relationship to the seller and his fear of losing his restaurant business if the property where it is located was sold. At the outset, we do not find the circumstances faced by appellant to constitute the "compelling business circumstances" that would rebut the utility of the sale. The Supreme Court has explained that an arm's-length sale is one that is voluntary, generally takes place in an open market, and occurs between parties acting in their own self interests. *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). The court has recognized that a party to a sale transaction may be under such duress to consummate the sale that it has no real choice but to purchase the property. In *Lakeside Ave. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 540 (1996), the court found that a sale was not arm's-length where the buyer was presented with "[t]he choice between [its] survival on the one hand and swift and sure corporate death (bankruptcy) on the other hand ***." Id. at 548-549. However, in *Lakeside*, the court noted that the property was offered for sale for a non-negotiable price. Here, appellant testified that he negotiated the purchase price down from $200,000 to $180,000. H.R. at 9. Further, there is no indication whether appellant's restaurant business would have suffered bankruptcy if the property had sold. There was no indication that appellant could not continue to lease the property following a transfer of ownership, nor is there any evidence that appellant could not have moved the restaurant to another location. *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St.3d 250, 2005-Ohio-6434.

We further find that the prior relationship between appellant and the seller does not establish that the sale was not at arm's-length. It appears that appellant's only relationship was based on his tenancy of parcel number 116-26-002. The Supreme Court has previously held that sale between landlords and tenants are arm's-length despite such relationship. See, e.g., *N. Royalton City School Dist. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092. Likewise, although it is not clear whether the subject parcels were advertised for sale on the open market, even if they were not, such fact does not rebut the presumption accorded the sale. Id. at ¶29.

Appellant testified that a portion of the $180,000 sale price is attributable to financing from the seller, though he did not specify an amount. In *Columbus Bd. of Edn. v. Fountain Square Assoc., Ltd.*, 9 Ohio St.3d 218 (1984), the Supreme Court indicated that evidence of favorable financing, alone, is insufficient to show that a sale price does not reflect a property's value. Without more specific information about the costs of financing included in the sale price, we are unable to conclude that the sale price should be reduced by such costs. See *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 325, 2017-Ohio-8817; *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision*, 119 Ohio St.3d 563, 2008-Ohio-5203, ¶30. The owner bears the burden to prove an allocation of the sale price to non-realty. *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921.

Based upon the foregoing, we find the circumstances of appellant's purchase of the properties in May 2016 do not rebut the presumption that it is the best evidence of the subject properties' values as of tax lien date.

We find no support for a reduction from the sale price in the appraisal report submitted on appeal. The appraisal, by Leroy Richards, CRA, opines a value of $117,000 for all five parcels as of July 16, 2018. H.R., Ex. A. At the outset, we note the appraisal's as of date – thirty-one months after tax lien date – makes it of little probative value in determining value as of January 1, 2016. While the factual information in an appraisal report may be relevant to tax lien date, see, e.g., *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-919, ¶18, the limited data in the report is not relevant in this matter. Specifically, the sales comparison approach uses three comparable sales that occurred in 2009, 2011, and 2012; all three are too far removed from tax lien date to be useful in our determination of value. Further, although Mr. Richards developed an income approach to value, no market data is presented in the report such that this board could evaluate whether his estimates for market rent, vacancy, and operating expenses, are appropriate. See *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996). Mr. Richards did not separately value the vacant parking lot, i.e., parcel number 116-26-004, and applied the same value to all the square footage of the buildings, despite parcel number 116-26-001 being a commercial warehouse and the remaining buildings being retail. Finally, we do not find Mr. Richards' cost approach to be probative, as the buildings on the subject parcels were built between 1920 and 1949. See The Appraisal of Real Estate (14th Ed.2013) 567-568.

Based upon the foregoing, we find appellant has failed to meet his burden to rebut the presumption that the May 2016 sale of the subject parcels is the best evidence of their values as of tax lien date. It is therefore the order of this board that the true and taxable values of the subject parcels are, as previously allocated by the BOR, as follows:

PARCEL NUMBER 116-26-001

TRUE VALUE: $39,600

TAXABLE VALUE: $13,860

PARCEL NUMBER 116-26-002

TRUE VALUE: $30,600

TAXABLE VALUE: $10,710

PARCEL NUMBER 116-26-003

TRUE VALUE: $18,000

TAXABLE VALUE: $6,300

PARCEL NUMBER 116-26-004

TRUE VALUE: $9,000

TAXABLE VALUE: $3,150

PARCEL NUMBER 116-26-005

TRUE VALUE: $82,800

TAXABLE VALUE: $28,980

OHIO BOARD OF TAX APPEALS

OEH ESTATE LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2017-1716 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - OEH ESTATE 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 Thursday, November 15, 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, parcel 722-26-064, 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 written argument submitted by the parties.

The fiscal officer initially assessed the subject property at a true value of $160,200. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $61,000 purportedly based upon the price at which it sold in August 2012. Although the BOR convened a hearing on the matter, no one appeared on behalf of the property owner. However, it appears that the property owner may have submitted a previous decision from this board, which valued the subject property at $61,000 for tax year 2014, based upon the August 2012 sale. *OEH Estate, LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 10, 2016), BTA No. 2016-166, unreported. It also appears that the BOR compiled a list of comparable sales, located in the same neighborhood as the subject property, which occurred between 2015 and 2017; however, it is unclear whether the BOR considered the comparable sales to reach its decision. The BOR subsequently issued a decision, which retained the subject property's initially assessed value and this appeal ensued.

Neither the property owner nor the county appellees availed themselves of the opportunity to submit

additional evidence at a hearing before this board. Instead, the property owner attached several documents to its notice of appeal. 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. The county appellees submitted written argument to argue that the $61,000 sale of August 2012 was too remote to the tax lien date of January 1, 2016 and should be disregarded.

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. This board must review 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*, 153 Ohio St.3d 23, 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.

We begin our analysis with the property owner's $61,000 purchase of the subject property in August 2012, which is the basis for the property owner's requested valuation. 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 the sexennial reappraisal. Furthermore, in *Cleveland Mun. Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Jan. 9, 2018), BTA No. 2017-336, unreported, at 3, we extended the holding in *Akron* to sales occurring more than 24 months before a triennial update: "[W]e 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." Here, the subject sale occurred nearly 28 months before January 1, 2015, the tax lien date for the first year of the new triennial period and nearly 40 months before the tax lien date at issue in this matter, January 1, 2016. Because the property owner failed to come forward with evidence to demonstrate that market conditions were unchanged during that time, we find that the subject sale is too remote from the tax lien date to be indicative of the subject property's value.

We also do not find the comparable sales data, compiled by the BOR, to be helpful in our quest to independently determine the subject property's value. There is no indication that the comparable sales were adjusted to make them comparable to the subject property's features and to the tax lien date of January 1, 2016. As a result, 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 (13th Ed.2008). For example, the unadjusted comparable sales vary in lot size, number of bedrooms, number of bathrooms, age, sale date and possibly condition and terms of sale. 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. There has to be some parity, or some method of establishing parity, between the properties before sales prices have any meaning.").

To the extent that the property owner asserts that the subject property's value should be reduced based upon this board's prior decision for tax year 2014, 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 v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26 (1997).

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 has failed to satisfy its evidentiary burden. 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:

TRUE VALUE

$160,200

TAXABLE VALUE

$56,070

OHIO BOARD OF TAX APPEALS

RC OHIO FUND, LLC, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-969

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RC OHIO FUND, LLC
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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, November 20, 2018

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

This matter is considered upon the county appellees' motion to dismiss and remand with instructions to dismiss the underlying complaint. The county asserts that the complaint was filed by a non-attorney and such filing constituted the unauthorized practice of law. Appellant has not responded to the motion. We decide the matter upon the notice of appeal, the statutory transcript certified by the fiscal officer, and the motion.

The underlying complaint against the valuation of parcel number 544-04-084 for tax year 2017 was filed by David Koenig as agent for property owner RC Ohio Fund, LLC. Mr. Koenig's relationship to the property is unclear. No one appeared on behalf of the owner at the board of revision's ("BOR") hearing on the complaint, and the BOR ultimately issued a decision finding no change in value was warranted. Mr. Koenig appealed the decision to this board on behalf of the owner; again, his relationship to the property was not specified.

The county argues that Mr. Koenig was not authorized to file the underlying complaint on behalf of the owner. R.C. 5715.19(A) provides the following individuals may file a complaint against the valuation of real property:

> "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 4701.01 of the Revised Code, a general or residential real estate appraiser licensed under Chapter 4735. of the Revised Code, who is retained by such 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; ***."

A non-attorney individual who is not one of those enumerated in the statute as authorized to file on behalf of another engages in the unauthorized practice of law by filing a complaint on behalf of another. *Sharon Village Ltd. v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479, 483 (1997). Such complaint also fails to invoke the jurisdiction of the board of revision. Id. Although Mr. Koenig's relationship to the property is not clear, it does not appear that he is an attorney nor that his relationship to the property owner is any of those identified by R.C. 5715.19(A). We therefore find he is not authorized to file on behalf of the owner. See *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4244. See also *NASCAR Holdings, Inc. v. Testa*, 152 Ohio St.3d 405, 2017-Ohio-9118.

Based upon the foregoing, we find that the underlying complaint failed to properly invoke the jurisdiction of the BOR. The county appellees' motion is therefore well taken. It is the order of this board that this matter be remanded to the Cuyahoga County Board of Revision with instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

CLEVELAND INVESTMENTS GROUP B, LLC, (et. al.),	CASE NO(S). 2018-968
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CLEVELAND INVESTMENTS GROUP B, LLC
Represented by:
DAVID KOENIG
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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 Tuesday, November 20, 2018

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

The county appellees move to dismiss this matter, asserting that the underlying complaint was not filed by a proper agent and therefore failed to properly invoke the Cuyahoga County Board of Revision's ("BOR") jurisdiction. We interpret the county's request as a motion to remand this matter with instructions to dismiss the underlying complaint. Appellant has not responded to the motion. We therefore decide the matter upon the notice of appeal, the statutory transcript certified by the fiscal officer, and the motion.

The underlying complaint against the valuation of parcel number 542-36-026 for tax year 2017 was filed by David Koenig, as agent for owner Cleveland Investments Group B, LLC. No one appeared on the owner/complainant's behalf at the BOR hearing, and the BOR issued a decision finding that no change in value was warranted. Mr. Koenig then filed an appeal with this board on behalf of the owner.

R.C. 5715.19(A) provides the following individuals may file a complaint against the valuation of real property:

> "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 4701.01 of the Revised Code, a general or residential real estate appraiser licensed under Chapter 4735. of the Revised Code, who is retained by such 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; ***."

A non-attorney individual who is not one of those enumerated in the statute as authorized to file on behalf of another engages in the unauthorized practice of law by filing a complaint on behalf of another. *Sharon Village Ltd. v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479, 483 (1997). Such complaint also fails to invoke the jurisdiction of the board of revision. Id. Although Mr. Koenig's relationship to the property is not clear, it does not appear that he is an attorney nor that his relationship to the property is any of those identified by R.C. 5715.19(A). The county appellees, in their motion, indicate that Mr. Koenig is the property manager. To the extent such assertion is correct, we find such relationship does not allow Mr. Koenig to properly file a complaint on behalf of the property owner. *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4244, ¶17 ("Property managers, however, are not among the nonlawyers who are explicitly authorized to file complaints under R.C. 5715.19(A).").

In the absence of any evidence indicating that Mr. Koenig is authorized to file a complaint on behalf of the owner, we find the underlying complaint failed to properly invoke the BOR's jurisdiction. 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

BRENDAN FRANCIS MOORE, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-573, 2018-574

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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

Entered Wednesday, November 21, 2018

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

Appellant appeals two decisions of the board of revision ("BOR"), which denied appellant's applications to remit the late-payment penalties for real property tax for the first half and second halves of tax year 2016. The county appellees moved to dismiss the appeals, asserting that this board lacks the jurisdiction to consider these matters because appellant failed to file copies of the notices of appeal with the BOR. During this board's small claims telephone hearing, appellant's brother acknowledged that they did not send anything to the BOR when they filed because they did not realize that they were required to do so. Appellant's brother further indicated that they assumed that the county appellees had been made aware because they received a copy of their attorney's entry of appearance.

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."). Furthermore, 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* (Mar. 30, 2001), BTA No. 2000-G-970, unreported.

In the present appeals, it is undisputed that appellant failed to file notices of appeal with the BOR. Upon consideration of the existing record, these matters are determined to be jurisdictionally deficient and, therefore, are dismissed.

OHIO BOARD OF TAX APPEALS

MARTHA SHELBY & HAROLD ADDY JR & OTHERS, (et. al.),	CASE NO(S). 2017-1938
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
BELMONT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - MARTHA SHELBY & HAROLD ADDY JR & OTHERS
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For the Appellee(s) - BELMONT COUNTY BOARD OF REVISION
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Entered Monday, November 26, 2018

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

[1] The appellant property owners appeal a decision of the board of revision ("BOR") related to complaints against the value of the subject real property, several parcels of subsurface rights (e.g., mineral, coal, oil and gas), 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, the hearing before this board, the county appellees' jurisdictional motion, and the property owners' response.

[2] The county appellees have filed a motion to dismiss the instant appeal with this board, which we now consider as a motion to remand with instructions to dismiss the underlying complaints based on the arguments contained therein. The county appellees argue that the property owners failed to include an opinion of value on line 8 of the complaints, and such omission renders the complaints invalid. The property owners responded to the motion, asserting that they are not limited to a dollar valuation and that a dollar valuation is not their point of contention for each parcel. The property owners argue that in addition to other parcel-specific issues that are unrelated to value, each of the parcels shares two common issues: (1) the creation of new mineral parcels was in violation of the county's published policy, and (2) the owners were not notified that the new parcels were being created.

[3] As an administrative agency, a board of revision may only perform those functions expressly authorized by statute, and the property owners must show that the BOR was authorized to consider their claims. 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"). Pursuant to R.C. 5715.19(D), "[e]ach complaint shall state the amount of overvaluation, undervaluation, discriminatory valuation, illegal valuation, or incorrect classification or determination upon which the complaint is based." The court has held that compliance with this mandate "plainly runs to the core of procedural efficiency," and that "failure to specify an amount in the complaint means that the complaint failed to invoke the BOR's jurisdiction." *Shinkle v. Ashtabula Cty. Bd. of Revision* , 135 Ohio St.3d 227, 2013-Ohio-397, ¶¶18, 22. Additionally, a county board of revision is not required to scour a complaint and any included attachments to discern a complainant's position regarding elements that are of a core jurisdictional nature. See *Columbia Toledo Corp. v. Lucas Cty. Bd. of Revision*, 76 Ohio St.3d 361, 362-363 (1996).

[4] The property owners essentially argue that the requirement to state an opinion of value does not apply to them because they do not challenge the value of the subject parcels, but rather the propriety of the auditor's actions in creating them. Such a challenge, however, is not authorized by the statute as a proper matter to be considered by a board of revision. R.C. 5715.19(A)(1) sets forth those issues that may be challenged by a properly filed complaint:

> "(a) Any classification made under section 5713.041 of the Revised Code;
>
> "(b) Any determination made under section 5713.32 or 5713.35 of the Revised Code;
>
> "(c) Any recoupment charge levied under section 5713.35 of the Revised Code;
>
> "(d) The determination of the total valuation or assessment of any parcel that appears on the tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;
>
> "(e) The determination of the total valuation of any parcel that appears on the agricultural land tax list, except parcels assessed by the tax commissioner pursuant to section 5727.06 of the Revised Code;
>
> "(f) Any determination made under division (A) of section 319.302 of the Revised Code."

[5] R.C. 5715.19(A)(1)(b),(c),(e), and (f) are clearly inapplicable to the present appeal. Thus, we are left with R.C. 5715.19(A)(1)(a) and R.C. 5715.19(A)(1)(d). R.C. 5715.19(A)(1)(a) permits a challenge to the auditor's classification based on a parcel's "principal, current use" for purposes of tax reduction. R.C.5713.041. "For purposes of this section, lands and improvements thereon used for residential or agricultural purposes shall be classified as residential/agricultural real property, and all other lands and improvements thereon and minerals or rights to minerals shall be classified as nonresidential/agricultural real property." Id. The property owners have not alleged that the parcels have been misclassified as mineral rights, rather than residential or agricultural, for instance. Instead, they challenge their existence, boundaries, and/or their mineral composition. R.C. 5715.19(A)(1)(a) is, therefore, inapplicable.

[6] The final issue that may be challenged through the filing of a complaint is the auditor's value determination. R.C. 5715.19(A)(1)(d). As noted, a complaint filed under this subsection requires an opinion of value to be listed on line 8 of the complaint. No opinion of value was listed on line 8 of any of the underlying complaints. Furthermore, by the property owners' own admission, the crux of their arguments only indirectly relates to the true value of the subject property.

[7] Accordingly, it is the order of this board that the matter is remanded to the BOR with instructions to dismiss the underlying complaints.

OHIO BOARD OF TAX APPEALS

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

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2017-1226

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TALIKI INVESTMENTS, LLC
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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BEDFORD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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WESTLAKE, OH 44145

Entered Monday, November 26, 2018

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

Property owner Taliki Investments, LLC appeals from a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel number 791-22-058 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 parties' written arguments.

The fiscal officer initially assessed the subject property at $79,200 for tax year 2016. Taliki Investments filed a complaint seeking a decrease in value to $26,000, based on a sale for that amount in April 2016. The Bedford City Schools Board of Education ("BOE") filed a countercomplaint seeking to maintain the fiscal officer's initial valuation. At the BOR hearing, counsel for Taliki presented evidence of three sales: a sheriff's foreclosure sale to U.S. Bank National Association in January 2016 for $26,667 (apparently based on a sheriff's appraisal of the property for $40,000), a sale from U.S. Bank to Castle 2016, LLC in April

2016 for $26,000, and a sale from Castle 2016, LLC to Taliki Investments, LLC in June 2016 for $40,100. Members of the BOR, and counsel for the BOE, questioned the absence of documentary evidence of the April 2016 transaction; counsel for the owner responded that because Taliki was not a party to that transaction, those documents were difficult to retrieve. The BOE also argued that all three sales were distressed because the first was a foreclosure sale and the subsequent two occurred so close in time to the initial foreclosure sale.

Upon considering the evidence presented, the BOR found that no change in value was warranted, indicating in the comment on its oral hearing worksheet and journal entry: "Property owner relied on a sheriff sale and sheriff appraisal to support value. Sheriff's appraiser was not available at hearing to authenticate value. The appraisal was not tax lien dated, or completed for this intended use or user. Sheriff sales are not considered arm's length. No other information was submitted for Board to determine if sale price was indicative of value or to support the requested value. No change." S.T., Ex. E.

On appeal to this board, Taliki argues that the property should be valued in accordance with the first non-foreclosure sale, i.e., the sale to Castle 2016, LLC in April 2016, or, in the alternative, in accordance with the subsequent sale, i.e., the sale to Taliki in June 2016. The BOE asks this board to affirm the BOR's decision to make no change in value, given the concerns voiced by the BOR about the sales and the lack of testimony from anyone involved in the sales, and again argues that all three sales are distressed and do not reflect fair market value.

At the outset, we reject the BOE's argument that this board should accord any deference to the BOR's decision. The Supreme Court has made clear that this board has a duty to independently determine the subject property's value, even when no new evidence is submitted on appeal. *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985); *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996). In a recent decision, the court reitereated 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." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7. Compare *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237. We therefore proceed to evaluate the evidence presented to the BOR.

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, "when the underlying transaction is an auction or forced sale under R.C. 5713.04, a rebuttable presumption exists that the sale price is not 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, ***, at ¶ 40." (Parallel citation omitted.) *N. Canton City School Dist. Bd. of Edn. v. Stark Cty. Bd. of Revision*, 152 Ohio St.3d 292, 2018-Ohio-1, at ¶11. The presumption may be rebutted with evidence that the sale was nevertheless arm's-length, i.e., that it was voluntary, took place on the open market, and that the parties acted in their own self-interest. Id. at ¶17, citing *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). Where a property is the subject of more than one arm's-length sale close in time to tax lien date, the arm's-length sale closest to tax lien date establishes the property's true value. *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, paragraph one of the syllabus.

The parties appear to agree that the January 2016 foreclosure sale, by which U.S. Bank National Association acquired title, was a forced sale and not a good indication of value.

Taliki argues for valuation of the subject property in accordance with the second sale, from U.S. Bank National Association to Castle 2016, LLC in April 2016 for $26,000. As evidence of the sale, Taliki presented a printout from the fiscal officer's website detailing the basic facts of the transaction. In *Utt v.*

Lorain Cty. Bd. of Revision, 150 Ohio St.3d 119, 2016-Ohio-8402, the Supreme Court explained the burden on an owner advocating for value in accordance with a sale:

> "We have recognized a rebuttable presumption that a sale that is supported by evidence 'has met all the requirements that characterize true value,' including that the sale was made at arm's length. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 78 Ohio St.3d 325, 327 *** (1997). This case first requires us to decide whether the Utts provided evidence sufficient to trigger the presumption that they purchased the property at arm's length. As we explain in *Lunn* [*v. Lorain Cty. Bd. of Revision*], 149 Ohio St.3d 137, 2016-Ohio-8075 ***, '[t]o benefit from this presumption, 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."' *Id*. at ¶ 14, quoting *Cummins* [*Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*], 117 Ohio St.3d 516, 2008-Ohio-1473, ***, at ¶ 41." (Parallel citations omitted.) Id. at ¶12.

The *Utt* court went on to find that the owners provided sufficient evidence of the sale, even in the absence of a deed, purchase agreement, or testimony about the sale, to create a rebuttable presumption that the sale was recent and arm's-length. Id. at ¶14. Such is the case here. The parties do not appear to dispute the basic details of the sale, i.e., the parties, date, and sale price. See *Lunn*, supra, at ¶15. Instead, the BOE argues that the sale was distressed because it occurred so close in time to the foreclosure sale and because the sale price was below the initial foreclosure sale price.

In *Utt*, the court found that the opponent of the sale (in that case, the county appellees) rebutted the presumption accorded to a post-foreclosure sale by Fannie Mae, through expert testimony about the seller and the circumstances under which it acquired and sold the property. Id. at ¶15. Here, the record contains only the owner's evidence of the sale. The BOE relies on speculation about the nature of the sale. "Mere speculation is not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2016-Ohio-1059, ¶15. In many cases, this board has rejected the notion that the sale of property by a bank following foreclosure is per se not indicative of market value. See, e.g., *Zimmer v. Stark Cty. Bd. of Revision* (Feb. 3, 2016), BTA No. 2015-637, unreported, affirmed, 5th Dist. Stark No. 2016CA00040, 2016-Ohio-7056. See also *Cattell 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. There is no indication in this matter that U.S. Bank was under any duress in selling the property to Castle 2016, LLC, nor is there any indication that either buyer or seller was an unwilling party to the transaction. We therefore find the appellees have failed to rebut the presumption that the April 2016 sale was arm's-length.

Having found an arm's-length sale recent to tax lien date, we need not further analyze the sale further from tax lien date, i.e., the sale to Taliki Investments in June 2016. *HIN*, supra.

Based upon the foregoing, we find appellant has met its burden on appeal and find that the April 2016 sale for $26,000 is the best evidence of the 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, 2016, were as follows:

TRUE VALUE

$26,000

TAXABLE VALUE

$9,100

OHIO BOARD OF TAX APPEALS

CAROLYN DWYER, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-461

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CAROLYN DWYER
OWNER
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#102
CINCINNATI, OH 45248

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, November 26, 2018

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 550-0181-0284, for tax year 2017. 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 auditor initially assessed the subject property at $116,000. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $104,000 based upon an appraisal report. At the BOR hearing on the matter, Carolyn Dwyer appeared and conceded that the subject property was purchased for $116,000 in April 2016; however, she argued that she overpaid, in part, because the subject sale was consummated rather quickly. According to her, she believed that another interested buyer intended to make an offer the following day and she did not want to miss out on the subject property given its location near her friends. As a result, Dwyer testified, she offered to purchase the subject property near its asking price. She further testified that she later learned that other condominium units in the development were selling for significantly less, which led her to engage an appraiser to value the subject property. Appraiser Martin T. Rueve performed an appraisal report that valued the subject property at $104,000 as of January 1, 2017. Kathleen Siciliano, a member of the county auditor's appraisal staff, testified about her review of the subject sale and the appraisal report. Although she acknowledged having very little information about the circumstances of the subject sale, she testified that she believed that the appraisal report was "a little on the low side" based upon the data relied upon, or not relied upon, by Rueve.

Statutory Transcript at Exhibit E. The BOR determined that the subject sale was the best indication of the subject property's value and retained the initially assessed value of $116,000. It subsequently issued a written decision to that effect and this appeal ensued. Attached to the notice of appeal, Dwyer submitted written argument that requested that Rueve's appraisal report, which valued the subject property at $104,000, be accepted as the best indication of the subject property'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). See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St. 3d 527, 2017-Ohio-4415. The settlement statement and notation of the subject sale on the property record card created a rebuttable presumption that the subject sale was a recent, arm's-length transfer indicative of the subject property's value. *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. Therefore, the burden is on the appellant to demonstrate why the subject sale should be rejected. In an effort to satisfy this burden, the appellant primarily argued that that the subject sale was not indicative of the subject property's value because she overpaid and submitted Rueve's appraisal report to support such argument. Based upon our review of the record and relevant case law, we reject the appellant's position.

[14] Here, the appellant was motivated to purchase the subject property because she wanted to be near her friends. All buyers and sellers have subjective motives in any transaction. It is evident that the appellant considered the subject to be worth the $116,000 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 bad deal and potentially overpaid for a property. See *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.").

[15] We proceed to evaluate Rueve's appraisal report to determine if there is sufficient evidence to rebut the subject sale. See *Terraza 8*, supra, at ¶34 ("The February 2013 sale price, which Terraza does not dispute, is the best evidence of the property's true value, subject to rebuttal."). Although the appraisal report indicated that Rueve had knowledge of the subject sale, there is no indication that he evaluated it and determined that it was not indicative of the subject property's value. For example, there is no indication that he determined that the market changed between the sale and tax lien dates such that the subject sale reflected different economic conditions or that the parties to the subject sale did not act in their own self-interests. See, *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588; *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23 (1989).

[16] Furthermore, as noted by Siciliano, the appraisal report was devoid of sufficient information about the selection of comparable properties. Because Rueve did not testify at the BOR hearing or at a hearing before this board, we are left to speculate on this issue. As an example, there was no explanation why Rueve used the sale at 4341 Regency Ridge Court, Unit 101, i.e., $89,000 sale in May 2016, as opposed to the sale at 4341 Regency Ridge Court, Unit 107, i.e., $109,000 sale in July 2016. See Statutory Transcript at Exhibit F. "An expert's opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion." *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997). See, also, *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. The Supreme Court determined that "[t]o 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, at ¶20. For these reasons, we must conclude that nothing in Rueve's appraisal report require us to reject the subject sale.

[17] 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 must find that the appellant has failed to satisfy her evidentiary burden to demonstrate that the April 2016 sale was not 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 are as follows as of January 1, 2017:

TRUE VALUE

$116,000

TAXABLE VALUE

$40,600

OHIO BOARD OF TAX APPEALS

CYNTHIA CICCOTTI, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-352

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CYNTHIA CICCOTTI
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CLEVELAND, OH 44113

Entered Monday, November 26, 2018

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

The appellant property owner, Cynthia Ciccotti, appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 115-31-106, 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 brick residential property. The fiscal officer initially assessed the subject's total true value at $52,500. Ciccotti filed a complaint with the BOR seeking a reduction in value to $12,500. At the BOR hearing, Ciccotti appeared to testify and present an appraisal report, acknowledging that the appraiser's opinion of value ($19,000 as of January 1, 2017) was higher than her own opinion. Ciccotti explained that she based her opinion on her recent purchase of a similar property across the street from the subject for $7,000. She indicated that property was in inferior condition to the subject and she purchased it as a "tax sale," though she testified that it was listed by a realtor. Ciccotti testified that the subject's upper unit was occupied and rented for $525 per month, but the lower unit was not habitable due to its poor condition. Ciccotti asserted that the copper had been stolen from the bottom unit, and it suffered from water damage from a frozen pipe and a leak from the back roof. The BOR members criticized the three sales utilized in the appraisal and referenced a list of sales that they had compiled, noting that many had sold in a higher price range than those in Ciccotti's appraisal. The BOR observed that the appraiser considered Ciccotti's purchase of the property across the street, which she described as a tax sale. The BOR also commented that another of the appraiser's three sales had transferred multiple times, twice at amounts higher than the sale price utilized in the report. The BOR indicated that the appraiser's third sale was not included in its own list of comparable sales. The BOR then provided a copy

of the list to Ciccotti, but did not include it in the transcript certified to this board. The BOR issued a decision reducing the initially assessed valuation to $42,100, rejecting the appraisal but finding that a 20% condition adjustment was warranted. From this decision, Ciccotti filed the present appeal. This board convened a hearing, at which Ciccotti's husband appeared to testify regarding the subject's condition and the appraisal previously submitted to the BOR.

Following the hearing, this board ordered the county appellees to supplement the record with the list of sales it considered during the BOR hearing. The county appellees did not provide the list, but rather submitted an affidavit to advise that no additional documentation was available to supplement the record. 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 list of sales referenced during the BOR hearing.

As the party challenging the BOR's decision, Ciccotti has the burden to prove her right to a reduction in the BOR's values. *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002. To satisfy this burden, Ciccotti must produce competent and probative evidence to establish the correct value of the subject property. Id. at ¶9. Thus, it was incumbent upon Ciccotti not to merely challenge the valuations of the auditor and BOR, but rather to provide competent and probative evidence that an alternative value reflects the true value of the subject property. *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818.

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 record contains not only the appraisal, but also testimony from Ciccotti and her husband. Although an owner is qualified to express an opinion of value, this board nevertheless may properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶20. Thus, we will consider all of Ciccotti's evidence and weigh it accordingly.

Initially, we note that it would be improper to simply rely on the appraisal because it was presented without testimony from the appraiser and offered an opinion of value as of a date other than January 1, 2016. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, ¶21 ("*Team Rentals*"). Where such an appraisal contains sufficient indicia of reliability, however, the information contained therein may furnish an independent basis for valuing the property. Id. at ¶27. In this case, we find that the appraisal fails to meet this standard and does not contain any reliable evidence of value. In addition to the absence of direct testimony about the preparation of the appraisal, there is no evidence that any individual or entity has relied on the appraisal to establish the subject's value. See *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058, ¶42 (distinguishing *Team Rentals* from the circumstances where the record lacked direct testimony about both the preparation and use of an appraisal). In fact, Ciccotti herself disagrees with the appraisal as she believes that the value is even less than that to which the appraiser concluded.

Additionally, we find that none of the appraiser's approaches to value constitute probative evidence of value. The appraiser relied most heavily on the sales comparison approach, yet we question the arm's-length nature of all three sales that he utilized. For instance, he relied on Ciccotti's purchase of a nearby home via tax sale but made no adjustment to account for the circumstances of the transaction.

Additionally, he used sales from both 2016 and 2018, to establish a value as of January 1, 2017 without any

adjustment for a change in market conditions. It is unclear whether there would be a need to adjust the sales to develop a value as of January 1, 2016, which is the tax lien date at issue. Similarly, the appraiser's income analysis was based on leases entered into on January 1, 2018, and we are unable to discern whether any adjustment would be necessary to relate those rents back to the tax lien date. Furthermore, the appraiser's income approach is based on the application of a gross rent multiplier, a technique of which this board has been critical in the past. See, e.g., *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA Nos. 2016-405, et al, unreported. See, also, *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). Finally, we find that the cost approach is not probative evidence of value due to the subject's age, as it was built in 1915 and has not undergone any recent renovations.

We acknowledge that Ciccotti's evidence demonstrates that the subject property suffers from a number of physical defects, particularly as it relates to the lower unit. Ordinarily, the mere presence of these negative aspects of the property is not sufficient for this board to independently determine an alternative value. See *Schutz*, supra, at ¶17 ("Without affirmative evidence of the property's value or specific analysis of how the property's condition affected its value, any evidence of defects in the property is inconsequential."). In this case, however, we find that the BOR properly considered the subject's condition and made an adjustment, which resulted in a reduction in the subject's value. The propriety of this reduction has not been challenged. See *Moskowitz*, supra.

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

$42,100

TAXABLE VALUE

$14,740

OHIO BOARD OF TAX APPEALS

JOHN W HUMPHREY IV TR, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-1374

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHN W HUMPHREY IV TR
Represented by:
JOHN HUMPHREY
OWNER
ZINOMOBILE
4927 WESLEY AVENUE
CINCINNATI, OH 45212

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 Thursday, November 29, 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 decided upon the motion, the statutory transcript certified by the county auditor, 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. 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 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

DAVID AND JENNIFER WLOCH, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-415

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DAVID AND JENNIFER WLOCH
OWNERS
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BEDFORD, OH 44146

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, November 30, 2018

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

[1] The appellant taxpayers challenge decisions issued by the board of revision ("BOR") denying their request for remission of real property tax late payment penalties from the first half of 2011 through the second half of tax year 2016. The county appellees have filed a motion to dismiss the appeal regarding the first and second half of 2011, which would effectively limit this board's jurisdiction to only the subsequent years. The basis for the county appellees' motion is that the appellants did not file applications for remission of the 2011 penalties, and, thus, none were submitted to the treasurer or BOR for an initial review. The appellants did not respond to this motion.

[2] In an appeal from a decision of a board of revision, the taxpayers have the burden to show that their request was improperly denied. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). The taxpayers request remission of the penalties, alleging that their failure to make timely payment was due to reasonable cause and not willful neglect. The property owners purchased the subject property in September 2015 after making payments to a company that held a tax lien on the property. The taxpayers assert that when they purchased the property after satisfying the earlier lien, it was their understanding that the lien payments satisfied all back taxes. At the time that title transferred, however, delinquent taxes and associated penalties were owed because the prior owner failed to pay for tax years 2011 through 2014, and they were not discharged by the payoff of the earlier lien. The taxpayers assert that they were unaware that these charges were levied against the property and that they did not receive any tax bills after their purchase for tax years 2015 or 2016 because they were being sent to the out-of-state former owner. When these payments were not timely made, the taxpayers incurred additional

penalties. The taxpayers maintain that they were first made aware of these delinquent taxes and associated charges when they received a letter dated October 18, 2017 that informed them the property was subject to a tax lien certificate sale due to the outstanding real property taxes, which were then certified delinquent. At that time, the taxpayers entered into a payment plan and applied for remission of the late-payment penalties for tax years 2012 through 2016. The BOR denied their requests for all tax years, noting that "[a]t the time of the purchase, the buyer assumed all liabilities certified to the tax duplicate." The taxpayers appealed these decisions, and appeared before this board in support of their request for the remission of all penalties incurred during the tax years 2011 through 2016.

[3] Initially, we grant the county appellees' motion and limit our jurisdiction only to those tax years for which an application was filed, i.e., tax years 2012 through 2016. R.C. 5715.39 outlines the 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" if it deems the circumstances are appropriate pursuant to the statute. R.C. 5715.39(C). Only after the board of revision makes its determination may the applicant then appeal to this board. R.C. 5715.20; R.C. 5717.01. In this case, the record indicates that the BOR has not rendered a decision on an application for either half of tax year 2011. Therefore, this board lacks jurisdiction to consider these penalties.

[4] Next, we consider the BOR's decision to deny the taxpayers' application for remission for tax years 2012 through 2016. Pursuant to R.C. 5715.39(C), "[t]he board of revision shall review the auditor's determination and remit a penalty for late payment of any real property taxes or manufactured homes 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." Relevant here, the 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.

[5] In the present appeal, the taxpayers assert that their failure to timely pay was due to reasonable cause and not willful neglect. The taxpayers maintain that they should not be responsible for penalties incurred prior to their purchase of the property and that they should not be responsible for penalties where late payment occurred due to their failure to receive the tax bill. First, we reject the taxpayers' request to remit those penalties that were imposed prior to the taxpayer's purchase of the property, i.e., the first half of tax year 2012 through the second half of 2014. Although it may be custom that real estate taxes are paid by the seller on the date of closing out of the sale proceeds in an ordinary real estate transaction, real property taxes and related penalties are levied upon the land and not upon the ownership of the property. See R.C.323.11 ("The lien of the state for taxes levied for all purposes on the real and public utility tax list and duplicate for each year shall attach to all real property subject to such taxes on the first day of January, annually, or as provided in section 5727.06 of the Revised Code, and continue until such taxes, including any penalties, interest, or other charges accruing thereon, are paid."). Thus, a change in ownership generally does not forgive taxes or fees assessed on a property unless such taxes, including any penalties, interest, or other charges accruing thereon, are paid in full. The simple fact that these fees were incurred prior to the taxpayers' ownership of the subject property, therefore, does not eliminate the penalties' attachment to the real property and the taxpayers' responsibility to pay them in order to avoid additional costs associated with the county's sale of the lien or potential foreclosure action.

[6] With respect to those payments due after the taxpayers' purchase of the subject property, we generally reject their contention that their failure to receive the tax bills relieved them of their obligation to timely pay the real property taxes. The taxpayers have failed to show that they provided notice of the appropriate tax mailing address upon their purchase or that they were unable to make timely payment of the tax due to negligence or error of a county official. See R.C. 323.13 ("A change in the mailing address of any tax bill shall be made in writing to the county treasurer. *** Failure 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)(1) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay."). In the present case, we find that the taxpayers' failure to make timely payments for more than two years after their purchase of the subject property constitutes willful neglect, particularly where they purchased the property following the prior owner's failure to make timely real property tax payments. Additionally, the taxpayers have offered no evidence that the prior owner's failure to timely pay for tax years 2012 through 2014 was for reasonable cause. As such, agree with the BOR's determination that the BOR failed to meet the requirements of R.C. 5715.39.

[7] While we are sympathetic that the taxpayers may have a larger tax burden than they intended when they purchased the property, it was their responsibility to ensure they had a full understanding of any encumbrances before they purchased the property and to continue to timely pay the taxes.

[8] Accordingly, we hereby affirm the decision of the BOR to deny the taxpayers' request for remission of the late payment penalty for the first and second halves of tax years 2012, 2013, 2014, 2015, and 2016.

OHIO BOARD OF TAX APPEALS

KEN & DIXIE BARKER, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-414

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KEN & DIXIE BARKER
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
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CINCINNATI, OH 45202

Entered Friday, November 30, 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 608-0032-0307-00, for tax year 2017. 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-story residential condominium unit, and the auditor initially assessed its total true value at $180,940. The property owners filed a complaint with the BOR seeking a reduction in value to $134,000. At the BOR hearing, the property owners relied on testimony from appellant Dixie Barker, a list of the costs of updates made to the subject property since 2006, information from the auditor's website about two properties that had recently transferred, and an appraisal report. The appraisal was prepared for refinancing purposes, and the appraiser concluded that the value of the subject property was $166,000 as of December 16, 2016. The BOR members asked Barker why she sought a value so much lower than that opined by the appraiser, and she explained that she believed that the appraiser considered new siding, which had been replaced by the condominium association rather than the owners. A staff appraiser from the auditor's office also testified in support of a Real Estate Department Report that she had prepared, and in which she concluded to a value of $160,000 after a review of the sales of 10 properties. The BOR did not have any significant criticisms of the financing appraisal other than the purpose for which it was created, but issued a decision reducing the initially assessed valuation to $160,000 based on the staff appraiser's recommendation. From this decision, the property owners filed the present appeal, seeking further reduction of the value of the subject property.

This board convened a hearing, at which Barker again testified and submitted additional evidence. Barker challenged the comparability of the properties utilized by the staff appraiser and submitted her own unadjusted list of sales, asserting that the properties in her list were more comparable than those in the staff appraiser's report.

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 has emphasized that this board cannot defer to the BOR and treat its assignment of value as presumptively valid, as we must "independently evaluate the evidence to determine the value of the subject property." *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384, ¶19.

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 record contains not only the financing appraisal and staff appraiser's report, both of which were prepared by state-certified residential licensed appraisers, but also Barker's testimony and compilation of sales. Although an owner is qualified to express an opinion of value, this board nevertheless may properly reject that opinion when the evidence that forms the basis for the owner's opinion fails demonstrate the value requested. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶20. Thus, we will consider all of the property owners' evidence and weigh it accordingly.

Initially, we note that it would be improper to simply rely on the financing appraisal because it was presented without testimony from the appraiser, offered an opinion of value as of a date other than January 1, 2017, and was performed for bank financing purposes. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, ¶21 ("*Team Rentals*"). Where such an appraisal contains sufficient indicia of reliability, however, the information contained therein may furnish an independent basis for valuing the property. Id. at ¶27. In this case, we find that the financing appraisal meets this standard and constitutes reliable evidence of value. Despite the absence of direct testimony about the preparation of the appraisal by the appraiser, Barker testified about its origin and use and indicated that the appraiser viewed both the interior and exterior of the subject property. Compare *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058, ¶42 (distinguishing *Team Rentals* from the circumstances where the record lacked direct testimony about both the preparation and use of an appraisal). Additionally, the appraisal contains significant discussion regarding the appraiser's analysis and the basis for his adjustments, with the gross adjustments ranging from 1.2% to 10.6%. The properties utilized were located within 0.39 miles from the subject, and took place during the 6 months preceding the tax lien date. The appraiser also took into consideration the differences among the properties, including room counts, finished area of basements, size of garage, fireplaces, and outdoor living space.

We further find that the staff appraiser's report serves as added support for the credibility of the financing appraisal. Like the comparable sales presented by Barker, the staff appraiser's sale data appears to be unadjusted and concludes to value based simply on the average sale prices. As such, we find that it is useful as support for the reliability of the financing appraisal, but do not give her conclusion the same weight that is given to the appraisal because she did not provide any indication that she considered differences among the properties, which is Barker's primary criticism of her report. For similar reasons, we find that Barker's unadjusted sales do not invalidate the appraisal or refute the appraiser's ultimate conclusion. See *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002.

It is therefore the order of this board that the true and taxable values of the subject property, as of January

1, 2017, were as follows:

TRUE VALUE

$166,000

TAXABLE VALUE

$58,100

OHIO BOARD OF TAX APPEALS

BISON COMMERCIAL INVESTMENTS, LLC, (et. al.),	CASE NO(S). 2017-1953, 2017-1954, 2017-1955
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Friday, November 30, 2018

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

The appellant property owner, Bison Commercial Investments, LLC ("Bison"), appeals three decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers M57 00109 0006, B02 00104 0020, and B02 00103 0007, for tax year 2016. 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.

The subject properties' total true values were initially assessed at $140,850, $194,760, and $132,370, respectively. Bison filed complaints with the BOR seeking reductions in value to $50,000, $171,500, and

$100,000, respectively. The appellee board of education ("BOE") filed a countercomplaint in support of the auditor's values for parcel number M57 00109 0006, but no countercomplaints were filed for the other two parcels. At the BOR hearings, Bison relied on sales of the subject properties, asserting that they provide the best evidence of each property's value. For parcel number M57 00109 0006, counsel offered a copy of an unexecuted settlement statement and a letter from the owner of the neighboring property indicating his agreement to lease parking spots for use at the subject property. According to the settlement statement, commissions were paid to the realtor who listed the property and counsel indicated that the property had been listed for sale, that the parties to the transaction were unrelated, and that the buyers purchased the property to lease it. Neither the BOR members nor the BOE challenged any particular aspect of the sale or the evidence presented, and the BOE provided no independent evidence of value. Nevertheless, the BOR issued a decision maintaining the initially assessed valuation.

For the remaining two parcels, in addition to a printout from the auditor's website showing the details of each transaction, Bison provided the second page of the settlement statement for each sale, which reflected that commissions were paid to the listing realtors. Bison also offered testimony from its General Manager, Ben Neely, who described the circumstances of the sales, noting that neither sale involved related parties. Neely indicated that Bison owned other properties in the area, and they noticed a for-sale sign in front of each property, prompting them to contact the selling agents. Neely further testified that parcel number B02 00103 0007 had been on the market for three years at the time of the sale. Neely also described the income generated at each property and the available parking. Following the hearing, the BOR issued a decision maintaining the initially assessed valuation, noting that Bison had not included the first page of the settlement statement and deeming the evidence "incomplete."

Dissatisfied with the BOR's decisions, Bison filed the present appeals. A hearing was convened before this board, at which Bison again appeared in support of its argument that the sale of each property provides the best evidence of its value, and presented complete copies of fully executed settlement statements and testimony from Jerry Allen Woodward, Bison's Chief Operating Officer. Bison asserted that this board must independently weigh the evidence and cannot accord a presumption of validity to the BOR's decision regarding the sales or the values of the properties. Bison also indicated that it had received multiple decision letters for parcel number B02 00103 0007: first a September 11, 2017 decision reducing the value of the subject property to $100,000, as requested by Bison; then a second letter on October 4, 2017, indicating that the BOR had determined the value was $132,370, which Bison appealed. The BOE waived the opportunity to appear and present additional evidence or argument, and the county appellees did not participate.

Following the hearing, this board ordered the county appellees to provide a decision recording for parcel number M57 00109 0006 and any decision letters for the subject parcels that were not yet provided to this board. If the BOR did not have such information, then it was directed to certify as much to this board. On August 31, 2018, the BOR filed a decision recording for parcel number M57 00109 0006. The recording was made that day, more than 10 months after the BOR issued its decision that Bison appealed to this board. The recording explained that the BOR had intended to reduce the value of the property, but there was an error with the October 2017 decision. The BOR did not submit any earlier recordings for that parcel, nor did the BOR provide any additional decision letters for any of the subject parcels. Because the BOR did not certify that such information was unavailable, we are left to speculate whether it was omitted or does not exist.

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. In this case, it is apparent that the BOR has failed to fulfill its statutory duty, as

there is some confusion as to the decisions issued by the BOR in October 2017 and the BOR has not addressed those questions despite being ordered to do so. Furthermore, the BOR not only failed to fulfill its duty, but also appears to have attempted to act beyond its authority by redetermining the value of one of the properties more than 10 months after it lost jurisdiction when the matter was appealed to this board. 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.'"). Thus, any attempt to change its decision at this late date was void.

There is a well-established rebuttable presumption that a submitted sale price has met all the requirements that characterize true value after a proponent of a sale satisfies a "relatively light initial burden." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14. This burden may be satisfied through the submission of even unauthenticated sale documents if there is no real dispute about the basic facts of the sale. Id. at ¶¶14-15. See, also, *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 691, 2017-Ohio-1412, ¶18. 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." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. 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.

The details of the sales are not in dispute and are reflected on the subjects' property record cards. The record shows that Bison purchased parcel number M57 00109 0006 from Georgia Oak Properties, LLC on September 29, 2015 for $50,000; parcel number B02 00104 0020 from Jeffrey J. Brockert on April 27, 2016 for $171,500; and parcel number B02 00103 0007 from Nooranissa J. Pasha on October 5, 2016 for $100,000. Neither the BOE nor the county appellees provided any specific challenge to the reliability of any of these transfers. While the BOR indicated that the owner has failed to present adequate evidence of the sales for various reasons, its own records reflect that each transfer took place. There is no suggestion that the parties were not typically-motivated, or that the sales were not recent to the tax lien date. Accordingly, we find that the appellees have failed to show that the sales were not qualifying transactions for purposes of establishing the true value of the subject properties.

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 M57 00109 0006

TRUE VALUE $50,000

TAXABLE VALUE $17,500

PARCEL NUMBER B02 00104 0020

TRUE VALUE $171,500

TAXABLE VALUE $60,030

PARCEL NUMBER B02 00103 0007

TRUE VALUE $100,000

TAXABLE VALUE $35,000

OHIO BOARD OF TAX APPEALS

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1937
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

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Entered Friday, November 30, 2018

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

The Cleveland Municipal School District Board of Education ("BOE") appeals from a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel number 002-01-115 for tax year 2016. We proceed to consider the matter upon the notice of appeal and the statutory transcript certified pursuant to R.C. 5717.01.

The fiscal officer initially valued the subject property at $45,800 for tax year 2016. The BOE filed a complaint seeking an increase in value to $200,000 to reflect the amount for which it sold in June 2016. At the BOR hearing, counsel for the BOE presented the general warranty deed as evidence of the sale. Members of the BOR discussed a notation on the fiscal officer's property record card that permits were taken out in prior years to raze the building on the property. Ultimately, the BOR found that no increase in value was warranted, noting on its oral hearing journal summary:

"2016 sale was post tax lien and county record indicates the property has been inspected by the

> Appraisal Department for 2014, 2015 and 2016. For tax lien 2016 the Appraisal Department reduced value for the building to a salvage value. In 2016 a permit is open for renovation and Appraisal Department will be adding for some of the renovations for 2017 complete. BOE did not provide any evidence indicating the sale price reflected the condition as of 1/1/16. Board could not determine if the sale price was indicative of value as of tax lien date. No change."

The BOE has appealed to this board, again seeking a value of $200,000. It has presented no evidence or argument in support of its requested value. The owner has not participated on 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. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. Here, the BOE has presented a general warranty deed indicating that the subject property transferred from Celtic Donkey Investments, LLC to 8009 Lake, LLC in June 2016 for a recorded sale price of $200,000.

The BOR found the sale to be too remote from tax lien date, due to changes made to the property in 2016. As the Supreme Court explained in *W. Carrollton City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 150 Ohio St.3d 215, 2017-Ohio-4328, "[a]dding an improvement is a factor intrinsic to the property itself that affects its value." Id. at ¶11. As such, where an improvement is added to the property between tax lien date and the date of sale, the sale is no longer the best evidence of the property's value on tax lien date. Id.; R.C. 5713.03(B). The property record card included in the statutory transcript indicates that the building on the property was in "very poor" condition and valued at "salvage value only." The property record card also indicates that a permit was granted for new construction in 2016. We find such information rebuts the presumption of the recency of the sale to tax lien date. In the absence of any information indicating that any changes to the property were made after the date of sale, i.e., not between tax lien date and the sale, we cannot conclude that the sale is not the best evidence of value as of January 1, 2016.

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

$45,800

TAXABLE VALUE

$16,030

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2016-561, 2016-562
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, November 30, 2018

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

The board of education ("BOE") and property owner, State Automobile Mutual Insurance Company ("State Auto"), appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, 52 parcels, many of which are subject to tax increment financing ("TIF"), for tax year 2014. This matter is now considered upon the notices of appeal, the transcript 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. During this board's merit hearing, the attorney examiner reserved ruling on numerous objections made by the parties. We hereby overrule these objections and give the testimony and documentary evidence the appropriate weight in our review based on their probative value.

The subject property consists of just over 11.5 acres of land in the Columbus Downtown District, and is

improved with four buildings: a five-story office building (built in 1929, renovated in 1991), a four-story office building (built in 1989), a single-story warehouse (built in 1948), and a single-story maintenance building (built in 1980). The site is dissected by several streets and alleyways, the most prominent of which is East Broad Street. While the main campus, including all buildings, is located on the north side of E. Broad, roughly 2.219 acres of land (according to the auditor's property record cards) is located south of E. Broad, is improved with paving and fencing, and is utilized as employee parking. The auditor initially assessed the subject's total true value at $15,650,000. State Auto filed a complaint with the BOR seeking a reduction in value to $6,000,020. The BOE filed a countercomplaint in support of maintaining the auditor's initial valuation. The BOR convened a hearing, at which State Auto presented testimony and a written report from appraiser Donald E. Miller, II, MAI, who opined that the total true value for the subject parcels was $11,000,000. The transcript certified by the BOR, however, contained an appraisal dated December 12, 2014, which concluded to a value of $9,900,000 as of January 1, 2011, apparently from proceedings on the property for an earlier tax year. Additionally, due to a technical oversight, the BOR was unable to provide a copy of the BOR hearing or its decision hearing to this board, and the details of those proceedings are, therefore, unavailable. Following the hearing, the BOR issued a decision reducing the total value of the parcels to $11,000,000, which both the BOE and State Auto appealed to this board. Through its appeal, the BOE sought reinstatement of the auditor's value, while State Auto sought further reduction to $9,900,000.

This board convened a merit hearing, at which the BOE presented testimony and a written report from appraiser Samuel D. Koon, MAI, who concluded that the total value for the subject property was $14,000,000 as of January 1, 2014. State Auto cross-examined Koon and offered several documents as rebuttal to various aspects of his methodology, but did not present any additional independent evidence of value. State Auto sought to have Miller's report admitted into evidence, but the document provided was another copy of the tax year 2011 report. Following the hearing, after unsuccessful attempts by this board to obtain Miller's tax year 2014 appraisal from the BOR, State Auto submitted the documents that it presented to the BOR. Considering the lack of testimony from Miller about the appraisal upon which the BOR relied to establish value due to the BOR's "technical oversight," this board reopened the record for the limited purpose of allowing the property owner to offer Miller's testimony and to allow the BOE to conduct cross-examination regarding his tax year 2014 appraisal, which was dated January 6, 2016. See *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611, ¶18.

Before we reach the merits of the appeal, we must address the BOE's motion for costs. The BOE sought payments to the offices of Samuel D. Koon & Associates, Ltd. in the amounts of (1) $450 for costs associated with the production of documents in response to a discovery subpoena, (2) $351.24 for costs associated with production of documents in response to a subpoena for hearing, (3) $175 for testimony from Koon in response to a subpoena from State Auto to testify regarding his work file and an appraisal of the subject for a prior year at the merit hearing, and (4) $1,200 for costs associated with preparation of appraiser John Barta to testify, though he was released prior to the hearing date. State Auto has not challenged the first three requests, but argues that it should not be responsible to compensate Barta for any preparation time, asserting that the extent of the information sought would require no preparation. Pursuant to the invoice attached to the BOE's motion, Barta requested $300 per hour for four hours of preparation for testimony, including a review of the report and file. While State Auto may now assert that it only intended to ask questions regarding the extent of his involvement with the appraisal assignment, the subpoena itself did not make this fact clear. Barta was subpoenaed to appear for the merit hearing and testify as a witness, and the information requested included not only appraisal engagement letters and communications between himself and Koon, but also the full appraisal file, including rent and sale comparables, notes from inspections, expense comparables, market vacancy data, sketches, all notes and calculations. Based upon States Auto's requested information and directive for Barta to appear as a witness to testify, it was reasonable for him to spend time reviewing the report and work file in preparation for such testimony.

Furthermore, we reject State Auto's contention that Barta was released thirteen days prior to the hearing, insinuating that he was provided adequate time and unnecessarily prepared in advance. It is undisputed that

he was released on a Friday afternoon and at that time, the hearing was scheduled for the following Monday at 9:00 AM. Thus, it was reasonable that he had prepared for the hearing before he was released. Additionally, it was State Auto's responsibility to take reasonable steps to avoid imposing an undue expense on a person subject to the subpoena. Civ. R.45(C)(1). To require an expert witness to appear and testify regarding the report and file with little or no advance preparation would be unreasonable. If State Auto intended to ask narrow questions that would require less preparation, it was State Auto's responsibility to communicate as much with Barta. In the absence of such direction, State Auto must compensate Barta for this time. Accordingly, we grant the motion as to all costs and order State Auto to remit payment to Samuel D. Koon & Associates, Ltd. within thirty days of the issuance of this decision and order.

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. 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 a case where multiple qualifying appraisals have been presented by the parties, the court has again held that the case law "makes it clear" that the BTA is statutorily required to weigh the evidence and assess credibility of both appraisals, and "has discretion to depart from any particular appraisal opinion of value and independently determine a value based on whatever evidence in the record the BTA finds to be most probative." *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4286, ¶¶10-11.

In the present appeal, the parties have presented two qualifying appraisals. Although State Auto's notice of appeal indicates that it is seeking Miller's tax year 2011 opinion of value, we find that this appraisal does not constitute competent and probative evidence of value, particularly where he has performed an appraisal that opined value as of January 1, 2014 and did not testify in support of his 2011 appraisal in such a way that would allow this board to review it for its probative value. See *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996). Compare, *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 130 Ohio St.3d 230, 2011-Ohio-3362; *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St. 3d 503, 2016-Ohio-1485.

We begin our review with a consideration of each appraiser's highest and best use conclusion, which forms the basis for other subjective judgments made by the appraisers, such as the choice of comparable properties. See *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4282, ¶10. Miller concluded that as improved, the highest and best use of the property is owner-occupied by a single user. As vacant, Miller indicated that the highest and best use would be to hold for future development, though Miller did not include a land value analysis in his report. Koon's highest and best use was more general, concluding that the subject property would continue to be used as office space, but could support both single-occupant and multi-tenant occupancy. Koon also concluded that the value of the land, if vacant, was nearly as high as the value including the existing improvements, explaining that the site was unique due to its potential for development based on its size and location in what he considered the Discovery District, near the Columbus Museum of Art, the Topiary Park, Columbus State, and two major employers.

Miller first performed the income-capitalization approach, though Miller utilized rent on a gross basis and Koon utilized rent on a triple-net basis. Miller first determined a market rent and vacancy rates for various types of rentable space, distinguishing between above- and below-grade office space, as well as the warehouse and maintenance buildings. Miller did not attribute any potential rental income to the unfinished basement space, using a total rentable square footage of 298,746, including the warehouse and maintenance buildings. Based on this calculation, Miller concluded to a total effective rental income of $3,386,299

($11.34 per square foot). Miller then subtracted $2,112,157 ($7.07 per square foot) for operating expenses, resulting in a net operating income of $1,274,141 ($4.26 per square foot). Miller then applied a 9% capitalization rate plus 2.83% tax additur, for an indicated value of $10,773,456, or $10,800,000 rounded. We note that the warehouse and maintenance buildings were not treated separately from the office buildings for purposes of expenses and capitalization.

Miller next performed the sales comparison approach, wherein he utilized the sales of six properties, three of which were located in Columbus, two in Cincinnati, and one in Akron, with sale dates ranging from February 2011 to October 2013. Miller determined that no market condition or property rights adjustments were necessary, and made adjustments to account for physical differences among the properties, such as location, size, and condition. These adjustments resulted in value indications from $29.37 to $43.07 per square foot, and he concluded that the average, $37.45 per square foot, was appropriate for the subject property. Miller applied this number to the 298,746 square feet of finished space (which included the warehouse and maintenance buildings), for a total indicated value of $11,200,000 (rounded). Miller reconciled this with income approach, giving equal weight to both, for an overall opinion that the value of the subject property was $11,000,000 as of January 1, 2014.

Koon first valued the land as though it were vacant for planned mixed-use development based on the sales of seven parcels in downtown Columbus, adjusting those sales to remove any value attributable to existing improvements, to account for differences in size or site layout, and to address any impact from the conditions of the sale. Koon attributed a higher value to the contiguous parcels ($30 per square foot) than non-contiguous parking sites ($20 per square foot), noting that the discount was necessary to reflect the reduced development potential of the smaller sites. Based on this approach, Koon concluded that if vacant, the value of the subject property would be $13,850,000, as of January 1, 2014.

Koon next performed the income approach, wherein he capitalized a net operating income of $1,209,161 at 8.5%, plus a .45% vacancy-weighted tax additur, for an indicated value of $13,510,177, or $13,500,000 rounded. Due to numerous mathematical errors in this approach, however, we reject it in its entirety. As such, we next look to Koon's sales-comparison approach, and note that two of the five sales he evaluated were also utilized by Miller. Four of Koon's comparable properties were located in Columbus and one in Dayton, and the dates of these sales ranged from August 2007 to October 2013. Koon made upward adjustments to the sales that occurred in 2007 and 2009, further adjusting for location, size, age, condition, parking ratio, and other amenities (i.e., onsite cafeteria and warehouse space). The indicated values following these adjustments ranged from $41 to $80 per square foot of gross building area. Koon concluded that $50 per square foot was appropriate and multiplied that number by 282,686 square feet, the total gross building area for the office buildings, including both finished and unfinished basement space, but excluding the warehouse and maintenance buildings. Koon opined that the sales comparison approach indicated a total value of $14,100,000 (rounded). Koon reconciled the two approaches at $14,000,000, commenting that because a typical purchaser of the subject property would be an investor or investment group looking at its ability to generate income, both approaches would be appropriate.

After consideration of the appraisal evidence, we find that both appraisals have strengths and weaknesses in the methodologies employed. For instance, Miller's sales comparison approach relies on sales that are closer in time to the tax lien date than those utilized by Koon, but Koon utilized comparables located in Columbus. Likewise, Miller attributed a separate value to the warehouse and maintenance buildings, including their square footages in both the income and sales-comparison approaches to value. Koon, on the other hand, did not include the square footage of these buildings in either approach, but considered them as amenities, adjusting the comparables accordingly. Accordingly, we find that both appraisers properly considered the presence of the smaller buildings, albeit in different ways. The methodologies of the appraisers differ, but if we look further into the appraisals and make changes to rehabilitate weaknesses, both appraisals conclude to a roughly similar result, which we find best represents the true value of the subject property.

We find that Miller's appraisal generally provides a reliable indication of value, with one notable exception. Miller utilized a number of downtown properties that had little to no parking, while the subject is spread throughout more than 11.5 acres and benefits from several parking lots. Miller did not adjust the comparable

properties to account for this difference, nor did he make any kind of adjustment for a land-to-building ratio, though he did adjust downward to account for the subject's location further east of Capital Square. We find that the parking lots, which are generally unimproved land (beyond paving and fencing), contribute to the value of the subject property, and that Miller's failure to adequately account for this area resulted in an undervaluation of the property. Compare *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-2909 (holding that an appraiser's subtraction of the value of extra land owned by most of the comparables and utilized as parking was proper because the subject did not own its parking lot). Indeed, Koon's testimony and land sales analysis provide further support for this opinion. In order to correct this deficiency in Miller's appraisal, we find that Koon's land sale analysis proves to be useful.

As Miller noted in his testimony, multiple lots are bifurcated from the rest of the campus, most notably, the roughly 2.219 acres of land south of E. Broad. State Auto portrayed the need of employees to cross a busy road as somehow detrimental to the value of the overall property, but Miller did not account for the value of parking, or this land in particular, at all in his appraisal. We find that the record shows that this land which is located on E. Broad has some potential for redevelopment separate from the main campus. As such, based on the record, including Koon's land sale analysis, we find that the best evidence available to determine the value of the land that was not considered in Miller's report, is to attribute Koon's conclusion of $20 per square foot to the area south of E. Broad and add it to Miller's overall conclusion of value. Adding $1,933,200 (based on 2.219 acres or 96,660 square feet) to Miller's $11,000,000 value conclusion, results in a total true value of $12,933,200 for the subject property.

As we now look at Koon's sales comparison approach, we find that it properly considers the value of the areas utilized by State Auto for parking. Koon also properly excluded the square footage from the warehouse and maintenance buildings because he adjusted the comparable sales to account for them as amenities. Based on the square footage in his comparable sales, however, we find that in this case, the more appropriate square footage is based on only the finished area within the office buildings rather than to include the area in the unfinished basement. If we subtract the unfinished basement, and apply Koon's conclusion that the subject's value was $50 per square foot, the resulting value is $12,945,000.

Thus, when we make these two changes, the difference between the two appraisers is approximately $11,800, and we find that either is a reliable representation of the value of the subject property. We give slightly more weight to Miller's value, with the upward adjustment to account for the value of the land, because it combines Miller's conclusions regarding the value of the improvements based on both the sales-comparison and income approaches with Koon's opinion regarding the land's development potential and provides the most comprehensive and probative value for the subject property.

Accordingly, we find that the subject's total true value, as of January 1, 2014, was $12,933,200. Because the property appears to be subject to a TIF for tax year 2014, however, we hereby remand this matter to the Franklin County Board of Revision with instructions to allocate value among the parcels per the TIF agreement.

OHIO BOARD OF TAX APPEALS

ILLYRIA INVESTMENTS LLC, (et. al.),	CASE NO(S). 2018-1307
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - ILLYRIA INVESTMENTS LLC
Represented by:
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MANAGING PARTNER
ILLYRIA INVESTMENTS LLC
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
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Entered Monday, December 3, 2018

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

The county appellees move to dismiss this matter because it was not timely filed with the county board of revision. We proceed to consider the matter upon the motion and appellant's response, the statutory transcript certified by the county auditor, and appellant's notice of appeal.

Appellant has appealed from a decision of the Hamilton County Board of Revision ("BOR") pursuant to R.C. 5717.01, which allows for an appeal to be taken provided such appeal is filed with this board *and the BOR* within thirty days after notice of the board of revision's decision 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 *Ross v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4746; *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000). The record in this matter indicates that appellant failed to file notice of the appeal with the BOR within thirty days of its decision, i.e., by September 10, 2018.

The response to the motion was filed by Eli Kadiu on behalf of owner Illyria Investments LLC. We note

that Mr. Kadiu does not appear to be an attorney and, therefore, any legal arguments made on behalf of appellant constitute the unauthorized practice of law and are hereby stricken. *Megaland GP, L.L.C. v. Franklin Cty. Bd. of Revision*, 145 Ohio St.3d 84, 2015-Ohio-4918, ¶19, fn.2; Ohio Adm. Code 5717-1-02(B). While Mr. Kadiu asserts in the response that notice of the appeal was filed with the BOR on November 26, 2018, such filing was clearly not made within the thirty-day statutory period and therefore does not cure the jurisdictional defect raised by the county appellees. In the absence of a proper, timely filing of notice of this appeal with the BOR, appellant has failed to properly invoke this board's jurisdiction.

Based upon the foregoing, the county appellees' motion is well taken. This matter must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

FARZADE OF TOLEDO, (et. al.),

Appellant(s), vs.

WOOD COUNTY BOARD OF REVISION, (et. al.), Appellee(s).

CASE NO(S). 2018-115

(REAL PROPERTY TAX) DECISION AND ORDERAPPEARANCES:

For the Appellant(s) - FARZADE OF TOLEDO
Represented by:
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For the Appellee(s) - WOOD COUNTY BOARD OF REVISION
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Represented by:
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Entered Monday, December 3, 2018

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

[1] The appellant appeals a decision of the board of revision ("BOR"), which denied its application for remission of penalties associated with late payment of property taxes, for parcels T6830076030500400, T68300760305003000, T68300760305001000, T68300800408007000, T68300760305002000, and T68300800408008000, for the second half of tax year 2016. 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 appellant filed a single application, which requested that late payment penalties be remitted, alleging that it failed to timely pay the property tax for the second half of tax year 2016 because "[w]e lost our accounts payable person and were unaware of taxes not being paid." See Statutory Transcript at Application. As a result, the appellant argued that failure to timely pay the property tax bill was not basedupon willful neglect but was due to reasonable cause. The treasurer reviewed the application and recommended it be denied, stating: "2nd ½ taxes have been late 2 consecutive years. 2nd ½ 2016 taxes due[.] 2nd ½ 2017 still due." Id.

The auditor subsequently reviewed the application and denied it for the same reasons articulated by the treasurer. The BOR considered the appellant's application and denied it as well. The appellant then appealed to this board. None of the parties availed themselves of the opportunity to submit evidence at a hearing before this board.

[3] When cases are appealed to this board, the burden is on the appellant to demonstrate the error in the board of revision's decision. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). See, also2001-L-511, unreported. *Estate of Raymond J. Battaglia v. Zaino*(Oct. 12, 2001), BTA No.

[4] Upon 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 penalties pursuant to R.C. 5715.39, which provides the guidelines to determine when real property tax late payment penalties shall be remitted. We specifically consider whether the remission of the late payment penalty would be appropriate under R.C. 5715.39(C), which provides that the late payment penalties 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. 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. It is important to note that the appellant failed to dispute the county appellees' assertion that it had a history of property tax delinquencies and that the property tax bills for the second half of tax year 2016 remain unpaid. Furthermore, the appellant is not absolved of its duty to meet its tax obligations because of the loss of its accounts payable person and such circumstances do not meet the standard of "reasonable cause."

[5] Based upon the foregoing, we affirm the BOR's decision to deny the appellant's request for remission of the late payment penalties for the property tax bill for the second half of tax year 2016.

OHIO BOARD OF TAX APPEALS

NAOMI LOUCKS, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-365

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NAOMI LOUCKS
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For the Appellee(s) - FAIRFIELD COUNTY BOARD OF REVISION
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Entered Tuesday, December 4, 2018

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

[1] The appellant appeals a decision of the board of revision ("BOR"), which denied an application for remission of penalty associated with late payment of property tax, for parcel 008-00578-10, for the first half of tax year 2017. 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 appellant filed an application, which requested that the late payment penalty be remitted, alleging that she failed to timely pay the relevant property tax bill because of the "negligence or error of the Auditor or Treasurer" and because she "did not receive a tax bill or corrected tax bill and attempted to obtain one on []3-06-18." Statutory Transcript at Application. The treasurer recommended the application be denied based upon a history of delinquent late payments of property tax bills, i.e., for tax years 2015 and 2016. The auditor denied the application. The BOR denied the application for the same reason articulated by the treasurer and this appeal ensued. At this board's merit hearing, only the appellant appeared to submit argument and/or evidence into the record. Appellant testified that she purchased the subject property in November 2017 from her son and his wife. As a result, she argued that she could not have had a history of late payments of property tax bills for tax years 2015 and 2016. She also argued that she paid the relevant property tax bill shortly after learning of the delinquency.

[3] When cases are appealed to this board, the burden is on the appellant to demonstrate the error in the board of revision's decision. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). See, also 2001-L-511, unreported. *Estate of Raymond J. Battaglia v. Zaino* (Oct. 12, 2001),

BTA No.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(B)(2), which provides, in relevant part, that "the taxpayer failed to receive a tax bill or a correct tax bill, and the taxpayer made a good faith effort to obtain such bill within thirty days after the last day for payment of the tax." In Fairfield County, property tax bills for the first half of tax year 2017 were due on or before February 15, 2018. Loucks testified that she not only "made a good faith effort to obtain such bill" on March 5, 2018, she also testified that she paid it on March 6, 2018, well "within thirty days" of the relevant property tax bill's due date of February 15, 2018. As such, we find that the appellant has successfully demonstrated that remission of the late payment penalty is appropriate in this matter.

[4] Because we have determined that remission of the late payment penalty would be appropriate under R.C. 5715.39(B)(2), we need not further consider whether remission of the late payment penalty would be appropriate under R.C. 5715.39(B)(1), as indicated on the appellant's application.

[5] We further note that there is no support for the BOR's decision. It is undisputed that the appellant purchased the subject property in November 2017. Therefore, it is unclear how the BOR could have based its decision on the appellant's history of late payment of property tax bills, specifically the property tax bills for tax years 2015 and 2016. See *Al-Sayed v. Lucas Cty. Bd. of Revision* (May 21, 2018), BTA No. 2017-1909, unreported. Compare *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported.

[6] 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 first half of tax year 2017 is appropriate, consistent with R.C. 5715.39(B)(2). Therefore, it is the decision and order of the Board of Tax Appeals that the BOR erred in its denial of the application for remission of the late payment penalty.

OHIO BOARD OF TAX APPEALS

MARGARET MEYMANN, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-444 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARGARET MEYMANN
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For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
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Entered Wednesday, December 5, 2018

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

The appellant taxpayer challenges decisions issued by the board of revision ("BOR") denying her requests for remission of real property tax late payment penalties from the first half of 2014 through the second half of tax year 2016 for five separate properties. 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 the appellant, the taxpayer 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). The taxpayer requests remission of the penalties, alleging that her failure to make timely payments was due to reasonable cause and not willful neglect. Specifically, taxpayer has not disputed that her payments were untimely, but described a number of medical difficulties and personal hardships that rendered her unable to timely pay her real property taxes during the time period in question.

Pursuant to R.C. 5715.39(C), "[t]he board of revision shall review the auditor's determination and remit a penalty for late payment of any real property taxes or manufactured homes 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." The county auditor shall remit a penalty for late payment of real property taxes when the tax was not timely paid because of the taxpayer's serious injury, but the tax must have been subsequently paid within sixty days after the last day for payment of such tax. R.C. 5715.39(B)(3). As the taxes were paid well-beyond the sixty-day time limit, the taxpayer does not qualify for this provision.

Despite the taxpayer's claims of an inability to pay, including evidence of medical bills and other financial hardship, we find that her failure to timely pay over the course of several years represented willful neglect rather than reasonable cause, bearing in mind her justifications for doing so. Even when only one prior incidence of late filing occurred, a taxpayer's habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause. 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. 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).

Accordingly, we hereby affirm the decisions of the BOR to deny the taxpayer's requests for remission of the late payment penalties for the first and second halves of tax years 2014, 2015, and 2016.

OHIO BOARD OF TAX APPEALS

THEODORE S ADKINS, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-193 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THEODORE S ADKINS
Represented by:
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For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
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Entered Wednesday, December 5, 2018

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

The appellant property owner appeals to this board from a decision of the Montgomery County Board of Revision ("BOR") determining the value of parcel number K46 00116 0017 for tax year 2017. No party requested a hearing before this board, so we proceed to consider the matter upon the notice of appeal and the statutory transcript certified pursuant to R.C. 5717.01. *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985).

The subject property was initially valued by the auditor at $107,860. The appellant property owner filed a complaint against the value, requesting a decrease to $90,000 based on nearby properties' values and comparable sales. No audio recording of the BOR hearing is available. Although this board set the matter for hearing to allow the parties to supplement the record with the missing testimony, no one appeared at the hearing. The "BOR Notes" included in the statutory transcript, however, indicate that the owner did appear at the hearing and provided a list of area sales and listing prices for similarly-sized homes. The BOR ultimately issued a decision decreasing the value of the property to $91,910 based on the evidence presented.

In the notice of appeal to this board, appellant requests a value of $91,910 – the precise value already determined by the BOR. In the absence of any other argument for a different value, we find appellant is not an aggrieved party and the present appeal does not present a justiciable issue. See *Kelsch v. Hamilton Cty.*

Bd. of Revision (Feb. 7, 2003), BTA Nos. 2002-T-1271, et al., unreported. We therefore find that this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

CINCINNATI CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-2110
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) - HAMILTON COUNTY BOARD OF REVISION
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36 E. SEVENTH, LLC
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Entered Wednesday, December 5, 2018

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

The Cincinnati City Schools Board of Education ("BOE") appeals to this board from a decision of the Hamilton County Board of Revision ("BOR") determining the value of parcel numbers 077-0003-0145, 077-0003-0146, and 077-0003-0147, for tax year 2016. As the parties waived their appearances at a hearing before this board, 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. *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (195).

The subject parcels were initially valued at a total of $9,200,000 for tax year 2016. The appellee property owner, 36 E. Seventh, LLC, filed a complaint seeking a decrease in total value to $8,400,000, based on the

property's sale for that amount in August 2016; it later amended its complaint to reflect a purchase price of $8,000,000. The BOE filed a countercomplaint seeking to maintain the auditor's initial value.

At the BOR hearing, the owner presented the testimony of Daniel Gray, asset manager for the buyer in the August 2016 transaction, and Keith Yearout, broker for the seller. Both testified that the purchase was conducted at arm's-length and that no significant changes to either the market or the property occurred between tax lien date and the date of the sale. Mr. Yearout explained that the property was offered for sale through an online auction site (TenX) which verified bids and assisted in the marketing of the property. Ultimately, after 72 inquiries, 9 bids were made and the property sold for an overall purchase price of $8,400,000, which included a $400,000 buyer's premium. The owner argued that the buyer's premium was paid to the online auction site for use of its platform and for printing of marketing materials; because it was not paid to the seller as part of the purchase price, the owner argued that the sale price for the subject real property was $8,000,000. The BOE argued that the buyer's premium was akin to a closing cost normally paid by the seller and should be included in the sale price. The BOR ultimately decreased the value to $8,000,000 and the BOE appealed to this board.

On appeal, the BOE argues that the BOR acted improperly by not including the $400,000 buyer's premium in the total purchase price. The owner maintains that the buyer's premium is not properly included, and notes that only $8,000,000 was reported on the conveyance fee statement filed with the county auditor.

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 parties do not dispute that the subject property transferred recent to tax lien date in an arm's-length transaction. While we note that the transfer was by way of auction, the record indicates that the sale was voluntary and that the seller was not under any duress. Compare *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-472. We therefore find that the August 2016 sale is the best evidence of the subject property's value as of tax lien date.

We must therefore decide whether the purchase price in the August 2016 transaction for purposes of valuing the property was the $8,000,000 reported on the conveyance fee statement or the $8,400,000 purchase price indicated on the purchase agreement as including a $400,000 buyer's premium. This board has previously found buyer's premiums to be akin to closing costs, brokerage fees, make-ready costs, title fees, and survey and engineering costs, which are "normal sale expenses" that should be included in a sale price for purpose of determining a property's value. See, e.g., *Primas Realty LLC v. Franklin Cty. Bd. of Revision* (Sept. 20, 2016), BTA No. 2015-2449, unreported; *Johnson v. Montgomery Cty. Bd. of Revision* (Mar. 9, 2010), BTA No. 2008-M-495, unreported.

The owner cites the importance of reporting $8,000,000 on the conveyance fee statement as the price for the subject real property. In prior cases involving the question of deductions from a sale price, this board has confronted the opposite factual scenario, i.e., a property owner arguing for deduction *below* the price reported on the conveyance fee statement. See *Primas Realty*, supra; *Gambert v. Montgomery Cty. Bd. of Revision* (Aug. 17, 2007), BTA No. 2006-V-914, unreported; *WB Storage Associates I v. Franklin Cty. Bd. of Revision* (Jan. 8, 1999), 1997-N-149, unreported. Here, the property owner cites language within the purchase agreement indicating that any commission paid to the brokers involved in the sale transaction should be based on the $8,000,000 "winning bid amount": "Any such commission or fee due Disclosed Brokers should be based solely on the Winning Bid Amount, *exclusive of the Buyer's Premium*." (Emphasis added.) S.T., Ex. F (Agreement for Sale at 23). In addition, the settlement statement separately states that a $400,000 buyer's premium was due to TenX RE, Inc. The owner further cites to the testimony of Mr. Yearout about the purpose of the "buyer's premium" being to cover the cost of using the online sale platform and marketing materials.

Upon review of the evidence, we find the buyer's premium is properly included in the total purchase price. The costs covered by the buyer's premium are similar to those normally incurred by a broker, though we acknowledge the parties agreed to a separate commission for the brokers involved. Mr. Yearout's testimony indicates that the costs covered by the buyer's premium were for advertising and facilitating a sale transaction - expenses normally incurred in a real estate transfer. Further, although the owner argues that the buyer's premium was not part of the purchase price, we find important that the parties' purchase agreement by its very own words indicates the opposite: the "purchase price" is equal to the winning bid amount ($8,000,000) plus the "buyer's premium" of $400,000. S.T., Ex. F. We find no reason to treat the buyer's premium in this matter any different than we have treated other closing costs in prior cases. While the owner cites to this board's decision in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Sept. 21, 2017), BTA No. 2016-1356, unreported, we find such inapposite, as there was no evidence in that case of the additional "auction fee" sought to be included in the purchase price. The record in this matter clearly establishes that the buyer's premium was included in the purchase price.

We acknowledge that reporting the sale price as $8,000,000 on the recorded conveyance fee statement created a presumption that $8,000,000 was the sale price for the property. However, such presumption is rebuttable. *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664. Here, the BOE points to other evidence in the record supporting a sale price higher than that reported on the conveyance fee statement. We find that the additional sale evidence provided, including the purchase agreement and testimony from representatives of the owner, rebuts the presumption accorded the recorded sale price. We find the sale price in the August 2016 transaction to be $8,400,000 for purposes of valuing the real property.

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

$8,400,000

TAXABLE VALUE

$2,940,000

OHIO BOARD OF TAX APPEALS

KENNETH R. LOMBARD, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-600

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KENNETH R. LOMBARD
OWNER
4744 HAMILTON MIDDLETOWN RD
HAMILTON , OH 45011

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 Wednesday, December 5, 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 D2020-043-000-012, for tax year 2017. 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 $144,440. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $106,000 based upon the negative impact of a new Kroger store located across the street, i.e., bright lights and increased traffic, and "relocation of Kyle Station Road." At the hearing on the matter, the property owner testified in support of the complaint. A spirited discussion was had regarding the real property valuation challenge process and valuation of real property in Liberty Township and Butler County. The property owner insisted that the BOR provide him with proof that the subject property was worth $144,440 and, conversely, the BOR insisted the property owner provide it with proof that the subject property was not worth $144,440. Because the property owner failed to come forward with evidence to demonstrate that the subject property should be valued at $106,000, the BOR voted to retain the subject property's initially assessed value of $144,440. The BOR subsequently issued a decision to that effect and this appeal ensued.

By way of the notice of appeal, the property owner requested that the subject property be revalued at $137,260. We note that none of the parties availed themselves of the opportunity to submit additional evidence at a hearing before this board. See *Newport Harbor Assn. v. Cuyahoga Cty. Bd. of Revision* (Nov.

25, 2014), BTA No. 2014-447, unreported at 2 ("A review of the notice of appeal demonstrates that the appellant used an outdated copy of the notice of appeal form, which was revised in October 2013. Although the appellant was not required to use the most recent notice of appeal form, by failing to do so, the appellant failed to provide newly requested information *** regarding the necessity of a merit hearing.").

Before we proceed with the merits of this appeal, we must first dispose of a preliminary issue. A review of the BOR hearing record suggests that the parties discussed other properties located within close proximity of the subject property via pictometry, which is not included in the statutory transcript. The board reminds 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, 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 records 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.

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. This board must review 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*, 153 Ohio St.3d 23, 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.

In this matter, we conclude that the property owner has failed to come forward with competent and probative evidence of the subject property's value. Though the property owner talked about the negative impact of the nearby Kroger store, i.e., bright lights and increased traffic, and relocation of Kyle Station Road, we do not find these bare assertions to be sufficient basis to reduce the subject property's value. The property owner failed to come forward with evidence to demonstrate how the defects impacted the subject property's value. Do the bright lights from the Kroger store result in a $1,000, $10,000, or $100,000 diminution in 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 ¶7. See also *Lombard v. Butler Cty. Bd. of Revision* (Jan. 11, 2016), BTA No. 2015-1235, unreported at 2 ("Appellant also submitted evidence and testimony regarding the negative aspects of the subject property and its location, in particular. *** Thus, we find that this information alone without further evidence as to how its location affects the value of the property is not sufficient to support a change in the subject's value.").

We note that, at the BOR hearing, the property owner strongly suggested that it was the BOR, not him, that had the burden to come forward with evidence of the subject property's value. To the extent that the property owner believed that he satisfied his evidentiary burden by merely questioning the accuracy of the subject property's initially assessed value, the Supreme Court has considered and rejected that argument. In *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572, 574 (1994), the court relied upon longstanding case law that *affirmatively* places the burden on a *complainant*, i.e., the property owner in this matter, to come forward with "'competent and probative evidence to establish the correct value of the subject property."

Furthermore, though the property owner failed to come forward with evidence to support his assertion(s), he attempted to impugn the mass appraisal system by suggesting some inappropriate motive in revaluing the subject property as part of the triennial update of real property values in Butler County for tax year 2017. See

R.C. 5715.24. The Supreme Court has also considered and rejected this argument. In *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, the court concluded:

> "Quite simply, then, nothing impugns the [auditor's] actions, so we presume that the [auditor's] unexplained adjustment was made in good faith and arose from the exercise of good judgment. *See Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, ***, ¶ 24. Moreover, we find it immaterial that the [auditor's] upward adjustment lacks a supporting rationale because, as the BTA correctly found, Jakobovitch failed to furnish competent and probative evidence of her proposed value. Under the case law, the [auditor] does not bear the burden to prove the accuracy of his or her valuation until the proponent of a different value presents competent and probative evidence to rebut that valuation. *Colonial Village*, 123 Ohio St.3d 268, 2009-Ohio-4975, *** , at ¶ 23, 30-31." Id. at ¶21.

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 come forward with competent and probative evidence of the subject property's value. As a result, we conclude that there is no basis to deviate from the subject property's initially assessed value.

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2017:

TRUE VALUE

$144,440

TAXABLE VALUE

$50,550

OHIO BOARD OF TAX APPEALS

STEVEN F. SMITH, (et. al.), Appellant(s), vs. ERIE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-466 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - STEVEN F. SMITH
Represented by:
STEVEN SMITH
4211 WALNUT CREEK LANE
SANDUSKY, OH 44870

For the Appellee(s) - ERIE COUNTY BOARD OF REVISION
Represented by:
GERHARD R. GROSS
ASSISTANT PROSECUTING ATTORNEY
ERIE COUNTY
247 COLUMBUS AVE.
SUITE 319
SANDUSKY, OH 44870

Entered Wednesday, December 5, 2018

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

Appellant property owner Steven Smith appeals a decision of the Erie County Board of Revision ("BOR") which determined the value of parcel number 32-00844.054 for tax year 2017. 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. None of the parties requested a hearing before this board at which to present new evidence.

The auditor initially valued the subject property at $478,660. Property owners Steven F. and Kathryn G. Smith filed a complaint seeking a decrease in value to $350,000 based on comparable sales. At the BOR hearing, the owners presented the report and testimony of Joseph A. Delahunt, a state-certified appraiser, who opined the value of the subject property to be $350,000 as of January 1, 2017. Mr. Delahunt explained that he used the sales comparison approach to value, and relied on three comparable sales in late 2016/early 2017, including two sales of properties in the subject's same development. After considering the evidence presented, the BOR voted to decrease the value of the property to $478,660, though it has provided no explanation in the record before us for such value. On appeal to this board, appellant again requests that the property be valued at $350,000 in accordance with Mr. Delahunt's appraisal.

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*, 151 Ohio St.3d 458, 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 Mr. Delahunt's 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 his appraisal report and testimony, we find Mr. Delahunt's opinion of value competent and probative.

The BOR's objections to the appraisal report during the proceedings below, if any, are not clear from the record. See *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."). Mr. Delahunt utilized three comparable sales that occurred close in time to tax lien date, of properties close in proximity to the subject, including two within the same development. The unadjusted sale prices of the three properties ranged from $315,000 to $350,000. He adjusted each sale for differences in square footage, condition, and amenities, and arrived at an adjusted range of $336,700 to $351,300. We find Mr. Delahunt's conclusion of value of $350,000 as of January 1, 2017 reasonable and well supported.

It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2017, were as follows:

TRUE VALUE

$350,000

TAXABLE VALUE

$122,500

OHIO BOARD OF TAX APPEALS

MATHEWS DAVID & ABBY, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-1519

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MATHEWS DAVID & ABBY
Represented by:
DAVE MATHEWS
6019 POND VIEW COURT
CINCINNATI, OH 45247

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, December 7, 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. Appellants 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 auditor, 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. The county appellees attached to their motion the affidavit of the clerk to the BOR, asserting that appellants' notice of appeal was

not filed with the Hamilton County Board of Revision. 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

CHARLES LARSON, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1477 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CHARLES LARSON
827 CHURCH STREET
IOWA CITY, IA 52245

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 10, 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 decided upon the motion, the statutory transcript certified by the county auditor, 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

SUPRENANT RONALD & ROSALYN, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1214 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SUPRENANT RONALD & ROSALYN
Represented by:
DR. RONALD SUPRENANT
7161 HUNTERS CREEK DRIVE
DAYTON, OH 45459

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, December 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. Appellants 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 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. The county appellees attached to their motion the affidavit of the clerk to the BOR, asserting that appellants' notice of appeal was not filed with the Hamilton County Board of Revision. Appellants submitted evidence, but did not provide documentation to demonstrate that a 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

JOHN KLOSTERMAN, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-1138

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHN KLOSTERMAN
OWNER
5615 SIDNEY RD
CINCINNATI , OH 45238

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, December 12, 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 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. 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 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 A. WISE, TRUSTEE OF THE MARK A. WISE TRUST; AND DAVID S. WISE, TRUSTEE OF THE DAVID S. WISE TRUST, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-359

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARK A. WISE, TRUSTEE OF THE MARK A. WISE TRUST; AND DAVID S. WISE, TRUSTEE OF THE DAVID S. WISE TRUST
Represented by:
MARY L'HOMMEDIEU
L'HOMMEDIEU & MCGRIEVY, LLC
100 NORTH MAIN STREET
SUITE 350
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 Monday, December 10, 2018

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

[1] This matter is now considered upon the county appellees' motion to dismiss, and the parties' responses thereto. The county appellees assert this appeal is premature, as the Cuyahoga County Board of Revision ("BOR") has not yet issued a decision from which appellants can appeal under R.C. 5717.01. Appellants counter that they appeal from the letter of the BOR's administrator indicating that their complaint was not timely filed.

[2] Appellants attached to their notice of appeal an April 3, 2018 letter from the administrator of the BOR indicating their valuation complaint was filed after the statutory deadline. We note that, although R.C. 5715.19(A) provides that complaints against real property valuation must be filed by March 31 of the ensuing year, such date fell on a Saturday in 2018; therefore, the statutory deadline for filing a complaint was April 2, 2018. The statutory transcript certified by the county fiscal officer pursuant to R.C. 5717.01 includes a copy of appellants' complaint against the value of parcel number 953-22-028 for tax year 2017.

[3] The complaint was notarized on April 2, 2018, and was mailed to the BOR by FedEx Priority Overnight on April 2 and delivered on April 3. Rather than receive the complaint and issue a decision dismissing it as untimely, the BOR's administrator sent appellants a letter indicating the complaint was not timely filed.

[4] Appellants make two arguments in their response to the county appellees' motion. First, they argue that the letter of the BOR's administrator constitutes a decision of the BOR from which they may appeal to this board under R.C. 5717.01 and R.C. 5703.02(A). As a creature of statute, this board has only the jurisdiction, power, and duties expressly given by the General Assembly. *Steward v. Evatt*, 143 Ohio St. 547 (1944). R.C. 5703.02(A) gives this board the authority to hear and determine appeals "from decisions, orders, determinations, or actions of any tax administrative agency established by the law of this state, including but not limited to appeals from: *** Decisions of county boards of revision ***."

[5] In *Channell v. Montgomery Cty. Bd. of Revision* (July 15, 2008), BTA No. 2008-N-529, unreported, we addressed a factually similar appeal. In that case, the appellant filed his complaint after the statutory deadline and, although he did not receive a decision letter from the board of revision, appealed to this board. We stated our concern with the board of revision's failure to consider the complaint and render a decision from which the complainant could appeal, citing our prior decisions in *National Church Residence v. Licking Cty. Bd. of Revision* (Sept. 12, 1997), BTA No. 1995-K-384, unreported, and *Meijer, Inc. v. Wood Cty. Bd. of Revision* (Sept. 7, 2001), BTA No. 2001-T-457, unreported. However, we held, as we do here, that this board's jurisdiction is limited to *decisions* of a county board of revision. *Channell*, supra, at 4 (noting that a board of revision must follow mandatory procedures under R.C. 5715.20 regarding the certification of its decisions, and that the statutory appeal period depends on such procedures). See also *Johnson v. Clark Cty. Bd. of Revision* (Mar. 27, 2017), BTA No. 2017-30, unreported; *Gibson v. Franklin Cty. Bd. of Revision* (Aug. 8, 2013), BTA No. 2013-L-751, unreported; *Bretelson v. Greene Cty. Bd. of Revision* (May 7, 1999), BTA No. 1998-G-476, unreported.

[6] We therefore find that the letter from the BOR administrator indicating the complaint was not timely filed does not constitute a decision of the board of revision from which appellants could appeal to this board.

[7] However, even if the BOR administrator's letter had constituted a decision from which appellants could appeal to this board, we would find no error in the administrator's assessment of the timeliness of the complaint. R.C. 5715.19(A) provides the following regarding the filing date to be accorded to a complaint:

> "If such complaint is filed by mail or certified mail, the date of the United States postmark placed on the envelope or sender's receipt by the postal service shall be treated as the date of filing. A private meter postmark on an envelope is not a valid postmark for purposes of establishing the filing date."

[8] It is clear that appellants did not file the complaint by United States mail or certified mail, nor that they used a private meter postmark. Instead, they used a private carrier. Appellants argue that R.C. 5703.056 accords filings by private carrier, i.e., "authorized delivery services," the date of mailing as the filing date. R.C. 5703.056 applies only to sections of the Revised Code applicable to payments or documents to be submitted to the tax commissioner, this board, or payments to be submitted to the treasurer of state. Such section allows the tax commissioner to authorize the use of a delivery service that meets certain criteria. The Tax Commissioner has issued Information Release 2001-01 specifying those delivery services that are "authorized delivery services" and whose date of receipt for mailings will be treated the same as a U.S. Postal Service postmark. See also Ohio Adm. Code 5703-1-13.

[9] FedEx Priority Overnight is among the authorized delivery services; however, the statute under which appellants filed their complaint against valuation, R.C. 5715.19, does not provide for "constructive filing" dates for mailings by authorized delivery services. Compare R.C. 5717.01. Because mailing by FedEx Priority Overnight is not specified in R.C. 5715.19(A), the date the mailing was received by FedEx is not treated as the date of filing; rather, the date of filing is the date the complaint was received by the BOR. The record demonstrates that the complaint was received on April 3, 2018. It was therefore untimely

[10] Based upon the foregoing, the county appellees' motion to dismiss is well taken. It is the order of this board that this matter be dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

PEOPLES SAVINGS & LOAN COMPANY/NKA HUNTINGTON BANCSHARES INCORPORATED/HUNTINGTON BANCSHARES FINANCIAL CORPORATION/THE HUNTINGTON NATIONAL BANK, (et. al.),	CASE NO(S). 2017-1311
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
GEAUGA COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - PEOPLES SAVINGS & LOAN COMPANY/NKA HUNTINGTON BANCSHARES INCORPORATED/HUNTINGTON BANCSHARES FINANCIAL CORPORATION/THE HUNTINGTON NATIONAL BANK
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Entered Friday, December 14, 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 number 19-011900, 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 written argument submitted by the parties.

The subject property was initially assessed at $275,000. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $175,000. The complaint disclosed the subject property was currently "[u]nder contract to purchase for $175,000." The BOR held a hearing on the complaint at which time the property owner appeared through counsel to submit argument and/or evidence in support of the complaint. In doing so, the property owner submitted a packet, an "Owner's Opinion of Value," which included documents that memorialized the $175,000 transfer of the subject property from

"The Huntington National Bank, successor by merger to FirstMerit Bank, N.A., successor by merger to The People's Savings and Loan Company" to JM Bruening, LLC in May 2017. (We note that one of the BOR members repeatedly referred to counsel's presentation as "testimony"; however, there was no indication that counsel was sworn in as a witness or had firsthand knowledge of the matters he discussed.) According to counsel, the subject property was an operating bank branch on the tax lien date of January 1, 2016 but had ceased operations prior to the sale date in May 2017. Counsel also stated that during the approximate sixteen months between the tax lien and sale dates, the then property owner merged with Huntington National Bank ("Huntington"). There was some discussion regarding the subject property's complaint valuation history. The BOR members asserted that a complaint against the subject property's value had been filed the prior year, tax year 2015, of which counsel for the property owner claimed to be unaware. The BOR determined that the subject sale did not reflect the subject property's value as of the tax lien date and subsequently issued a written decision to that effect. 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 "[a]n 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 the following:

> "Real property that is not intended primarily for use in a business activity shall qualify for a partial exemption from real property taxation. For purposes of this partial exemption, 'business activity' includes all uses of real property, except farming; leasing property for farming; occupying or holding property improved with single-family, two-family, or three-family dwellings; leasing property improved with single-family, two-family, or three-family dwellings; or holding vacant land that the county auditor determines will be used for farming or to develop single-family, two family, or three-family dwellings. ***"

It is undisputed that the subject property is "intended primarily for use in a business activity" and was actually used as a retail bank branch. As such, the instant appeal is ineligible for the small claims docket. We hereby reassign the matter to the board's regular docket. R.C. 5703.021(D).

None of the parties availed themselves of the opportunity to supplement the record with additional evidence at a hearing before this board. Instead, they submitted written argument to fully articulate their respective positions. In its submission, the property owner asserted that it had provided several sale documents to demonstrate that the subject property had been the subject of a recent, arm's-length sale and, as a consequence, requested that the subject property be revalued consistent with its $175,000 sale price. In their submission, the county appellees first asserted that the underlying complaint was an impermissible multiple filing within the triennial period. R.C. 5715.19(A)(2). As a consequence, the county appellees argued that the BOR lacked jurisdiction to consider the property owner's complaint, which also deprives this board of the ability to consider the merits of this appeal. Alternatively, the county appellees argued that we should affirm the BOR's decision to reject the subject sale because the substantial change in the subject property's occupancy rendered such sale remote from the tax lien date. In the property owner's response to the motion to dismiss, it asserted that the underlying complaint was filed by a subsequent owner of the subject property, Huntington, and argued that we should disregard the county appellees' combined motion to dismiss and merit brief because it was untimely filed. The property owner attached a number of documents to its filing, including the complaints for tax years 2015 and 2016.

Before we can consider the merits of this appeal, we must first determine whether jurisdiction was properly vested before the BOR. As an initial matter, we reject the property owner's argument that any jurisdictional issues must be ignored because the county appellees failed to timely raise such issues. 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 Cty. Bd. of Revision* (Dec. 18, 2017), BTA No. 2017-1190, unreported. We therefore find the issue is properly raised.

The county appellees' motion is premised upon R.C. 5715.19(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. *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. 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. Bd. of Revision*, 84 Ohio St.3d 32, 35 (1998). It is important to note that the relevant triennial period includes tax years 2014, 2015, and 2016.

The property owner argues that R.C. 5715.19(A)(2) is inapplicable to this matter because the complainant that filed the tax year 2015 complaint is not the same complainant that filed the tax year 2016 complaint. In support of its position, the property owner submitted *Pavilonis v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 18, 2018-Ohio-1480, as additional authority. There, the court ruled that a complaint was not an impermissible second filing, under R.C. 5715.19(A)(2), because the prior owner, i.e., a different titled owner, had filed the prior complaint. In reaching its decision, the court noted:

> "The county contends, however, that the BTA ignored evidence showing that Uchbar was behind the filing of both valuation complaints and the transfer to his wife. It says that Uchbar and Pavilonis each had some interest in the property when both complaints were filed. To be sure, evidence shows that Uchbar has an ownership interest in Transworld Investments; that he (as Transworld Investments' member) executed the deed by which the property was conveyed to Pavilonis; and that he, Transworld Investments, and Pavilonis use the same address. But this evidence does not undermine Transworld Investments' status as a distinct entity or change the fact that different complainants filed the complaints at times when they each had the right to do so under R.C. 5715.19(A)(1)." Id. at ¶13.

Here, a review of the tax years 2015 and 2016 complaints and the property record card demonstrate that "The People Savings & Loan Company" was the complainant and titled owner of the subject property. In fact, counsel for the property owner admitted that "The People Savings & Loan Company," a distinct entity, was the titled owner of the subject property though there had been a merger with Huntington National Bank, a distinct entity. See BOR Hearing Record. As such, there is no dispute as to the identity of the titled owner of the subject property, "The People Savings & Loan Company."

Because we have concluded that the titled owner, "The People Savings & Loan Company," filed complainants in two, consecutive tax years within the same triennial period, we next consider whether there was an exception to the rule indicated by R.C. 5715.19(A)(2). A review of the property owner's tax year 2016 complaint indicates that the property owner checked two boxes to claim exceptions to R.C. 5715.19(A)(2). The complaint indicated that the subject property "was sold in an arm's[-]length transaction" and that the subject "[p]roperty's occupancy changed by at least 15%."

The Supreme Court has held that there are three elements to satisfy the jurisdictional bar on a successive complaint that alleges an arm's-length sale: (1) [t]he second-filed complaint must allege that the property

value should be changed on account of the property's having been sold in an arm's length transaction; (2) [t]he sale must have occurred after the tax-lien date for the tax year for which the prior complaint was filed; and (3) [t]he sale must not have been "taken into consideration with respect to the prior complaint." S*oyko*, supra, at ¶¶22-26. Accord *Glyptis v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 597, 2018-Ohio-1437, at ¶12. Based upon these decisions, we find that the property owner's complaint for tax year 2016 is not jurisdictionally barred. It is undisputed that the property owner checked boxes to claim exceptions to the prohibition against filing multiple complaints within the triennial period. It is equally undisputed that the subject sale of the subject property or the occupancy change of at least 15% occurred after the tax lien date for the previously filed complaint, i.e., January 1, 2015. It is also undisputed that neither the subject sale nor the occupancy change of at least 15% were "taken into consideration with respect" to the complaint for tax year 2015. As a consequence, the county appellees' motion to remand with instructions to dismiss is denied.

We now 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). 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 review 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*, 153 Ohio St.3d 23, 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.

In this matter, the presentation of the sale documents, by the property owner, created a rebuttable presumption that the subject sale was a recent, arm's-length transfer indicative of the subject property's value. *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 burden then shifted to the proponent of the subject sale, the county appellees, to provide evidence to rebut such sale. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, at ¶¶32, 34. There is no evidence in the record to support the BOR's decision to reject the subject sale. We note that the discussion at the BOR hearing suggests that the BOR members rejected the subject sale because it did not occur in the same year as the tax lien date of January 1, 2016. We have previously concluded that the Geauga County Board of Revision acted contrary to law with its wholesale rejection of post-tax lien date sales. *Uchbar v. Geauga Cty. Bd. of Revision* (Dec. 14, 2015), BTA No. 2015-986, unreported at 2; *Geauga Commercial Props. LLC v. Geauga Cty. Bd. of Revision* (Jul. 14, 2016), BTA No. 2014-1457, unreported at 4. See, e.g., *Akron Ctr. Plaza, LLC v. Summit Cty. Bd. of Revision*, 128 Ohio St.3d 145, 2010-Ohio-5035, at ¶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.

Accordingly, we find that the county appellees failed to rebut the presumptions accorded to the subject sale. Absent an affirmative demonstration that the subject sale is not a qualifying sale for tax valuation purposes, we find that the record shows that the transaction was recent and 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 subject property's true and taxable values, as of January 1, 2016, were as follows:

TRUE VALUE

$175,000

TAXABLE VALUE

$61,250

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

PLAIN LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1025
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
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TIRE AND AUTO HOLDINGS INC.
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PO BOX 2710 LEASE AND PROPERTY TAX
ROANOKE, VA 24001

Entered Wednesday, December 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 real property, parcel number 5214828, 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 1.75 acres of land improved with a commercial building that operates as an Advanced Auto Parts store. The auditor initially assessed the subject's total true value at $599,900. The BOE filed a complaint with the BOR seeking an increase in value to $877,300. At the BOR hearing, the BOE explained that the auditor performed the triennial update for tax year 2015, and the subject's value decreased for 2016, mid-triennial. The BOE argued that this decrease was improper, and the subject should return to the value that resulted from the 2015 update, i.e., $877,300. The BOE asserted that the reduction primarily resulted from changing the building code from retail store to discount store. The BOE presented

property record cards for two other commercial properties of similar size, built within a year of the subject's construction date, also operating as Advanced Auto Parts stores. The BOE asserts that these properties are both classified as retail stores (not discount stores), which shows that the auditor's change of the subject's use code resulted in a valuation inconsistent with other similar properties. The BOR issued a decision maintaining the initially assessed valuation, and from this decision, the BOE filed the present appeal. This board convened a hearing, at which the BOE again argued that the auditor improperly changed the value of the subject property in the second year of the interim period. The BOE presented an email exchange between himself and the auditor's office evidencing his inquiry into this and other situations in which the auditor reduced a property's value during the second year of the triennial period. The BOE also submitted a report prepared by the auditor's staff for the BOR hearing, a record of the subject's values from 2008 through 2017, and a printout of the subject parcel's data from the auditor's website.

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 is well-settled that an appellant bears a burden not to merely challenge the auditor's valuation, but rather to provide competent and probative evidence that an alternative value reflects the true value of the subject property. See, e.g., *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶10 ("The county, therefore, needed to present evidence supporting the fiscal officer's valuation only if Schutz first carried his burden by presenting evidence of a different value for the property.").

In this case, the BOE 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 2015 was the first year. Neither the property owner nor the county appellees have directly responded to this argument, but the evidence submitted by the BOE provides some context regarding the auditor's 2016 value. Based upon the documents submitted by the BOE, it appears that the auditor's office visited the subject property on September 4, 2015, to physically inspect new construction. Based on this inspection, the following updates were made to the property's profile: the subject's use was changed from retail store to discount store, a covered patio was added, and the description of the entrance was changed to a covered patio. The BOE argues that the new construction should have arguably increased the value of the subject property but its reclassification as a discount store caused its value to decrease. The BOE claims that this reclassification of its use was improper, offering the classification of similar buildings as support for this contention.

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 assess taxes against real property in the county pursuant to R.C. 5713.01(B) and R.C. 5713.03. Pursuant to these duties, the auditor must 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*." (Emphasis added.) Id. at ¶32.

In the present appeal, the record shows that new construction caused the auditor to reevaluate the subject property, which resulted in a new valuation. As such, the mid-triennial change to the subject's value fell within the scope of an auditor's duties under R.C. 5713.01. Moreover, because this revaluation fell within the auditor's ordinary duties of office, the presumption of regularity applies and the auditor is presumed to have done it properly. See *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872, ¶28. A party may rebut this presumption, but we find that the BOE's presentation of the auditor's use code for other properties is not sufficient to show that the subject's use was misclassified as discount retail. Furthermore, if a party disagrees with the new value, that issue is properly addressed through the filing of a complaint, as the BOE did in this case. Where the BOE fell short, however, is its failure to

present additional independent evidence of 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, 2016, were as follows:

TRUE VALUE

$599,900

TAXABLE VALUE

$209,970

OHIO BOARD OF TAX APPEALS

RONALD W. DUDERSTADT, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1278 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RONALD W. DUDERSTADT
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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GAHANNA-JEFFERSON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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Entered Monday, December 17, 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 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 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 Franklin 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

TIFFANY CHARLOW & ANTHONY MICELI, (et. al.),	CASE NO(S). 2018-1424
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - TIFFANY CHARLOW & ANTHONY MICELI
Represented by:
JENSEN E. SILVIS
ATTORNEY AT LAW
190 NORTH UNION STREET
SUITE 201
AKRON, OH 44304

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

Entered Monday, December 17, 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. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is 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 county appellees attached to their motion the affidavit of the executive assistant to the Summit County Board of Revision, asserting that appellants' notice of appeal was filed forty days after the mailing of the BOR's decision. 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

DELORIS LOWREY, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-1422

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DELORIS LOWREY
Represented by:
JENSEN E. SILVIS
ATTORNEY AT LAW
190 NORTH UNION STREET
SUITE 201
AKRON, OH 44304

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

Entered Monday, December 17, 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 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. (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 county appellees attached to their motion the affidavit of the executive assistant to the Summit County Board of Revision, asserting that appellant's notice of appeal was filed forty days after the mailing of the BOR's decision. 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

RAYMOND J. COOK, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-1315

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RAYMOND J. COOK
Represented by:
RAYMOND COOK
OWNER
884 CARINI LN.
CINCINNATI, OH 45218

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 Monday, December 17, 2018

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

The appellees jointly 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 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. The appellees attached to their motion the affidavit of the clerk to the BOR, asserting that appellants' notice of appeal was not filed with the Hamilton County Board of Revision. 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

CANTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1026
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CANTON 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) - 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

MARKET AVENUE HOTEL LLC ET AL
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

Entered Monday, December 17, 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 243103, 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 0.9 acres of land improved with an 8-story hotel. The auditor initially assessed the subject's total true value at $3,739,600. The BOE filed a complaint with the BOR seeking an increase in value to $4,372,200. The appellee property owner, Market Avenue Hotel LLC, filed a countercomplaint in support of retaining the auditor's value. At the BOR hearing, the BOE argued that the subject's value was improperly decreased for 2016, the second year in the interim period, and the 2015 value, which resulted

from the triennial update, should be reinstated. The BOE described the recent history of complaints filed regarding the value of the subject property, noting that the owner had filed for both 2014 and 2015, but both were dismissed and did not result in a change to the subject's value. The BOE explained that the 2014 complaint had gone to hearing, at which evidence of the subject's 2014 income information and a mortgage for $3,150,000 was provided, though the complaint was ultimately dismissed for lack of jurisdiction. The BOE presented this information and argued that it supports the requested increase. The BOE also clarified that the 2015 complaint was voluntarily dismissed by the property owner, after which the BOE dismissed its countercomplaint, leaving the 2015 update value, i.e., $4,372,200, in place. The BOE asserts that this value should have carried forward into 2016. Market Avenue Hotel submitted a report summarizing the subject's basic property details in addition to income data for 2015 and 2016, asserting that this showed that not only should the value not be increased, but also that the auditor has overstated the subject's 2016 value. The BOR issued a decision maintaining the initially assessed valuation, finding that the BOE did not present sufficient evidence.

From this decision, the BOE filed the present appeal. This board convened a hearing at which the BOE again argued that the tax year 2015 value should have carried forward into 2016. The BOE presented an email exchange with the auditor's office inquiring about multiple properties with values that were reduced during the second year of the triennial period. The BOE also submitted a record of the subject's values from 2008 through 2017 and a printout of the subject parcel's data from the auditor's website. Neither the county appellees nor Market Avenue Hotel submitted argument or additional evidence to this board.

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 is well-settled that an appellant bears a burden not to merely challenge the auditor's valuation, but rather to provide competent and probative evidence that an alternative value reflects the true value of the subject property. See, e.g., *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶10 ("The county, therefore, needed to present evidence supporting the fiscal officer's valuation only if Schutz first carried his burden by presenting evidence of a different value for the property.").

In this case, the BOE initially challenges the auditor's assessment of the subject property for tax year 2016, asserting that the auditor improperly cut off the carry-forward during the interim period, of which 2015 was the first year. Neither the property owner nor the county appellees have directly responded to this argument, but the evidence submitted by the BOE provides some context regarding the auditor's 2016 value. Based upon the documents submitted by the BOE and a report from the auditor's staff, it appears that the auditor's office visited the subject property on May 27, 2016 related to the 2015 complaint. Although that complaint was withdrawn and the 2015 value was not adjusted, based on this inspection, the auditor adjusted the building value for 2016, having determined it was outdated. The BOE argues that the record does not contain support for this reduction.

At the outset, we reject the BOE's argument that auditor's revaluation of the subject property for tax year 2016 was improper and should result in the reinstatement of the subject's 2015 values. 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 assess taxes against real property in the county pursuant to R.C. 5713.01(B) and R.C. 5713.03. Pursuant to these duties the auditor must 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*." (Emphasis added.) Id. at ¶32.

In the present appeal, the record shows that a tax year 2015 complaint caused the auditor to visit the subject property, which resulted in a new valuation. As such, the mid-triennial change to the subject's value fell

within the scope of an auditor's duties under R.C. 5713.01. Moreover, because this revaluation fell within the auditor's ordinary duties of office, the presumption of regularity applies and the auditor is presumed to have done it properly. See *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872, ¶28. A party may rebut this presumption, but we find that the BOE has failed to show that the auditor's actions were improper. Furthermore, if a party disagrees with the new value, that issue is properly addressed through the filing of a complaint, as the BOE did in this case. Where the BOE fell short, however, is its failure to present competent and probative independent evidence of value.

We acknowledge that the BOE did provide evidence of a mortgage and that both the BOE and Market Avenue Hotel submitted income information. None of this evidence is sufficient to allow this board to independently determine an alternative value. 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). A mortgage, such as the one submitted by the BOE in this case, does not constitute a transfer of the subject property and is not given the weight attributed to a qualifying sale. Additionally, although a lender may rely upon an appraisal to establish the limits of the amount of principal to lend, that principal does not provide a reliable basis for this board to essentially extract a value for the property based on what we believe the loan-to-value ratio might be. Noticeably, in this case, the mortgage is secured by not only the subject real property, but also aspects of the hotel business, such as personal property and revenue. Thus, we find that the mortgage evidence offered by the BOE does not constitute competent and probative evidence of the value of the subject property.

Finally, we find that the income and expense data submitted by the BOE and Market Avenue Hotel does not provide a reliable basis for this board to independently determine a value for the subject property. The record is devoid of any evidence as to whether the subject property's actual experience conforms to the market. See *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996). Even if this board were to conclude that the subject is operating at market income and expense rates, the record lacks evidence as to the appropriate capitalization rate to translate the net operating income into value. Therefore, we find that the income data does not support an adjustment to the subject's 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, 2016, were as follows:

TRUE VALUE

$3,739,600

TAXABLE VALUE

$1,308,860

OHIO BOARD OF TAX APPEALS

GRANT MICHAEL HILL, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-1272

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GRANT MICHAEL HILL
Represented by:
DR. GRANT HILL
16972 KAWAI COURT
FOUNTAIN VALLEY, CA 92708

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, December 18, 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. This matter is decided upon the motion, the responses thereto, and the statutory transcript certified by the fiscal officer.

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. In addition, the county provided the affidavit of the clerk to the BOR, asserting that the appellant's notice of appeal was not filed with the Cuyahoga County Board of Revision. Appellant's response denied county appellees' claim, but did

not provide documentation to demonstrate that the appeal was timely filed. 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

CUYAHOGA FALLS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1563
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - CUYAHOGA FALLS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
CHRISTIAN M. WILLIAMS
ATTORNEY AT LAW
PEPPLE & WAGGONER, LTD.
CROWN CENTRE BUILDING
5005 ROCKSIDE ROAD, SUITE 260
CLEVELAND, OH 44131-6808

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

3140 W. BAILEY ROAD, LLC
Represented by:
MICHAEL BURNS
P.O. BOX 519
BATH, OH 44210

Entered Tuesday, December 18, 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, parcels 02-12381, 02-12382, and 02-12383, 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 written argument submitted by the parties.

[2] The subject property was initially assessed at $225,000. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $169,900, to reflect the price at which it sold in August 2016. The BOE filed a countercomplaint, which objected to the request.

[3] At the BOR hearing on the matter, the property owner and BOE appeared to submit argument and evidence in support of their respective positions. Michael Burns, a member of the corporate property owner, testified about the facts and circumstances of the land-installment contract that the property owner entered into with Noel Holding Enterprises, Inc. ("Noel") for $169,900 in August 2016. Burns asserted that the property owner retained ownership of the subject property, remained responsible for the mortgage encumbering it and any taxes, and was at risk should Noel default under the terms of the land-installment contract. The BOE cross-examined Burns about the terms of the land-installment contract and the property owner's attempts to sell the subject property. The BOE argued that there were a number of decisions from this board that determined that land-installment contracts were financing arrangements, which did not enjoy the presumptions of a sale unless title to the property transferred "recent" to the tax lien date. The BOR voted to reduce the subject property's value to $169,900 and issued a written decision to that effect. The BOE then appealed to this board.

[4] None of the parties availed themselves of the opportunity to submit additional evidence at a hearing before this board. Instead, the BOE submitted written argument to more fully articulate its position. Neither the property owner nor the county appellees submitted 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 OhioSt.2d 129 (1977). This board must review 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*, 153 Ohio St.3d 23, 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.

[6] Although this board has previously relied upon the sale price pursuant to a land contract 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. 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.

[7] Here, the terms of the land-installment contract are undisputed. The record is, however, devoid of any evidence to demonstrate that the subject property has transferred to Noel in satisfaction of the land-installment contract. In fact, Burns conceded that the property owner retained ownership of the subject property. 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. *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of* Revision, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶19. Because the BOR's decision is based upon the land-installment contract, we must conclude that its decision is improper.

[8] To the extent that the property owner asserted that its unsuccessful attempts to sell the subject property necessitated a reduction to the subject property's value, Ohio courts have held that unaccepted offers to purchase are not competent and probative evidence of real property value. *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397, 400 (1997). 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.").

[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, we find that the land-installment contract upon which the property owner relied is not competent and probative evidence of the subject property's value. As a result, the BOR committed legal error when it reduced the subject property's value based upon the land-installment contract. In the absence of any other evidence of value, we are constrained to reinstate the subject property's initially assessed value. See *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 548, 2018-Ohio-919; *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 700, 2016-Ohio-8375.

[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, 2016:

PARCEL NUMBER 02-12381

TRUE VALUE: $163,350

TAXABLE VALUE: $57,170

PARCEL NUMBER 02-12382

TRUE VALUE: $31,090

TAXABLE VALUE: $10,880

PARCEL NUMBER 02-12383

TRUE VALUE: $30,560

TAXABLE VALUE: $10,700

OHIO BOARD OF TAX APPEALS

MARGO MICHELE REIS AND DONALD W REIS, WIFE AND HUSBAND, FOR THEIR JOINT LIVES, REMAINDER TO THE SURVIVOR OF THEM, (et. al.),	CASE NO(S). 2018-1442
	(REAL PROPERTY TAX)
Appellant(s),	DECISION AND ORDER
vs.	
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - MARGO MICHELE REIS AND DONALD W REIS, WIFE AND HUSBAND, FOR THEIR JOINT LIVES, REMAINDER TO THE SURVIVOR OF THEM
Represented by:
JOSEPH MATEJKOVIC
ATTORNEY
3189 PRINCETON RD. #298
FAIRFIELD TOWNSHIP, OH 45011-5338

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

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 Tuesday, December 18, 2018

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

[1] This matter is now considered upon the appellant board of education's ("BOE") motion to remand this matter to the board of revision ("BOR") with instructions to dismiss the underlying complaint for lack of jurisdiction. The BOE argues that the underlying complaint failed to properly invoke the jurisdiction of the BOR. The property owners did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). We consider this matter upon the motion and the notice of appeal.

[2] Attached to the BOE's motion is a copy of the underlying complaint against the valuation of parcel number N64 00202 0066 for tax year 2017. The complaint listed "Margo Michele & Donald W. Reis" as the property owners, "agent" as the complainant if not owner, and "Doris McCall-Hammonds" as the complainant's agent. The complaint was signed by "Doris McCall-Hammonds," whose title was noted as "Agent." The BOR ultimately issued a decision finding value for the subject property, and the property owners appealed to this board. In its motion, the BOE argues that Ms. McCall-Hammonds engaged in the unauthorized practice of law by filing the complaint, and that the complaint therefore failed to properly invoke the jurisdiction of the BOR.

[3] The Supreme Court has recently reaffirmed that "if someone other than the property owner prepares and files the complaint on behalf of the owner, that person must be an attorney or authorized by law to make such filing." *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4244, 11. R.C. 5715.19(A) specifies those non-attorney agents who may file on behalf of an owner, including spouses, appraisers, real estate brokers, accountants, and corporate officers. Non-attorney agents, such as Doris McCall-Hammonds, are not authorized to file valuation complaints on behalf of another, and engage in the unauthorized practice of law when they do so. *Greenway*, supra, at ¶17. A complaint filed by a non-attorney agent not authorized by law fails to invoke the board of revision's jurisdiction. *Sharon Village, Ltd. v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479 (1997).

[4] Based upon the foregoing, we find that the underlying complaint failed to properly invoke the jurisdiction of the BOR. Accordingly, this matter is hereby remanded to the Montgomery County Board of Revision with instructions to vacate its decision, dismiss the underlying complaint, and reinstate the auditor's initial valuation for tax year 2017.

OHIO BOARD OF TAX APPEALS

SMARTLANDBR35, LLC, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-164

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SMARTLANDBR35, LLC
Represented by:
JEFFREY P. POSNER
ATTORNEY AT LAW
3393 NORWOOD ROAD
SHAKER HTS., 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 Wednesday, December 19, 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 real property, parcel number 785-15-037, 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 property owner's written argument. We note that the property owner attached several documents to its written argument. To the extent that these documents were not previously made part of the record during the proceedings before the BOR and were not submitted at a hearing before this board, we will not consider them as part of the record. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996)

The subject property is improved with a 36-unit apartment building. The fiscal officer initially assessed the subject's total true value at $731,900. The Maple Heights City School District Board of Education ("BOE") filed a complaint with the BOR seeking an increase in value to $835,000 based on a December 2016 sale of the subject property. At the BOR hearing, the BOE submitted a deed and conveyance fee statement as evidence of the sale, arguing that the reported purchase price of $835,000 establishes the true value of the subject property. The property owner did not dispute that it purchased the subject property in a recent arm's-length transaction, but argued that the reported sale price included consideration paid for personal property included in the sale. The property owner asserted that in addition to a reduction for appliances and furnishings included in each unit, the sale price should be further reduced to account for a $65,000 credit to

improve the parking lot. The BOE noted that the property owner attributed the entire purchase price to real property on both the conveyance fee statement and a Sale Verification Questionnaire filed with the county at the time of the transfer. The BOE further noted that a new mortgage of $896,800 suggested a potentially higher value for the subject than even the sale price. The BOR issued a decision increasing the initially assessed valuation to $835,000, which led to the present appeal. The property owner waived the opportunity to appear before this board to present additional evidence, relying on written argument and the record below to reiterate the claim made to the BOR that the purchase price should be reduced to account for credits paid to the purchaser at closing and non-realty items purportedly included in the transaction. The property owner also argued that the BOE should be required not only to present the basic documentation of sale, but also to further develop a true valuation based on additional factors. The BOE did not participate in the present appeal, and the county appellees did not submit written argument.

There is a well-established rebuttable presumption that a submitted sale price has met all the requirements that characterize true value after a proponent of a sale satisfies a "relatively light initial burden." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶14. This burden may be satisfied through the submission of even unauthenticated sale documents if there is no real dispute about the basic facts of the sale. Id. at ¶¶14-15. See, also, *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 691, 2017-Ohio-1412, ¶18. 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." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. 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 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, there is no dispute that the subject property transferred via a recent, arm's-length sale. The only question is the proper sale price attributable to the real property. The property owner argues that in addition to the purchase of the subject real property, the $835,000 sale price includes consideration for personal property, such as appliances, equipment, and furnishings. In this case, the property owner submitted a single page of what purports to be a real estate sale contract to show that the sale includes the transfer of personal property. While we acknowledge that this page indeed reflects that personal property transferred among the parties, this page does not establish that the personal property ultimately transferred and was included in the $835,000 reported sale price. The document submitted by the property owner is not a complete copy of the purchase agreement and was presented without testimony from a party with knowledge of the sale who could confirm that the document accurately represents the transaction. Thus, taking into consideration the certifications on the conveyance fee statement and sale verification questionnaire that no consideration for personal property was included in the recorded sale price, we find that the single page of a purchase agreement is insufficient to show that the recorded sale price included consideration for items other than the subject real property.

Even if we were to find that the property owner proved that the sale price included consideration for personal property, we would find that it failed to provide sufficient corroborating indicia of the value of the personal property to reduce the portion of the sale price attributable to real property. If this board determines that the record contains adequate support to find that any of the consideration paid in a sale was for assets other than real estate, we must then allocate the purchase price to items other than real property. *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611. 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*, supra, at 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 to 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 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, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664, ¶35. If the proponent of an allocation fails prove the appropriate reduction, absent unusual "complexities of the sale," "the full sale price constitutes the property value." *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 151 Ohio St.3d 109, 2017-Ohio-7650, ¶11.

In this case, neither the settlement statement nor the single page of the purported purchase agreement set forth any allocation. The only document properly included in the record that attempts to value the personal property is an email from the property owner's CEO that attributes roughly $1,000 per unit to kitchen appliances for each of the 36 units, with no basis for this estimate. This email also indicated that a segregation study would be completed, but no such study was submitted. We find that the email submitted by the property owner does not constitute reliable evidence that would allow this board to attribute a value to the personal property, and that the property owner failed to establish an appropriate allocation. Furthermore, there is nothing about the sale that makes it so complex that we should disregard the sale price altogether. Accordingly, we find that the full sale price constitutes the property's value.

The property owner further argues that the price should be reduced for credits listed on the settlement statement, particularly the parking lot improvement credit. First, contrary to the property owner's assertion, the settlement statement does not show that the credit was paid by the seller to account for the negative condition of the subject property. Rather, the gross amount due by the purchaser includes a line item of $68,300 for an escrow hold to repair point of sale violations. Thus, it appears that the $65,000 parking lot improvement credit came from funds escrowed by the purchaser, i.e., the appellant property owner. Second, even if we could determine that such a credit were paid by the seller, a purchase price should not be discounted for "normal sale expenses," such as broker's fees, closing costs, and make-ready costs. See, e.g., *Gambert v. Montgomery Cty. Bd. of Revision* (Aug. 17, 2007), BTA No. 2006-V-914, unreported, at 2, fn.1; *Johnson v. Montgomery Cty. Bd. of Revision* (Mar. 9, 2010), BTA No. 2008-M-495, unreported. We find that the parking lot credit falls into this category and should not be deducted from the purchase price.

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

$835,000

TAXABLE VALUE

$292,250

y

OHIO BOARD OF TAX APPEALS

KMA CAPITAL, LLC, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1434, 2018-1435, 2018-1436, 2018-1437, 2018-1438, 2018-1439 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KMA CAPITAL, LLC
Represented by:
JENSEN E. SILVIS
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For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
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AKRON, OH 44308

Entered Friday, December 21, 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 decided 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.").

The county appellees attached to each motion the affidavit of the executive assistant to the BOR, asserting that appellant's notices of appeal were filed more than thirty days after the mailing of the BOR's decisions. Upon consideration, and for the reasons stated in the motion, 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

H3RE LLC, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-1225

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - H3RE LLC
Represented by:
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WHAM PROPERTIES
PO BOX 8233
CINCINNATI, OH 45208

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, December 21, 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 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 a notice of the appeal was filed with the BOR sixty-one 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

MASON PARK INVESTMENTS, LLC, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1425, 2018-1426, 2018-1427, 2018-1429, 2018-1431, 2018-1432, 2018-1433 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MASON PARK INVESTMENTS, LLC
Represented by:
JENSEN E. SILVIS
ATTORNEY AT LAW
190 NORTH UNION STREET
SUITE 201
AKRON, OH 44304

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

Entered Friday, December 21, 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 decided 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.").

The county appellees attached to each motion the affidavit of the executive assistant to the BOR, asserting

that appellant's notices of appeal were filed forty days after the mailing of the BOR's decision. Upon consideration, and for the reasons stated in the motion, 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

LEONID RATNER, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1133 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LEONID RATNER
23703 GLENHILL DR
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 Friday, December 21, 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 Cuyahoga County Board of Revision ("BOR"), or an 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 August 23, 2018, the appellant filed a notice of appeal with this board, on which it was indicated that the BOR mailed a decision on August 1, 2018. Appellant did not include a copy of a BOR decision. The record does not demonstrate that appellant made an initial filing, i.e., a complaint against valuation or an application for remission of a real property tax late payment penalty, such that the BOR would issue such a decision.

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

YES WE CAN COMMUNITY HOMES, INC., (et. al.),	CASE NO(S). 2018-393
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
ALLEN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - YES WE CAN COMMUNITY HOMES, INC.
Represented by:
LES HENDERSON, SR.
YES WE CAN COMMUNITY HOMES, INC.
311 E. MARKET STREET
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LIMA, OH 45801

For the Appellee(s) - ALLEN COUNTY BOARD OF REVISION
Represented by:
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DUBLIN, OH 43017

Entered Wednesday, December 26, 2018

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

Appellant appeals a decision of the board of revision ("BOR"), which dismissed appellant's complaint against the value of the subject real property, parcel number 36-3612-03-006-000, for tax year 2017. 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."), the county appellees' motion to affirm, and the parties' responses to an order issued by this board.

The county appellees maintain that appellant's tax year 2017 complaint was properly dismissed because it was filed after the statutory filing deadline. This board convened a hearing on the matter, at which Les Henderson testified in support of appellant's position that the complaint was timely filed. Mr. Henderson asserted that he attempted to file a complaint in person on April 2, 2018, the final day to file for 2017, but was turned away and told it was past the deadline to file. H.R. at 6. Mr. Henderson testified that the BOR hand-wrote a BOR number but failed to time stamp the complaint before handing it back to him. Mr. Henderson pointed to a complaint that had a handwritten case number at the top but no timestamp as corroboration for his testimony. H.R., Ex. 2. Mr. Henderson further explained that later that day or the next, when he realized the complaint was not timestamped, he faxed it to the BOR. H.R. at 7. Mr. Henderson also referenced a decision letter that he received in August 2018 that determined the value of the subject property for tax year 2017. Ms. Leslie Henderson also testified that she was also present at the BOR

on April 2, 2018 and stated that Mr. Henderson accurately described the events that took place. H.R. at 9-10. Following the hearing, this board issued an order to the county appellees to supplement the record with anything in their possession about any proceedings for the subject property related to tax year 2017. In response, the BOR submitted two decision letters dated July 31, 2018 with an explanation that they were necessary in order to close out the case on the BOR's computer system. The county appellees asserted that in addition to the value decision mentioned by Mr. Henderson, the BOR sent a corrected decision letter that was also dated July 31, 2018 and indicated that the reason for its decision was that the case was dismissed. Appellant also responded to the order by filing several documents including both of the July 31, 2018 decision letters referenced by the county appellees.

To invoke the jurisdiction of a board of revision, a valid complaint must be filed. See *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872, ¶17. "It is elemental that when the jurisdiction of an administrative tribunal such as the BOR is challenged, '"the party claiming jurisdiction bears the burden of demonstrating that the court has jurisdiction over the subject matter."' *Marysville Exempted Village School Dist. Bd. of Edn. v. Union Cty. Bd. of Revision*, 136 Ohio St.3d 146, 2013-Ohio-3077, *** ¶10, quoting *Ohio Natl. Life Ins. Co. v. United States*, 922 F.2d 320, 324 (6th Cir.1990)." *L.J. Smith*, supra, at ¶18. Pursuant to R.C. 5715.19(A)(1), "a complaint against [the determination of value of any parcel that appears on the tax list] 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 ***." When March 31 falls on a weekend or holiday, the final day to timely file a complaint is the following business day. R.C. 1.14. Because March 31, 2018 was a Saturday, the filing deadline for a tax year 2017 complaint was April 2, 2018.

In this case, the complaint in the record displays a file stamp that reflects a received date of April 3, 2018, which is past the deadline to file for tax year 2017 and would make the complaint untimely. The uncontested testimony, however, indicates that Mr. Henderson personally appeared on April 2, 2018 and attempted to timely file the complaint. This testimony was further corroborated by Ms. Henderson and the complaint that reflected a case number but not a file stamp. Although the county appellees' attorney indicated that Henderson did not personally visit the auditor's office to hand-deliver the complaint on April 2, 2018, the county appellees did not submit any testimony or even an affidavit to corroborate this contention or to contradict the testimony of the two witnesses present at this board's hearing.

Finally, although the propriety of the BOR's July 31, 2018 letters is not at issue in the present appeal, to the extent that they emanate from the complaint that led to this appeal, it appears that the BOR lacked jurisdiction to take such an action. "As administrative tribunals, boards of revision have ' "inherent authority to reconsider their own decisions since the power to decide in the first instance carries with it the power to reconsider," ' but such authority does not extend beyond 'the actual institution of an appeal or expiration of the time for appeal.' *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363, 368 ***, quoting *Hal Artz LincolnMercury, Inc. v. Ford Motor Co.* (1986), 28 Ohio St.3d 20, *** paragraph three of the syllabus." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 121 Ohio St.3d 218, 2009-Ohio-760 ¶14. It appears that these letters were sent as a clerical act related to their software system and not following the consideration of evidence of value submitted by the appellant property owner. As such, we must remand the matter for further proceedings and allow the BOR to first consider the subject's value. See *Ginter v. Auglaize Cty. Bd. of Revision*, 143 Ohio St.3d 340, 2015-Ohio-2571, ¶18 ("But the BOR has yet to determine the value of the property. As a result, it is premature for either the BTA or this court to address the issue of value. We agree with appellants that the cause must be remanded to the BOR for a determination of value.").

Accordingly, based upon the foregoing, we must find that the BOR incorrectly dismissed the subject complaint for lack of jurisdiction. Therefore, the BOR's decision is hereby reversed and this matter is remanded to the Allen County Board of Revision for further proceedings on the value of the subject property.

OHIO BOARD OF TAX APPEALS

RITA M. FILER AND SAMUEL R. FILER, III, (et. al.),	CASE NO(S). 2018-1822
Appellant(s),	(REAL PROPERTY TAX)
vs.	ORDER
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - RITA M. FILER AND SAMUEL R. FILER, III
Represented by:
RITA FILER
604 INVERNESS RD.
AKRON, OH 44313-4521

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
REGINA M. VANVOROUS
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

Entered Wednesday, December 26, 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. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is decided upon the motion, the attached affidavit, 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 county appellees attached to their motion the affidavit of the executive assistant to the BOR, asserting that appellants' notice of appeal was not filed with the Summit 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

WEBELER, JEFFREY L. TR, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-1748 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WEBELER, JEFFREY L. TR
Represented by:
JEFFREY WEBELER
WHITE OAK GARDEN CENTER, INC.
3579 BLUE ROCK ROAD
CINCINNATI, OH 45247

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

NORTHWEST LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
BRIAN C. SHRIVE
THE FINNEY LAW FIRM
4270 IVY POINTE BOULEVARD, SUITE 225
CINCINNATI, OH 45245

Entered Wednesday, December 26, 2018

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

The county appellees and the board of education jointly 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 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. The movants 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

MARY P LIENHART, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-1728

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARY P LIENHART
Represented by:
MARY LIENHART
OWNER
660 EVENING STAR LANE
CINCINNATI, OH 45220

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, December 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. 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 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

ORANGE POINT SWS LLC, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-1649

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ORANGE POINT SWS LLC
Represented by:
GREGG HARDY
10015 WISNER HIGHWAY
P.O. BOX 156
TIPTON, MI 49287

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

PRINCETON 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, December 26, 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 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. 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

PAMELA AND CHRIS HUNTER, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-755 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PAMELA AND CHRIS HUNTER
OWNERS
4801 WICKLOW DR
MIDDLETOWN , OH 45042

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 31, 2018

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

The property owners appeal a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel Q6542-037-000-077, for tax year 2017. 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 $36,740. The property owners filed a complaint with the BOR, which requested that the subject property be revalued at $20,000 based upon an opinion of fair market value by a real estate agent, Marlayne Skeens. At the BOR hearing on the matter, the property owners appeared and testified as to the income and expenses derived from leasing the subject property and as to its condition. The BOR voted to retain the subject property's initially assessed value and subsequently issued a decision to that effect. This appeal ensued. None of the parties availed themselves of the opportunity to submit additional evidence at a hearing before this board.

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. This board must review 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*, 153 Ohio St.3d 23, 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.

Upon review, we find that the property owners failed to provide competent, credible, and probative evidence of the subject property's value. The property owners primarily relied upon a letter from Skeens, which opined the subject property's fair market value to be $20,000. For a number of reasons, we find such evidence to be unpersuasive. First, Skeens did not appear before the BOR or this board, to authenticate the opinion of value, to testify regarding her professional credentials and the underlying data and methodologies used to derive her conclusion, and/or to be questioned by this board's attorney examiner or members of the BOR. As a result, Skeens' letter is hearsay. See *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997).

Second, there is no indication that Skeens was a licensed real estate appraiser trained to opine real property values. In fact, the record is devoid of any evidence of her education, training, certifications, or, to any significant degree, her experience in appraising real property before the BOR. This board has repeatedly rejected opinions of value offered by real estate agents, noting that "[a]s 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) at 8. See, e.g., *DeOliveira v. Cuyahoga Cty. Bd. of Revision* (Sept. 5, 2017), BTA Nos. 2016-1134 et al., unreported.

Third, the record is devoid of any indication of the "as of" date for Skeens' opinion of value. While her letter is dated November 9, 2017, the tax lien date at issue in this matter is January 1, 2017. 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.

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 owners failed to satisfy their 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, 2017:

TRUE VALUE

$36,740

TAXABLE VALUE

$12,860

OHIO BOARD OF TAX APPEALS

DALLAS R. ADKINS, (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-847

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DALLAS R. ADKINS
OWNER
36743 VALLEY RIDGE DR
EASTLAKE, OH 44095

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
ERIC A. CONDON
ASSISTANT PROSECUTING ATTORNEY
LAKE COUNTY
105 MAIN STREET
P.O. BOX 490
PAINESVILLE, OH 44077

WILLOUGHBY-EASTLAKE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ELIZABETH GROOMS-TAYLOR
HOOVER KACYON, LLC
527 PORTAGE TRAIL
CUYAHOGA FALLS, OH 44221

Entered Monday, December 31, 2018

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

This matter is considered upon a notice of appeal filed by property owner Dallas Adkins from a decision of the Lake County Board of Revision ("BOR"), which increased the values of parcel numbers 34A008G000290 and 34A008G000280 for tax year 2017. While appellant requested that this matter proceed pursuant to this board's small claims docket, the subject property does not meet the requirements for such assignment. R.C. 5703.021(B)(1). The matter is hereby reassigned to board's regular docket pursuant to R.C. 5703.021(D). We proceed to decide the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, and the parties' written arguments. *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985).

The county auditor initially valued the two subject parcels at a total of $145,060. The Willoughby-Eastlake

City School District Board of Education ("BOE") filed a complaint against the valuation, seeking an increase in total value to $250,000, to reflect the amount for which the parcels sold in August 2017. At the BOR hearing, the BOE presented the conveyance fee statement as evidence of the sale. The owner did not appear at the hearing. The BOR adopted the sale price as the property's value for tax year 2017, and the owner appealed to this board. No new evidence has been presented on appeal. In his notice of appeal, the owner argues that the property is overvalued when compared to the values of other properties in the area.

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. There appears to be no dispute that the subject parcels transferred from Rosemary Bateman to Dallas R. Adkins in August 2017 for a recorded sale price of $250,000 in a recent, arm's-length transaction.

A party opposing the use of a recent, arm's-length sale to value a property for real property taxation purposes must rebut the presumption that such sale is the best evidence of value. Here, appellant has presented no evidence to rebut the presumption accorded to the sale. Appellant asserts in his notice of appeal that the subject property is overvalued compared to other, nearby properties. However, as the Supreme Court noted in *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996), "[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." See also *Meyer v. Bd. of Revision*, 58 Ohio St.2d 328, 335 (1979). The burden is on the appellant in this matter to present evidence that the sale does not reflect the subject parcels' true values as of tax lien date. He has failed to meet his burden in this matter.

Based upon the foregoing, we find the August 2017 sale price for the property, as allocated by the BOR, 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, 2017, were as follows:

PARCEL NUMBER 34A008G000290

TRUE VALUE

$191,250

TAXABLE VALUE

$66,940

PARCEL NUMBER 34A008G000280

TRUE VALUE

$58,750

TAXABLE VALUE

$20,560

OHIO BOARD OF TAX APPEALS

TIMOTHY CLIFTON, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-681 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TIMOTHY CLIFTON
900 BROADVIEW BLVD.
DAYTON, OH 45419

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

Entered Monday, December 31, 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, parcel R72 13904 0029, for tax year 2017. 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 $160,790. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $132,000, purportedly to reflect the cost to remediate defects to the home, i.e., roof damage and water problems in the basement. At the BOR hearing on the matter, the property owner testified that he had recently purchased the subject property for $168,000 and soon discovered that there were problems that the prior owner/seller had either failed to disclose, i.e., water problems in the basement, or fraudulently disclosed, i.e., that the roof had been repaired when it had not. As a result, the property owner testified, he instituted legal action against the prior owner/seller. Although he conceded that the Patterson Park area was a hot neighborhood and that he purchased the subject property for $168,000, he argued that defects of the home, and the cost to remediate those defects, should be considered when valuing the subject property. In support of his testimony, the property owner referenced photographs and a video submitted prior to the BOR hearing; however, it is unclear when those items were submitted and whether the BOR members considered them in their analysis. At the BOR decision hearing, even though the BOR members acknowledged that the $168,000 sale of the subject property in December 2016 was the best indication of value, they voted to retain the subject property's

initially assessed value. The BOR subsequently issued a written decision to that effect and this appeal ensued. None of the parties availed themselves of the opportunity to submit additional evidence at a hearing before this board.

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). "Pursuant to R.C. 5713.01, the 'true value in money' is the basis for assessing real property and usually equates to 'market value,' meaning what the property would sell for when the buyer and seller arrive at the sale price acting as 'typically motivated market participants.' *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734, ***, ¶ 14." (Parallel citation omitted.) *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 100, 2017-Ohio-7578, at ¶19. 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. 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 this board. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, at ¶11.

We begin our analysis with the subject sale. The property owner does not dispute the minimal details of his $168,000 purchase of the subject property in December 2016, which is noted on the property record card. *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. However, the property owner asserted that the condition of the subject property, specifically the latent defects discovered after the subject sale, necessitate some valuation below the full $168,000 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.

Furthermore, even if we had had the photographs and video that the property owner referenced at the BOR hearing before us, our conclusion in this matter would not be different. Such evidence fails to quantify the effect of any defects on the value of the property. See *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, at ¶7 ("There 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.'").

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 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 property owner failed to rebut the presumptions accorded to such sale and, therefore, he 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, 2017 are as follows:

TRUE VALUE

$168,000

TAXABLE VALUE

$58,800

OHIO BOARD OF TAX APPEALS

RC REAL ESTATE EQUITIES, L.P., (et. al.),

Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-577

(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RC REAL ESTATE EQUITIES, L.P.
Represented by:
DAVID KOENIG
9810 EAST WASHINGTON STREET
CHAGRIN FALLS, OH 44023

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 31, 2018

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

[1] The county appellees move to remand this matter to the board of revision ("BOR") with instructions to dismiss the underlying complaint, asserting that the BOR lacked jurisdiction to issue a value decision. The appellant property owner, RC Real Estate Equities, LP ("RC"), did not respond to the county appellees' motion. This matter is decided upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the county appellees' motion.

[2] On March 15, 2018, David Koenig filed a complaint with the BOR on behalf of RC in his capacity as "agent." No one appeared at the BOR hearing on behalf of RC, and the BOR issued a decision retaining the fiscal officer's value. From this decision, RC filed the present appeal. This board convened a hearing, at which RC failed to appear. The county appellees waived the opportunity to appear at the merit hearing, having previously filed the jurisdictional motion.

[3] It is undisputed that Koenig filed the complaint as RC's agent, though in what capacity is not entirely clear. Koenig did not indicate his relationship to RC or the subject property, even when given the opportunity to do so after it was raised by the county appellees. Additionally, there is no indication that Koenig is a licensed attorney, and nowhere is it alleged that an attorney was involved in the preparation and filing of the underlying complaint. The filing of a complaint by a non-attorney who is not expressly identified in R.C. 5715.19 as a person authorized to institute such filing, "constitutes the unauthorized practice of law, necessitating the dismissal of the complaint." *Menos v. Cuyahoga Cty. Bd. of Revision* (Apr. 11, 2013), BTA

No. 2012-Q-5127, unreported. See, also, *Sharon Village Ltd. v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479 (1997); *Cleveland Metro. Bar Assn. v. Wallace*, 147 Ohio St.3d 338, 2016-Ohio-5603. To the extent that Koenig is involved with the management of the subject property or was otherwise given permission by RC to file on its behalf, without the assistance of an attorney, the filing of complaint by an individual not approved to do so by R.C. 5715.19(A) also constitutes the unauthorized practice of law, even where the owner gave contractual authorization. See *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, Slip Opinion No. 2018-Ohio-4244; *Toledo Pub. Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision*, 124 Ohio St.3d 490, 2010-Ohio-253. As noted, Koenig does not appear to be an attorney licensed in Ohio, nor is there any indication in the record that he is one of the enumerated agents authorized to file complaints. The underlying complaint filed on behalf of RC, therefore, failed to properly invoke the jurisdiction of the BOR.

[4] Based upon the foregoing, this matter is hereby remanded to the Cuyahoga County Board of Revision with instruction to vacate its decision finding value for the subject property and dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

JEROME E. STASEK JR. AND DANA S. HARDIN, (et. al.),	CASE NO(S). 2018-351
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

APPEARANCES:

For the Appellant(s) - JEROME E. STASEK JR. AND DANA S. HARDIN
Represented by:
JEROME STASEK
1758 Drayton Park CT
COLUMBUS, OH 43212

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, December 31, 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 numbers 070-011991-00 and 070-013648-00, for tax year 2017. 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 consists of roughly 7.493 acres of land improved with a single-family home, pool, tennis court, bathhouse, and patio space. The auditor initially assessed the subject's total true value at $2,152,900. Appellants filed a complaint with the BOR seeking a reduction in value to $1,587,200. Appellant Jerome E. Stasek appeared at the BOR hearing, to testify and present information about other properties that had sold near the subject property, arguing that the value of the property should be reduced. Stasek acknowledged that the subject property is unique because of the size of the house and the lot, but asserted that much of the lot is wooded and sloped. Stasek indicated that roughly 4 acres is unusable and cannot be rezoned or redeveloped. Stasek explained that the subject property had been listed for sale for several years, during which time they received only one offer of $1,550,000, which they countered at $1,800,000, but did not result in the sale of the property. Stasek testified that one of the realtors who had attempted to sell the subject property had surveyed a number of colleagues, who said that it should be listed at $1,500,000, despite it being far below appellants' 2006 purchase price of $2,202,900. Stasek provided a spreadsheet comparing the assessed values of a number of properties that had recently sold based on the

value per square foot. The BOR issued a decision reducing the initially assessed valuation to $1,875,000 based on the evidence and testimony presented during the hearing. From this decision, appellants filed the present appeal. The BOR also included in the statutory transcript the listing history for the subject property and listing information for several of the properties included on Stasek's spreadsheet. Stasek appeared at a hearing convened before this board, during which he provided the auditor's assessed values for additional properties, and asserted that the final offer for the subject property was $1,700,000 in June 2018, but that did not result in a sale.

[3] The burden in the present appeal is on the appellants to prove their right to a reduction from the BOR's value. *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002. To satisfy this burden, appellants must produce competent and probative evidence to establish the correct value of the subject property. Id. at ¶9. Appellants seek to meet this burden through Stasek's testimony and the presentation of evidence regarding their inability to sell the subject property and the assessed values for a list of properties that sold. As the owner of the subject property, Stasek is competent to testify about the subject's value, but this board must determine the appropriate weight to accord his testimony. *Valigore v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 302, 2005-Ohio-1733. Because we find that the evidence upon which Stasek bases his opinion of value is not probative, Stasek's testimony is not sufficient to satisfy appellants' burden on appeal.

[4] Although the price at which a property transfers in an arm's-length sale is presumed to establish the value for purpose of ad valorem taxation, an unaccepted offer to purchase does not constitute a sale price and, therefore, does not raise such a presumption. *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397, 400 (1997). Similarly, "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. Thus, the history of appellants' failed attempts to sell the subject property does not establish its value.

[5] Appellants also presented lists of the assessed values for properties that had sold, and the details of several of those sales is included in the transcript certified by the BOR. While comparable sales data is frequently utilized by appraisers to determine the value of a given property, the list of sales in this record is not probative evidence of value because appellants have not provided evidence about the circumstances of those sales or adjusted them for differences among the properties. See *Moskowitz*, supra. Likewise, the assessed values for those properties are not probative evidence of the value of the subject property. See *Valigore*, supra.

[6] Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. Additionally, we note that the BOR reduced the value of the property after considering appellants' attempts to sell the property, other sales in the area, and the auditor's value for the subject and others in the area. Thus, it appears that the BOR addressed several of appellants' concerns and they benefited from a corresponding reduction in value, the propriety of which has not been challenged on appeal. As such, we find it appropriate in this case to retain the BOR's value. *Moskowitz*, supra, at ¶10.

[7] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 070-011991-00

TRUE VALUE

$1,852,100

TAXABLE VALUE

$648,240

PARCEL NUMBER 070-013648-00

TRUE VALUE

$22,900

TAXABLE VALUE

$8,020

OHIO BOARD OF TAX APPEALS

G & J REALTY LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	CASE NO(S). 2018-190 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, December 31, 2018

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

The appellant property owner, G & J Realty LLC, appeals to this board from a decision of the Cuyahoga County Board of Revision ("BOR") determining the value of parcel number 129-13-031 for tax year 2016. All parties waived their appearances at a hearing before this board. We therefore decide the matter upon the notice of appeal and the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01. *Black v. Cuyahoga Cty. Bd. of Revision*, 16 Ohio St.3d 11 (1985).

The subject property is a two-story building comprised of two retail/commercial units and twelve residential units. The fiscal officer initially valued the property at $412,000 for tax year 2016. The appellant property owner filed a complaint against the valuation, requesting a decrease in value to $250,000 based on

an appraisal performed for its lender for financing purposes. The Board of Education for the Cleveland Municipal School District ("BOE") filed a countercomplaint requesting the fiscal officer's valuation be maintained.

At the BOR hearing, the owner appeared through counsel and asked that the property be valued with an appraisal report authored by Mark E. Paul, MAI, at the request of its lender, Northwest Savings Bank. The appraisal opined a value for the subject property of $250,000 as of December 30, 2016. S.T., Ex. F. Phil Scantland, the owner's accountant, testified that the appraisal was done for refinancing purposes; however, the owner was not able to obtain the financing it sought. Mr. Scantland had little personal knowledge of the property itself, though he testified to the accuracy of the financial information for the subject as presented in the appraisal report. The BOE and BOR members indicated their desire to question the author of the appraisal report about aspects of the report, including his selection of sale comparables, his reconciliation to a value under the sales comparison approach far below any of the comparable sales, and whether the income approach accounted for occupancy of two of the subject's residential units by the owner's property maintenance employee. Counsel for the BOE also noted that the appraisal did not opine value as of the tax lien date – January 1, 2016.

The BOR issued a decision finding that no change in value was warranted. In its oral hearing worksheet and journal entry, the BOR commented that "[t]he board places no reliance on the appraisal without testimony. The raw data contained in the income and expense information does not provide evidence of value." S.T., Ex. E.

In its notice of appeal to this board, the owner again requests a reduction in value to $250,000 based on the "appraisal prepared for attempted finance." Notice of Appeal at 1. No new evidence, nor any written legal argument, has been presented to this board on appeal.

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 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 subject property has not recently sold. We therefore turn to the owner's appraisal evidence.

This board has repeatedly rejected appraisal evidence similar to that presented here, i.e., an appraisal for financing purposes, of the leased fee interest, without the testimony of its author, for a date other than tax lien date. See, e.g., *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported (a financing appraisal is "not necessarily a complete and thorough evaluation of the property."); *Bd. of Edn. of the Hilliard City Schools v. Franklin Cty. Bd. of Revision* (Apr. 10, 2014), BTA No. 2010-2356, unreported (rejecting a leased fee appraisal as not valuing the fee simple estate as required by R.C. 5713.30 and *Alliance Towers, Ltd. v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16 (1988)); *Cole v. Hamilton Cty. Bd. of Revision* (Sept. 12, 2018), BTA No. 2018-162, unreported (finding appraisal report without its author's testimony to be unreliable hearsay).

The Supreme Court recently reiterated its holding in *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, that it is legal error to directly rely on an appraisal with an opinion of value that does not coincide with tax lien date. *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 548, 2018-Ohio-919, ¶18. However, the court also acknowledged that, notwithstanding the date of the appraisal, "factual information contained in that appraisal may still be regarded as furnishing potentially relevant evidence of a property's value as of the tax-lien date." Id. at ¶18, citing *AP Hotels of Ill., Inc. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 343, 2008-Ohio-2565, ¶16-17;

Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, 130 Ohio St.3d 230, 2011-Ohio-3362, ¶26-29.

Here, we do not find the factual information within the appraisal report is probative of the subject property's true value as of tax lien date. In his sales comparison approach, Mr. Paul utilized sales temporally removed from tax lien date (2012 and 2013) and current listings, and made no adjustments for differences in market conditions. We find none of the sales indicates a value for the subject as of January 1, 2016, and we question his choice not to use comparable sales closer in time to tax lien date. In his income capitalization approach, while Mr. Paul made conclusory statements about the subject's rents being at market levels, provided little market information for residential market rent comparables, and provided no market information for retail/commercial rent comparables. He likewise provided no data demonstrating market vacancy rates and market expenses. Lastly, we note that the comparable sales from which he derived his capitalization rate occurred in 2009, 2010, and 2012 (in addition to two current listings). Without additional testimony from the report's author to explain these apparent deficiencies, we find the information within the report is not reliable evidence of value.

Based upon the foregoing, we find the appellant property owner failed to meet his burden to prove a value different 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, 2016, were as follows:

TRUE VALUE

$412,000

TAXABLE VALUE

$144,200

OHIO BOARD OF TAX APPEALS

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	CASE NO(S). 2017-1936
Appellant(s),	(REAL PROPERTY TAX)
vs.	DECISION AND ORDER
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	
Appellee(s).	

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Entered Monday, December 31, 2018

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

The Akron City Schools Board of Education ("BOE") appeals from a decision of the Summit County Board of Revision ("BOR") determining the value of parcel number 67-27672 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 pursuant to R.C. 5717.01, and the parties' written arguments.

The fiscal officer initially valued the subject property at $262,310 for tax year 2016. The BOE filed a complaint against the valuation seeking an increase to $786,240, based on a sale of the property, along with two other parcels, for $840,000 in April 2016. The BOE presented the deed, conveyance fee statement,

Metroscan information, and printouts from the fiscal officer's website as evidence of the sale. Though property owner 589 East Waterloo Road Realty LLC did not file a countercomplaint, it appeared at the BOR hearing and presented the appraisal report and testimony of Michael J. Flak, MAI, who opined a value of $510,00 as of January 2016.

At the BOR hearing, counsel for the BOE indicated that its requested value was based on an allocation of the $840,000 three-parcel sale to the subject parcel in accordance with the relative fiscal officer's values, i.e., attributing 93.7 percent of the total sale price to the subject. Counsel for the owner argued that the April 2016 sale was not arm's-length, because the owner purchased the property to protect the business of its tenant, who is a close friend. Counsel also indicated that the owner had purchased the property, in part, in reliance on a plan to lease a separate building on the property to a video gaming business; however, the requisite permit could not be obtained and the plan fell through after the sale had closed.

There was much discussion during the hearing about the buildings attributed to the property by the fiscal officer. The owner argued that an approximately 3,300 square foot automotive service building, attributed to the subject parcel by the fiscal officer, is not physically located on the subject parcel, and should instead be reflected on parcel number 19-01918, located outside the Akron City School District. As a result, its appraiser, Mr. Flak, valued only the 2,090 square foot convenience store building in his appraisal of parcel number 67-26762. Using the cost approach to value, Mr. Flak opined the value of the underlying land (based on three vacant land sales) to be $135,000 (or $8 per square foot), and the value of the convenience store building (depreciated at 40%) to be $366,881, for a total value of $502,000. Under the sales comparison approach, he looked to three comparable sales of other former gas stations, which sold between May 2015 and November 2016 for unadjusted prices of $235,000 to $649,900 (or $126.34 to $275.85 per square foot). After adjusting for market conditions, location, condition, land-to-building ratio, and conditions of sale, he arrived at an adjusted range of $127.97 to $282.15 per square foot, and opined a value of $250 per square foot for the subject property, or $523,000. He reconciled his cost approach and sales comparison approach values to a final value of $510,000 as of tax lien date.

After considering the evidence presented, the BOR voted to increase the value of the property to $510,000 in accordance with Mr. Flak's opinion of value. The BOR did not address what improvements should be included in the subject parcel.

On appeal to this board, the BOE requests an increase in value to $787,010 (in its notice of appeal) or $780,620 (in its written brief) to reflect an appropriate allocation of the April 2016 $840,000 sale price to the subject parcel. The owner again argues that the sale was not arm's-length, given its relationship to the tenant and given that it purchased the property contemplating a lease of the automotive service station building for a video gaming business. Instead of relying on the sale, the owner urges this board to rely on Mr. Flak's appraisal, as accepted by the BOR.

As the appellant before this board, the BOE bears the burden of proof on appeal. Pursuant to the *Bedford* rule, ordinarily, a board of revision decision based on an owner's appraisal will serve as the "default" value on appeal, and an appellant board of education must present affirmative evidence of a different value. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025. However, "[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, and the *Bedford* rule does not apply." Id. at ¶11. We therefore begin our review with the April 2016 sale of the property.

There appears to be no dispute that the subject parcel, along with two related parcels, transferred to 589 Waterloo Road Realty LLC in April 2016 for $840,000. The owner argues, however, that the transfer does reflect market value. First, the owner argues that it was motivated to purchase the property based on its relationship with the property's tenant. An arm's-length sale is one that occurs between parties acting in their own self interests. *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). There is no indication that either party to the transaction was not acting in its own self interest; simply because the

buyer's interests were aligned with those of the tenant does not render the sale not arm's-length. Every party to a sale has some subjective motivations for its participation in the transaction; however, such motivations do not demonstrate that a sale was not a voluntary, arm's-length transaction. See *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 ("A bad investment decision does not equate to failure to act in one's own self interest."); *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."). Indeed, the court has found that, even where a tenant purchases the property from its landlord, the sale transaction may be conducted at arm's-length. *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092. There is nothing in the record before us to suggest that the interests of the buyer and seller were aligned in any way.

Second, the owner argues that the sale price does not reflect market value because it was based, in part, on an unsuccessful plan to lease the automotive service building for use as a video gaming business. In *Westlake City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 6, 1995), BTA Nos. 1994-A-309, et seq., unreported, this board found a sale remote from the relevant tax lien date where the buyer's intended purpose was completely frustrated by intervening government ordinances. Here, on the contrary, the owner's plan to lease one building for a video gaming business was not the *entire* purpose of its purchase. Further, there is no indication that the owner could not lease the building to another tenant for another purpose that would not require the same level of approval as a gaming business.

Based upon the foregoing, we find the owner has failed to rebut the presumption that the April 2016 sale was a recent, arm's-length transaction. We therefore find the $840,000 bulk sale reflects the best evidence of value as of tax lien date.

Because the sale involved two parcels in addition to the subject parcel, the sale price must be allocated to each of the parcels. *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664, ¶18, quoting *FirstCal Industrial 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921, ¶17 and *Conalco, Inc. v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), at paragraph two of the syllabus ("With a bulk sale, the best evidence of true value ' "is the proper allocation of the lump-sum purchase price" ' to individual parcels.") In *FirstCal*, supra, at ¶31, the court found the fiscal officer's "initial determination of value for a given tax year possesses an increment of prima-facie probative force, and the percentages derived from those valuations are 'corroborating' in the absence of better evidence. As a result the proportion of each parcel's assigned value to the aggregate value of the parcels possesses the same increment of prima facie probative force." An allocation by this method is precisely what the BOE advocates here – in its brief, the BOE indicates that, according to the fiscal officer's records, 92.9305% of the overall sale price, i.e., $780,260, is attributable to the subject parcel.

We are unable to accept the BOE's proposed allocation. It is clear from the BOR hearing and the owner's arguments that there is some dispute as to the fiscal officer's records for the subject parcel and what improvements are located thereon, as opposed to properly located on parcel number 19-01918. Indeed, Mr. Flak stated in his appraisal report that the subject parcel includes a 3,343 square foot auto service building situated on parcel number 19-10452. Appraisal at 25. We have previously addressed the propriety of attributing improvements located on one parcel to another parcel. See, e.g., *Pennock v. Washington Cty. Bd. of Revision* (Feb. 28, 2013), BTA No. 2011-Q-1799, unreported (citing *Am. Care Centers, Inc. v. Franklin Cty. Bd. of Revision* (Mar. 23, 1989), 10th Dist. Franklin No. 88AP-669, unreported); *Zelenitz v. Belmont Cty. Bd. of Revision* (Sept. 13, 2017), BTA No. 2016-2391, unreported. See also *State ex rel. Rolling Hills Local School Dist. v. Brown Cty. Auditor*, 63 Ohio St.3d 520 (1992).

In this matter, we find it appropriate to remand this matter to the Summit County Board of Revision to determine whether the improvements, i.e., both the convenience store and the automotive service building, are appropriately attributed to the subject parcel (parcel number 67-27672). After making such determination, the BOR is directed to allocate the $840,000 bulk sale price to the subject parcel, giving consideration to Mr. Flak's appraisal of the property as evidence of a proper allocation to the convenience

store and the underlying land.