TOPIC INDEX AND BTA CASES
VOLUME 4
BTA OPINIONS ISSUED FROM
JANUARY 2, 2020 – DECEMBER 31, 2020

The decisions of Ohio's Board of Tax Appeals ("BTA") in this **Volume 4** were issued commencing on **January 2, 2020 and continue chronologically through December 31, 2020**. The first part of this **Volume 4** contains a topic index numbered in Roman numerals. It alphabetically categorizes, by legal topic, decisions of the BTA issued from **January 2, 2020 through December 31, 2020.** Starting on August 2, 2017, BTA decisions for other periods not covered in this **Volume 1** can be found in the other volumes of this series under the RESOURCES tab of the OBORRC website. Each of those other volumes is structured in the same manner as this one. The second part of this **Volume 4** 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 ***Bohn, John F. and Belle, J., Trustees v. Montgomery County Board of Revision*** **(April 2, 2020), BTA No. 2019-710 (Vol. 4/0711 ‖ 5).** The information highlighted in yellow shows that the law in that decision addressing sheriff's sales can specifically be found in this volume on **page 0711** and in **paragraph [5]** on that page.

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

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

TOPIC INDEX FOR VOLUME 4

SHORT SALE

See Valuation

STATUTORY RECORD

When Unintelligible -

What Should Be Included In -

STIPULATED VALUE

Board of Revision -

Is BOR Bound by Stipulated Value –

Whether Carried Over Into Next Year –

TRIENNIAL UPDATE

UNAUTHORIZED PRACTICE OF LAW

Representation by Family Member Other Than Spouse -

VALUATION

Allocation of Purchase Price Between Real and Personal Property –

Green Local Schools Board of Education v. Summit County Board of Revision (January 8, 2020), BTA No. 2018-1757 (Vol. 4/0114 – 0115 ¶ 6)

Akeel Investment Limited v. Franklin County Board of Revision (March 2, 2020), BTA No. 2018-2004 (Vol. 4/0455 – 0456 ¶ 7)

Soehnke Hasselhof v. Summit County Board of Revision (March 19, 2020), BTA No. 2019-1710 (Vol. 4/0593 – 0594 ¶ 7)

Sub Zero Hamilton Properties v. Lake County Board of Revision (April 6, 2020), BTA No. 2019-1011 (Vol. 4/0809 – 0810 ¶ 5)

VETERAN'S ADMINISTRATION SALES

Impact of VA Sale on Valuation –

Matthew Dawson v. Cuyahoga County Board of Revision (January 7, 2020), BTA No. 2019-651 (Vol. 4/0083 ¶ 4)

New Day Reallty LLC v. Summit County Board of Revision (February 13, 2020), BTA Nos. 2019-1237, 2019-1241, 2019-1242, 2019-1261, 2019-1262, 2019-1264 (Vol. 4/0373 ¶ 5)

New Day Realty LLC v. Summit County Board of Revision (September 15, 2020), BTA No. 2019-1263 (Vol. 4/1268 ¶ 3)

ZILLOW/INTERNET

Whether Zillow/Internet Information is Given Any Weight –

VOLUME 4
BTA DECISIONS

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OHIO BOARD OF TAX APPEALS

LINA ATTAIE, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1059
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

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Entered Friday, January 3, 2020

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

This matter is now considered upon the appellee Columbus City Schools Board of Education's ("BOE") motion to dismiss as having been untimely filed. We decide the matter upon the motion, the responses thereto, the notice of appeal, and the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01.

The appellant property owner filed the appeal with this board on July 18, 2019. The

BOE alleges in its motion that such filing occurred more than thirty days after the Franklin County Board of Revision ("BOR") issued its decision in this matter, i.e., September 5, 2018. Because the appellant statute (R.C. 5717.01) requires that an appeal from a decision of a county board of revision be filed within thirty days of the mailing of the board of revision's decision, the BOE argues this matter was untimely filed and therefore jurisdictionally deficient. In response, the owner argues that notice was not properly provided to her until June 20, 2019, making this appeal timely.

The record demonstrates that the BOE filed the underlying complaint against the value of parcel number 010-010239-00 for tax year 2017 in March 2018. The complaint listed the owner as "Lina Attaie, U.S. Bank, N.A., P.O. Box 20005, Owensboro, KY 42304." S.T., Ex. A. The auditor's property record card lists the owner as Lina Attaie, with an address of "2595 Oldehill Ct N, Columbus, OH 43224." S.T., Ex. C. Pursuant to R.C. 5715.19(C), the BOR provided notice of the complaint to the property owner at the Oldehill Ct. N. address on April 30, 2018. S.T., Ex. D. It then provided notice of its scheduled hearing to the same address (by certified and ordinary mail) on August 17, 2018. Id. The certified mailing was returned as unclaimed on October 10, 2018. Id. Only counsel for the BOE was present at the BOR's hearing. Counsel presented a deed and conveyance fee statement indicating that the subject property had sold for $350,000 in December 2017. Notably, the conveyance fee statement lists Ms. Attaie's Oldehill Ct. N. address as the buyer's address, and the Owensboro, Kentucky P.O. Box address as the tax billing address. S.T., Ex. F. The BOR issued its decision increasing the property's value to the sale price on September 5, 2018, and mailed noticed to Ms. Attaie at the Oldehill Ct. N. address. S.T., Ex. G. Again, the notice was returned as unclaimed, on November 14, 2018. Subsequently, on June 20, 2019, the BOR again sent notice of its decision to Ms.

Attaie, this time to "503 E Beck St, Columbus, OH 43206;" this notice bears the notation "Notice Originally Sent September 5, 2018." Id.

The above series of events leads us to the present appeal and the BOE's motion. In essence, the BOE argues that the thirty-day appeal period began to run on September 5, 2018; appellant argues it did not begin to run until June 20, 2019, because the prior notice was directed to an incorrect address.

R.C. 5717.01 provides that "[a]n 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." At the time the BOR mailed its decision (September 5, 2018), R.C. 5715.20(A) provided:

> Whenever a county board of revision renders a decision on a complaint filed under section 5715.19 of the Revised Code, it shall certify its action by certified mail to the person in whose name the property is listed or sought to be listed ***. A person's time to file an appeal under section 5717.01 of the Revised Code commences with the mailing of notice of the decision to that person as provided in this section.

A board of revision may only certify its decision a second time if it does so within the thirty-day appeal period and no appeal has yet been filed. *Meadows Dev., L.L.C. v. Champaign Cty. Bd. of Revision*, 124 Ohio St.3d 349, 2010-Ohio-249.

The Ohio Supreme Court has acknowledged that the statutory provisions directing the BOR to provide notice to the owner do not specify what address ought to be used. The court has held that, "[u]nder such circumstances, *** the constitutional due process principle supplies the

rule: the owner may be served at an address that is reasonably calculated to give notice to the owner." *Knickerbocker Properties v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192, ¶17. The court has further stated that "where a taxpayer supplies officials with an address, it may be fairly presumed that the taxpayer can be reached at such an address." *Groveport Madison Local School Bd. of Edn. v. Franklin Cty. Bd. of* Revision, 149 Ohio St.3d 706, 2017-Ohio-1428, ¶20, quoting *In re Foreclosure of Liens for Delinquent Taxes*, 62 Ohio St.2d 333, 337-338 (1980).

Appellant does not dispute that she listed the Oldehill Ct. N. address as her address on the conveyance fee statement filed with the auditor in December 2017. Rather, she argues that the BOR did not comply with the statute by not determining whether the notices ever reached her address. We agree with the BOE that the BOR does not have a duty to ensure actual service upon the property owner. For purposes of providing notice of the complaint (under R.C. 5715.19(B)), notice of the BOR hearing (R.C. 5715.12 and 5715.19(C)), and notice of the BOR decision (under R.C. 5715.20), the BOR is required only to *send* proper notice. Further, as the *Knickerbocker* court acknowledged that no specific address is required to be used, we find no error in the BOR's failure to serve the U.S. Bank P.O. Box address. We find it more reasonable that the address listed on the conveyance fee statement was the one to which mail would be reasonably calculated to reach appellant.

We find the only properly certified decision by the BOR was its September 5, 2018 decision. As such, the deadline to appeal to this board was October 5, 2018. Appellant filed this appeal on July 18, 2019. We agree with the BOE that the appeal is untimely. Accordingly, the motion to dismiss is well taken and this matter is hereby dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

JOKSIM DJURIC, (et. al.),)
)
Appellant(s),)
)
vs.)
)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),)
)
Appellee(s).)

CASE NO(S). 2019-518

(REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:
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Entered Monday, January 6, 2020

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

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 552-06-063, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject property is improved with a two-family home. Appellant resides in one unit and rents the other. The fiscal officer initially assessed the subject's total true value at $243,800. Appellant filed a complaint with the BOR seeking a reduction in value to $210,000. Appellant appeared at the BOR hearing and presented a list of both the 2017 and 2018 assessed values for five two-family homes in the area, including the subject property. Appellant argued

that the values for the other properties established that the subject was valued disparately from other similar two-family homes. During the hearing, a BOR member acknowledged that there were few two-family homes in the area, and after the hearing, the BOR considered appellant's evidence and testimony along with sale of other properties. The BOR issued a decision reducing the initially assessed valuation to $234,900, which led to the present appeal. This board convened a hearing, at which appellant again submitted the list of other properties but also an appraisal report he had obtained for purposes of the appeal, though the appraiser did not appear to testify. The appraiser considered both the sales and income approaches to value, opining that its market value was $198,000 as of January 1, 2018. Appellant indicated that he agreed that the fiscal officer's value was too high but thought that the subject's value was roughly $215,000.

[3] As the party challenging the BOR's decision, appellant has the burden to prove his right to a reduction in the BOR's values. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. To satisfy this burden, an appellant must produce competent and probative evidence to establish the correct value of the subject property. Id. Thus, it was incumbent upon appellant not to merely challenge the valuations of the fiscal officer 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.

[4] 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 appellant's testimony. 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*, supra, at ¶20. See, also, *Johnson v. Clark Cty. Bd. of Revision*, 155 Ohio St.3d 264, 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

[5] Initially, we note that the appraisal report constitutes hearsay because it was presented without testimony from the appraiser, and the value conclusions should not be given any weight in our analysis. 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*"). When a party submits a written appraisal, the presentation of the appraiser as a witness allows the other parties and this board the opportunity to evaluate the credibility of the appraiser and the reliability of his or her analysis. This is necessary because 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; *Akron Natl. Bank & Trust Co. v. Freed & Co.*, 9th Dist. Medina No. 957 (Aug. 20, 1980), unreported; *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported.

[6] Even without testimony from the author, however, where an appraisal contains adequate indicia of reliability, the information contained therein may furnish an independent basis for valuing the property. *Team Rentals*, supra, at ¶27. In this case, the record lacks direct testimony about the preparation of the appraisal, and unlike the appraisal in *Team Rentals*, 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).

[7] The lack of testimony or evidence regarding another party's reliance on the appraisal are particularly relevant where we have questions about the appraiser's analysis. For instance, we have questions for the appraiser because everyone acknowledged a relatively small number of two-family homes in the area, which equates to an even smaller number of sales. The appraiser utilized four comparable sales, and three of them are located in a different municipality, for which he made a $12,000 adjustment. The basis for this adjustment is not clear from the report, nor is the support for the additional location/view adjustments such as "busy road" or "less private." This board also has questions about the appraiser's utilization of a gross rent multiplier, an approach we have repeatedly criticized. See, e.g., *Gallick v. Franklin County Bd. of Revision* (Oct. 30, 2017), BTA Nos. 2016-405, et al., unreported, affirmed, 10th Dist. Franklin No. 17AP-811, 2019-Ohio-485. 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). With these unanswered questions at the center of the appraiser's analysis and appellant's own acknowledgement that the appraiser's value is understated, we are unable to rely on his report.

[8] Finally, we reject the appellant's central argument that the subject property's assessed value should be reduced because it increased more drastically than others in the area. The values of other properties are not reliable evidence of value for the subject. *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996) ("Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner."). Additionally, a property's valuation from one tax year is not competent and probative evidence of value for another tax year. See *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 29 (1997). Thus, this argument is without merit.

[9] 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 appellant's evidence, other sales in the area, and the fiscal officer's value for the subject and others in the area. Therefore, it appears that the BOR addressed several of appellant's concerns and he 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.

[10] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$234,900

TAXABLE VALUE

$82,220

OHIO BOARD OF TAX APPEALS

OLENTANGY LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. DELAWARE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1000 (REAL PROPERTY TAX) DECISION AND ORDER

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Entered Monday, January 6, 2020

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

The board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject properties, consecutively numbered parcels 319-322-04-005-501 through 319-322-04-005-512, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and the BOE's written argument.

The county auditor initially assessed the subject properties, separately parceled condominium units, at a combined true value of $1,207,800 for tax year 2017. The property owner filed a complaint with the BOR, which requested that the twelve subject properties be revalued at $77,000 per parcel, or at a combined value of $924,000, purportedly based upon their conditions. The BOE filed a countercomplaint, which objected to the requests.

At the BOR hearing on the matter, both the property owner and BOE appeared to submit argument and/or evidence in support of their respective positions. Umesh Vazirani appeared on behalf of the property owner and submitted photographs and a written statement in support of the complaint. He testified about the facts and circumstances surrounding the property owner's $925,000 purchase of the subject properties in 2011, the conditions of the subject properties, the occupancy/vacancy of the subject properties, and the income and expenses related to renting the subject properties. He asserted that the subject properties' values had increased too much, as part of the county auditor's sexennial reappraisal of real property values for tax year 2017, considering their rental income and related expenses. The BOE argued that the property owner failed to come forward with evidence to support deviations from the subject properties' initially assessed values and, therefore, their values should remain as assessed. As the hearing ended, the BOR requested an opportunity for a site visit by a county appraiser to assist the BOR in rendering a decision on the matter. After a county appraiser visited and viewed three of the subject properties, he or she recommended that each of the subject properties be revalued at $77,100 for a combined value of $925,200. Though the BOR voted to accept the unnamed county appraiser's recommendation, it issued a decision that revalued each of the subject properties at $77,000 for a combined value of $924,000. The BOE appealed to this board.

While this matter was pending, the BOE filed a motion to compel the property owner to respond to its discovery requests; this board granted such motion in *Olentangy Local Schools Bd. of Education v. Delaware Cty. Bd. of Revision* (Interim Order, Oct. 15, 2018), BTA No. 2018-1000, unreported. After the property owner failed to comply with the order, the BOE filed a motion for sanctions; this board granted such motion in *Olentangy Local Schools Bd. of Education v. Delaware Cty. Bd. of Revision* (Interim Order, Feb. 1, 2019), BTA No. 2018-1000, unreported. As a result, the property owner was precluded from submitting new evidence at the hearing before this board. Nevertheless, Vazraini appeared at the hearing, attempting to submit additional argument and/or evidence into the record. Although he was allowed to make a brief statement, he was prohibited from making legal argument and submitting additional evidence. In lieu of attending the hearing, the BOE submitted written argument to more fully assert its position that the property owner failed to satisfy its burden before the BOR and, therefore, the BOR's decision was in error.

Before we consider the merits of this appeal, we must first dispose of a preliminary issue. On behalf of the property owner, Vazraini filed a motion to compel the BOE to respond to discovery requests. Vazraini admitted that he was not an attorney at this board's hearing; thus, as result, his filing of the motion to compel constituted the unauthorized practice of law. See *Megaland GP, LLC v. Franklin Cty. Bd. of Revision*, 145 Ohio St.3d 84, 2015-Ohio-4918, ¶19, fn.2. (striking a brief filed by a non-attorney on behalf of a limited liability company and indicating such filing constituted the unauthorized practice of law). The filing will not be considered and is stricken from 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. 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.

Here, the property owner seemingly argued that its $925,000 purchase of the subject properties in 2011 remains the best indication of their value because of the state of the housing market. We disagree. In *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, at ¶26, 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. Instead, the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property has not changed between the sale date and the lien date." The property owner failed to provide evidence of market conditions at the time of the subject sale and intervening six years between the sale and tax lien dates, or a paired sales analysis, such that this board could conclude that market conditions were similar or remained stable. See, *Financial Wealth Assoc. LLC v. Cuyahoga Cty. Bd. of Revision* (Oct. 19, 2017), BTA No. 2016-2151, unreported at 3 ("The property owner could have provided an appraisal report with a paired sales analysis to demonstrate *** market conditions. See e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (May 1, 2014), BTA No. 2011-2227, unreported, *aff'd* 2016-Ohio-757."). We acknowledge that the property owner submitted a few photographs of some of the subject properties, purportedly to support its position that the condition of the subject

properties had not changed. The record is, however, devoid of any indication when the photographs were taken and there are no photographs comparing/contrasting the subject properties at the time of the subject sales and on the tax lien date. Notably, at the BOR hearing, Vazirani conceded that some of the subject properties had been updated. As such, we cannot confirm that the subject properties did not experience any condition changes between the sales and tax lien dates. For these reasons, we must conclude that the property owner's $925,000 purchase of the subject properties in 2011 was too remote from the tax lien date and, consequently, is not reflective of their value.

The property owner also seems to suggest that the subject properties should be considered as one economic unit and valued collectively, instead of as individually parceled condominium units. We disagree on this issue as well. In *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 700, 2016-Ohio-8375 ("*Metro Partners*"), the court affirmed this board's rejection of an appraisal because the appraiser valued sixteen unsold condominium units as an apartment complex rather than individual condominium units. In doing so, the court held that for purposes of ad valorem taxation, condominium units must be valued and assessed as units to be sold individually. Id. Accord *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940, at ¶17, citing *Eastcreek Corp. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga Nos. 53150-53156 (Jan. 7, 1988) ("Under the plain language of [R.C. 5311.11], each condominium unit is 'deemed to be a separate parcel for all purposes of taxation and assessment of real property.'"). For this reason, we will not consider the subject properties as one economic unit.

The property owner asserted that the purported income and expenses related to renting

the subject properties and/or their occupancy/vacancy rates necessitate reductions to the subject properties' values. We must reject this argument. The property owner relied upon the subject properties' purported actual income and expenses. As we stated in *Whitaker v. Miami Cty. Bd. of Revision* (Feb. 12, 2013), BTA No. 2012-Y-2567, unreported, reliance on a specific property'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." The property owner failed to provide information about market income, expenses, and occupancy/vacancy rates as required by *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552 (1996). As a result, the record is devoid of any indication of the subject properties' place in the market. Are the rental rates garnered by the subject properties at the lower or higher end of the market? We cannot say because the record is deficient. It should also be noted that the property owner failed to provide any corroborating and specific information about *each* of the subject properties. For example, although Vazirani testified that some (unknown) number of the subject properties garner higher rent, because of amenities, the record is devoid of any specific information detailing the rental income received for each of the subject properties. For these reasons, we must conclude that the property owner failed to provide sufficient evidence in support of the complaint.

The property owner argued that the conditions of (some of) the subject properties, i.e., homes with original bathrooms and lack of air conditioning, support reductions to the subject properties' values. We reiterate that the record is devoid of any evidence to demonstrate which of the subject properties had and had not been updated. Regardless, the property owner failed to offer specific evidence to demonstrate how the subject properties' defects impacted their values.

For example, is the value of parcel 319-322-04-005-501 decreased or increased by the condition of the bathroom? Furthermore, how much would that decrease or increase in value be, $1,000 or $10,000? 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.')." *Gides* at ¶7. For this reason, we must conclude that assertions about the conditions of the subject properties is not competent, credible, or probative evidence of the subject properties' values.

In sum, we must conclude that the property owner failed to provide sufficient evidence to support its requested valuations.

We now turn to the BOR's decision to value each of the subject properties at $77,000 or a combined value of $924,000. See *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."). A review of the BOR decision hearing record demonstrates that the BOR based its decision on the recommendation of an unidentified county appraiser after he or she visited three of the twelve subject properties. However, there a myriad of problems with the county appraiser's recommendation.

First, the county appraiser's written recommendation to the BOR notes that the subject

properties were "[a]ll rented out and managed like an apartment complex. *** They are nearly identical to each other arranged 2 units per building with 6 buildings making up the 12 total units like a small apartment complex." See Statutory Transcript ("S.T.") at Ex. J. As such, it appears that the county appraiser considered the subject properties as one economic unit, which was legal error, instead of separately parceled condominium units as required by *Metro Partners*. The county appraiser's income approach supports such a conclusion.

Second, it is unclear how the county appraiser extrapolated the condition of each of the subject properties when he or she only inspected three of the twelve properties at issue. This is especially troublesome because Vazraini testified that some of the units had been updated and had different amenities. Again, the record is devoid of any specific informtion identifying which of the subject properties had been updated and which of the subject properties had not been updated. Third, the county appraiser's income approach lacks support. It is unclear how he or she determined that the average rental rate was $1,000 per month when the record is devoid of any specific information about the rental rates. Though Vazraini testified that the rental rates vary between $850 and $1,100, we cannot discern which of the subject properties receive $850 per month, which of the subject properties receive $1,100 per month, and which of the subject properties receive some amount between $850 and $1,100. Furthermore, the county appraiser's income approach relies upon "normal vacancy and owner expenses *** in the 5% range, normal expenses in the 20% range" and unknown capitalization rate and tax additur to "put the estimated value in the $950,000 +- range." S.T. at Ex. J. How did the county appraiser determine that normal vacancy should be 5% instead of 10%? What are "normal expenses" and does it include or exclude property taxes? What were the capitalization rate and tax additur and how were they derived? Why did the county appraiser recommend a combined value of $925,200 if the estimated value conclusion was $950,000? Similarly, why did the BOR deviate from the county appraiser's

recommendation and, instead, decide to value the subject properties at a combined value of $924,000? Because the county appraiser failed to testify at any hearing, we are left to speculate. See generally *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St. 3d 310, 2006-Ohio-1059, ¶15 ("Mere speculation is not evidence."). For these reasons, we must reverse the BOR's decision.

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 conclude that the property owner failed to provide competent, credible, and probative evidence of the subject properties' values before the BOR. Furthermore, because we are unable to replicate the BOR's decision, or to fully determine how the BOR arrived at its specific values, we conclude that the BOR's decision is unsupported. We are constrained to reinstate the subject properties' initially assessed values. See *South-Western City School Dist. Bd. of Edn.*, supra, at ¶18 ("We have held that the BTAacts 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." (Parallel citations omitted.)).

It is, therefore, the order of this board that the subject properties' true and taxable values are as follows as of January 1, 2017:

Parcel Number: 319-322-04-005-501

True Value: $101,000

Taxable Value: $35,350

Parcel Number: 319-322-04-005-502

True Value: $100,300

Taxable Value: $35,110

Parcel Number: 319-322-04-005-503

True Value: $100,500

Taxable Value: $35,180

Parcel Number: 319-322-04-005-504

True Value: $100,500

Taxable Value: $35,180

Parcel Number: 319-322-04-005-505

True Value: $100,300

Taxable Value: $35,110

Parcel Number: 319-322-04-005-506

True Value: $101,000

Taxable Value: $35,350

Parcel Number: 319-322-04-005-507

True Value: $100,900

Taxable Value: $35,320

Parcel Number: 319-322-04-005-508

True Value: $101,000

Taxable Value: $35,350

Parcel Number: 319-322-04-005-509

True Value: $100,500 Taxable Value: $35,180

Parcel Number: 319-322-04-005-510

True Value: $100,500

Taxable Value: $35,180

Parcel Number: 319-322-04-005-511

True Value: $101,000

Taxable Value: $35,350

Parcel Number: 319-322-04-005-512

True Value: $100,300

Taxable Value: $35,110

OHIO BOARD OF TAX APPEALS

JOHN WEIZMAN, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-598
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

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For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
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Entered Monday, January 6, 2020

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

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number M57 00206 0054, for tax year 2018. 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] On the tax lien date, the subject property was improved with a single-family home and two additional structures. The auditor initially assessed the subject's total true value at $96,710. Appellant filed a complaint with the BOR seeking a reduction in value to $60,000. At the BOR hearing, appellant presented evidence about his December 2018 purchase of the property and testified regarding its condition and his plans for the property. Appellant indicated that after his

purchase, the two additional structures were damaged by rain and subsequently demolished, though the main house, which he intended to make his personal residence, was in good condition. The BOR issued a decision reducing the initially assessed valuation to $69,180, which appellant appealed to this board. Appellant appeared at a hearing before this board to provide additional testimony about the circumstances of the sale and the subsequent demolition of the structures.

[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). 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." *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.

[4] In the present appeal, appellant purchased the subject property from the Secretary of Housing and Urban Development ("HUD") on December 27, 2018, for $63,000. While we acknowledge that a HUD sale constitutes a foreclosure sale that is presumptively not arm's-length, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 127 Ohio St.3d 63, 2010-Ohio-4907, the court has held that this presumption is rebuttable. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243,

2014-Ohio-4723. In this case, appellant testified that he first discovered that the property was listed when he observed a sign in the yard after it had been listed for two-three months. When he approached his realtor about potentially purchasing the property, he discovered it had gone into contract with another buyer. When the original buyer was unable to obtain necessary financing, the property went back on the market and appellant's agent contacted him about whether he was still interested. Appellant testified that he submitted his offer the next day, which resulted in his eventual purchase. Appellant also submitted listing information to the BOR. The involvement of real estate agents for both parties to the sale is corroborated by the commissions paid on the settlement statement. In this case, we find that appellant has provided sufficient evidence to establish that the sale provides a reliable indication of value. Additionally, the county appellees have failed to provide additional evidence to show that this board should nevertheless disregard the sale, which took place recent to the tax lien date.

[5] Appellant further argued that the value of the property should be reduced based on the demolition of structures on the property at the time of his purchase. These structures, however, existed on the property on the tax lien date and, therefore, should be considered in the total assessed value for the property. Thus, no deduction for their removal is appropriate.

[6] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$63,000

TAXABLE VALUE

$22,050

OHIO BOARD OF TAX APPEALS

DALE KOLESAR/MAXIMUM TITLE & ESCROW SERVICES INC., (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-350, 2019-351, 2019-352 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DALE KOLESAR/MAXIMUM TITLE & ESCROW SERVICES INC.
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Entered Monday, January 6, 2020

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

In these consolidated cases, the county appellees move to dismiss these appeals on the ground appellants Dale Kolesar and Maximum Title & Escrow Services (collectively "Kolesar") lack standing. The county appellees argue these cases are substantially similar to cases this board dismissed in *Dale Kolesar/Maximum Title & Escrow Services, Inc. v. Cuyahoga Cty. Bd. of Revision* (Sept. 12, 2019), BTA No. 2019-356, unreported ("*Kolesar I*"). In that decision, we dismissed several appeals because Kolesar lacked standing. Kolesar did not respond to the motions or file a brief in these cases.

Upon review, we agree with the county appellees that these cases are materially indistinguishable from the cases at issue in *Kolesar I*. Both sets of cases involve the same subject property and the same general facts. No property taxes were paid on the subject from approximately 2011 until July 31, 2017, when Joshua Louis Hoert purchased the subject and trued up the taxes. Kolesar, as the title agent, then filed a penalty remission application for payments missed during that time period. The application also requests partial abatement of interest. The BOR granted remission for tax year 2011, but it denied remission for the remaining years finding the failure to make payment was not "due to reasonable cause and not willful neglect."

In *Kolesar I*, we dismissed the cases for lack of standing finding subsequent owners lack standing to request penalty remission per *Mosher v. Harris*, 2nd Dist. Montgomery No. 12834 (July 24, 1992). There is no question Kolesar is not the owner, and we find nothing in the record that would lead us to conclude Kolesar had express authority from the prior owner to file any of the remission applications at issue in these cases. We see no reason to revisit our holding in *Kolesar I*. Accordingly, these cases are dismissed for lack of standing.

OHIO BOARD OF TAX APPEALS

THISTLEDOWN RACETRACK, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2017-635, 2017-788, 2017-790 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THISTLEDOWN RACETRACK, LLC
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WARRENSVILLE HEIGHTS CITY SCHOOLS BOARD OF EDUCATION
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Entered Monday, January 6, 2020

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

This matter is now considered upon appeals by property owner Thistledown Racetrack, LLC ("Thistledown") and the Warrensville Heights City Schools Board of Education ("BOE") related to the valuation for real property tax purposes of the Thistledown Racino in North Randall for tax years 2014 and 2015. We proceed to decide the matter upon the notices of

appeal, the statutory transcripts certified pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written arguments. We further note that the valuation of this property has been the subject of numerous appeals to the Ohio Supreme Court and to this board for prior tax years. *Warrensville Hts. City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 145 Ohio St.3d 115, 2015-Ohio-78; *Warrensville Hts. City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 277, 2017-Ohio-8845; *Harrah's Ohio Acquisition Co., L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 154 Ohio St.3d 340, 2018-Ohio-4370; *Harrah's Ohio Acquisition Company, LLC v. Cuyahoga Cty. Bd. of Revision* (June 7, 2019), BTA Nos. 2014-4596, et al., unreported, appeal pending, 8th Dist. No. CA-19-108765.

The fiscal officer valued the subject property, i.e., parcel numbers 771-03-001 and 761-18-001, at a total of $23,157,100 for tax year 2014 and $32,000,000 for tax year 2015. Thistledown filed a complaint against the valuation of the property for tax year 2015 requesting a decrease in value to $25,200,000. The BOE filed a countercomplaint for tax year 2015 requesting an increase in value to $49,000,000, and requested that the BOR also consider tax year 2014 under its continuing complaint jurisdiction. See R.C. 5715.19(D). The BOR found it had jurisdiction over both tax years and proceeded to hear the parties' evidence as to both years. We agree that the BOR properly had jurisdiction over tax year 2014. See *Life Path Partners, Ltd. v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 238, 2018-Ohio-230; *Novita Industries, L.LC. v. Lorain Cty. Bd. of Revision*, 153 Ohio St.3d 57, 2018-Ohio-2023.

Thistledown presented the appraisal report and testimony of David Sangree, MAI, who opined a value of $27,000,000 as of January 1, 2014, and $25,200,000 as of January 1, 2015. The BOE presented the appraisal report and testimony of Douglas F. Bovard, CAE, who opined the value of the property to be $48,000,000 as of January 1, 2014, and $49,000,000 as of

January 1, 2015. After considering the reports and testimony, the BOR rejected all the appraisal evidence and issued decisions finding no change in value was warranted for either tax year. In its oral hearing journal summary, included in the statutory transcripts, the BOR members explained:

> The Board considered the tax lien dated appraisal supplied and the appraiser's testimony for tax years 2014 and 2015, for the property owner. The Board finds that the appraiser's determination of value for the subject property's FF&E and gaming license is not supported with reasonable commentary or supplemental documentary evidence. Due to this, the Board finds that Mr. Sangree's appraisal does not represent the true value for the subject property for tax year 2014 and 2015.
>
> The Board of Education provided appraisal reports and testimony from a general certified appraiser as well. The Board considered the appraisals and testimony of Mr. Bovard and find that the reconciled value in the 2014 report and 2015 report, not representative of the subject's true value for the respective tax years. Mr. Bovard's utilizes a discounted cash flow analysis, in which, the Board questions the projections and conclusions of the analysis.

On appeal to this board, the parties have again presented the testimony of their respective appraisers, i.e., Mr. Sangree for the owner and Mr. Bovard for the BOE. In addition, each party presented a second appraiser to review the opposing party's appraisal evidence, i.e., Kathleen M. McGee, Ohio certified general appraiser, reviewed Mr. Sangree's reports, and Joseph Pierce, MAI, reviewed Mr. Bovard's reports. We note Thistledown objected to BOE Exhibits 14 through 17 as not being timely disclosed prior to the hearing; we hereby overrule the objection and admit all four documents into evidence. We further note that the BOE objected to Mr. Sangree's qualification to present an opinion of value as an expert witness in this matter, given that he lacks certain accreditation(s) and designation(s). Having reviewed Mr. Sangree's reports and the whole of the testimony presented, we overrule the objection and find Mr. Sangree qualified to present his opinions of value in this matter. See *Steak 'n Shake, Inc. v.Warren Cty. Bd. of Revision*, 145 Ohio St.3d 244, 2015-Ohio-4836, ¶20-26. We likewise overrule any objection to Mr. Bovard's qualifications as an expert appraiser.

We note that, although the review appraisal evidence is new, Mr. Sangree's and Mr. Bovard's appraisal reports for the tax years at issue in this matter (2014 and 2015) are substantially

similar to those presented in the tax year 2013 matter recently decided by this board. *Harrah's Ohio Acquisition Company, LLC v. Cuyahoga Cty. Bd. of Revision* (June 7, 2019), BTA Nos. 2014-4596, et al., unreported. There, we found Mr. Bovard's approach to valuing the subject property, using an estimated lease rate based on the gaming revenue from the operations at the property, was improper as it reflected business value and failed to properly isolate real property value, citing to the Supreme Court's decisions in *HCP EMOH, L.L.C. v. Washington Cty. Bd. of Revision*, 155 Ohio St.3d 378, 2018-Ohio-4750, and *Higbee Co. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St.3d 325, 2006-Ohio-2. We rejected his tax year 2013 appraisal and stated:

> Here, we find Mr. Bovard's approach to valuing the subject property runs afoul of the same problem the court analyzed in *HCP*. While his approach to valuing the property, assuming it would be leased on a net basis, is appropriate, the lease rate he derived is based on a percentage of the various types of revenue from the business conducted at the subject property. Just as in *HCP* and in *Higbee*, a lease rate derived from such revenue reflects business value, not realty value. We therefore find that, just as in *HCP*, "it follows that any subsequent calculations built on the lease-coverage ratio, including his final opinion of value, are flawed, too." *HCP*, supra, at ¶20. We reject Mr. Bovard's income approach in its entirety.

Id. at 4. Because Mr. Bovard used the same approach in valuing the property as of tax years 2014 and 2015 in this matter, we again find his analysis legally flawed. We therefore reject his income analyses.

For tax year 2014, Mr. Bovard also used a cost approach, though he placed little weight on his $48,000,000 value resulting therefrom. He did not perform a sales comparison analysis for tax year 2014; however, he did for tax year 2015. In his tax year 2015 report, Mr. Bovard provided three comparable sales, including the sale of the subject in July 2010, the sale of River Downs in Hamilton County in January 2011, and the sale of the Higbee Building/Horseshoe Casino in Cuyahoga County in August 2013. He provided little analysis of the sales, and indicated in his Market Value Conclusion that he considered the sales approach "primarily as a check upon the reasonability of the other approaches to value." H.R., Ex. 4 at 90. Relying on his income analyses, he opined a value of $48,000,000 as of January 1, 2014, and $49,000,000 as of January 1, 2015.

H.R., Exs. 3-4.

As he did for tax year 2013, Mr. Sangree valued the overall going concern of the property and the business conducted thereon, and ultimately concluded to a real property value of $27,000,000 as of January 1, 2014, and $25,200,000 as of January 1, 2015. Although he performed cost and sales comparison analyses, he relied primarily on his income approach. After estimating and capitalizing the net operating income for the overall going concern, he deducted the value of the gaming license ($50,000,000 for each tax year), and personal property (derived from the owner's balance sheets), to arrive at his real property value for each year.

Ms. McGee and the BOE criticize Mr. Sangree's appraisal in several respects. While we acknowledge their criticisms, we also acknowledge the appraisal of real property is not an exact science, but is instead an opinion. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May30, 1985), BTA No. 1982-A-566, et seq., unreported. 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. This board is tasked with independently determining the value of real property from all the evidence in the record before us. We look not for a perfect opinion of value, but the most probative one. Here, we find Mr. Sangree's opinions of value are the most probative, despite the BOE's criticisms. Any reliance on Mr. Bovard's income approach (the only approach upon which he placed any reliance) is foreclosed by our prior decision. We find Mr. Bovard's tax year 2015 sales approach of little value, given that no adjustments were made to his comparable sales. Further, we agree with Mr. Bovard that the cost approach is of little value given the age of the improvements on the property.

Based upon the foregoing, we find Mr. Sangree's opinions of value are the most probative of the subject property's values on the relevant tax lien dates. We allocate his overall

opinions of value between the two parcels in accordance with the fiscal officer's initial values. *FirstCal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921. It is the order of this board that the true and taxable values of the property as of January 1, 2014, were as follows:

PARCEL NUMBER 761-18-001

TRUE VALUE: $4,872,040

TAXABLE VALUE: $1,750,210

PARCEL NUMBER 771-03-001

TRUE VALUE: $22,127,970

TAXABLE VALUE: $7,744,790

It is further ordered that the true and taxable values of the property as of January 1, 2015, were as follows:

PARCEL NUMBER 761-18-001

TRUE VALUE: $3,528,000

TAXABLE VALUE: $1,234,800

PARCEL NUMBER 771-03-001

TRUE VALUE: $21,672,000

TAXABLE VALUE: $7,585,200

OHIO BOARD OF TAX APPEALS

FAIRWAY CROSSING LIMITED PARTNERSHIP, (et. al.),	)	Appellee(s).)
Appellant(s),	)	
vs.	)	CASE NO(S). 2018-610
SENECA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

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For the Appellee(s) - SENECA COUNTY BOARD OF REVISION
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Entered Tuesday, January 7, 2020

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

The appellant property owner, Fairway Crossing Limited Partnership ("Fairway"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property for tax year 2017. The subject property includes parcel numbers Q53-02-112972-05-00, Q53-02-112972-06-00, Q53-02-112972-07-00, Q53-02-112972-08-00, Q53-02-112972-09-00, Q53-02-112972-10-00, Q53-02-112972-11-00, Q53-02-112972-12-00, Q53-02-112972-13-00, Q53-02-112972-14-00, Q53-02-112972-15-00, Q53-02-112972-16-00, Q53-02-112972-17-00, Q53-02-112972-18-00, Q53-02-112972-19-00, Q53-02-112972-20-00, Q53-02-112972-21-00, Q53-02-112972-22-00, Q53-02-112972-23-00, Q53-02-112972-24-00, Q53-02-112972-25-00, Q53-02-112972-26-00, Q53-02-112972-27-00, Q53-02-112972-28-00,

Q53-02-112972-29-00, Q53-02-112972-30-00, Q53-02-112972-31-00, Q53-02-112972-33-00, Q53-02-112972-34-00, Q53-02-112972-35-00, Q53-02-112972-36-00, Q53-02-112972-37-00, Q53-02-112972-38-00, Q53-02-112972-39-00, and Q53-02-112972-40-00. 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 appellant's written argument.

At this board's hearing, the county appellees offered testimony from appraiser Thomas Sprout along with an accompanying document. Fairway objected to this evidence based on the county appellees' untimely disclosure of the intent to rely on such evidence. The attorney examiner reserved ruling on the objection, which we now sustain because the county appellees have failed to show good cause as to why the disclosure was untimely. Even if this board were to consider the evidence, however, we would find that it is not reliable evidence of value for the subject property for the reasons more fully discussed below and would accord it no weight in our determination.

The subject property consists of 35 parcels operating as one economic unit participating in the Low Income Housing Tax Credit ("LIHTC") program. Each parcel is improved with a single-family home, including 18 three-bedroom and 17 four-bedroom dwellings. The auditor initially assessed the subject parcels at total true values ranging from $57,430 to $69,180 each based on the cost approach to value. Fairway filed a complaint with the BOR seeking a reduction in value to $43,800 per parcel. At the BOR hearing, Fairway relied on testimony from James E. Zambori, a representative of the owner. Zambori described the subject property and the LIHTC restrictions in place, in addition to the income, expenses, and historical occupancy at

the subject property. Fairway also submitted a packet of documents, which included an income approach that formed the basis for its opinion of value. The BOR issued a decision maintaining the initially assessed valuation, from which Fairway filed the present appeal.

This board convened a hearing, at which Fairway presented testimony and a written report from appraiser Richard G. Racek, Jr., MAI. Racek relied solely on the income approach, taking the LIHTC restrictions into consideration for purposes of determining market income, expenses, and capitalization rates. Racek divided a net operating income of $146,210 by 9.57% (8% capitalization rate plus 1.57% tax additur), for a resulting value of $1,527,795. Racek then deducted $250 per unit ($8,750) to account for furniture, fixtures, and equipment, for an overall value of $1,519,000 (rounded) attributable to the real property. Racek allocated the value equally among each unit, concluding to a value of $43,400 for each of the subject parcels.

The county appellees cross-examined Racek and offered testimony from Sprout with a market rent survey. Sprout reviewed Racek's appraisal and the market data upon which he relied, criticizing his conclusions because they were based on the LIHTC restrictions. Sprout testified that his market analyses was based on the income, expenses, vacancy, and capitalization rates appropriate for the property if it were a conventional unrestricted project. As noted above, Fairway objected to this evidence because it was not timely disclosed, at which time the county appellees acknowledged the untimely disclosure and provided the circumstances for the missed deadline. The county appellees also maintained that the late disclosure did not prejudice Fairway because Sprout did not prepare a report. At that time, the attorney examiner allowed the county appellees to proffer the testimony. Following the hearing, the parties were given the opportunity to address legal issues through written argument, though only Fairway submitted a brief in this case, and we have now sustained the objection to the county appellees' evidence.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). This board 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. When a property is encumbered by a restrictive covenant that limits rental rates due to its participation in the LIHTC program, these restrictions must be taken into account. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 151 Ohio St.3d 12, 2017-Ohio-2734, ¶16 ("*Network Restorations III*"), citing *Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision,* 121 Ohio St.3d 175, 2009-Ohio-762. Three general principles direct the valuation of low-income housing: (1) market rents expenses should be used, though the appropriate "market" may consist of a smaller subset comprised of restricted rents, (2) government subsidies should not be taken into account if they increase the property's value above the conventional market, and (3) "a cost approach to valuation is disfavored." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254, ¶17, citing *Network Restorations III* at ¶¶16-18;*Notestine Manor, Inc. v. Logan Cty. Bd. of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2.

In this case, we find that Racek's appraisal is the only reliable evidence in the record, as he properly narrowed his market data to reflect the LIHTC restrictions in place and his conclusions were reasonable and well-supported. Even if we were to consider Sprout's market data and review of Racek's report, such evidence expressly disregards the restrictions in place at the subject property and fails to adhere to the general principles of the valuation of low-income properties. As such, we would give it no weight. Finally, the auditor's values were based on the cost approach and, therefore, are not a reliable indication of the value of the subject property.

It is therefore the order of this board that the true and taxable values for each of the subject parcels, as of January 1, 2017, were as follows:

TRUE VALUE

$43,400

TAXABLE VALUE

$15,190

OHIO BOARD OF TAX APPEALS

CRISTOPHER BROYLES, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-763
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MEDINA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - CRISTOPHER BROYLES
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For the Appellee(s) - MEDINA COUNTY BOARD OF REVISION
Represented by:
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MEDINA COUNTY
60 PUBLIC SQUARE
MEDINA, OH 44256

Entered Tuesday, January 7, 2020

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

Property owner Cristopher Broyles appeals from a decision of the Medina County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2018. No hearing was requested. Therefore, we decide the case on the notice of appeal, the statutory transcript, and the parties' written arguments. Mr. Broyles' brief asks this board to order the BOR to conduct a series of calculations and to present additional evidence to support the auditor's value as retained by the BOR. We find those requests without merit and deny them. Mr. Broyles' brief also asks this board to require the BOR to attempt to negotiate a settlement in this case. We interpret that request as a request for mediation. See Ohio Adm. Code 5717-1-22. We deny the request and proceed to the merits.

The subject property is an approximately 25-acre plot currently valued according to its

current agricultural use value ("CAUV"). Mr. Broyles purchased the subject for $206,000 in December 2017. The record contains the conveyance fee statement, which indicates no portion of the sale was attributable to non-realty. The auditor valued the subject at $187,700 for tax year 2018. Mr. Broyles filed a decrease complaint for tax year 2018 asking the BOR to value the subject at $158,059 for that year. At the BOR hearing, he presented unadjusted market data compiled with the assistance of a real estate agent. The BOR's speaking member informed Mr. Broyles that the property was under CAUV status so the tax bill would be dictated according to the CAUV tables. The BOR ultimately retained the auditor's value. Mr. Broyles appealed but did not request a hearing.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The only question before us in this case is value, not CAUV status.

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. The basic facts of the December 2017 sale are undisputed. Mr. Broyles purchased the subject property in December 2017 for $206,000 as confirmed by the conveyance fee statement and parcel card. Nothing in the record suggests the transaction was anything other than arm's-length. Accordingly, that sale, which occurred one month before the tax-lien date, creates a presumption of value as of the tax-lien date. See id. As a result, the burden was on any party advocating for a different value to rebut the sale. While Mr. Broyles advocates for a lower

value, we do not find he has rebutted the presumption created by the sale. We likewise do not find his evidence to be better, more persuasive evidence of value.

First, we do not find his unadjusted market data rebuts the sale or is more persuasive evidence of value. Unadjusted market data is generally not probative evidence of value because of the variables between the subject property and the comparables. See *1721 Radio LLC v. Montgomery Cty. Bd. of Revision* (Mar. 28, 2019), BTA No. 2018-586, unreported. Moreover, the data was compiled, at least in part, by a real estate agent. However, as this board has noted, a salesperson is not an appraiser. See *Springfield Local Sch. Bd. of Edn. v. Lucas Cty. Bd. of Revision* (Sept. 17, 2018), BTA No. 2017-2014, unreported. As we have noted before, "real estate salespeople are licensed to sell real estate. They have training in their field but may or may not have extensive appraisal experience." Id. (quoting The Appraisal of Real Estate (13th Ed.2008)). Additionally, it appears Mr. Broyles had no personal knowledge of the comparable properties. That means the market information is largely unreliable hearsay. The Ohio Supreme Court has been clear that "the owner qualifies primarily as a fact witness giving information about his or her property; usually the owner may not testify about comparable properties, because that would be hearsay." *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶ 19. Accordingly, we do not find the evidence submitted by Mr. Broyles rebuts the presumption created by the sale, and further, do not find his evidence to be more persuasive evidence of value.

For these reasons, we find the sale is the best, most persuasive evidence of value. It is the decision and order of this board that the true and taxable values of the subject property as of January 1, 2018, were as follows:

PARCEL NUMBER 009-16B-25-003

TRUE VALUE

$206,000

TAXABLE VALUE

$72,100

OHIO BOARD OF TAX APPEALS

ANNE JACOBS, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-760
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - ANNE JACOBS
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Tuesday, January 7, 2020

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

Anne Jacobs appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's value of the subject property for tax year 2018. No hearing was requested. Therefore, we decide the case on the notice of appeal, the statutory transcript, and the parties' briefs.

The subject property is a single-family residence, which the fiscal officer valued at $236,400 for tax year 2018. Appellant filed a decrease complaint with an opinion of value of $201,000. In support, appellant supplied the BOR with five parcel numbers. According to appellant, each was comparable to the subject property and had sold in a transaction recent to tax-lien date. However, it does not appear the appellant had actual knowledge of the comparables or the sales transactions. Appellant also supplied a series of photographs showing

negative characteristics including a cracked foundation. The BOR ultimately retained the fiscal officer's value. The BOR's decision states: "The sales information consisted of raw sales data that did not contain any analysis or adjustment." With regard to the negative characteristics, the BOR's decision states it could not determine what value reduction "if any" would be appropriate based on those characteristics.

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). Neither the fiscal officer nor the BOR bears the "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." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23). A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. However, the subject property has not recently sold. Accordingly, we move on to review appellant's evidence.

Upon review, we are unable to find appellant has carried her burden. We have repeatedly said unadjusted comparable sales data is generally insufficient to warrant an adjustment. When a party gives us nothing more than a list of raw sales data we are "left to speculate as to how 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." *Wearn v. Cuyahoga Cty. Bd. of Revision* (May 22, 2018), BTA No. 2017-1159, unreported (citing generally The Appraisal of Real Estate (13th Ed.2008)).

We have likewise held the presence of negative characteristics is generally insufficient to justify a reduction. All properties have negative characteristics. The Supreme Court has been clear that, while negative characteristics can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)).

We note that appellant's opinion of value is largely based on her subjective opinion. To be sure, an owner is competent to provide an opinion of value. *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987). However, for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994). While an owner might be an expert in the subject, an owner might not be an expert in valuation or the market. Here, we do not find appellant's opinion of value is supported by probative evidence. Therefore, we see no reason to deviate from the fiscal officer's valuation, which was retained by the BOR. See *Jakobovitch*, supra.

We find the true and taxable values of the subject property as of January 1, 2018, were as follows:

PARCEL NUMBER 871-31-013

TRUE VALUE

$236,400

TAXABLE VALUE

$82,740

OHIO BOARD OF TAX APPEALS

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

vs.

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

CASE NO(S). 2018-1957, 2018-1970

REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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COLUMBUS, OH 43215

WINDSOR INVESTMENTS, LTD. AND FLORIDA COASTAL PARTNERS, LLC
Represented by:
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WESTERVILLE, OH 43082

Entered Tuesday, January 7, 2020

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

[1] The appellant board of education ("BOE") appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 010-022803-00, 010-053799-00, 010-068654-00, 010-068971-00, 010-103855-00,010-122116-00, 010-147285-00, and 010-068762-00, for tax year 2017. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, and the record

of the hearing before this board.

[2] The subject properties are single-family rental properties primarily located in the Hilltop neighborhood of Columbus (with one in North Linden). The auditor initially assessed the subject properties at values ranging from $36,600 to $140,400 each. The appellee property owners filed complaints with the BOR seeking reductions to values ranging from $18,000 to $93,000. The BOE filed countercomplaints in support of maintaining the auditor's values. At the BOR hearing, the owners presented appraisal reports opining values for the subject properties as of January 1, 2017, though the appraiser did not appear. Instead, owner Alex Dorsey testified that he had ordered the appraisals and that he agreed with the appraiser's conclusions. Mr. Dorsey also testified about negative aspects of of the properties and challenges faced by the neighborhoods in which they are located. He described the rental income and occupancy/vacancy at each of the subject properties. The BOE objected to the appraisal reports because the appraiser was not present to testify, noting that the reports disclosed only exterior inspections had been done.

[3] The BOR issued decisions reducing the properties' values to the appraiser's values, though one of the BOR members dissented and would have maintained the auditor's values. In reaching their decision, the majority members of the BOR reviewed the data within the reports, verifying the sales utilized in his sales comparison analysis and the basis for his gross rent multipliers ("GRM"). From these decisions, the BOE filed the present appeals. At this board's hearing, the BOE argued that the BOR's decisions were marred by legal error and the appraisals should be excluded. The BOE claimed that this board must independently review the evidence and reinstate the auditor's values because the property owner failed to present evidence that would warrant reductions. The property owners argued that the BOR rightfully considered the appraisal evidence and testimony from their owner, asserting that the evidence they presented justified the

BOR's reduced values.

[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). While valuation determinations made by county boards of revision are not presumptively correct, see, e.g., *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, under certain circumstances, when the BOR adopts a new value based on the owner's evidence, it has the effect of "shifting the burden of going forward with evidence to the board of education on appeal to the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543, ¶16. The court has referred to this as the "*Bedford* rule," based on the its decision in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio- 5237. See, e.g., *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025 ("*Union Savings Bank*").

[5] The court has provided guidance about when the *Bedford* rule applies. For instance, in *Union Savings Bank*, the court defined the four elements necessary to invoke the *Bedford* rule: that a property owner filed a complaint (or countercomplaint), the BOR reduced value based on "competent evidence offered by the property owner," a board of education files an appeal, and "the board of revision's determination of value is based on appraisal evidence rather than a sale price offered as the property value." Id. at ¶¶9-11. Nevertheless, "[a] legal error in the BOR's determination prevents affirmance of the BOR's determination." *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, ¶30 ("*Team Rentals*"). Likewise, this board may reinstate the auditor's value "when the BOR's decision to reject the auditor's valuation is completely unsupported in the record" or when the BOE "presents evidence that the auditor's valuation is more accurate than the BOR's." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 144 Ohio St.3d 324, 2015-Ohio-3633, ¶44.

The court has reiterated the importance of this board's independent review of evidence offered to the BOR in cases where the BOR has reduced value. See, e.g., *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381; *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 148 Ohio St.3d 695, 2016-Ohio-8332.

[6] In the present appeals, the BOE urges this board to find legal error with the BOR's decision, thus preventing affirmation of the value reductions. In *Team Rentals*, the BOR reduced the value of the subject property based on a straight-forward reliance on an appraisal, about which the court observed: "the written report was presented without authenticating and supporting testimony from the appraiser, the appraisal was expressly performed for bank-financing purposes, and the 'as of' date was six months before the lien date." Id. at ¶21. The court found that the BOR's straightforward reliance on the appraisal was legal error without any qualification that would relate the value to the tax lien date. Id. at ¶30. Despite the error preventing affirmance of the BOR's decision, the court concluded that the property owner had affirmatively negated the auditor's value and "the appraisal furnished evidence that in conjunction with the testimony was competent, that negated the validity of the auditor's valuation, and that furnished an independent basis for valuing the property." Id. at ¶27. The court observed that the appraisal was prepared by a state-certified appraiser and was offered with testimony from the owner about its origin and use. Id. at ¶¶24-25We disagree with the BOE's argument that the *Bedford* rule does not apply to the present appeals and, consequently, we find that the auditor's values cannot be reinstated. These cases fall squarely within the parameters set forth in *Union Savings Bank*, and the BOR's decision was not "legal error." Unlike the appraisals in *Team Rentals*, the appraisals in this case opined value as of the tax lien date and, therefore, it was not legally improper for the BOR to strictly rely upon their findings. The lack of testimony may raise questions regarding the proper weight to be accorded an appraisal, but the court has made clear that an appraiser's testimony is not a mandatory legal requirement, particularly where there is additional testimony to authenticate the report and testify regarding its purpose and use. See, e.g., *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of*

Revision, 130 Ohio St.3d 230, 2011-Ohio-3362. See, also, *Emerson v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 148, 2017-Ohio-865. Here, the BOR did not merely accept the report, but it further confirmed the sales and considered the GRM analyses before determining value for the subject properties.

[7] Finally, even if the *Bedford* rule did not apply, as was the case in *Team Rentals*, the appraisals negated the validity of the auditor's initial valuations and provide reliable independent evidence that support the reduced values found by the BOR. The BOE correctly maintains that this board must independently review the evidence, and we find that the appraisals have sufficient indicia of reliability and meet the standards set forth by the court in *Team Rentals*. On appeal, the BOE was required to present evidence in support of the auditor's values (or other values) but failed to do so, and upon review of the evidence, we cannot say theBOR's value is "completely unsupported." To the contrary, we find that the appraisal reports, which were further investigated and relied upon by the BOR, are the most reliable evidence in the record.

[8] 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 010-022803-00

TRUE VALUE

$18,000

TAXABLE VALUE

$6,300

PARCEL NUMBER 010-053799-00

TRUE VALUE

$25,000

TAXABLE VALUE

$8,750

PARCEL NUMBER 010-068654-00

TRUE VALUE

$59,000

TAXABLE VALUE

$20,650

PARCEL NUMBER 010-068971-00

TRUE VALUE

$93,000

TAXABLE VALUE

$32,550

PARCEL NUMBER 010-103855-00

TRUE VALUE

$53,000

TAXABLE VALUE

$18,550

PARCEL NUMBER 010-122116-00

TRUE VALUE

$55,000

TAXABLE VALUE

$19,250

PARCEL NUMBER 010-147285-00

TRUE VALUE

$57,000

TAXABLE VALUE

$19,950PARCEL NUMBER 010-068762-00

TRUE VALUE

$57,000

TAXABLE VALUE

$19,950

OHIO BOARD OF TAX APPEALS

LUTHERAN SOCIAL SERVICES OF CENTRAL OHIO PLEASANT VIEW HOUSING INC., (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2018-1132
vs.	)	(REAL PROPERTY TAX)
FAIRFIELD COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LUTHERAN SOCIAL SERVICES OF CENTRAL OHIO PLEASANT VIEW HOUSING INC.
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For the Appellee(s) - FAIRFIELD COUNTY BOARD OF REVISION
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LANCASTER CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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DUBLIN, OH 43017

Entered Tuesday, January 7, 2020

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

The appellant property owner, Lutheran Social Services of Central Ohio Pleasant View Housing Inc. ("Lutheran Social Services"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 053-42077-00, 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, the record of the hearing before this board ("H.R."), and the parties' written arguments.

The subject property consists of six acres improved with a two-story affordable rental housing community with 49 rentable one-bedroom units. The property was built using capital advance proceeds from the U.S. Department of Housing and Urban Development ("HUD") pursuant to section 202 of the Housing Act of 1959 ("§ 202"), which provides supportive housing for the elderly. HUD also provides a subsidy through a project rental assistance contract ("PRAC") to subsidize the difference between the rent paid by tenants, which are tied to their incomes, and the property's expenses. The PRAC is reviewed by HUD annually based on the project's budget and all excess income must be deposited into a residual receipts account. In addition to the 49 residential units, the project includes a two-bedroom unit for an onsite property manager, laundry room, library, business center, fitness center, common patio with grill, and craft room, all of which were required by HUD for the capital advance.

The auditor initially assessed the subject's total true value at $1,048,850. Lutheran Social Services filed a complaint with the BOR seeking a reduction in value to $660,000. The appellee board of education ("BOE") filed a countercomplaint in support of maintaining the auditor's value. At the BOR hearing, Lutheran Social Services presented the testimony and written report from appraiser Donald E. Miller, MAI. Miller relied on the income approach to value, estimating income and expenses based on the subject property's participation in the §202 program. Miller utilized the subject's contract rental rates after having determined that they were consistent with the conventional unrestricted market. After reducing the effective gross income ("EGI") ($364,758) for expenses ($349,782, which is roughly 95.9% of EGI), Miller applied a capitalization rate of 7.5% (plus tax additur) to the resulting net operating income

("NOI") of $14,976, for a total value of $160,000 (rounded). Miller then deducted $11,529 to account for the value of nonreality items, for a total true value attributable to real estate of $150,000.

The BOE cross-examined Miller but did not submit any independent evidence of value. The BOE argued that Miller's rents did not conform to the market and that it was unclear whether he fully considered the common area in his valuation. The BOE also urged the BOR to consider that the subject property consists of 49 units built in 2001 on six acres of land, but Miller's opinion of value was only $150,000. The BOR issued a decision reducing the initially assessed valuation to $660,000, which led to the present appeal.

Lutheran Social Services appeared before this board, relying on the transcript from the proceedings before the BOR, including Miller's appraisal. The BOE presented testimony and a report prepared by appraiser Thomas D. Sprout, MAI. Sprout relied primarily on the income approach, expressly ignoring the restrictions in place to estimate the subject's value. Nevertheless, Sprout concluded that the rents achieved at the subject property are consistent with those in the conventional market. Where Sprout disagreed with Miller, however, was with the appropriate expenses. Sprout calculated a NOI of $103,410 because he reduced the EGI ($374,642) based on estimated expenses of only $271,232 (72.4% of EGI). Capitalized at 7% (plus a tax additur), the significantly higher NOI resulted in a significantly higher total value of $1,195,000. Sprout also performed a sales comparison approach based on the sales of conventional unrestricted rental properties, which led to a range between $1,345,000 to $1,375,000. Giving more weight to the income approach, Sprout deducted $25,000 for personal property and concluded that the value attributable to real property as $1,170,000 as of January 1, 2017.

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 a case where the record contains multiple qualifying appraisals, the court has held that the case law "makes it clear" that the BTA is statutorily required to weigh the evidence and assess credibility of both appraisals, to independently determine a value based the evidence that we find is most probative. *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 247, 2018-Ohio-4286, ¶¶10-11.

When a property is encumbered by governmental restrictions on land use, it should be valued as a low-income-housing development, and these restrictions must be taken into account. *Notestine Manor, Inc. v. Logan Cty. Bd. of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2; *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734, ¶16 ("*Network Restorations III*"), citing *Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762. Three general principles direct the valuation of low-income housing: (1) market rents expenses should be used, though the appropriate "market" may consist of a smaller subset comprised of restricted rents, (2) government subsidies should not be taken into account if they increase the property's value above the conventional market, and (3) "a cost approach to valuation is disfavored." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254, ¶17, citing *Network Restorations III* at ¶¶16-18; *Notestine*, supra.

In this case, the Lutheran Social Services maintains that only Miller valued the property

consistent with the court's direction in *Notestine*, which discussed the value of a §202 property. The BOE, on the other hand, argues that Miller's increased expenses run afoul of the court's direction and result in an undervaluation of the property. The BOE contends that because his rental rates did not exceed those achievable by the subject property, Sprout's appraisal is proper and the best evidence in the record. The BOE also again points to the difference between Miller's valuation and the value of the land if it were not improved.

First, we disagree with the BOE's argument that the increased expenses related to operating a low-income property that is encumbered by HUD restrictions should be disregarded. The BOE's claim ignores the central tenant of *Woda Ivy Glen* that an appraiser must consider the effect of the use restrictions to value a HUD-restricted property. In a §202 property, the income must match the expenses. As such, in order to achieve "market-level" rents, the actual expenses incurred by a §202 property may be above the conventional unrestricted market. By focusing only on whether the rent conforms to the unrestricted market, the BOE and Sprout ignore the increased costs associated with operating the property consistent with HUD's requirements and which are the foundation for the approved rents. Sprout criticized the increased administrative management fees as a means to "pull fees out of the property in order for them to make money, so to speak, at the partnership level." H.R. at 13. The BOE has provided no evidence, however, to demonstrate that the subject's expenses, which are reviewed by HUD to set the annual budget, are inconsistent with other §202 properties, i.e, the market in which the subject property operates. Thus, we find that Miller's expenses are appropriate for the subject property and that Sprout's reliance upon unrestricted properties to determine market expenses does not fully capture the impact of the restrictions on the property's overall NOI. Likewise, we find that the sales comparison approach utilized by Sprout does not provide a reliable indication of value where there has been no adjustment for the restrictions in place or the difference in the expense ratio for a §202 property

like the subject.

Second, we acknowledge the BOE's argument regarding the comparatively low values for a property like the subject that is operating under HUD restrictions. As Sprout commented, "if you're looking at a property like this with the income and expenses, but matching each other up, you know, the ultimate goal for that type of property is [to] get to zero. So from a standpoint of analyzing the property that way, the real estate is never going to have a value to it." H.R. at 13-14. The court addressed this argument in *Notestine* and concluded that "Ohio law does not prohibit applying valuation principles merely because they generate a nominal value under these circumstances," and that the General Assembly must resolve the issue as to whether highly restricted low-income-housing properties should have more than a nominal tax value. Id. at ¶30-32. Thus, the value of the vacant land is irrelevant to the value of the property as improved with the restrictions in place in this case.

Finally, we note that the BOE has raised a constitutional argument. While the Supreme Court has authorized this board to accept evidence on constitutional points, it has clearly stated that this board has no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229 (1988); *MCI Telecommunications Corp. v. Limbach*, 68 Ohio St.3d 195 (1994). Hence, we decline to address this issue.

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
$150,000

TAXABLE VALUE

$52,500

OHIO BOARD OF TAX APPEALS

DILLON CROSSING L.P., (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2018-611
vs.	)	
SENECA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DILLON CROSSING L.P.
Represented by:
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3021 E. DUBLIN-GRANVILLE, SUITE 200
COLUMBUS, OH

For the Appellee(s) - SENECA COUNTY BOARD OF REVISION
Represented by:
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RICH & GILLIS LAW GROUP, LLC
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DUBLIN, OH 43017

FOSTORIA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
JENNIFER STIFF TOMLIN
SCOTT SCRIVEN LLP
250 EAST BROAD STREET, SUITE 900
COLUMBUS, OH 43215

Entered Tuesday, January 7, 2020

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

The appellant property owner, Dillon Crossing L.P. ("Dillon"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property for tax year 2017. The subject property includes parcel numbers P51-04-103470-03-00, P51-04-103470-04-00, P51-04-103470-05-00, P51-04-103470-06-00, P51-04-103470-07-00, P51-04-103470-08-00, P51-04-103470-09-00, P51-04-103470-10-00, P51-04-103470-11-00, P51-04-103470-12-00, P51-04-103470-13-00, P51-04-103470-14-00, P51-04-103470-15-00,

P51-04-103470-16-00, P51-04-103470-20-00, P51-04-103470-21-00, P51-04-103470-22-00, P51-04-103470-23-00, P51-04-103470-24-00, P51-04-103470-25-00, P51-04-103470-26-00, P51-04-103470-27-00, P51-04-103470-28-00, P51-04-103470-29-00, P51-04-103470-30-00, P51-04-103470-31-00, P51-04-103470-32-00, P51-04-103470-33-00, P51-04-103470-34-00, and P51-04-103470-35-00. 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 appellant's written argument.

At this board's hearing, the county appellees offered testimony from appraiser Thomas Sprout along with an accompanying document. Dillon objected to this evidence based on the county appellees' untimely disclosure of the intent to rely on such evidence. The attorney examiner reserved ruling on the objection, which we now sustain because the county appellees have failed to show good cause as to why the disclosure was untimely. Even if this board were to consider the evidence, however, we would find that it is not reliable evidence of value for the subject property for the reasons more fully discussed below and would accord it no weight in our determination.

The subject property is improved with 30 single-family homes that operate as one economic unit participating in the Low Income Housing Tax Credit ("LIHTC") program. The community includes 15 three-bedroom and 15 four-bedroom dwellings. The auditor initially assessed the subject parcels at total true values ranging from $51,080 to $58,300 based on the cost approach to value. Dillon filed a complaint with the BOR seeking a reduction in value to $17,000 per parcel. The appellee board of education ("BOE") filed a countercomplaint in support of the auditor's value. At the BOR hearing, Dillon relied on testimony from Sue White, who oversees the management operations at the subject property. White testified about the

LIHTC restrictions in place on the property, along with the subject's historical income, expenses, and occupancy. White explained that the subject had experienced relatively high vacancy in part due to the property's condition and in part due to difficulty finding tenants that qualify in the restricted income range. Dillon also submitted a packet of documents to support the income approach that formed the basis for its opinion of value. The BOE cross-examined White but did not present any independent evidence of value. The BOR issued a decision maintaining the initially assessed valuation, which Dillon appealed to this board.

At this board's hearing, Dillon presented testimony and a written report from appraiser Richard G. Racek, Jr., MAI. Racek's opinion of value relied solely on the income approach, and he estimated market income, expenses, and capitalization rates based on the LIHTC restrictions in place. Racek reduced an estimated $181,907 effective gross income by $124,500 for expenses. Racek then divided the resulting net operating income ($57,407) by 10.13% (8% capitalization rate plus 2.13% tax additur), for a resulting value of $566,703. Racek then deducted $250 per unit ($7,500) to account for furniture, fixtures, and equipment, for an overall value of $561,000 (rounded) attributable to the real property. Racek allocated the value equally among each unit, concluding to a value of $18,700 for each of the subject parcels.

The BOE cross-examined Racek but did not present any independent evidence of value. The county appellees cross-examined Racek and offered testimony from Sprout, who reviewed Racek's appraisal and compiled a market rent survey. Sprout critiqued Racek's analysis, which Sprout contended should have disregarded the LIHTC restrictions. Sprout indicated that he performed his own market survey as if the property was competing in the conventional unrestricted market. As discussed above, Dillon objected to this evidence because it was not timely disclosed, and the county appellees acknowledged the untimely disclosure explaining the

circumstances for the missed deadline. The county appellees also asserted that it was unlikely that the late disclosure would prejudice Dillon because Sprout did not prepare a report. The attorney examiner allowed the county appellees to proffer the testimony. Following the hearing, the parties were given the opportunity to address legal issues through written argument. Only Dillon submitted a brief in this case, and we have now sustained the objection to the county appellees' evidence.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). This board 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. When a property is encumbered by a restrictive covenant that limits rental rates due to its participation in the LIHTC program, these restrictions must be taken into account. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734, ¶16 ("*Network Restorations III*"), citing *Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762. Three general principles direct the valuation of low-income housing: (1) market rents expenses should be used, though the appropriate "market" may consist of a smaller subset comprised of restricted rents, (2) government subsidies should not be taken into account if they increase the property's value above the conventional market, and (3) "a cost approach to valuation is disfavored."*Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146,2018-Ohio-3254, ¶17, citing *Network Restorations III* at ¶¶16-18; *Notestine Manor, Inc. v.Logan Cty. Bd. of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2.

In this case, we find that Racek's appraisal is the only reliable evidence in the record, as he properly narrowed his market data to reflect the LIHTC restrictions in place and his conclusions were reasonable and well-supported. Even if we were to consider Sprout's market data and review of Racek's report, such evidence expressly disregards the restrictions in place at the subject property and fails to adhere to the general principles of the valuation of low-income properties. As such, we would give it no weight. Finally, the auditor's values were based on the cost approach and, therefore, are not a reliable indication of the value of the subject property.

It is therefore the order of this board that the true and taxable values for each of the subject parcels, as of January 1, 2017, were as follows:

TRUE VALUE

$18,700

TAXABLE VALUE

$6,550

OHIO BOARD OF TAX APPEALS

BRUCE S. & SARAH J. TOMCIK, TRUSTEES, (et. al.),	)
Appellant(s),	)
vs.	)
LORAIN COUNTY BOARD OF REVISION, (et. al.),	)
Appellee(s).	)

CASE NO(S). 2019-664

(REAL PROPERTY TAX) DECISION

AND ORDER

APPEARANCES:

For the Appellant(s) - BRUCE S. & SARAH J. TOMCIK, TRUSTEES
Represented by:
BRUCE TOMCIK
TRUSTEE
6190 GRANITE LN.
N. RIDGEVILLE, OH 44039

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Tuesday, January 7, 2020

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

[1] The appellant property owners appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 07-00-032-000-355, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject property is improved with a single-family home in Lorain County, for which the auditor performed a county-wide sexennial reappraisal for tax year 2018. After the property owners participated in an informal valuation review process, the auditor assessed the total value of the property at $226,900. The property owners then filed a complaint with the BOR seeking areduction in value to $189,990. The BOR convened a hearing, at which property owner Bruce Tomcik testified in support of the requested reduction. Tomcik asserted that recent sales near the subject property show that the auditor's value for the subject property is too high. Appellant cited the 2018 sales of four properties, noting the aspects of those properties that are different or more desirable than the subject. The BOR members clarified that the detailed property information in the auditor's records was correct, confirming the presence of a pond adjacent to

the property. A BOR member also noted that the property owners purchased the subject property in 2004 for $244,825, which far exceeded the requested reduction. The BOR issued a decision maintaining the initially assessed valuation, explaining that it accepted the recommendation from the auditor's appraisal department, which considered thirteen sales within the subject property's neighborhood and determined that the subject property's assessed value was at the low end of the range. From this decision, the property owners filed the present appeal.

[3] The property owners appeared before this board and Tomcik argued that the property's value increased too drastically during the reappraisal process. Tomcik referenced the comparable sales information discussed before the BOR, asserting that it supported a reduced value. Tomcik also challenged the BOR's characterization of the body of water near his home, claiming that it was a stormwater retention basin and not a pond or lake that was available for recreational use. The county appellees cross-examined Tomcik and asserted that the auditor's value should be affirmed because property owners had failed to present competent and probative evidence of an alternative value.

[4] The auditor has the duty to value and assess taxes against real property in the county, which includes the obligation to reappraise property values once every six years and perform an update at the three-year interim point. *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, ¶19; R.C. 5713.01(B), 5713.03, 5715.33, and 5715.24; Ohio Admin. Code 5703-25-16(B). When a property owner seeks to challenge the values resulting from the reappraisal process, the owner must present sufficient evidence to establish that an alternative proposed value is the true value of the property and cannot merely challenge the accuracy of auditor's value. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. Although a BOR member referenced the 2004 sale of the subject property, it is too remote from the tax lien date to be given any weight in our determination. Id. at ¶18. 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. See also *Johnson v. Clark Cty. Bd. of Revision*, 155 Ohio St.3d 264, 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

[5] Initially, we find that the comparable sales information submitted by the property owners does not establish the reduced value that they seek. While comparable sales data is frequently utilized by appraisers to determine the value of a given property, the list of sales the property owners have provided is not probative evidence of value because they have not not demonstrated knowledge about the circumstances of those sales or adjusted them for differences among the properties. *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002. Additionally, we find that the BOR's potential mischaracterization of the pond does not show that the subject's value is not correct, particularly where Tomcik confirmed that the auditor's property details were accurate. See generally *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996) (discussing the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value).

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

[7] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$226,900

TAXABLE VALUE

$79,420

OHIO BOARD OF TAX APPEALS

STEVE & KAREN KNIGHT, (et. al.), Appellant(s), vs. BROWN COUNTY BOARD OF REVISION, (et. al.),	)	Appellee(s). CASE NO(S). 2019-517 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - STEVE & KAREN KNIGHT
Represented by:
KAREN KNIGHT
OWNER
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SARDINIA, OH 45171

For the Appellee(s) - BROWN COUNTY BOARD OF REVISION
Represented by:
MARY MCMULLEN
ASSISTANT PROSECUTING ATTORNEY
BROWN COUNTY
510 EAST STATE STREET, SUITE 2
GEORGETOWN, OH 45121

Entered Tuesday, January 7, 2020

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

[1] The taxpayers appeal a decision of the board of revision ("BOR"), which denied their request for remission of the late payment penalty associated with the property tax bill for parcel 42-081-552.0000 for the first half of tax year 2018. We proceed to consider this matter based upon the underlying application, statutory transcript certified pursuant to R.C. 5717.01, and written argument submitted by the county appellees.

[2] The taxpayers applied for remission of the late payment penalty for the previously mentioned tax period. By way of the application, they alleged that their failure to timely pay the property tax bill was based upon reasonable cause, i.e., they had timely paid their property tax

bills over the prior seven years and a parent was hospitalized. The treasurer recommended that the application be denied because of the taxpayers' prior history of paying property tax bills late and because of the lack of corroborating evidence. The BOR accepted the treasurer's recommendation and denied the taxpayers' application for remission of the late payment penalty. This appeal ensued.

[3] Neither the taxpayers nor the county appellees availed themselves of the opportunity to submit evidence into the record at a hearing before this board. The county appellees submitted written argument, which requested that this board affirm the BOR's decision.

[4] 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).

[5] Upon review, we are constrained to find that the taxpayers have failed to demonstrate that the facts and circumstances of this matter qualifies 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. The taxpayers alleged that their situation fit within the parameters of under R.C. 5715.39(C), which provides that the late payment penalty shall be remitted if the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. Here, the taxpayers have not disputed that they had at least one late payment of property tax bills within the last three years, i.e., a property tax bill payment due in calendar year 2018 for the second half of tax year 2017. As such, we find that the taxpayers do not qualify for remission of the late payment penalty under R.C. 5715.39(C).

[6] Based upon the foregoing, we find that the taxpayers have failed to satisfy the evidentiary burden on appeal. As such, we deny their request for remission of the late payment penalty for the property tax bill for the first half of tax year 2018.

OHIO BOARD OF TAX APPEALS

JACKSON LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. STARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1106 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JACKSON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
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LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
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CANTON, OH 44702-1413

FOFM LLC
4571 STEPHEN CIRCLE NW
CANTON, OH 44718

Entered Tuesday, January 7, 2020

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 1616177, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and record of this board's hearing.

The BOE filed a complaint with the BOR, which requested that the subject property be revalued at $940,400, from its initially assessed value of $534,700. By way of the complaint,

the BOE asserted that its requested value of $940,400 had been the subject property's assessed value for tax year 2016. At the BOR hearing on the matter, only the BOE appeared to submit argument and/or evidence into the record. In doing so, the BOE asserted that the county auditor arbitrarily and improperly decreased the subject property's value in the last year of the triennial period. In support of such argument, the BOE submitted a spreadsheet of multiple properties, one of which is the subject property, to highlight that changes were made to the county auditor's records. As it relates to the subject property, the BOE pointed out that the spreadsheet demonstrated that the county auditor's office changed its records about the subject property's "construction type, building height, land," which led to its decreased value for tax year 2017. Statutory Transcript at BOR Hearing Exhibit. The BOR voted to retain the subject property's initially assessed value and this appeal ensued.

At this board's hearing, only the BOE appeared to supplement the record with additional argument and/or evidence. In doing so, the BOE submitted evidence that it claimed demonstrated that the county auditor had decreased the subject property's assessed value (as well as neighboring properties' values) for pretextual reasons for tax year 2017 because the subject property's assessed value went back up for tax year 2018 without any consideration of "construction type, building height, land." Id.

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.

Based upon our review of the relevant laws and standard of review, we find that the BOE has failed to satisfy its evidentiary burden on appeal. We have previously considered other cases with substantially similar facts involving the Stark County Board of Revision. See, *Marlington Local Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Nov. 30, 2018), BTA No. 2018-913, unreported; *Plain Local Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Dec. 12, 2018), BTA No. 2017-1025, unreported; *Canton City Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Dec. 17, 2018), BTA No. 2017-1026, unreported. In those cases, we noted that the county auditor has a duty to value and assess taxes against real property, see *AERC Saw Mill Village v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, and that, generally, a value carries over from one year of the triennial period to the remaining years of the same period, a county auditor can adjust a property's value based upon changes to the property itself. Here, the county auditor changed the previously cited characteristics of the subject property, which resulted in a decreased assessed value. Because the county auditor's revaluation of the subject property fell within the county auditor's ordinary duties of office, the presumption of regularity applies, and the county 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. Unfortunately, the BOE has failed to show that the county auditor's actions were improper and failed to present competent and probative independent evidence of a different value.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d

13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we conclude that the BOE failed to satisfy its evidentiary burden on appeal. As such, the subject property's value shall remain as initially assessed for the tax year at issue.

PARCEL NUMBER 1616177

TRUE VALUE

$534,700

TAXABLE VALUE

$187,150

OHIO BOARD OF TAX APPEALS

ARC TKDBNOH001, LLC, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2017-1572
vs.	)	
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ARC TKDBNOH001, LLC
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Entered Tuesday, January 7, 2020

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

The appellant property owner, ARC TKDBNOH001, LLC ("ARC"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 010-215395-00, 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 parties' written argument. The hearing record for *Cirignano*

Family Limited Partnership vs. Franklin Cty. Bd. of Revision, BTA No. 2017-1571, particularly with respect to cross-examination of the witnesses, was also incorporated into the present appeal.

The subject property is comprised of 0.872 acres of land improved with a 6,672 square-foot, single-story commercial building that operates as a National Tire & Battery ("NTB") auto service business. The building was constructed in 2003 and has eight drive-in bays and a stockroom, as well as employee and customer service areas. The auditor initially assessed the subject's total true value at $1,691,300. ARC filed a complaint with the BOR seeking a reduction in value to $1,000,800. The appellee board of education ("BOE") filed a countercomplaint in support of the auditor's values. The BOR convened a hearing, at which both ARC and the BOE appeared, though neither presented any evidence of value. The BOR issued a decision maintaining the initially assessed valuation due to a lack of evidence of an alternative value, and ARC filed the present appeal.

This board convened a hearing on this matter, at which ARC relied on the testimony and written report from appraiser Richard G. Racek, Jr., MAI, while the BOE relied on the testimony and report from appraiser Thomas D. Sprout, MAI. The appraisers disagreed about the underlying methodology to remove any additional value a lease may contribute to a property being appraised "as if unencumbered" for ad valorem taxation. Racek did not consider any properties that had a lease in place when they sold and did not perform the income approach to value. Sprout, on the other hand, relied on the income approach and utilized the sales of leased properties but adjusted sales for "property rights conveyed" to remove the contributory value of the lease.

Looking first at his sales comparison approach, Racek concluded to a value of $150 per

square foot ($1,000,000 rounded total) for the subject property based on the sales of five properties and the listing of a sixth. Racek adjusted the sales and listing to account for differences in market conditions and physical dissimilarities from the subject property. Racek next performed the cost approach, utilizing the properties in his sales comparison approach to calculate a rate of depreciation. Racek estimated the value of the land based on a sales comparison approach ($262,000), which he added to the depreciated cost of improvements ($747,872), concluding to a value of $1,010,000 (rounded). Racek did not utilize the income approach, asserting that it was not applicable because similar properties are often owner-occupied or subject to built-to-suit leases. Racek reconciled the two approaches and concluded to a value of $1,000,000 as of January 1, 2016.

Sprout concluded to a value of $250 per square foot ($1,670,000 rounded total) based on the sales comparison approach, having considered the sales of six properties. Sprout adjusted the sale prices where necessary to address changes in market conditions, physical differences, and for property rights conveyed because, unlike Racek, several of the properties in Sprout's report transferred with an existing lease in place. Sprout also performed the income approach to value, relying on leases from five similar properties, three of which were occupied by NTB and two by Tire Discounters. The NTB properties were constructed in 2001 and 2003, while the Tire Discounters properties were constructed in 2006 and 2016. Like the subject property, all of the comparable leases were triple net, where most operating expenses are assumed by the tenant. Sprout calculated a net operating income of $134,444, which he capitalized at a rate of 8.0% plus 3.05% tax additur, resulting in a value of $1,680,000 (rounded) based on this approach. Sprout did not utilize the cost approach because of the age of the building, commenting that a potential investor would not consider this approach to value. Sprout reconciled the two approaches giving equal weight to both, opining the value of the subject property was $1,675,000 as of January 1,

2016.

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*, 155 Ohio St.3d 247, 2018-Ohio-4286, ¶¶10-11.

Upon review of the appraisals in this case, we find that both appraisers utilized some flawed methodology that left questions unanswered. Nevertheless, the auditor's value has been negated and we must independently determine value based on the evidence before us. On one hand, Racek relies on sales of properties in secondary retail locations and of inferior condition, though the subject property continued to be occupied by the national tenant that had operated its business on the property since its construction in 2003. Racek acknowledges the inferior aspects

of the properties in his sales approach, however, and adjusted all of them upward to account for these issues. Racek then carries forward the weakness from his choice of comparable sales into the cost approach, wherein he utilizes the sales information to form a depreciation rate.

On the other hand, Sprout relies heavily on properties that are leased to the original tenant, like the subject property, for both his sales comparison and income approaches to value. Sprout adjusted the comparable sales to account for vacancy and reserves that were not reflected in the sale price, commenting that the leases were consistent with the comparable properties' location and size. This conclusion was based on the leases in his income approach, however, which relied solely on national tenants occupying a property built to suit their tenancy. Sprout failed to address the contributory value, if any, of the presence of a creditworthy tenant occupying the space for the foreseeable future following the sale.

Despite these weaknesses, we must weigh all the evidence available to us to find value. Looking to the data within the reports, we find that Racek's comparable sale number five, a property at 5700 Westerville Road that sold in October 2017 for $1,200,000, as adjusted, provides the best evidence of the value of the subject real property. The property was of similar age and condition as the subject property and sold at $126.05 per square foot in an inferior location. Racek noted that an overall upward adjustment was required, with some offsetting downward adjustment because market conditions continued to improve between January 1, 2016 and the date of the sale. This sale provides compelling support for Racek's conclusion that the subject's value was $150 per square foot on the tax lien date.

We find it important to note that we disagree with ARC's contention that we must disregard Sprout's appraisal altogether because it contains data from properties leased at the time of the sale and original tenants. Additionally, we recognize that excluding properties

occupied by a "first generation" tenant altogether, as Racek did, may prevent a property that continues to have a highest and best use as a property occupied and operated by a regional or national tenant from being properly valued. We do find, however, that in this case, where we have a thirteen-year-old property with seven years remaining in the original term of its built-to-suit lease, Sprout failed to remove the value added by the desirability of the tenant as opposed to the desirability of the real property from the perspective of a potential buyer. As the court explained in *GC Net Lease @ (3) (Westerville) Investors, L.L.C. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3856, ¶10: "To be sure, the amount a building tenant pays in rent generally affects what a potential purchaser would pay to own the building. But the amount of rent charged under a lease has to be considered in the context of at least two other factors: the creditworthiness of the tenant and whether the lease at issue is a net lease, under which the tenant defrays the expenses relating to the real estate." In this case, Sprout's failure to take into account all relevant considerations regarding not only the lease terms but also the tenant resulted in a less reliable analysis. We recognize that the impacts of a lease in place may have diminishing effects as it nears the end of its term, but there is no indication that any of the tenants in the properties relied upon by Sprout were approaching the end of their leases or that the tenant's creditworthiness was not a factor in the buyer's calculation.

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

$1,000,000

TAXABLE VALUE

$350,000

OHIO BOARD OF TAX APPEALS

MATTHEW DAWSON, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-651
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, January 7, 2020

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

[1] Appellant Matthew Dawson appeals from a decision of the Cuyahoga County Board of Revision ("BOR") valuing the subject property for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

[2] The subject property is an unoccupied single-family residence, which the fiscal officer valued at $28,000 for tax year 2018. Appellant filed a decrease complaint with an opinion of value at $8,200 based on a May 2015 sale. Appellant appeared at the BOR hearing and presented the sale information as well as general information about the property. The BOR adopted a value of $15,000 based on a change of condition classification. Appellant filed a notice of appeal with this board and appeared at this board's hearing. He presented the settlement statement at that hearing.

[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). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. HopeJr. Trustee v. Cuyahoga Cty. Bd. of Revision* unreported. (July 26, 2013), BTA No. 2012-L-2291,

[4] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. However, we find the May 2015 is not the best evidence of value for tax year 2018 because the sale is neither recent nor arm's-length. The Ohio Supreme Court has held a sale that predates the tax-lien date by more than 24 months is generally not recent. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Aug. 6, 2018), BTA No. 2016-1877, unreported (citing *Akron City Schools Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588)). We find no evidence in the record that the sale remains probative evidence of value despite the passage of time. See *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. We also note the seller was the United States Department of Veteran's Affairs, meaning this board presumes the sale was not an arm's-length transaction absent evidence to the contrary. See *Columbus City Schools*, supra.

[5] We likewise do not find appellant has presented other probative evidence of value. While an owner is competent to provide an opinion of value, that opinion must be supported by tangible evidence to be probative. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994). While an owner might be an expert in the subject property, an owner might not be an expert in valuation or the market. Here, we do not find appellant's opinion of value is supported by probative evidence.

[6] We are mindful of our duty to independently review the BOR's reduction. We find the BOR's reduction is supported by the evidence in the record. The parcel card indicates the subject

property was classified as fair. The BOR appears to have calculated its value using a condition of poor. Appellant testified the property was in poor condition, and several of the comparables the BOR considered in its calculation were classified as poor.

[7] For these reasons, this board decides that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

PARCEL 132-14-094

TRUE VALUE

$15,000

TAXABLE VALUE

$5,250

OHIO BOARD OF TAX APPEALS

A.D., (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-649
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, January 7, 2020

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 662-04-040, for tax year 2018. 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 the fiscal officer initially assessed at a total true value of $205,000. Appellant filed a complaint with the BOR seeking a reduction in value to $170,000. The BOR convened a hearing, at which appellant asserted that her property had increased during the countywide reappraisal while her neighbors saw a decrease or had otherwise been assessed at a lower value despite having larger homes. Appellant presented

a report from the Cuyahoga County Sheriff in anticipation of a sale that ultimately did not happen. The report stated that three disinterested appraisers estimated the subject's value was $190,000 on or about November 29, 2017, though none of the details of those appraiser's analyses were included. Appellant also submitted an appraisal performed for her lender with an effective date of August 16, 2018. The appraiser considered the sales of three properties and listings of three others, making necessary adjustments to account for differences among the properties, to determine that the property would likely sell within 30 days at $195,000 or at $200,000 if marketed for 90-120 days. The BOR members discussed the sales in the neighborhood and explained the fiscal officer's valuation process.

Following the hearing, the BOR issued a decision maintaining the initially assessed valuation, indicating that the information provided by appellant supported the fiscal officer's value. From this decision, appellant filed the present appeal. Appellant appeared at the hearing before this board, again relying on the report from the sheriff's office and assertions regarding the values of her neighbors.

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). To satisfy this burden, appellant must produce competent and probative evidence to establish the correct value of the subject property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. 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, appellant has submitted two different valuation reports, however, both constitute unreliable hearsay because they were presented without testimony from the respective appraisers. 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*"). When a party submits a written appraisal, the presentation of the appraiser as a witness allows the other parties and this board the opportunity to evaluate the credibility of the appraiser and the reliability of his or her analysis. 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; *Akron Natl. Bank & Trust Co. v. Freed & Co.* (Aug. 20, 1980), Medina App. No. 957, unreported; *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported.

Even without testimony from the author, however, where an appraisal contains sufficient indicia of reliability, the information contained therein may furnish an independent basis for valuing the property. *Team Rentals,* supra, at ¶27. In this case, however, we find that the appraisals fail to meet this standard. With respect to the sheriff's report, we have no explanation about the credentials of the appraisers or any aspect of their analysis. Thus, we cannot assess the credibility of the appraisers or their methodology and, therefore, accord no weight to the sheriff's report in our value determination. See *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058, ¶42 (distinguishing a *Team Rentals* from the circumstances where the record lacked direct testimony about both the preparation and use of an appraisal).

As we consider the appraisal prepared for appellant's lender, we again observe that the record lacks testimony from the appraiser or any information regarding his or her qualifications. The financing appraisal does include a detailed analysis of the comparable sales and adjustments

made to account for their differences. Upon review of the sales and listings in the report, however, we find that they support the fiscal officer's initial value. Although the appraiser concluded that the property would likely sell for an amount approximately $5,000-$10,000 below the fiscal officer's value given some marketing time, the fiscal officer's value falls in the middle of the range of the adjusted sales within the report and is consistent with the average adjusted sale prices. Thus, we find that the appraisal evidence not only fails to demonstrate a new value, but moreover fails to negate the fiscal officer's value.

Finally, we reject the appellant's central argument that the assessed value of the subject property is higher and increased more drastically than others in her neighborhood. The values of other properties are not reliable evidence of value for the subject. *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996) ("Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner."). Additionally, a property's valuation from one tax year is not competent and probative evidence of value for another tax year. See *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 29 (1997).

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, 2018, were as follows:

TRUE VALUE

$205,000

TAXABLE VALUE

$71,750

OHIO BOARD OF TAX APPEALS

STEEL SUMMIT HOLDINGS INC, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1620 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, January 7, 2020

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

Steel Summit Holdings, Inc. ("Summit"), appeals from a decision of the Hamilton County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2017. We decide the case on the notice of appeal, the record of this board's hearing ("H.R."), and the parties' briefs.

The subject property is a 7.5-acre parcel improved with a 120,334 square foot industrial building with some office space. The subject property is owner-occupied by Summit. The auditor valued the subject at $3,834,810 for tax year 2017, and Summit filed a decrease complaint requesting a value of $2,400,000. Appellee Winton Woods City Schools Board of Education ("BOE") filed a counter-complaint asking the auditor's value be retained. At the BOR hearing, Summit supplied a packet of evidence containing market sales data. The BOR ultimately kept the auditor's value, and Summit appealed to this board.

At this board's hearing, Summit presented the appraisal report and testimony of G. Franklin Hinkle, II, MAI, who appraised the subject at $2,500,000 as of January 1, 2017. The auditor called James W. Burt, MAI, who appraised the subject at $4,900,000 as of January 1, 2017. The parties filed post-hearing briefs.

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). We are also required to independently review all evidence before us and "render a value determination consistent with such information." *Herbert J. Hope, Jr., Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. However, there are no recent sales of the subject property, and no party advocates for a sale price. Therefore, we move on to the parties' appraisal evidence.

Mr. Hinkle appraised the subject using the sales comparison and income capitalization approaches, giving most weight to the sales comparison approach. For his income capitalization approach, he selected four net lease comparables ranging from $3.40-$4.00/SF. He calculated

vacancy and credit loss at 10%, leading to an effective gross income figure of $324,902. After estimating expenses and reserves, Mr. Hinkle expected a net operating income figure of $248,490. He then applied a 10% capitalization rate, which included a real estate tax additur. His indicated value using the income capitalization approach was $2,500,000.

For his sales comparison approach, he selected four sales comparables ranging from 52,898 to 213,528 square feet. The comparables sold between March 2016 and March 2017 for between $21.38-$40.61/SF. The sales were for the fee simple estate. Mr. Hinkle adjusted the properties based on age, condition, size, clear height, use, and land/building ration. His indicated sales comparison approach value was $2,500,000, which was the same as the value indicated by his income capitalization approach.

Mr. Burt also appraised the subject using the sales comparison and income capitalization approaches, giving the most weight to the sales comparison approach. In his income capitalization approach, he selected four rent comparables with net leases ranging from $2.36-$5.27/SF. He adjusted for vacancy, credit loss, and reserves, which led him to estimate the subject could produce $419,872 in net operating income. He then applied 8.25% capitalization rate, which rendered an indicated value of $5,100,000. For his sales comparison approach, Mr. Burt selected three fee simple sales and one leased fee sale. He made adjustments to the sales and concluded to a value of $5,415,000. He then made a deduction for a needed roof replacement and concluded to a final value of $4,915,000.

The appraisers agreed the sales comparison approach is most applicable because properties like the subject are typically owner-occupied. We agree and find both appraisals support that conclusion. The two appraisals reach significantly different outcomes primarily because of each appraiser’s highest and best use determination. Mr. Burt's appraisal indicates

his belief that the subject property's highest and best use is as a "crane building" or "crane capable building." In his report, he states the following:

> Overall, the subject improvements were constructed as a crane building to facilitate the movement and processing of rolled steel. The subject has three crane bays that are approximately 75 feet wide with a length up to approximately 500 feet. The subject improvements have adequate parking, office finish, ceiling heights and drive-in and dock doors for this type of use. As constructed the subject is considered to be a desirable building given the lack of functional, well maintained crane buildings on the market.

H.R., Ex. A. at 46. Therefore, Mr. Burt selected as comparables buildings capable of supporting a crane or group of cranes.

By contrast, Mr. Hinkle believed a less tailored highest and best use to be appropriate given the subject's age and layout. He testified as follows:

> I think in modern building techniques, then you'll notice the difference between something that's light or heavy manufacturing versus warehousing, like a bulk warehousing, but when you get into older vintage buildings that have some type of interchangeable compatible use, somebody can use a building that was used maybe for a light industrial or manufacturing and the store stuff in it; so somebody might call that warehousing. Someone might call it storage. Somebody might say it's a light industrial use.

H.R. at 42. Accordingly, Mr. Hinkle selected older, flex buildings, which he felt were more analogous to the subject. We note his sale comparable three is the same as Mr. Burt's sale comparable four, which was a December 2016 sale for $40.61/SF.

Upon review, we find Mr. Burt's highest and best use to be more appropriate for the following reasons. First, Mr. Burt's highest and best use better captures the subject's potential, i.e., is more productive than flex space. We note Mr. Burt's adjusted rent comparables show the subject could achieve a rental rate of $4/SF whereas general flex area, as reflected by Mr. Hinkle's appraisal, would only be able to achieve $3/SF. Moreover, the crane capable buildings in Mr. Burt's appraisal were able to obtain a sale value of between $30.81 to $54.98/SF. By contrast, Mr. Hinkle's more general flex comparables were only able to achieve between $20.61 to $40.61/SF. Those discrepancies indicate to this board that the subject would be put to higher and better use

as a crane building. Mr. Burt's determination is supported by the fact that Summit actually operates the subject as a crane building. See *Johnston Coca-Cola Bottling Co. v. Hamilton Cty. Bd. of Revision*, 149 Ohio St.3d 155, 2017-Ohio-870, ¶ 15 ("And significantly, Thoreson *** concluded that the property's highest and best use as improved aligns with its current use."). The *Johnston* court clarified that "[a]lthough present use cannot be the *only* measure of value, in a proper case it may be considered in determining true value for tax purposes." Id. at ¶ 14. This board need not pretend property was not actually used as it was on tax-lien date, nor must it disregard that fact when determining which comparables are "more analogous" to the subject. Here, a crane capable building is more productive and is a higher use than a standard flex building. Accordingly, we find Mr. Burt's comparables are a better indication of value.

Summit levels several general arguments against Mr. Burt's appraisal. First, Summit argues Mr. Burt did not adequately account for the subject's age, while, it argues,Mr. Hinkle did. We disagree. A significant portion of the manufacturing and office space was built in the 1990s, with some manufacturing space built as early as 2012. Mr. Burt's comparables fall within that range, and he made adjustments to several to account for age. We also note even Summit relies on one of those sales. Summit also argues Mr. Burt's comparables are not located in the same market area. Here, again, the comparable furthest away was actually used by both appraisers, Mr. Burt's number 4 and Mr. Hinkle's number 3. While Mr. Hinkle's remaining comparables were located in Hamilton County, Mr. Burt looked to Hamilton County, Butler County, and Boone County, Kentucky. We are unable to find Mr. Burt erred in considering those sales especially since, as he testified, a buyer would consider the entire "tri-state area" meaning "southeast Indiana, southwest Ohio, and northern Kentucky." H.R. at 114. Summit also claims Mr. Burt failed to properly define a crane building or crane capable building. We disagree and find ample support for his definition in his report. He testified a crane capable building required

certain structural requirements such as a thicker slab as well as heavy power. The subject was built as such, and Mr. Burt selected comparables of similar character.

For these reasons, this board finds Mr. Burt's appraisal is the best evidence of value. Accordingly, the true and taxable values of the subject property as of January 1, 2017, were as follows:

PARCEL NUMBER 591-0002-0023

TRUE VALUE

$4,900,000

TAXABLE VALUE

$1,715,000

OHIO BOARD OF TAX APPEALS

TG3 REAL ESTATE - ELYRIA, LLC, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-865 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TG3 REAL ESTATE - ELYRIA, LLC
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Represented by:
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ELYRIA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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HUBBARD AND HUBBARD
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Entered Tuesday, January 7, 2020

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

This matter comes before this board upon a notice of appeal filed by property owner TG3 Real Estate Elyria, LLC ("TG3") from a decision of the Lorain County Board of Revision ("BOR") determining the value of parcel numbers 06-24-172-000-038 and 06-24-173-000-024

for tax year 2017. We proceed to decide the matter upon the notice of appeal, the statutory transcript certified pursuant to R.C. 5717.01, the record of the hearing ("H.R.") before this board, and the parties' written arguments.

The subject property is a 22,000-square-foot, single-tenant retail property located in Elyria, Ohio, and occupied by Planet Fitness. For tax year 2017, the county auditor valued the property at $1,009,880. Based on a reported sale of the property for $1,600,000 in February 2017, the Board of Education of the Elyria City Schools ("BOE") filed a complaint seeking an increase in value. At the BOR hearing, counsel for the BOE presented a limited warranty deed and conveyance fee statement indicating the subject property transferred from AT Midway Elyria OH, LLC to TG3 in February 2017 for a recorded sale price of $1,600,000. Counsel for TG3 did not dispute that the property sold as reported, but argued that the unique circumstances of the sale and the fact that it sold in the leased fee interest render it not indicative of fair market value. He explained that TG3 was the tenant in the property prior to the sale. TG3 provided a copy of its lease, and argued that its lease at the time of the sale was above market and that it purchased the property to avoid paying an increase in the lease rate scheduled to begin in 2017. Counsel for TG3 also presented unadjusted comparable sales as evidence of the market.

After considering the evidence presented, the BOR increased the value of the property to the $1,600,000 sale price. TG3 thereafter appealed to this board. At this board's hearing, TG3 again argued against reliance on the sale and, instead, presented the appraisal report and testimony of John W. Emig, MAI, who opined the value of the property on tax lien date was $880,000. The county appellees argued in favor of reliance on the sale price, but in the alternative, presented the appraisal report and testimony of Thomas D. Sprout, MAI, who opined a value of $1,440,000 as of tax lien date. Although the BOE participated at the hearing through counsel, it did not provide any additional evidence of value.

As the appellant in this matter, the burden is on TG3 to prove its right to the value asserted. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096. Specifically, given that the parties do not dispute the minimal details of the February 2017 transfer of the property, the burden is on TG3 to rebut the presumption that the sale is the best evidence of the value of the fee simple unencumbered interest. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. TG3 argues here that the sale does not reflect market value because of the above-market lease in place at the time of sale and the tenant's motivation to purchase the property to avoid continuing to pay an above-market rental rate. Such fact points to a possibly atypical motivation by the buyer to purchase the property at a higher sale price to avoid paying higher lease payments on an ongoing basis. We turn to the parties' appraisal evidence to determine whether the February 2017 sale of the subject property represents the property's fair market value.

Both appraisers agreed that the existing improvements on the property reflect the highest and best use of the property. Both appraisers also agreed that the sales comparison and income capitalization approaches to value were most appropriate. They differed in their selection of sale and rent comparables based on their differing views of the subject's market area. Mr. Emig focused on the area immediately surrounding the subject property – the largely vacant former Midway Mall to which the subject property is attached. In discussing the lease in place on the subject property, Mr. Emig indicated that the character of the subject's neighborhood had changed since the negotiation of the lease in 2011, specifically that the anchors of the Midway Mall were open and operating. The anchors closed in 2016 and 2017. H.R. at 25-26. He noted that Midway Mall has "struggled *** to remain a viable shopping destination" and that "[a] significant oversupply of retail space is currently available in the immediate area attributable to declining retail stores spending and population declines in the area, a direct result of a decline in

manufacturing." H.R., Ex. A at 34. He included in his report several sales of properties in the immediately surrounding area, including the former Dillards (sold for $2.14/SF in August 2016), the former Wal-Mart (sold for $4.58/SF in July 2017), the former Macys (sold for $6.04/SF in January 2018), and the Midway Crossing retail plaza (sold at $30.62/SF in October 2015 at 49% occupancy). Id. at 35-38. Mr. Emig opined that these "very low sale prices" and high retail vacancies in the area indicate the "[o]verall locational appeal is generally fair ***." Id. at 34. He selected his sale comparables and rent comparables consistent with his view of the subject's area, focusing on properties near the subject property or in areas with similar vacancies to the Midway Mall area.

Mr. Sprout, on the other hand, viewed the subject's surrounding area as viable. H.R. at 90. While he acknowledged the vacancies at the Midway Mall, he noted retail development in the surrounding areas, including restaurants, national retailers, and new hotels. He indicated second generation users, like Planet Fitness, as "flourishing" in the area. Id. at 91.

Given his view of the market, Mr. Emig selected nine sales comparables and one listing. His sale comparables sold between April 2013 and December 2018 for unadjusted prices of between $17.72/SF and $67.76/SF. After making adjustments, his comparables indicated a range of $26.31/SF to $50.82/SF. He selected a value of $40/SF for the subject property, for a value conclusion of $880,000 overall. The county appellees argue that Mr. Emig's sale comparables are inconsistent with his conclusion that the highest and best use of the property is for retail use, noting that sale 2 was converted to a charter school, sales 3 and 5 are used as Habitat for Humanity ReStores, sale 6 was converted to office space, and sale 7 was converted to a house of public worship. TG3 argues in response that the ReStores are retail uses and that the remainder of Mr. Emig's comparable sales (with which the county raises no concern) support his conclusion of value.

In his income capitalization approach, Mr. Emig looked to nine rent comparables at rates

from $4/SF to $6.88/SF. He determined a triple net rent rate of $5/SF was appropriate for the subject property, noting that "the subject property offers somewhat below average locational appeal and average overall physical attributes." H.R., Ex. A at 63. He further determined a 12.5% vacancy rate was appropriate "[g]iven significantly high vacancies found within the adjoining retail plaza to the north of the subject and the Midway Mall complex to the west." Id. He deducted 3% for management expenses and a $0.50/SF reserve, to arrive at a net operating income of $82,363. He selected a 9% capitalization rate, plus tax additur, to arrive at a final value conclusion of $880,000, rounded. Relying equally on both approaches to value, Mr. Emig opined a final value conclusion of $880,000 as of January 1, 2017.

Mr. Sprout placed most reliance on his sales comparison approach. He relied on five comparable sales of properties in northeast and central Ohio that sold for unadjusted prices of between $41.02/SF and $67.86/SF from 2014 through 2018. After adjusting the sales, he determined a value of $65/SF, or $1,440,000 overall, was appropriate for the subject property. TG3 argues Mr. Sprout failed to appropriately adjust his leased fee sale comparables (sales 1 and 3) and failed to properly investigate those properties' leases and local markets.

In his income approach, he looked at properties leased to other fitness facilities, including Planet Fitness and World Gym, and a furniture store that he felt was suitably similar to the subject property. The comparable lease rates ranged from $4.40/SF to $8/SF on a triple net basis, from which he selected $6/SF as appropriate for the subject property. However, he added an additional $4.05/SF as reimbursable expenses, including taxes, insurance, and common area maintenance expenses, resulting in an effective rental rate of $10.05/SF. He deducted 6% for vacancy based on a CoStar market survey (which excluded vacancies at department stores at Midway Mall), and then deducted expenses (including taxes, insurance, and common area maintenance expenses) and $0.20/SF for reserves. He capitalized his net operating income of

$115,017 at 8% to arrive at a value indication of $1,440,000. He separately capitalized the net operating income without property taxes, using a tax additur, and arrived at a similar value of $1,435,000.

TG3 argues Mr. Sprout's income approach amounts to a value in use appraisal, given his reliance on other Planet Fitness leases. It also takes issue with Mr. Sprout's use of what amounts to a modified gross lease, given that all his lease comparables were leased on a triple net basis. TG3 notes that Mr. Sprout's vacancy rate intentionally fails to account for the vacancies at the former anchors at the Midway Mall, and, therefore fails to reflect the subject property's immediate retail environment.

Upon consideration of the sale, the appraisal evidence, and the parties' arguments, we find Mr. Emig's income capitalization approach is the best evidence of value. Both appraisers conclude that the sale of the subject property did not reflect its fair market value, as evidenced by their different opinions of value. Moreover, they agree that the tenant-buyer had unusual motivation to purchase when it did due to the increasing lease rate. As to the appraisers' differing opinions of value, we agree with TG3 that Mr. Sprout gave too little weight to the negative effect of the vacancies at the mall to which the subject property is attached. While there may be other retail developments nearby, we find it inappropriate to ignore the external obsolescence which both appraisers agree is present at the subject property due to the failing mall. In failing to account for any of the vacancies at the mall, Mr. Sprout does just that. Mr. Emig, on the other hand, appropriately accounted for vacancy and estimated a net operating income consistent with the triple net basis of comparable leases and the subject's actual lease prior to the February 2017 sale. While we share the county appellees' concerns with some of Mr. Emig's sale comparables, the remaining comparables support his ultimate conclusion of value of $880,000 as of tax lien date.

It is therefore the order of this board that the true and taxable values of the subject

property on January 1, 2017, were as follows:

PARCEL NUMBER 06-24-172-000-038

TRUE VALUE: $864,820

TAXABLE VALUE: $302,690

PARCEL NUMBER 06-24-173-000-024

TRUE VALUE: $15,180

TAXABLE VALUE: $5,310

OHIO BOARD OF TAX APPEALS

MARY M. NAYLOR, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-743
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
ALLEN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARY M. NAYLOR
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For the Appellee(s) - ALLEN COUNTY BOARD OF REVISION
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Entered Wednesday, January 8, 2020

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

Mary Naylor appeals from a decision of the Allen County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2018. No hearing was requested. We decide the case on the notice of appeal and the statutory transcript.

The subject is a single-family residence. The auditor valued the property at $89,900 for tax year 2018, and appellant filed a decrease complaint with an opinion of value at $72,000. At the BOR hearing, appellant argued her property suffers from negative characteristics such as a poor neighborhood and standing water in the back yard. She also supplied unadjusted market data, and she argued the auditor valued nearby homes differently even though they are similar to the subject property. The BOR retained the auditor's value.

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

the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Neither the auditor nor the BOR bears the "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." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23). A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. However, the subject has not recently sold. Accordingly, we move on to appellant's evidence.

Upon review, we are unable to find appellant has carried her burden. We have repeatedly found unadjusted comparable sales data is generally insufficient to warrant an adjustment. When a party gives us nothing more than a list of raw sales data we are "left to speculate as to how 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." *Franklin & D M Wearn v. Cuyahoga Cty. Bd. of Revision* (May 22, 2018), BTA No. 2017-1159, unreported. With regard to the auditor's valuation of nearby properties, the Ohio Supreme Court has held, "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996).

We have likewise held the presence of negative characteristics is generally insufficient to justify a reduction. All properties have negative characteristics. The Supreme Court has been

clear that, while negative conditions can impact value, the party must present "adequate evidence of the specific impact that these negative factors have on the properties; dollar-for-dollar costs do not necessarily correlate to value." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)).

To be sure, an owner is competent to provide an opinion of value. *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987). However, for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994). While an owner might be an expert in the subject property, an owner might not be an expert in valuation or the market. Here, we do not find appellant's opinion of value is supported by probative evidence. Therefore, we see no reason to deviate from the auditor's valuation, which was affirmed by the BOR. See *Jakobovitch*, supra.

We find the true and taxable values of the subject property as of January 1, 2018, were as follows:

PARCEL NUMBER 36-2405-04-018.000

TRUE VALUE

$89,900

TAXABLE VALUE

$31,470

OHIO BOARD OF TAX APPEALS

WESTERLY I, L.P., (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-207
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WESTERLY I, L.P.
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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LAKEWOOD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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Entered Wednesday, January 8, 2020

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

The appellant property owner, Westerly I, L.P. ("Westerly"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 312-20-047, 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 Westerly's written argument.

The subject property is improved with a seven-story apartment building with studio,

one-, and two-bedroom units. Although originally built in 1968, the subject property was substantially renovated in 2016 utilizing law income housing tax credits ("LIHTC"), in turn agreeing to rental restrictions based on tenants' gross income. The fiscal officer initially assessed the subject's total true value at $3,394,400, and Westerly filed a complaint with the BOR seeking a reduction in value to $1,875,000. The appellee board of education ("BOE") filed a countercomplaint in support of the fiscal officer's value.

The BOR convened a hearing, at which Westerly presented testimony from appraiser Donald E. Miller, II, MAI, along with his written report, opining a value of $1,370,000 as of January 1, 2017. Miller explained that he relied solely on the income approach to value, in which he utilized income and expense data from other LIHTC projects to determine the market rental rates for the various unit types, removing the effects of subsidies from his analysis. Miller testified about his methodologies and responded to questions from not only the BOE, but also members of the BOR. Miller clarified that he did not necessarily "ignore" subsidies, but removed the income received for portable tenant-based subsidized units from his analysis if they "inflated" rents above the restricted market rates. Miller also responded to questions about his 77.9% expense ratio. The BOE challenged Miller's report but did not present any independent evidence of value.

After the hearing, the BOR issued a decision maintaining the initially assessed valuation after finding Miller's appraisal was not a valid indication of value for the 2017 tax year. The BOR specifically criticized Miller's failure to demonstrate the impact of the subsidies as they relate to the conventional unrestricted market before removing them from his analysis. From this decision, Westerly filed the present appeal. The parties waived the opportunity to present additional evidence at a merit hearing before this board, and only Westerly submitted written

argument, urging this board to adopt Miller's opinion of value. Although it was not provided in the form of a traditional qualifying appraisal, the fiscal officer's property record card includes a detailed summary of the foundation for the assessed value, including both the cost and income approaches to value. Thus, we are able to review this data in reaching our decision.

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 a case where the record contains multiple qualifying appraisals, the court has held that the case law "makes it clear" that the BTA is statutorily required to weigh the evidence and assess credibility of both appraisals, to independently determine a value based the evidence that we find is most probative. *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 247, 2018-Ohio-4286, ¶¶10-11.

When a property is encumbered by a restrictive covenant that restricts rental rates due to its participation in the LIHTC program, these restrictions must be taken into account. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734, ¶16 ("*Network Restorations III*"), citing *Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762. The court has further clarified that the valuation methodology for low-income housing is governed by three general principles: "First, 'in applying the income approach, market rents and expenses, as opposed to the actual rents of the

properties at issue, are used.' [*Network Restorations III*,] at ¶16. Second, in using 'an income approach, government subsidies should not be taken into account in a way that would increase the value of the property.' *Id*. at ¶17. Third, a cost approach to valuation is disfavored. *Id*. at ¶18." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254, ¶17. When the subject property competes in the LIHTC market, the court has explained that the restricted rents may be included as part of the appropriate market subset. Id. Essentially, when a property is restricted from achieving rents that it would receive if it were operating within the conventional unrestricted market, it is appropriate to consider the rents at other restricted properties to develop the income approach. Subsidies should be excluded, but only to the extent that they increase the value above the conventional unrestricted market.

In this case, we agree with the BOR's criticism of Miller's income approach, in which he ignores the effect of portable vouchers without the data to show that they elevate the rates above the conventional market rates. As we have previously explained, because a tenant voucher does not allow the landlord to exceed its published rent (though it may allow the landlord to charge at the higher end of the range), the primary effect of the voucher is the ability of those tenants to occupy units that they may not otherwise be able to afford. *Abbey Church Village (TC2) Housing Ltd. Partnership v. Franklin Cty. Bd. of Revision* (Jan. 28, 2019), BTA No. 2017-1055, unreported. Unlike the situation in which a property may benefit from a project-based subsidy that artificially sets rents, rents in LIHTC projects like the subject are set by its competition within the market place. Id. As such, removal of those units from a competitive market analysis without a showing that the subsidies elevate rates above the conventional market rates removes a relevant portion of market data from consideration.

We disagree, however, with the BOR's decision to reject Miller's appraisal in its

entirety and rely on the fiscal officer's value. A party seeking a change to value must affirmatively prove its entitlement to that amount and is not entitled to an adjustment simply because no evidence to the contrary is offered in support. See, e.g., *Colonial Village Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶30, ("[W]e reiterate that the county does not have the affirmative burden to establish as a general matter the accuracy of any appraisals that underlie its valuation of the property."). Nevertheless, this board is under a duty to independently weigh all evidence in the record to determine the value of a property. See, e.g., *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381. Importantly, where a party affirmatively negates the fiscal officer's value and furnishes an independent basis for valuing the property, this board must find value accordingly. *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485.

Upon review of the data contained within the property record card, the fiscal officer properly rejected the cost approach to value in favor of the income approach. The rental rates used for each unit type, however, were the same or lower than those used by Miller and the vacancy rate (8%) was higher than Miller's (5%). As such, Miller's effective gross income ($814,564) was higher than that utilized by the fiscal officer ($771,089). Thus, any criticism of Miller's rental rates would apply equally to the fiscal officer's approach. The primary difference between the two valuations was the deduction for expenses. While Miller provided market data to establish the basis for each component of his 77.9% expense ratio and explained it had some relationship to the unit sizes, the property record card contains no support data for its 48% expense ratio. Additionally, there is no indication from the property record card that the fiscal officer's value accounts for the increased expenses associated with the operation of a LIHTC

property. See, e.g., *Abbey Church*, supra. Thus, we find that Miller's appraisal provides the most reliable evidence of value in this case and that, if anything, upon a more detailed review, the fiscal officer's analysis supports his conclusions.

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

$1,370,000

TAXABLE VALUE

$479,500

OHIO BOARD OF TAX APPEALS

GREEN LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1757 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GREEN LOCAL SCHOOLS BOARD OF EDUCATION
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Entered Wednesday, January 8, 2020

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

[1] The Green Local Schools Board of Education ("BOE") appeals from a decision of the Summit County Board of Revision ("BOR") valuing the subject property for tax year 2017. We decide the appeal on the notice of appeal, the statutory transcript, this board's hearing record, and the parties' briefs.

[2] The fiscal officer valued the subject property at $343,630 for tax year 2017, and the

BOE filed an increase complaint asking the BOR to adopt a value of $930,000 citing an October 2016 sale. The property owner—Emerald Unlimited L.L.C. ("Emerald")—filed a counter-complaint asking the fiscal officer's value be retained. At the BOR hearing, counsel for Emerald was sworn in and stated a portion of the sale was attributable to non-realty. Emerald did not submit an appraisal or other documentary evidence. The BOE presented the deed and conveyance fee statement. That statement indicates no portion of the sale price was attributable to non-realty. The BOR adopted a value of $788,000 based on counsel's testimony that a portion of the sale price was attributable to non-realty.

[3] The BOE appealed. This board set a hearing date of May 21, 2019. On May 6, 2019, Emerald asked this board to continue the hearing because "the principal of [Emerald] desires to testify in this matter and he will not be available on this date." Emerald disclosed no documentary evidence. This board continued the hearing to June 19, 2019. Emerald appeared at that hearing with various exhibits and the corporate secretary, Margaret Kinsinger. She testified she had no knowledge of the sale but was there primarily to authenticate Emerald's documents as a record custodian. The BOE objected to the testimony and documentary evidence citing this board's disclosure rules and R.C. 5715.19(G). The BOE also argued the sale price remained the best evidence of value. The parties filed post-hearing briefs.

[4] The attorney examiner reserved ruling on the admissibility of Ms. Kinsinger's testimony and Emerald's documents. The BOE argues R.C. 5715.19(G) required Emerald to present its evidence to the BOR since the evidence was in existence at that time. The BOE relies heavily on *Hoty 250 Water, Ltd. V. Erie Cty. Bd. of Revision* (March 25, 2008), BTA No. 2006-B-1101, unreported. In *Hoty*, we recognized that "we have consistently held that, in cases in which a sale price is in dispute, evidence regarding the sale must be presented to the BOR. If such evidence is not presented to the BOR, any attempt to provide to this board will be barred unless

good cause can be established as to why the presentation should be permitted." We find Emerald has not shown good cause, and, as such, we will not consider the evidence submitted at this board's hearing. We further note the documents were not disclosed per this board's rules. See Ohio Adm. Code 5717-1-16(I). We also note Ms. Kinsinger's testimony does not appear to have been properly disclosed since Emerald's continuance motion merely stated an unnamed, male principal wished to testify.

[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). We are also required to independently review all evidence before us and "render a value determination consistent with such information." *Herbert J. Hope, Jr., Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No.2012-L-2291, unreported. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty Bd. of Revision*, 150 Ohio St.3d 527,2017-Ohio-4415, 31. The proponent of a sale may satisfy its initial burden, as the BOE did here, with sale documents such as a deed and conveyance fee statement. The burden then shifts to any party opposing the sale to present rebuttal evidence. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Here, that party is Emerald.

[6] Upon review, we find Emerald has not carried its burden. The Ohio Supreme Court has been clear that "the party advocating for a reduction below the full sale price" because a portion of the sale price was attributable to non-realty bears the burden of proving a reduction is warranted by presenting "'corroborating indicia' of the appropriate allocation." *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611. If the owner fails

to do so, the "full sale price constitutes the property['s] value." *Cincinnati School Dist. Bd. Of Edn. v. Hamilton Cty. Bd. of Revision*, 151 Ohio St.3d 109, 2017-Ohio-7650, ¶ 11. Here, Emerald presented no such evidence. Emerald presented no documents or an appraisal to the BOR. We also find Emerald has failed to present probative evidence to show the sale was not arm's-length. Accordingly, we find the sale price is the best, most persuasive evidence of value. We order the subject property valued as follows for tax year 2017:

PARCEL NUMBER 2100032

TRUE VALUE

$930,000

TAXABLE VALUE

$323,500

OHIO BOARD OF TAX APPEALS

SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2018-1369
vs.	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, January 8, 2020

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

The South-Western City Schools Board of Education ("BOE") appeals from a decision of the Franklin County Board of Revision ("BOR") valuing the subject property for tax year 2017. We decide the case on the notice of appeal, the statutory transcript, this board's hearing record, and the parties' briefs.

The subject property is an apartment complex subject to low-income housing tax credit ("LIHTC") restrictions. Property owner River Pointe Housing, LLC ("River Pointe") purchased the property in October 2015 for $5,750,000. The BOE filed an increase complaint asking the BOR to adopt the sale price for tax year 2017. River Pointe filed a counter-complaint asking the auditor's value to be retained. At the BOR hearing, the BOE presented the conveyance fee statement and deed. The conveyance fee statement indicates no portion of the sale price was attributable to non-realty. River Pointe presented the testimony and appraisal report of Cynthia Hatton Tepe, MAI, who valued the subject property at $4,580,000 as of January 1, 2017. River Pointe also called the subject's property manager. She testified to the rent restrictions and how River Pointe complies with those restrictions. She testified some improvements were made between October 2015 and January 1, 2017, but she indicated the property's condition on January 1, 2017, was "generally about the same" as its condition in October 2015. She also testified she was not involved in the October 2015 sale. The BOR ultimately adopted Ms. Tepe's opinion of value. The BOR did not discuss the sale or explain why it found Ms. Tepe's appraisal to be better evidence of value.

The BOE appealed. At this board's hearing, River Pointe recalled Ms. Tepe, and the BOE presented the testimony and appraisal of Thomas Sprout, MAI. He appraised the subject property at $6,120,000 as of January 1, 2017. He also conducted an appraisal review of Ms. Tepe's appraisal. River Pointe objected to the admission of BOE's exhibit two, and the attorney examiner reserved ruling for this board. The exhibit is a finance appraisal created in connection with the October 2015 sale. The appraisal values the subject property at $5,800,000. The BOE offered the appraisal to support the sale price. River Pointe objected on the basis that it was not properly disclosed and is irrelevant because it is a financing appraisal. See River Pointe Reply

at 4-5 (citing *Krehnbrink v. Testa*, 148 Ohio St.3d 129, 2016-Ohio-3391 (Kennedy, J., concurring in judgment only)). The BOE argues the appraisal was disclosed during discovery, meaning River Pointe was on notice that it might be offered and was not unfairly prejudiced. BOE Br. at 9 (citing *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, BTA No. 2016-2365 (July 25, 2018), BTA No. 2016-2365, unreported). River Pointe relies heavily on *Gahanna-Jefferson City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, (Sept. 10, 2018), BTA No. 2017-1178, unreported ("Waterbury"), wherein this board held a party does not comply with this board's disclosure rules by merely producing a document among other documents in discovery. Upon review, we find the finance appraisal in this case like the evidence in *Waterbury* and sustain River Pointe's objection. Because we sustain the objection on disclosure grounds, we need not address the issue of relevance.

River Pointe has also objected the BOE's brief as untimely, and River Pointe has further objected to the attachments to the BOE's brief, which are materials outside the record. We agree the brief was untimely. Parties are expected to comply with this board's set schedules or to seek an extension after conferring with opposing parties. Regardless, we are unable to find striking the brief in its entirety is a proportionate remedy since River Pointe had time to, and did, file a reply brief addressing any legal issues it wished to address. River Point's objection to the attachments is sustained. This board will only consider evidence contained in the statutory transcript or offered at this board's hearing. *Custom Hardwoods, Inc. v. Wilkins*, (Feb. 29, 2018), BTA No. 2006-A-1542, unreported.

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). We are required to independently review all

evidence before us and "render a value determination consistent with such information." *Herbert J. Hope, Jr., Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. The basic facts of the October 2015 sale are undisputed, and no party argues the sale is not recent or was not arm's-length.

Turning to the merits, we find the October 2015 sale is the best and most persuasive evidence of value. We note that no party presented any evidence or called any witnesses with actual knowledge of the sale that would cause us to believe the sale was not market-driven. We find neither appraisal is more persuasive than the sale. Both appraisers valued the subject to determine what the market would offer in a hypothetical sale under hypothetical market conditions. We see no reason to disregard what the market *actually* paid under *actual* market conditions absent compelling reasons to the contrary. We also note this board has accepted sales of LIHTC restricted properties many times. See, e.g., *Shaker Place VOA Affordable Housing v. Cuyahoga Cty. Bd. of Revision* (Apr. 30, 2014), BTA No. 2012-599, unreported; *Bd of Edn. of the Stow Munroe Falls Sch. Dist. v. Summit Cty. Bd. of Revision* (Feb. 21, 2013), BTA No. 2010-Y-3126, unreported. Indeed, the first step in valuing a LIHTC property is to determine if a recent, arm's-length sale has occurred. See *Moler/Van Buren Development v. Montgomery Cty. Bd. of Revision* (Apr. 17, 2018), BTA No. 2015-2236, unreported.

We further find Ms. Tepe's appraisal less persuasive than the sale because of the speculation required in a LIHTC restricted appraisal as opposed to the more concrete October 2015 sale. We do not find Mr. Sprout's appraisal to be more persuasive evidence than the sale given the way he selected his comparables in light of the LIHTC restrictions. His report states

he appraised the property under the hypothetical condition the LIHTC restrictions were not in place. We are unable to determine his approach presents an opinion of value more persuasive than the October 2015 sale.

Finally, the parties heavily discussed *Buckeye Community Twenty-One LP v. Muskingum Cty. Bd. of Revision*, BTA No. 2016-1047, unreported, in their briefs. We agree with the BOE that *Buckeye* is quite different from this case because this case involves a recent, arm's-length sale. See id. ("In this matter, the record does not disclose a recent, arm's-length sale of the subject property***.").

For these reasons, this board finds the true and taxable values of the subject property as of January 1, 2017, were as follows:

PARCEL 570-144454-00

TRUE VALUE

$5,750,000

TAXABLE VALUE

$2,012,500

OHIO BOARD OF TAX APPEALS

NICOLE & HYUNJOO YIM, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-2166 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NICOLE & HYUNJOO YIM
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Entered Wednesday, January 8, 2020

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

[1] The appellant property owners appeal a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 373-35-024, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and submitted written argument.

[2] The property owners filed a complaint with the BOR, which requested that the subject property be revalued from its initially assessed value of $132,500 to $72,000 to be consistent with the price at which it transferred in May 2017. At the BOR hearing on the matter, counsel for the property owners submitted argument and documentary evidence in support of the

complaint. As the hearing commenced, counsel confirmed that the property owners would not be attending the hearing. He argued that the subject property should be valued consistent with the $72,000 price at which it transferred from United States Department of Housing and Urban Development (more commonly referred to "HUD") to ProsperCle, LLC ("ProsperCle") in May 2017. Though counsel was not sworn in, he attempted to testify as to the facts and circumstances of the sale in May 2017. He argued that BTA case law, i.e., "the Morton case," supported his argument that the subject property should be valued consistent with the $72,000 sale from HUD in May 2017. He also argued that the subject property required approximately $45,000 to rehabilitate the condition of the home situsedon the subject property. One of the BOR members noted that the record was devoid of any information about the nature of the alleged rehabilitation work. It was noted that the subject property also transferred to the current property owners for $138,000 in June 2017 and that the record was devoid of any evidence regarding the subject property's condition on the tax lien date or at the time of both sales. The BOR subsequently determined that the HUD sale was not the best indication of the subject property's value and that property owners had failed to carry their evidentiary burden. This appeal ensued.

[3] Though this matter was initially scheduled for a merit hearing before this board, the parties opted to waive the hearing and, instead, to submit written argument. In their written submission, the property owners argued that they had demonstrated that the $72,000 sale in May 2017 was an arm's-length sale despite it being a transfer from HUD. In their written submission, the county appellees argued that the property owners had failed to submit any evidence to rebut the presumption that the transfer from HUD was *not* an arm's-length transfer.

[4] Before we consider the merits of this appeal, we must dispose of a preliminary issue. As noted above, the parties waived their appearance of this board's hearing. Despite such waiver, the property owners attached a document to their written argument, which was not previously submitted at the BOR hearing. As a result, this document will not be considered in our analysis. See,

e.g.,*SMARTLANDBR35 v. Cuyahoga Cty. Bd. of Revision* (Dec. 19, 2019), BTA No.2018-164, unreported at 1 ("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).").

[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. 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] It is important to note that the statutory transcript includes evidence of two sales that would be considered "recent" to the tax lien date of January 1, 2017: the $72,000 sale from HUD to ProsperCle in May 2017 and the $138,000 sale from ProsperCle to the current property owners in June 2017. We begin our analysis with the sale most recent to the tax lien date, which is the basis for the property owners' requested valuation. See *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687. It is undisputed that HUD was the seller in the sale of May 2017. A HUD sale is presumed not to be a valid sale for purposes of establishing the value of a property. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 127 Ohio St.3d 63, 2010-Ohio-4907 ("*Fenco*"). In *Fenco*, the court held that a HUD sale constitutes a foreclosure sale that is presumptively not arm's-length. Since this decision, however, the court has set forth additional direction regarding the utility of auctions and forced

sales. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723 ("*TaDa"*). In *TaDa*, the Supreme Court held that R.C. 5713.04, which provides that "[t]he price for which such real property would sell at auction or forced sale shall not be taken as the criterion of its value," is not an absolute bar. The court held that, instead, R.C. 5713.04 is the codification of a rebuttable presumption that forced sales and auctions are not at arm's length, which could be rebutted by the party relying upon the sale. Id.

[7] We must find that the property owners failed to satisfy the *TaDa* standard. They failed to provide any testimony from a person with firsthand knowledge of the HUD sale in May 2017, which *may* have rebutted the presumption that such sale was a forced sale. Though they repeatedly cited to *Morton v. Lorain Cty. Bd. of Revision* (BTA No. 2016-1630), Oct. 20, 2017, unreported, and *Schwartz v. Cuyahoga Cty. Bd. of Revision*, 143 Ohio St.3d 496, 2015-Ohio-3431, in support of their argument that May 2017 HUD sale was an arm's-length transaction, those cases actually demonstrate the importance of witness testimony to describe the facts and circumstances of a HUD sale. For example, in *Morton*, the property owner testified about the facts and circumstances of his HUD sale and condition of the property; in *Schwartz*, the property manager testified about the facts and circumstances of the HUD sale and condition of the property. No such testimony was provided at the BOR hearing and the property owners waived the opportunity to plug this glaring hole at a hearing before this board. Counsel for the property owners attempted to testify about the facts and circumstances of the HUD sale of May 2017, but he was not sworn in and the record is devoid of any indication that he actually had firsthand knowledge of the topics on which he spoke. We have repeatedly held that statements of counsel are not evidence. See *Corporate Exchange Bldgs. JV & V, L. P. v. Franklin Cty. Bd. of Revision*, 82 Ohio St.3d 297, 299 (1998). See, also, *Hardy v. Delaware Cty. Bd. of Revision*, 106 Ohio St.3d 359, 2005-Ohio-5319, ¶14 (discussing adverse consequences which may result from a party's failure to present witness testimony before the board and electing instead to rely upon documentary exhibits discussed by counsel).

[8] Furthermore, we find the Multiple Listing Service ("MLS") listing for the subject property, from the HUD sale, to be unreliable hearsay. See, e.g., *Dellick v. Eaton Corp*., 7th Dist. Mahoning No. 03-MA-246, 2005-Ohio-566, at ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). *** Generally, hearsay is inadmissible. Evid.R. 802."). The MLS listing was no substitute for testimony from someone with firsthand knowledge of the HUD sale and does not rebut the presumptions accorded to such sale. See, *Olentangy*, supra.

[9] Moreover, we cannot ascertain the impact or influence that the $45,000 of rehabilitation costs due *from* ProsperCle had on the HUD sale of May 2017. Statutory Transcript at Settlement Statement at Line 104. Again, no one with firsthand knowledge of this sale testified at any level of proceedings and this board will not speculate as to the nature of these costs and how they *may* have affected the parties' negotiations and effected the subject property's condition and value. See, generally *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2016-Ohio-1059, ¶15 ("Mere speculation is not evidence."). It should be noted that the property record card does not disclose that building permits were taken out. See R.C. 5713.03 (the property record is the place where the county auditor should "record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property."). See, also Ohio Adm. Code 5703-25-09.

[10] Because we conclude the sale from HUD to ProsperCle in May 2017 to be an unreliable indicator of the subject property's value, we now turn to the subsequent sale. It is undisputed that the property owners purchased the subject property from ProsperCle for $138,000 in June 2017. While counsel for the property owners suggested that the character of the subject property changed between the tax lien and sale dates, the record is devoid of any competent, credible, and probative evidence to support such assertion. Absent an affirmative demonstration

that the property owners' own $138,000 purchase of the subject property was not a qualifying sale for tax valuation purposes, we find that the record shows that the June 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. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript").

[11] It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of the relevant tax lien date:

TRUE VALUE: $138,000

TAXABLE VALUE: $48,300

OHIO BOARD OF TAX APPEALS

DALE KOLESAR/MAXIMUM TITLE & ESCROW SERVICES INC., (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-353, 2019-354, 2019-355 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DALE KOLESAR/MAXIMUM TITLE & ESCROW SERVICES INC.
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Entered Wednesday, January 8, 2020

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

The appellant appeals decisions of the board of revision ("BOR"), which denied its requests for remission of the late payment penalties, and/or interest related to such late payment penalties, for various tax periods between tax year 2013 (payable tax year 2014) and tax year 2014 (payable tax year 2015).

Several applications for remission of the late payment penalties associated with delinquent property tax bills of real property were filed with the county treasurer. The appellant asserted that its failure to make timely property tax payments was due to reasonable cause and

not willful neglect, i.e., the requests were being made pursuant to R.C. 5715.39(C). The appellant provided a written statement on each of the applications, which clarified that it was requesting remission of additional interest assessed to the delinquent property tax bills, in August 2017 and December 2017, because the appellant paid such tax bills, along with any penalties, on or about July 31, 2017. The BOR determined that remission of late payment penalties was inappropriate given the history of delinquent property tax bills and that it was precluded from remitting assessed interest. These appeals ensued. Neither the appellant nor the county appellees availed themselves of the opportunity to submit additional evidence into the record at a hearing before this board.

Before we can consider the merits of these appeals, we must first dispose of a preliminary issue. As noted, the appellant did not request hearings before this board; however, the appellant attached several documents to the notices of appeal. Some of these documents were copies of documents already submitted through the statutory transcript and, therefore, they will be considered in our analysis. However, some of these documents were not submitted at a hearing before this board and, therefore, they cannot be considered in our analysis. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996); *Bd. of Educ. v. Cuyahoga County Bd. of Revision* (Oct. 28, 2008), BTA No. 2007-V-99, unreported. See, also *Cunagin v. Tracy* (Mar. 31, 1995), BTA No. 1994-P-1083, unreported, at 3 ("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."). To the extent that these documents were offered for the truth of the matter asserted, we further find such documents to be unreliable hearsay. See, e.g., *Dellick v. Eaton Corp.*, 5th 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.").

On appeal, the burden is on the appellant to demonstrate that the BOR improperly denied the requests for remission of the real property tax late payment penalties. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001).

Upon review, we find no merit to these appeals. We note that the BOR considered whether the circumstances of these matters qualified for penalty remission under R.C. 5715.39(C), which provides that the late payment penalty shall be remitted if the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug.17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No2015-1877, unreported. Here, it is undisputed that there is evidence of a history of prior late payments of property tax bills in each of these appeals. As such, we agree with the BOR that remission of the late payment penalties would be inappropriate on this basis.

Furthermore, we agree that the BOR lacked the authority to remit any assessed interest on the delinquent property tax bills. Nothing in R.C. 5715.39(B) vests jurisdiction in county auditors/fiscal officers, treasurers, or boards of revision to remit interest assessed on delinquent property tax bills; that section only provides such officials the ability to consider remission of late payment penalties associated with delinquent property tax bills. However, R.C. 5715.39(A) provides in relevant part that "[t]he tax commissioner may remit real property taxes, manufactured home taxes, penalties, *and interest* found by the commissioner to have been illegally assessed." Because the appellant requested remission of assessed interest from the BOR, not the tax commissioner, it appears that the appellant failed to raise the issue in the proper venue. See, generally *Park-Ohio Industries, Inc. v. Tracy* (June 2, 1995), BTA No. 1994-N-306,

unreported. As such, we agree with the BOR that it was precluded from remitting assessed interest in these matters. Because the BOR lacked jurisdiction to consider this issue and because our jurisdiction is derivative, we also lack jurisdiction to consider it.

Based upon the foregoing, we find that the appellant failed to satisfy the evidentiary burden on appeal. As such, we deny the requests for remission of the late payment penalties for various tax periods between tax year 2013 and tax year 2014 and we lack jurisdiction to consider the appellant's requests for remission of assessed interest.

OHIO BOARD OF TAX APPEALS

PERRY LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. STARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-107 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PERRY LOCAL SCHOOLS BOARD OF EDUCATION
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Represented by:
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Entered Wednesday, January 8, 2020

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

This matter is now considered upon a notice of appeal filed by the Perry Local Schools Board of Education ("BOE") from a decision of the Stark County Board of Revision ("BOR") determining the value of parcel number 4317134 for tax year 2017. The parties

waived their appearances at a hearing before this board. We therefore 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.

The subject property is improved with a small retail plaza, and was initially valued by the county auditor at $743,500. The owner at the time, DeMario Land Holding Co., LLC, filed a complaint against the valuation seeking a decrease in value to $625,000. The BOE filed a countercomplaint. DeMario subsequently sold the property to MDM Property Holdings LLC ("MDM") in June 2018, and DeMario withdrew its complaint in August 2018. Upon learning of the withdrawal and the sale, the BOE amended its complaint to request an increase in value to the reported $940,000 sale price from the June 2018 transfer.

At the BOR hearing, the BOE presented the conveyance fee statement and deed as evidence of the sale, and presented a mortgage in the amount of $956,000 against the subject property and two adjacent parcels. The managing partner for MDM Property Holdings LLC, Alyssa Fabynick, testified that she had worked for the prior owner of the property and negotiated the sale of the subject property, the two adjacent parcels, the three ongoing businesses located at the property, and associated equipment and liquor license. Though she admitted such allocation was never reduced to writing, she testified the businesses were valued at $300,000 and the personal property at $40,000. Ms. Fabynick was unaware whether any formal appraisal was done. In its written argument on appeal, MDM indicates an appraisal was preformed by Charles G. Snyder, MAI; however, we find no such appraisal in the record. (It appears such appraisal may have been submitted in a subsequent BOR proceeding for tax year 2018.) After considering the evidence presented, as well as an auditor's staff appraiser recommendation to value the property at $625,000, the BOR voted to reduce the value of the property to $625,000.

The BOE appealed to this board. In its written argument, it asks that this board adopt

the full, reported sale price of $940,000, or, in the alternative, reduce the sale price by no more than the $40,000 purportedly attributable to personal property. The BOE further argues that there is no probative basis for the BOR's reduction. MDM argues that the BOR's decision was proper, and that an allocation of "somewhere between $600,000 and $691,800" to the subject real property is supported by Ms. Fabynik's testimony and the purchase agreement.

In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. We are also mindful that, where "the central issue is whether a sale price of the subject property establishes its value, the factors attending that issue must usually be determined de novo by the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

There is no dispute that the subject property sold recent to tax lien date, i.e., in June 2018. While we acknowledge the parties to the sale had a prior relationship due to Ms. Fabynick's employment with the prior owner, both parties appear to have acted in their own self-interests and the transaction appears to have been conducted at arm's-length. See *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092.The BOE argues the full sale price reported on the conveyance fee statement, i.e., $940,000, should be accepted as the value of the real property, given the lack of any allocation to non-realty on such statement. "A school board, as the proponent of using a reported sale price to value real property, makes a prima facie case when it submits basic documentation of the sale – the conveyance fee and deed." *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664, ¶20, citing *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of*

Revision, 125 Ohio St.3d 485, 2010-Ohio-1921, at ¶23-24. Because MDM opposes use of the value reported on the conveyance fee statement, it bears the burden of demonstrating the reported sale price does not reflect the value of the subject real property. *Buckeye Terminals*, supra, at ¶21.

MDM relies on Ms. Fabynick's testimony and the executed purchase agreement to support its argument that the reported $940,000 sale price reflected more than the value of the subject real property, including business value for three ongoing businesses, equipment associated with those businesses, and a liquor license. We agree that the purchase agreement and addendum demonstrate that non-realty (per the purchase agreement "the business of DeMario's Pizza and Michael D's Bar and Restaurant" and "all restaurant equipment," and per the addendum the liquor license) transferred in the overall $940,000 transaction. While in some cases this board has found that business value is not separable from the real estate, e.g., *Hidmi Enter., Inc. v. Montgomery Cty. Bd. of Revision* (Apr. 22, 2008), BTA No. 2006-M-2278, unreported (no separable value for car wash business), here we find the restaurant and bar businesses located on the property are assets that are distinct from the realty. We find MDM has met its burden to prove that the sale price reported on the conveyance fee statement does not reflect the value of the subject property. We must therefore determine the proper allocation to real property.

Despite MDM's argument that an appraisal of the property demonstrates a value for real property, we find no such appraisal in the record. We are left with Ms. Fabynick's statement that the real property is worth $600,000, and the representation on the conveyance fee statement that a mortgage of $676,000 was taken against the subject property. The record also contains the auditor's appraiser's one-page report indicating a field visit was conducted and resulted in a "revised market value" of $613,600; the report recommended the auditor's initial value be decreased to $625,000. While none of these pieces of evidence is sufficient on its own, particularly in the absence of a properly-authenticated tax valuation appraisal, we find that the

evidence as a whole indicates the value of the real property is best reflected in the BOR's value. The BOE has presented no evidence to the contrary, apart from the full reported sale price on the conveyance fee statement. We therefore determine that the BOE has failed to meet its burden to establish a value different from that initially determined by the auditor and upheld by the BOR.

It is therefore the order of this board that the true and taxable values of the subject real property as of January 1, 2017 were as follows:

TRUE VALUE

$625,000

TAXABLE VALUE

$218,750

OHIO BOARD OF TAX APPEALS

CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2018-2225
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

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

AK FRANKLIN MY PLACE LLC
2666 SHAKER BOULEVARD
CLEVELAND HEIGHTS, OH 44118

Entered Wednesday, January 8, 2020

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

The Cleveland Metropolitan Schools Board of Education ("BOE") appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's valuation of the subject property for tax year 2017. Each party either waived its appearance or failed to appear at this board's hearing. No party filed written argument. Accordingly, we decide the case on the notice of appeal and the statutory transcript ("S.T.").

The subject property is a 0.236 lot improved with apartments. The fiscal officer valued

the property at $173,800 for tax year 2017, and the BOE filed an increase complaint requesting a value of $300,000. At the BOR hearing, the BOE argued the property sold via an entity transfer and the property should be valued at $300,000. In support, the BOE supplied a limited warranty deed transferring the property from 5212 Franklin Boulevard LLC to appellee AK Franklin My Place LLC ("AK") for $10. The BOE also supplied a recorded mortgage granted by AK, which secured a note in the amount of $250,000. The BOR ultimately retained the fiscal officer's value in holding:

> This transfer appears to be a sale of a corporate interest whose function is solely to own the subject parcel and is therefore a sale of the parcel itself. However, the board does not have sufficient evidence of the actual transfer price to find that an increase is warranted since the submitted materials were not verified or authenticated.

S.T., Ex. E.

The appellant must prove the adjustment in value requested when appealing from a board of revision to this board. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has been clear "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." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶¶ 31-34 (quoting *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129). A transfer of the membership interest in a limited liability company may be the best evidence of value when "the purchase and sale agreement indicates that the transfer of membership interest was done solely to transfer title to the subject property." *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 107199, 2019-Ohio-634 (quoting *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 28, 2018), BTA No. 2017-127, unreported). In other

words, this board can look to the economic reality of a transaction and adopt a membership transfer as a sale of real property. To succeed, the party arguing an entity transfer is actually the sale of real property for tax valuation purposes must present sufficient evidence for this board to determine the nature of the transaction.

Here, we find the BOE has not carried its burden. The BOE relies on the deed, the mortgage, and a Metroscan printout. None of the documents show when the membership interest transferred, from whom it transferred, to whom it transferred, or for how much it transferred. Most importantly, the documents do not show what property was held by AK, whether only the subject property or other property. We are likewise unable to determine the membership sale price from the mortgage. In *Beachwood City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 15, 2018), BTA No. 2017-871, unreported, we found a mortgage alone is of limited value and only helpful when the basic facts of an underlying transaction are clear. Here, we find no such clarity. We see the mortgage secured a $250,000 but are unable to determine why the BOE believes $300,000 to be appropriate. We also find this case distinguishable from *Orange* because the BOE provided no testimony from any party with knowledge of the transaction.

For these reasons, we see no reason to deviate from the fiscal officer's values for tax year 2017 as follows:

PARCEL NUMBER 002-14-040

TRUE VALUE

$173,800

TAXABLE VALUE

$60,830

OHIO BOARD OF TAX APPEALS

CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2018-2225
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

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

AK FRANKLIN MY PLACE LLC
2666 SHAKER BOULEVARD
CLEVELAND HEIGHTS, OH 44118

Entered Wednesday, January 8, 2020

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

The Cleveland Metropolitan Schools Board of Education ("BOE") appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's valuation of the subject property for tax year 2017. Each party either waived its appearance or failed to appear at this board's hearing. No party filed written argument. Accordingly, we decide the case on the notice of appeal and the statutory transcript ("S.T.").

The subject property is a 0.236 lot improved with apartments. The fiscal officer valued

the property at $173,800 for tax year 2017, and the BOE filed an increase complaint requesting a value of $300,000. At the BOR hearing, the BOE argued the property sold via an entity transfer and the property should be valued at $300,000. In support, the BOE supplied a limited warranty deed transferring the property from 5212 Franklin Boulevard LLC to appellee AK Franklin My Place LLC ("AK") for $10. The BOE also supplied a recorded mortgage granted by AK, which secured a note in the amount of $250,000. The BOR ultimately retained the fiscal officer's value in holding:

> This transfer appears to be a sale of a corporate interest whose function is solely to own the subject parcel and is therefore a sale of the parcel itself. However, the board does not have sufficient evidence of the actual transfer price to find that an increase is warranted since the submitted materials were not verified or authenticated.

S.T., Ex. E.

The appellant must prove the adjustment in value requested when appealing from a board of revision to this board. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has been clear "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." *Terraza 8,L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶¶ 31-34 (quoting *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129). A transfer of the membership interest in a limited liability company may be the best evidence of value when "the purchase and sale agreement indicates that the transfer of membership interest was done solely to transfer title to the subject property." *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 107199, 2019-Ohio-634 (quoting *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 28, 2018), BTA No. 2017-127, unreported). In other

words, this board can look to the economic reality of a transaction and adopt a membership transfer as a sale of real property. To succeed, the party arguing an entity transfer is actually the sale of real property for tax valuation purposes must present sufficient evidence for this board to determine the nature of the transaction.

Here, we find the BOE has not carried its burden. The BOE relies on the deed, the mortgage, and a Metroscan printout. None of the documents show when the membership interest transferred, from whom it transferred, to whom it transferred, or for how much it transferred. Most importantly, the documents do not show what property was held by AK, whether only the subject property or other property. We are likewise unable to determine the membership sale price from the mortgage. In *Beachwood City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 15, 2018), BTA No. 2017-871, unreported, we found a mortgage alone is of limited value and only helpful when the basic facts of an underlying transaction are clear. Here, we find no such clarity. We see the mortgage secured a $250,000 but are unable to determine why the BOE believes $300,000 to be appropriate. We also find this case distinguishable from *Orange* because the BOE provided no testimony from any party with knowledge of the transaction.

For these reasons, we see no reason to deviate from the fiscal officer's values for tax year 2017 as follows:

PARCEL NUMBER 002-14-040

TRUE VALUE

$173,800

TAXABLE VALUE
$60,830

OHIO BOARD OF TAX APPEALS

CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2018-2225
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

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

AK FRANKLIN MY PLACE LLC
2666 SHAKER BOULEVARD
CLEVELAND HEIGHTS, OH 44118

Entered Wednesday, January 8, 2020

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

The Cleveland Metropolitan Schools Board of Education ("BOE") appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's valuation of the subject property for tax year 2017. Each party either waived its appearance or failed to appear at this board's hearing. No party filed written argument. Accordingly, we decide the case on the notice of appeal and the statutory transcript ("S.T.").

The subject property is a 0.236 lot improved with apartments. The fiscal officer valued the property at $173,800 for tax year 2017, and the BOE filed an increase complaint requesting a value of $300,000. At the BOR hearing, the BOE argued the property sold via an entity transfer and the property should be valued at $300,000. In support, the BOE supplied a limited warranty deed transferring the property from 5212 Franklin Boulevard LLC to appellee AK Franklin My Place LLC ("AK") for $10. The BOE also supplied a recorded mortgage granted by AK, which secured a note in the amount of $250,000. The BOR ultimately retained the fiscal officer's value in holding:

> This transfer appears to be a sale of a corporate interest whose function is solely to own the subject parcel and is therefore a sale of the parcel itself. However, the board does not have sufficient evidence of the actual transfer price to find that an increase is warranted since the submitted materials were not verified or authenticated.

S.T., Ex. E.

The appellant must prove the adjustment in value requested when appealing from a board of revision to this board. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has been clear "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." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶¶ 31-34 (quoting *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129). A transfer of the membership interest in a limited liability company may be the best evidence of value when "the purchase and sale agreement indicates that the transfer of membership interest was done solely to transfer title to the subject property." *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 107199, 2019-Ohio-634 (quoting *Orange City Schools Bd. of Edn.*

v.Cuyahoga Cty. Bd. of Revision (Apr. 28, 2018), BTA No. 2017-127, unreported). In other words, this board can look to the economic reality of a transaction and adopt a membership transfer as a sale of real property. To succeed, the party arguing an entity transfer is actually the sale of real property for tax valuation purposes must present sufficient evidence for this board to determine the nature of the transaction.

Here, we find the BOE has not carried its burden. The BOE relies on the deed, the mortgage, and a Metroscan printout. None of the documents show when the membership interest transferred, from whom it transferred, to whom it transferred, or for how much it transferred. Most importantly, the documents do not show what property was held by AK, whether only the subject property or other property. We are likewise unable to determine the membership sale price from the mortgage. In *Beachwood City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 15, 2018), BTA No. 2017-871, unreported, we found a mortgage alone is of limited value and only helpful when the basic facts of an underlying transaction are clear. Here, we find no such clarity. We see the mortgage secured a $250,000 but are unable to determine why the BOE believes $300,000 to be appropriate. We also find this case distinguishable from *Orange* because the BOE provided no testimony from any party with knowledge of the transaction.

For these reasons, we see no reason to deviate from the fiscal officer's values for tax year 2017 as follows:

PARCEL NUMBER 002-14-040 TRUE VALUE

$173,800

TAXABLE VALUE

$60,830

OHIO BOARD OF TAX APPEALS

JACQUELYN M. BISHOP KLEE, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2029 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JACQUELYN M. BISHOP KLEE
Represented by:
JACQUELYN M. BISHOP
19600 FRAZIER DRIVE
ROCKY RIVER, OH 44116

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

ROCKY RIVER SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Tuesday, January 14, 2020

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

This case is before us on a motion to dismiss filed by the Cuyahoga County Board of Revision ("BOR"). The motion alleges appellant Jacquelyn M. Bishop Klee lacked standing to file the underlying BOR complaint. The motion also alleges this board lacks jurisdiction to consider this appeal because Klee did not serve her notice of appeal on the BOR timely as required by R.C. 5717.01. Klee did not respond to the motion.

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board and the BOR within thirty days after notice of the decision of the BOR is mailed. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals.***R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal."

Here, the record does not demonstrate that Klee filed her notice of appeal with the BOR. Therefore, we must conclude we are without jurisdiction to consider the merits of this case.

For these reasons, this case is dismissed. The motion to dismiss for lack of standing is denied as moot.

OHIO BOARD OF TAX APPEALS

KRISHNA HAN AND CHRISTOPHER FREY, (et. al.), Appellant(s), vs. LUCAS COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1787 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KRISHNA HAN AND CHRISTOPHER FREY
Represented by:
KRISHNA HAN
2025 SCOTTWOOD AVENUE
TOLEDO, OH 43620

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

TOLEDO CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MATTHEW J. FISCHER
MARSHALL & MELHORN, LLC
FOUR SEAGATE, 8TH FLOOR
TOLEDO, OH 43604

Entered Wednesday, January 15, 2020

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 and responsive filings, the affidavit 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 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 timely filed such notice with the BOR within thirty days of the mailing of its 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

SLY INC. (THEODORE KURZ), (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2122 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SLY INC. (THEODORE KURZ)
Represented by:
RICHARD HODY
CONTROLLER
8300 DOW CIRCLE
STRONGSVILLE, OH 44136

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, January 16, 2020

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

This matter is now considered upon the county appellees' motion to dismiss for appellant's failure to timely file notice of the appeal with the Cuyahoga County Board of Revision ("BOR") as is required by R.C. 5717.01. We decide the matter upon the motion, the notice of appeal filed with this board, and the statutory transcript. Appellant did not respond to the motion.

R.C. 5717.01 provides that an appeal to this board from a decision of a county board of revision "shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, facsimile transmission, electronic transmission, or by authorized delivery service,

with the board of tax appeals *and with the county board of revision*." (Emphasis added.) Such notices must be filed within thirty days of the BOR's decision. Id. "Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals." *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). See also *Ross v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 373, 2018-Ohio-4746; *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946). This board may only review board of revision decisions where the appeals have been filed in a correct manner. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000).

The record demonstrates that notice of the BOR's decision was mailed on September 23, 2019. While appellant timely filed an appeal with this board on October 3, 2019, the statutory transcript indicates the BOR did not receive notice of the appeal. Accordingly, the county appellees' motion is well taken. This matter was not filed in compliance with the requirements of R.C. 5717.01, and, as such, must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

12310 FAIRVIEW COURT LLC, (et. al.),	)	Appellee(s).)
Appellant(s),	)	
vs.	)	CASE NO(S). 2019-1739
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 12310 FAIRVIEW COURT LLC
Represented by:
FRED JUREK
12933 ROSETTA DR.
CHESTERLAND, OH 44026

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, January 16, 2020

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

This matter is now considered upon the county appellees' motion to dismiss for appellant's failure to timely file notice of the appeal with the Cuyahoga County Board of Revision ("BOR") as is required by R.C. 5717.01. We decide the matter upon the motion, the notice of appeal filed with this board, and the statutory transcript. Appellant did not respond to the motion.

R.C. 5717.01 provides that an appeal to this board from a decision of a county board of revision "shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, facsimile transmission, electronic transmission, or by authorized delivery service, with the board of tax appeals *and with the county board of revision*." (Emphasis added.) Such

notices must be filed within thirty days of the BOR's decision. Id. "Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals." *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). See also *Ross v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 373, 2018-Ohio-4746; *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946). This board may only review board of revision decisions where the appeals have been filed in a correct manner. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000).

The record demonstrates that notice of the BOR's decision was mailed on August 13, 2019. While appellant timely filed an appeal with this board on September 11, 2019, the statutory transcript indicates the BOR did not receive notice of the appeal. Accordingly, the county appellees' motion is well taken. This matter was not filed in compliance with the requirements of R.C. 5717.01, and, as such, must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

NAOMI ROSADO AND IRIS CAMACHO, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2560 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NAOMI ROSADO AND IRIS CAMACHO
Represented by:
NAOMI ROSADO
3517 FULTON RD.
CLEVELAND, OH 44109

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, January 22, 2020

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 BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon

the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

JACK RICHARDSON, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-2541
vs.	)	
MAHONING COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - JACK RICHARDSON
3532 COLUMBIANA RD.
NEW SPRINGFIELD, OH 44443

For the Appellee(s) - MAHONING COUNTY BOARD OF REVISION
Represented by:
GEORGE G. BRIACH
ASSISTANT PROSECUTING ATTORNEY
MAHONING COUNTY
21 W. BOARDMAN STREET, 6TH FLOOR
YOUNGSTOWN, OH 44503

Entered Wednesday, January 22, 2020

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 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

WOLFE ERIC & HILARY, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-1085
vs.	)	
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WOLFE ERIC & HILARY
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

Entered Wednesday, January 22, 2020

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. 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

THOMSON HOLDINGS LLC, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1037 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THOMSON HOLDINGS LLC
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

Entered Wednesday, January 22, 2020

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

The county appellees move to dismiss this matter on the basis the notice of appeal was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is 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 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

BH RETIREMENT PROPERTIES LLC, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1036 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BH RETIREMENT PROPERTIES LLC
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

Entered Thursday, January 23, 2020

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

The county appellees move to dismiss this matter on the basis the notice of appeal was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is 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 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

RR KELSCH, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2848
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - RR KELSCH
OWNER
4999 MADISON ROAD
CINCINNATI , OH 45227

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

Entered Friday, January 24, 2020

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, appellant's response, 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. Accordingly, Appellant's motion to remove this matter from the accelerated docket is moot, and thereby denied.

OHIO BOARD OF TAX APPEALS

ZKI PROPETIES LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2632
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ZKI PROPETIES LLC
Represented by:
MARK SKITZKI
OWNER / MANAGER
ZK PROPERTIES LLC
3189 CHARLES STREET
CUYAHOGA FALLS, OH 44221

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, January 24, 2020

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. (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

DAMALU II LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2579
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DAMALU II LLC
Represented by:
DON A. MCMAHAN
MEMBER OF LLC
8035 MEEKER RD
DAYTON, OH 45414

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, January 27, 2020

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. (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

NIEMEYER TODD A TR, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-1035
vs.	)	
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NIEMEYER TODD A TR
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

Entered Tuesday, January 28, 2020

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

The county appellees move to dismiss this matter on the basis the notice of appeal was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is 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

FRANKLIN MATTHEW R TR, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1033 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FRANKLIN MATTHEW R TR
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

Entered Tuesday, January 28, 2020

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

The county appellees move to dismiss this matter on the basis the notice of appeal was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is 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 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

REHAB TO RENT INC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1034
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - REHAB TO RENT INC
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

Entered Tuesday, January 28, 2020

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

The county appellees move to dismiss this matter on the basis the notice of appeal was not filed with the county board of revision. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is 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 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

REDOVIAN JAMES MARTIN TRUSTEE AND GRIBANOVA ELENE TRUSTEE, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-1021
vs.	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - REDOVIAN JAMES MARTIN TRUSTEE AND GRIBANOVA ELENE TRUSTEE
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

Entered Tuesday, January 28, 2020

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

The county appellees move to dismiss this matter on the basis the notice of appeal 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 BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. (Emphasis added). See, also, R.C. 5715.20. In *Hope v.*

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

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

BOBBIE GARDNER, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-1438
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BOBBIE GARDNER
POA FOR THE ESTATE OF WILLIE M. LETNER
7094 WOLF ROAD
MEDINA, OH 44256

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, January 28, 2020

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 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

WENDLAND DAVID, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-1080
vs.	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - WENDLAND DAVID
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

Entered Tuesday, January 28, 2020

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. (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 does not demonstrate that appellant filed such notice with the BOR. We acknowledge that the county appellees claim that the notice of appeal was untimely filed with this board, but based on the date of the letter, it appears this argument is without merit. Regardless, because appellant failed to file a copy of the notice of appeal with the BOR, 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

THOMSON JOEL COURTLAND TR, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1079 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THOMSON JOEL COURTLAND TR
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

Entered Tuesday, January 28, 2020

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. (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 does not demonstrate that appellant filed such notice with the BOR. We acknowledge that the county appellees claim that the notice of appeal was untimely filed with this board, but based on the date of the letter, it appears this argument is without merit. Regardless, because appellant failed to file a copy of the notice of appeal with the BOR, 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

AHMAD SARAH, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1078
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AHMAD SARAH
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

Entered Tuesday, January 28, 2020

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. (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 does not demonstrate that appellant filed such notice with the BOR. We acknowledge that the county appellees claim that the notice of appeal was untimely filed with this board, but based on the date of the letter, it appears this argument is without merit. Regardless, because appellant failed to file with the BOR, 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 WRIGHT, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-902
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CLERMONT COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARK WRIGHT
121 W CIRCUS ST.
BETHEL, OH 45106

For the Appellee(s) - CLERMONT COUNTY BOARD OF REVISION
Represented by:
JASON A. FOUNTAIN
ASSISTANT PROSECUTING ATTORNEY
CLERMONT COUNTY
101 EAST MAIN STREET
BATAVIA, OH 45103

Entered Tuesday, January 28, 2020

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

The property owner appeals a decision of the board of revision, which determined the value of the subject property, parcel 36-03-05.-274C, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and statutory transcript certified pursuant to R.C. 5717.01.

The property owner filed a complaint with the BOR, which requested that the subject property's value be reduced from its initially assessed value of $56,600 to $16,000. By way of the complaint and letter attached to it, the property owner asserted that he paid $16,000 for the subject property, which had not been updated and suffered from numerous defects including issues with mold. He noted two unsuccessful attempts to sell the subject property at prices much lower than its $56,600 assessed value and submitted photographs to illustrate his argument

about the subject property's condition. At the BOR hearing on the matter, no one appeared on behalf of the property owner; however, an employee of the county auditor's office appeared to testify about his review of the property owner's complaint and attachments. He recommended that the BOR retain the subject property's value because the property owner's $16,000 purchase of the subject property did not appear to be arm's-length and because the property owner failed to provide evidence to demonstrate the effects of the numerous defects. The BOR subsequently voted to retain the subject property's initially assessed value and this appeal ensued. By way of the notice of appeal, the property owner requested that the subject property be revalued at $21,000. Neither the property owner nor the county appellees availed themselves of the opportunity to submit additional evidence into 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. 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 $16,000 purchase of the subject property in August 2013, which seemingly formed the basis of the property owner's requested valuation(s). We do not find such sale to be indicative of the subject property's value as of the tax lien date at issue, January 1, 2018. In *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, at ¶26, 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. Instead, the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property has not changed between the sale date and the lien date." The property owner failed to provide evidence of market conditions at the time of the subject sale and intervening fifty-two months between the sale and tax lien dates, or a paired sales analysis, such that this board could conclude that market conditions were similar or remained stable. See, *Financial Wealth Assoc. LLC v. Cuyahoga Cty. Bd. of Revision* (Oct. 19, 2017), BTA No. 2016-2151, unreported at 3 ("The property owner could have provided an appraisal report with a paired sales analysis to demonstrate *** market conditions. See e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (May 1, 2014), BTA No. 2011-2227, unreported, aff'd 2016-Ohio-757."). The owner likewise failed to provide evidence that the character of the property did not change between the sale and tax lien date. We acknowledge that the property owner submitted a few photographs of the subject property. The record, however, is devoid of any indication when the photographs were taken and there are no photographs comparing/contrasting the subject property at the time of the subject sale and on the tax lien date. The property owner conceded that the subject property's condition had changed on the complaint, i.e., "[s]ome issues are getting worse." As such, we cannot confirm that the subject property did not experience any material condition changes between the sales and tax lien dates. For these reasons, we must conclude that the property owner's $16,000 purchase of the subject property in August 2013 was too remote from the tax lien date and, consequently, is not reflective of its value.

The property owner also argued that defects of the subject property, i.e., mold, outdated windows, and swampy yard, necessitate a reduction to its value. However, the property owner failed to provide evidence to quantify the specific diminution in value that resulted from the defects. 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." (Internal citations omitted.) Is the subject property's value diminished by $1,000 or $10,000 as the result of the mold problem? We cannot say because the property owner failed to provide sufficient evidence to value the impact of the alleged defect. This board has repeatedly rejected the argument that defects, not quantified by a proper appraisal, are sufficient evidence to reduce real property value. See e.g., *Bardshar Apts., Inc. v. Erie Cty. Bd. of Revision* (Mar. 15, 2016), BTA No. 2015-1451, unreported. Furthermore, to the extent the property owner argued that the subject property's value should be reduced commensurate with the costs to address the defects, "dollar-for-dollar costs do not necessarily correlate to value." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996).

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 failed to provide competent, credible, and probative evidence of the subject property's value before the BOR and before this board. It is, therefore, the order of the board that the subject property's value shall remain as assessed, as of January 1, 2018:

TRUE VALUE

$56,600

TAXABLE VALUE

$19,810

OHIO BOARD OF TAX APPEALS

ALEX SCHUTZ, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-668, 2019-669, 2019-820, 2019-1068 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ALEX SCHUTZ
13290 CEDAR RD
CLEVELAND 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 Tuesday, January 28, 2020

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

In these consolidated cases, property owner Alex Schutz appeals from four decisions of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's 2018 values for the following parcels: 684-24-004, 682-33-148, 682-07-009, and 684-29-070. This board held an evidentiary hearing on September 4, 2019. We decide the cases on the notices of appeal, this board's hearing record ("H.R."), and the BOR's motions.

The BOR has filed motions to dismiss the appeals for want of jurisdiction, which we address before the reaching the merits. Appeals from a BOR to this board are governed by R.C. 5717.01. That statute dictates how an appeal must be taken, and it states "such appeal **shall** be taken by filing of a notice of appeal***with the board of tax appeals **and** with the county board of revision." (Emphasis added.) The appealing party is required to file the notice of appeal with

this board and the BOR within thirty days after the BOR's decision is mailed. See *Collins v. Wood Cty. Bd. of Revision* (Apr. 30, 1993), BTA No. 1992-K-921, unreported. The BOR alleges appellant failed to serve his notices of appeal on the BOR timely or at all in some cases.

Parcel 684-24-004 is located at 3228 Berkeley Road in Cleveland Heights. The fiscal officer valued the property at $118,800, and appellant filed a decrease complaint with an opinion of value at $110,000. The BOR held a hearing and retained the fiscal officer's value. The BOR mailed its decision on May 24, 2019. Appellant filed his notice of appeal with this board on June 5, 2019. However, the BOR's motion to dismiss states appellant did not serve the BOR. It is clear appellant actually received the decision because he appealed it to this board timely. Upon review, we find no evidence in the statutory transcript or in the evidence submitted at this board's hearing to demonstrate appellant timely served the BOR with the notice of appeal. Therefore, we must find we are without jurisdiction to decide this matter and dismiss it. See *Keeble v. Cuyahoga Cty. Bd. of Revision* (Aug. 30, 2019), BTA No. 2019-673, unreported.

Parcel 682-33-148 is located at 3681 Woodridge Road in Cleveland Heights. The fiscal officer valued the property at $83,200, and appellant filed a decrease complaint with an opinion of value at 65,000. The BOR held a hearing and retained the fiscal officer's value. The BOR mailed its decision on May 24, 2019, and appellant timely appealed to this board. Upon review, we find no evidence in the statutory transcript or in the evidence submitted at this board's hearing to demonstrate appellant timely served the BOR with the notice of appeal. Therefore, we find we are without jurisdiction to decide this matter and dismiss it. See *Keeble*, supra. We note that even if we did reach the merits, we would not find appellant has carried his burden. He relied primarily on rental information and general information about the neighborhood. We would be unable to find that information is probative evidence of value without corroborating evidence showing how income and general neighborhood information translates to value. See *Gallick v.*

Franklin Cty. Bd. of Revision (Oct. 30, 2017), BTA No. 2016-405, unreported. Parcel 682-07-009 is located at 3586 Atherstone Road in Cleveland Heights. The fiscal officer valued the property at $61,600, and appellant filed a decrease complaint with an opinion of value at $39,000. The BOR held a hearing, and it retained the fiscal officer's value. The BOR mailed its decision on June 19, 2019, and appellant timely appealed to this board. Upon review, we find no evidence in the statutory transcript or in the evidence submitted at this board's hearing to demonstrate appellant timely served the BOR with the notice of appeal. Therefore, we find we are without jurisdiction to decide this matter and dismiss it. See *Keeble*, supra. Even if we were required to proceed to the merits, we would find appellant has not carried his burden. He relies on evidence of negative characteristics using a building inspection. The Ohio Supreme Court has been clear that, while negative characteristics can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the" property's value. *Gallick*, supra (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)).

Parcel 684-29-070 is located at 3409 Desota Avenue in Cleveland Heights. The fiscal officer valued the property at $105,400, and appellant filed a decrease complaint with an opinion of value at $56,000. Importantly, appellant listed his mailing address on the complaint as 13920 Cedar Road in Cleveland Heights. That appears to have been in error since his mailing address is actually 13290 Cedar Road. H.R. at 9. The BOR mailed its decision, retaining the fiscal officer's value, on May 24, 2019, to 13920 Cedar Road. The statutory transcript shows the decision was returned to the BOR as "not deliverable as addressed[.]" The BOR resent the decision to the same address, 13920 Cedar, but that letter was likewise returned. Appellant eventually obtained the decision and filed a notice of appeal with this board on July 19, 2019. Appellant then promptly served the BOR. Appellant argues he properly served the BOR because the appeal window tolled since the BOR sent the decisions to the wrong address when it knew or should have known his

correct address.

Upon review, we cannot find the BOR complied with R.C. 5715.20. The Ohio Supreme Court discussed the contours of R.C. 5715.20 in *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 149 Ohio St.3d 706, 2017-Ohio-1428. There, the court held when a county is presented with multiple addresses for a taxpayer, a tax notice should be sent to the "better address." While it does appear Mr. Schutz placed the incorrect mailing address on his complaint, the county had evidence that the address was incorrect, and the county was on notice it had the wrong address when the letters were returned. Indeed, the BOR sent related BOR decisions to the correct address, the tax billing address. Accordingly, we deny the motion without prejudice and proceed to the merits.

On the merits, this board finds appellant has not carried his burden with regard to this property. Appellant's opinion of value is based on an appraisal created for tax valuation purposes. However, this board generally rejects an appraiser's opinion of value when the appraiser does not appear before either the BOR or this board. *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. As we explained in *Speca*, when the appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials, authenticate or identify the report, or describe the efforts undertaken to estimate value. Importantly, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed by this board. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. We also note there is no evidence any party relied on the appraisal in a business or financial transaction, so this board is not required to look to, or rely on, the information contained therein when crafting our decision. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485. Even if we did, we note the appraiser made substantial adjustments to the sales comparables, making the appraisal

less reliable. Accordingly, we do not find the unauthenticated appraisal is probative evidence of value, and we see no reason to deviate from the fiscal officer's value as retained by the BOR.

In sum, the appeals of parcels 684-24-004, 682-33-148, 682-07-009 are dismissed. We order parcel 684-29-070 valued as follows for tax year 2018:

TRUE VALUE

$105,400

TAXABLE VALUE

$36,890

OHIO BOARD OF TAX APPEALS

RITA J. CALHOUN, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-968, 2019-969 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RITA J. CALHOUN
OWNER
25340 EASY ST.
BEDFORD HTS , OH 44146

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

Entered Tuesday, January 28, 2020

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

[1] Appellant appeals decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 139-09-071 ("E. 146th Street") and 141-08-140 ("N. Lotus Drive"), for tax year 2018. This matter is now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] E. 146th Street is improved with a two-family residential property and was initially assessed by the fiscal officer at a total true value of $50,200. N. Lotus Drive is improved with a

single-family home and was initially assessed at a total true value of $25,800. Appellant filed decrease complaints with the BOR seeking reductions in value to $7,000 and $10,000, respectively.

[3] At the BOR hearings, appellant presented photographs and testimony regarding the poor conditions of the properties, explaining that they had been vacant for several years and had been damaged by vandalism. Appellant also explained that the values of these properties were reduced by the BOR to the values requested for tax year 2017, arguing that the values did not increase to the new values in that single year. Appellant also testified regarding valuations for the properties as part of foreclosure and bankruptcy proceedings and provided sales information for properties she considered comparable to the subject properties. The BOR provided a list of sales of nearby properties, which appellant criticized as being in better condition than the subject properties. The BOR issued decisions reducing the initially assessed valuations to $30,000 and $20,600, respectively, based on the evidence regarding the subjects' conditions and the comparable sales data. From these decisions, appellant filed the present appeals.

[4] This board convened a hearing, at which appellant presented additional details regarding the bankruptcy proceedings and submitted an appraisal that was prepared as part of those proceedings. Appellant explained that E. 146th Street was facing foreclosure when she first filed for Chapter 7 bankruptcy. During the initial foreclosure proceedings, the value was placed at $10,000 by three independent appraisers and accepted by the judge in that case. Then, during the Chapter 7 bankruptcy proceedings, the parties agreed that the value of E. 146th Street was $10,000, and the trustee abandoned N. Lotus Drive, apparently having determined that it had negligible value. Appellant then filed for Chapter 13 bankruptcy, during which the lienholder on E. 146th Street obtained an appraisal for the property, which opined that the value of the

property was $18,000 as of February 17, 2018. Based on this appraisal, the lender accepted a payment of $18,000 to release the lien and the judge agreed to the payment. Although it was no longer secured by a lien, appellant agreed to pay $3,430 to retain N. Lotus Drive. The county appellees waived the opportunity to present argument or evidence before this board.

[5] The fiscal officer has the duty to value and assess taxes against real property in the county, which includes the obligation to reappraise property values once every six years and perform an update at the three-year interim point. *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, ¶19; R.C. 5713.01(B), 5713.03, 5715.33, and 5715.24; Ohio Admin. Code 5703-25-16(B). When a property owner seeks to challenge the values resulting from the reappraisal process, the owner must present sufficient evidence to establish that an alternative proposed value is the true value of the property and cannot merely challenge the accuracy of fiscal officer's value. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. 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).

[6] In this case, appellant has submitted several different valuation reports, including the appraisal, the "land appraisal" from the sheriff related to the foreclosure proceedings, two orders from the bankruptcy court confirming a payment of $18,000 would be paid to release the lien on E. 146th Street, and a Schedule A/B from Official Form 106A/B indicating the current value of N. Lotus Drive was $10,000 (though it appears that this was filled out by appellant

based on her opinion of the property's value). To the extent that the values on these documents were opined by a third party, they constitute unreliable hearsay because they were presented without testimony from the respective appraiser. 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* "). When a party submits a written appraisal, the presentation of the appraiser as a witness allows the other parties and this board the opportunity to evaluate the credibility of the appraiser and the reliability of his or her analysis. 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; *Akron Natl. Bank & Trust Co. v. Freed & Co.* (Aug. 20, 1980), 9th Dist. Medina No. 957, unreported; *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported.

[7] Even without testimony from the author, however, where an appraisal contains sufficient indicia of reliability, the information contained therein may furnish an independent basis for valuing the property. *Team Rentals*, supra, at ¶27. We find that the appraisal of E. 146th Street that was performed as part of the bankruptcy meets this standard. Similar to *Team Rentals*, the record contains testimony from the property owner about its origin and use. Although appellant indicated that she believed the value was too high, she also testified that the appraisal was relied upon by the lender and the judge to establish the value of the property during the bankruptcy, and the orders from the court corroborate this assertion. The effective date for the appraisal is February 17, 2018, just 47 days after the tax lien date, and we find that the appraiser's conclusions are well supported by the data.

[8] The appraiser considered the rents at three similar properties to determine a market rent for the E. 146th Street ($1,200 per month). The appraiser then utilized this market rent to determine

whether any adjustments were necessary to account for the terms of the leases in place at the time of the sales in her sales comparison approach. The appraiser utilized three sales in her sales comparison approach, considering potential physical differences and whether any adjustments were necessary for the terms or timing of the sales. The gross adjustments for the three properties ranged from 0% to 11.1% and the adjusted sales provide strong support for her conclusion that the value of the property was $18,000 as of February 17, 2018, particularly with the additional comments included in her analysis that provides explanation and support for her methodologies. The appraiser also applied a gross rent multiplier to the market rent and opined a value of $17,040 based on the income approach, which provides additional support for her conclusion of value based on the sales comparison approach.

[9] We acknowledge the record also contains the land appraisal for E. 146th Street from the foreclosure proceedings and the bankruptcy documents for N. Lotus Drive, but none of these documents meet the standard from *Team Rentals*. None of these documents contains the details regarding the credentials of the appraisers or their approaches to value. Thus, we cannot assess the credibility of the appraisers or their methodology and, therefore, accord them no weight. 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).

[10] Appraisal evidence also may be in the form of a non-expert owner's opinion of value. *Schutz*, ¶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. See, also, *Johnson v. Clark Cty. Bd. of Revision*, 155 Ohio St.3d 264, 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

[11] Appellant relies heavily on the 2017 values for the subject properties as determined by the BOR. The Ohio Supreme Court has consistently rejected the argument that a property's

valuation from one tax year, resulting from either an agreement among the affected parties or a finding by a tribunal, is competent and probative evidence of value for another tax year. *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 29 (1997); *TBC Westlake, Inc. v. Hamilton Cty. Bd. of Revision*, 81 Ohio St.3d 58 (1998); *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461, ¶20-21. The court stated in *Fogg-Akron Assoc., L.P. v. Summit Cty. Bd. of Revision*, 124 Ohio St.3d 112, 2009-Ohio-6412, ¶15, that "when determining the true value of real property for the current tax year, the assessor should not accord presumptive or prima facie validity to an earlier year's valuation." Thus, the 2017 values carry no weight in our 2018 determination.

[12] Appellant also offered information that is typically utilized by appraisers, including some raw sales data and information regarding the condition of the properties. In the absence of an appraisal which analyzes such data, however, the submission of raw sales information is normally considered insufficient to demonstrate value since the trier of fact is left to speculate as to how common differences, e.g., location, size, quality of construction of improvements, nature of amenities, date of sale as opposed to tax lien date, etc., may affect a valuation determination. See, generally, The Appraisal of Real Estate (14th Ed.2013). Therefore, this raw sales data alone provides little value to establish the value of the subject properties.

[13] Appellant also testified extensively about negative conditions experienced by the subject properties, including damage from vandalism and copper theft. In *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996), the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value. See, also, *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997). Without a demonstration of the relationship of these factors to a

particular value, their presence alone cannot support a further reduction.

[14] Based upon our review of the record, we find that appellant has failed to establish that the value of E. 146th Street should be reduced below the $18,000 appraisal or that the value of N. Lotus Drive should be further reduced. The BOR reduced the value of N. Lotus Drive after considering sales in the area and appellant's evidence, particularly regarding its condition. Therefore, it appears that the BOR addressed several of appellant's concerns and she 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. *Moskowitzv. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002, ¶10.

[15] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

PARCEL NUMBER 139-09-071

TRUE VALUE

$18,000

TAXABLE VALUE

$6,300

PARCEL NUMBER 141-08-140

TRUE VALUE

$20,600

TAXABLE VALUE

$7,210

OHIO BOARD OF TAX APPEALS

GARLAND REAL ESTATE, LLC, (et. al.), Appellant(s), vs. TUSCARAWAS COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1241 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Represented by:
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NEW PHILADELPHIA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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Entered Tuesday, January 28, 2020

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

Appellant Garland Real Estate, LLC ("Garland"), appeals from several decisions of the Tuscarawas County Board of Revision ("BOR") valuing the three subject parcels for tax year 2017. We decide the case on the notice of appeal and the statutory transcript.

The auditor valued the three parcels in the aggregate at $151,280 for tax year 2017. The

appellee school board filed a valuation complaint requesting an aggregate value of $872,500 based on a June 2017 sale. At the BOR hearing, the school board presented the conveyance fee statement, which indicates no portion of the sale was attributable to non-realty. The school board also supplied the deed. Garland was represented by counsel at the hearing, and Garland presented the testimony and appraisal of Charles Snyder, MAI. He stated the buyer purchased the property without knowledge of an easement and an option to purchase in favor of McDonald's. It appears a local McDonald's uses the easement to operate a portion of a drive-thru. Mr. Snyder valued the property at $101,840 subject to the easement, but he testified the property would have a much higher value without the easement. His report stated as follows:

> To develop an opinion of value, the appraiser considered the Site Value Analysis exclusively. Again, the appraiser is, essentially, appraising the easement track identified as Parcel No. 43-08268-006. As there is no material effect on the remainder property including Parcel Nos. 43-08268-000 and 43-08204-000, the appraiser will stipute to the value of these two properties including land value and building/site improvements value using the public record county auditor appraised values which are within a reasonable degree of professional certainty. The Cost, Sales Comparison and Income Capitalization Approaches are not applicable in the valuation of commercial land subject to a perpetual easement.
>
> ***
>
> As the 0.415 acre trac, Parcel No. 43-08268-006, offers no value to any third party user besides McDonald's due to the exclusive and perpetual easement, $0 is applicable for this tract of land.

Having assigned a $0 value to the easement encumbered portion of the property, Mr. Snyder valued the entire subject property at a total value of $101,840. The BOR ultimately adopted the sale price. Garland appealed to this board. It requested a hearing, but later waived its appearance. No party filed written argument.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We are required to independently review all evidence before us and "render a value determination consistent with such information." *Herbert*

J. Hope, Jr., Trustee v. Cuyahoga Cty. Bd. of Revision (July 26, 2013), BTA No. 2012-L-2291, unreported. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. No party argues the sale is too remote.

Garland argues the sale lacks utility because the property was purchased subject to an unknown easement and option. However, no party with actual knowledge of the sale appeared before the BOR or this board to discuss the details of the sale or the subjective knowledge of the buyer. Mr. Snyder testified he had no personal knowledge of the sale, and statements of counsel are not evidence. *The Ohio Club and University Estates, Inc. v. Athens Cty. Bd. of Revision* (Dec. 21, 2010), BTA No. 2008-V-1015, unreported. Moreover, while an appraiser is an expert in valuation and the market, an appraiser cannot be used as a conduit to introduce hearsay statements about a sale or the state of mind of a party to a sale. See *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046 ("*UTSI*"). An appraiser is an appraiser, not a surrogate owner. As the Supreme Court noted in *UTSI*, an expert witness is permitted to rely on hearsay statements. Id. at ¶ 33. But, the court held this board properly disregards evidence about the subject property when "an appraiser acts merely as a conduit of information concerning material facts about the subject property itself[.]" Id. at ¶ 37. This board has repeatedly rejected such evidence in accordance with *UTSI*. See, e.g., *QCA-Parma, LLC v. Cuyahoga Cty. Bd. of Revision* (June 19, 2019), BTA No. 2017-2169, unreported. Therefore, we see no reason to disregard the sale on the basis of Mr. Snyder's testimony about the sale or statements of counsel.

We recognize a party may rebut the presumption created by a sale with an appraisal. See *Terraza 8*, supra. We find Mr. Snyder's appraisal is not probative for two reasons. First, as the school board correctly argued below, R.C. 5713.03 requires the property to be valued as if unencumbered. See generally *Beavercreek Towne Station LLC and Kohl's Illinois, Inc. v.*

Greene Cty. Bd. of Revision (Aug. 29, 2019), BTA No. 2015-1488, unreported. Mr. Snyder's appraisal is not probative here because it values the property subject to a private encumbrance, i.e., the easement. See *St. Bernard Self-Storage LLC v. Hamilton Cty. Bd. of Revision* (Apr. 28, 2006), BTA No. 2003-T-1532, unreported; see also *Woda Ivy Glen L.P. v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762 (discussing encumbrances generally). Second, we find the appraisal lacks sufficient data to support its conclusion. The appraisal is primarily a summary of the local and regional markets, but very little is tailored to the actual subject property. It is also unclear to this board why the property could not be valued using the income capitalization or the sales comparison approach or if those methods were unavailable simply because Mr. Snyder chose to value the property subject to the easement.

In sum, we find the sale is the best evidence of value. We find the true and taxable values of the subject property as of January 1, 2017, were as follows:

PARCEL 43-08268-000

TRUE VALUE

$355,620

TAXABLE VALUE

$124,470

PARCEL 43-08268-006

TRUE VALUE

$285,140

TAXABLE VALUE

$99,800

PARCEL 43-08204-000

TRUE VALUE

$231,740

TAXABLE VALUE

$81,110

OHIO BOARD OF TAX APPEALS

PYRRHUS INC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1175
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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

Entered Tuesday, January 28, 2020

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

Pyrrhus, Inc., appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's value of the subject property for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and any written argument.

The subject property comprises three parcels, which the fiscal officer valued at $23,100 for tax year 2018. Pyrrhus filed a decrease complaint requesting a value of $9,850. Joseph Carey, Pyrrhus' president, appeared at the BOR's hearing, testified about the property, and presented unadjusted market data. The BOR found Pyrrhus had not supplied probative evidence of value, and Pyrrhus appealed to this board. No hearing was requested.

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). To prevail, an 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. Our factual review is confined to the statutory transcript when no hearing is requested. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

The best evidence of value is a recent arm's-length sale. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. There have been no recent sales of the subject property; therefore, we move on to Pyrrhus' other evidence of value.

After review, we find Pyrrhus has not carried its burden. An owner is competent to provide an opinion of value, but this board need not adopt that value unless it is supported by probative evidence of value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994). Here, Pyrrhus relies on unadjusted market data, testimony about negative characteristics, and testimony about obsolescence. Raw sales data alone is generally insufficient to warrant a reduction in value because that data is not tailored to the subject property. See *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported. With nothing more than a list of raw sales data, a trier of fact is left to speculate as to how common differences may affect a valuation determination. Also, the Supreme Court has been clear that, while negative characteristics can impact value, the party must present "adequate evidence of the specific impact that *** negative factors have on the" property. *Gallick*, supra (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). Finally, even if the property does suffer from obsolescence, a party must show what effect obsolescence has on value, which was not done in this case. See *Young v. Cuyahoga Cty. Bd. of Revision* (Apr. 29, 2019), BTA No. 2018-708, unreported.

Having found Pyrrhus has not carried its burden, we retain the fiscal officer's values as follows:

PARCEL NUMBER 124-12-012

TRUE VALUE

$7,200

TAXABLE VALUE

$2,520

PARCEL NUMBER 124-12-016

TRUE VALUE

$5,500

TAXABLE VALUE

$1,930

PARCEL NUMBER 124-12-017

TRUE VALUE

$10,400

TAXABLE VALUE

$3,640

OHIO BOARD OF TAX APPEALS

RASEM AL-SALEH, (et. al.),	)
	)
Appellant(s),	)
	)
vs.	)
	)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)
	)
Appellee(s).	)

CASE NO(S). 2019-1069

(REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RASEM AL-SALEH
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
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Entered Tuesday, January 28, 2020

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

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 526-0080-0104-00, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the written argument of the parties.

[2] The subject property consists of 1.316 acres of land improved with a 4,822-square-foot single-family home. The auditor initially assessed the subject's total true value at $1,054,580, and appellant filed a complaint with the BOR seeking a reduction in value to $700,000. At the BOR hearing, appellant submitted photographs and estimates to demonstrate the property needed repairs and had several condition issues. A staff appraiser from the auditor's office appeared to

present a report prepared by the office and opined that no reduction was warranted. The BOR considered all of the information presented and voted to reduce the value of the property after changing the subject's condition from "good" to "average." The BOR issued a decision reducing the initially assessed valuation to $896,400. Appellant filed the present appeal and attached an appraisal report asking this board to consider it in our determination of value. The parties waived the opportunity to appear before this board to submit additional evidence, and instead relied on written argument.

[3] At the outset, we decline to consider the appraisal report attached to the notice of appeal. It is well established that this board cannot consider documents that were not part of the original record from the BOR or submitted at a hearing before this board. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996). As this board explained, 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, an appellant's statements in, and attachments to, the notice of appeal do not rise to the level of evidence upon which we can rely in making our determination herein, 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, our review is confined to the evidence included in the transcript certified by the BOR and the arguments contained in the parties' written argument.

[4] The burden in the present appeal is on the appellant 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, an appellant must produce competent and probative evidence to establish the correct value of the subject property. Id. at ¶9. Appellant seeks to meet this burden through his testimony and the presentation of evidence regarding condition issues with the subject property. As the owner of the subject property, appellant 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 appellant bases his opinion of value is not probative, his testimony is not sufficient to satisfy appellant's burden on appeal. *Johnson v. Clark Cty. Bd. of Revision*, 155 Ohio St.3d 264, 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

[5] Appellant relied on photographs depicting negative conditions at the subject property and cost estimates to make some necessary repairs. In *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996), the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value. Additionally, as the court has pointed, dollar-for-dollar costs do not necessarily directly correlate to value. See, e.g., *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997). This board explained:

> Simply stated, 'cost and value are not necessarily synonymous.' The Appraisal of Real Estate [(13th Ed.2008)], at 319. While adjustments made in the cost approach are based on cost indicators, including depreciation, adjustments made when relying upon sale prices of comparable properties should take into account the contributory value of each property's components. 'The principle of contribution states that the value of a particular component is measured in terms of its contribution to the value of the whole property or as the amount that its absence would detract from the value of the whole. The cost of an item does not necessarily equal its value.' The Appraisal of Real Estate, at 40. The contribution to value may be higher or lower than the original cost: "'Buyers are clearly conscious of the cost of repairs, additions, or conversions as seen in the application of the cost approach ***, but the cost of an

> improvement does not always result in a one-to-one increase in value for the property as a whole. For example, adding a swimming pool to a residential property at a cost of $50,000 may only add $25,000 to the sale price of the property if swimming pools are not a desirable amenity in that market.' Id. at 319. Ultimately, a property's value must be measured in terms of its overall benefit or utility in the market. Id. at 41. *Bratslavsky v. Warren Cty. Bd. of Revision* (Feb. 3, 2009), BTA No. 2007-T-1415, unreported, 6-7.

[6] Accordingly, based upon our review of the record, we find that appellant has failed to establish that the value of the subject property should be further reduced. Additionally, the BOR reduced the value of the subject property after considering appellant's evidence, reducing the subject's condition from good to average. Consequently, the BOR addressed appellant's primary argument and he benefited from a corresponding reduction in value, albeit not to the extent requested by appellant. Although the auditor argues on appeal that his initial value should be reinstated, we find that the BOR's reduction is supported by the record and that it is proper to retain the BOR's value in this case. *Moskowitz*, supra, ¶10.

[7] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$896,400

TAXABLE VALUE

$313,740

OHIO BOARD OF TAX APPEALS

MARY JANE WOLFE, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-898
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARY JANE WOLFE
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Entered Tuesday, January 28, 2020

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

[1] The property owner appeals a decision of the board of revision ("BOR"), which dismissed the underlying complaint against the value of parcel 473-24-052 for tax year 2018. We proceed to consider this matter based upon the notice of appeal and statutory transcript certified pursuant to R.C. 5717.01.

[2] On January 15, 2019, the property owner filed a complaint with the BOR, which requested that the subject property's value be reduced from its initially assessed value of $114,300. On line 8, she did not provide an opinion of value; however, she did refer to attached documents that included argument asserting that neighboring properties experienced 9-12% increase in their true values but the subject property experienced a 32% increase. Nowhere did

she provide a specific opinion of value. As a result, the BOR issued a decision on June 4, 2019, that dismissed the complaint because the property owner failed to provide an opinion of line 8. On June 20, 2019, it appears that the property owner attempted to cure this defect by submitting a statement to the BOR, which provided her $100,000 opinion of value for the subject property. She then filed an appeal with this board. By way of a statement attached to the notice of appeal, the property owner conceded that she did not provide an opinion of value on line 8 and that she thought that it was sufficient to provide the true values of other properties on the underlying complaint.

[3] As an administrative body with limited jurisdiction, "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." *Shelby v. Belmont Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1938, unreported. The Ohio Supreme Court has been clear a board of revision lacks jurisdiction to consider a complaint where the complainant fails to state an opinion of value. *Shinkle v. Ashtabula Cty. Bd. of Revisi*on, 135 Ohio St.3d 227, 2013-Ohio-397, ¶ 22. While this board has recognized the opinion of value can be inferred even when line 8 of a complaint is blank, e.g., when a complainant requests valuation in accordance with a recent sale price and the sale price is on the complaint, in this matter, no such information was provided that would have allowed the BOR to infer the property owner's opinion of value. Though the property owner attempted to cure the jurisdictional defect by letter subsequent to the issuance of the BOR's decision, such attempt was jurisdictionally insufficient because it occurred well after the deadline for filing complaints for tax year 2018, i.e., April 1, 2019. R.C. 5715.19(A).

[4] Based upon the foregoing, we agree with the BOR and conclude that the property owner's complaint was jurisdictionally deficient. See *Elyria City Schools Bd. of Edn. v. Lorain Cty. Bd. of Revision* (Sept. 4, 2018), BTA No. 2018-679, unreported. As a result, we affirm the BOR's decision to dismiss the complaint. Because this board's jurisdiction is based, in part, on

proper jurisdiction before the BOR, we likewise lack jurisdiction to consider the merits of the property owner's appeal.

OHIO BOARD OF TAX APPEALS

MICHAEL AND THERESE PIERCE, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-807 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MICHAEL AND THERESE PIERCE
9840 APPLEWOOD DR
NORTH ROYALTON, OH 44133

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
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CLEVELAND, OH 44113

Entered Tuesday, January 28, 2020

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

The property owners appeal a decision from the board of revision ("BOR"), which determined the value of the subject property, parcel 481-11-007, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and county appellees' written argument.

The property owners filed a complaint with the BOR, which requested that the subject property's value be reduced from its initially assessed value of $254,700 to $237,500. By way of the complaint, the property owners asserted that county records were inaccurate about their home's square footage and noted that they purchased the subject property for $237,500 in October 2018. It appears that they attached supporting documentation to the complaint.

Although the BOR scheduled the matter for hearing, the property owners did not appear. Even though the complaint noted the property owners' recent purchase of the subject property, which mirrored their opinion of value, the BOR limited its consideration to the square footage issue raised in the complaint. The BOR issued a decision that retained the subject property's initially assessed value and this appeal ensued.

None of the parties availed themselves of the opportunity to submit additional evidence into the record at a hearing before this board. However, the property owners submitted new documents and previously submitted documents along with their notice of appeal. Because the new documents were not submitted at a hearing before this board, we will not consider them. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13; *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. To the extent that the new documents were offered for the truth of the matter asserted, we further find such documents to be unreliable hearsay. See, e.g., *Dellick v. Eaton Corp.*, 5th 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."). In lieu of attending a hearing, the county appellees submitted written argument to assert that the property owners failed to satisfy their evidentiary burden.

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 owners' $237,500 purchase of the subject property in 2018, as noted on the property record card. As this board has held on multiple occasions, "evidence of a sale contained on a property record card, if undisputed, may serve as a sufficient basis upon which to rely in determining the value of a property." *Bd. of Edn. of the Westerville City Schools v. Delaware Cty. Bd. of Revision* (June 13, 2013), BTA No. 2011-A-155, unreported. See also *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 16-Ohio-8075; *1192 Group Partnership LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 18, 2013), BTA No. 2010-Y-651, unreported; *Bd. of Edn. of the Cleveland Mun. School Dist. v. Cuyahoga Cty. Bd. of Revision* (May 10, 2013), BTA No. 2009-Y-1596, unreported. Such is the case here as there has been no dispute as to the sale information contained on the property record card. As such, a rebuttable presumption of validity attaches to the transfer, and the burden to rebut such presumption falls upon the opponent of utilizing such sale, here, the BOR, to prove that the sale price is not indicative of value. See *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. The BOR did not dispute any aspect of the subject sale and, therefore, the BOR failed to satisfy its burden to rebut the presumption that such sale was indicative of the subject property's value. Therefore, we find the unrebutted sale price to be the best evidence of value.

It is the order of this board that the subject property's value are as follows for January 1, 2018:

TRUE VALUE: $237,500

TAXABLE VALUE: $83,130

OHIO BOARD OF TAX APPEALS

JOE J. THOMPSON, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1125
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
STARK COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOE J. THOMPSON
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For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
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CANTON, OH 44702-1413

Entered Wednesday, January 29, 2020

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

[1] Joe Thompson appeals from a decision of the Stark County Board of Revision ("BOR") valuing the subject property at $34,300 for tax year 2018. Thompson requested a hearing with this board but later waived his appearance. Accordingly, we decide the case on the notice of appeal and the statutory transcript.

[2] The subject property is a residence, which the auditor valued at $49,900 for tax year 2018. Thompson filed a decrease complaint requesting a value of $30,500 citing negative characteristics, e.g., flooding, mold. While the BOR's audio decision recording indicates the BOR made no change to the value, the BOR's written decision lowered the value to $34,300. It appears that value was formulated by the auditor's appraiser, who developed a truncated sales comparison approach appraisal.

[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). To meet that burden, an 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. A recent arm' s-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. There have been no recent sales of the subject property, so we move on to Thompson's other evidence of value.

[4] Here, Thompson relies solely on his testimony, a written statement, and photographs showing the property suffers from negative characteristics. The fact a property suffers from negative characteristics is generally insufficient to warrant an adjustment unless a party shows what effect those characteristics have on value. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). We do not find that Thompson has connected the dots by showing what effect these conditions have on value. While an owner is competent to opine on the property's value, this board need not adopt that opinion of value unless probative evidence supports the owner's opinion. *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500 (1997). Accordingly, we find that Thompson has not carried his burden.

[5] We must also independently review the BOR's decision to reduce value below the auditor's value. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35. We find the reduced value reflected in the BOR's written decision is supported by the truncated appraisal developed by the auditor's appraiser. The appraiser selected three comparable sales and made adjustments to the comparables. Therefore, we order the property valued as follows for tax year 2018:

PARCEL NUMBER 243382

TRUE VALUE

$34,300

TAXABLE VALUE

$12,010

OHIO BOARD OF TAX APPEALS

AMHERST MARKETPLACE STATION, LLC, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-930 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AMHERST MARKETPLACE STATION, LLC
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Entered Wednesday, January 29, 2020

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

The appellant property owner, Amherst Marketplace Station LLC ("Amherst"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real

property, parcel number 05-00-041-110-052, 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, and the written argument of the parties.

The subject property is improved with a commercial building occupied by a Giant Eagle supermarket (76,737 square feet), two additional in-line retail tenants (3,208 square feet total), and an outlot operating as a fuel center (720 square feet). The auditor initially assessed the subject's total true value at $7,362,910, and Amherst filed a complaint with the BOR seeking a reduction in value to $4,860,000. The appellee board of education ("BOE") filed a countercomplaint seeking to increase the property's value to $11,655,000. At the BOR hearing, Amherst presented an appraisal of the property opining a value of $4,860,000 as of January 1, 2015, which had been prepared for proceedings regarding the subject's value for an earlier tax year. The author of the report was not present, and no testimony was offered to otherwise establish the reliability of the report as evidence of the value of the subject property for tax year 2017. The BOE submitted a deed and conveyance fee statement as evidence that the property sold on December 23, 2015 for $11,655,000 and argued that the sale provided the best evidence of the subject's value as of January 1, 2017. Amherst did not challenge that the sale was a recent arm's-length transaction but indicated that the appraisal reflected the fee-simple value of the property. The BOR issued a decision increasing the initially assessed valuation to $11,655,000, which Amherst appealed to this board.

This board convened a hearing, at which Amherst relied on testimony and a written report from appraiser Richard G. Racek, Jr., MAI, who opined that the total true value of the property was $4,730,000 as of January 1, 2017. Racek explained that he valued the property as a multi-tenant shopping center and relied on both the sales comparison and income approaches

to value. Racek also testified that he did not consider the sale of the subject property because it represented the transfer of the leased-fee interest rather than the fee-simple interest unencumbered by any leases. Racek further testified that in order to value the fee-simple interest as unencumbered by any lease, he assumed that the property was available for occupancy by either a new owner or a new tenant, i.e., vacant on the tax lien date. Thus, his market rent analysis required consideration of properties with "second generation" leases, i.e. those properties whose original tenant vacated and were now being leased to a secondary user. See *Lowe's Home Ctrs., Inc. v. Washington Cty. Bd. of Revision*, 154 Ohio St.3d 463, 2018- Ohio-1974, ¶13, fn.2 ("A 'second-generation space' is a 'building or space used by a tenant other than the original tenant,' Appraisal Institute, *The Dictionary of Real Estate Appraisal* 210 (6th Ed.2015), whereas a 'first-generation space' is a 'building or space designed to be functionally and economically efficient for the original tenant or a similar class of tenants over a period of time, during which the space retains its original utility and desirability,' *id*. at 92.") Racek stated that when a property sells with a lease in place, adjustments are necessary not only to account for rental rates that are above or below market, but also to account for the additional risk associated with the lease-up period because he assumes a property would sell "available to be leased" (vacant). Consequently, in addition to adjustments for physical and location differences, Racek adjusted the comparable sales for property rights conveyed when a property was occupied by its original tenant or had rental rates above or below his estimated market rent. Notably, despite claims that he did not consider the sale of the subject property because it was leased, he utilized the sales of other leased properties, including one that sold with a Giant Eagle as the anchor tenant.

The county appellees presented testimony from and a written report prepared by

appraiser Thomas D. Sprout, MAI, who concluded that the value of the subject property was $11,300,000 as of January 1, 2017. Sprout determined that the highest and best use of the subject property would be for occupation by a regional retailer and valued the property as a single-tenant property, as Giant Eagle occupies greater than 95% of the subject property. Like Racek, Sprout considered both the sales comparison and income approaches to value, though he chose sale and rent comparables based on his highest and best use that the property would be occupied by a single regional retailer. Sprout testified that he adjusted those sales involving the transfer of a property with a lease in place to account for any added value for the lease, including above/below market rental rates and vacancy, and also considered the quality of the tenant and the remaining term of the lease.

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." *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶¶14-15. "[T]he proponent of a sale is not required, as an initial matter, to affirmatively demonstrate with extrinsic evidence that a sale price reflects the value of the unencumbered fee-simple estate." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶32. Once a party provides basic documentation of a sale, the opponent of the sale has "the burden of going forward with rebuttal evidence showing that the price did not, in fact, reflect the property's true value." Id.

In the present appeal, it is undisputed that Amherst purchased the subject property from Amherst Ridge Equities, LLC on December 23, 2015 for a recorded sale price of $11,655,000.

Amherst has broadly maintained that any sale of a property with a lease in place at the time of the transfer should not be considered for purposes of valuation, citing to R.C. 5713.03 ("The county auditor *** shall determine *** the true value of the fee simple estate, as if unencumbered, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon ***.") In its reply brief Amherst claims that the court has held that when a subject property sells with a lease in place, "outside evidence of unencumbered fee simple value would rebut the sale as best evidence of value," citing to *Terraza*, supra. It appears that Amherst conflates a direction to consider other evidence with a direction to reject a sale if any contradictory evidence is presented.

Amherst is correct in its assertion that a sale price no longer conclusively determines value but ignores the court's direction that the "best-evidence rule of property valuation *** creates a rebuttable presumption that the sale price reflected true value." Id. at ¶33. Nevertheless, when the opponent of the sale presents evidence that purports to explain why the sale price did not reflect the value of the unencumbered fee-simple estate, this board must consider such evidence. Id. at ¶39. For instance, the court has directed this board to consider all terms of a lease, including not only whether the actual rent was at market rates, but also "the creditworthiness of the tenant and whether the lease was a net lease, under which the tenant defrays the expenses relating to the real estate." *GC Net Lease @ (3) (Westerville) Investors, L.L.C. v. Franklin Cty. Bd. of Revision,* 154 Ohio St.3d 121, 2018-Ohio-3856, ¶10. Rebuttal evidence may include an appraisal to demonstrate that the sale was not reflective of market value or to provide affirmative evidence of value. *Spirit Master Funding IX, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 254, 2018-Ohio-4302, ¶9, citing *Westerville City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 308, 2018- Ohio-3855, ¶14.

Amherst asks this board to ignore relevant case law on the issue and to make numerous assumptions in order to reject the sale and adopt Racek's opinion of value. For instance, Amherst insists that this board must take Racek's conclusion that the sale is unreliable at face value, though it has provided no corroborating evidence to challenge any aspect of the sale, including the motivations of the parties, recency, or arm's-length nature of the sale. See *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046. Instead, Amherst asserts that this board must outright reject the sale because we must presume that some portion of the consideration was paid for the lease and instead base our decision on the value of the improvements as they would sell if vacant, regardless of the terms of the lease. We note that there was some discussion that the sale was part of a broader portfolio transfer, but no evidence was presented to corroborate this claim and Amherst has not challenged the validity of any allocation as recorded on the conveyance fee statement. See, generally, *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921 (holding that when a school board advocates the use of the amount of sale price allocated to a particular parcel on a conveyance-fee statement, the burden of rebuttal rests on the owner because the owner is the party most likely to possess the information that could justify or refute the propriety of the allocation).

Amherst's argument is inconsistent with the case law, in two very important ways. First, the court has expressly held that even with a lease in place, a sale of the subject property "is the is the *best evidence* of the property's true value, subject to rebuttal," as the terms of the lease become relevant "only if an opponent presents it as evidence in an attempt to rebut a sale price." (Emphasis sic.) *Terraza*, ¶34. Thus, a sale of leased property continues to enjoy the presumption that it is the best evidence of value unless the opponent of the sale presents evidence to establish otherwise. Second, the court also recognized that a property owner may be able to realize the value of a

property by encumbering it with a lease, holding that an appraiser may appraise the unencumbered estate as if it were leased. "Appraising property in this way is consistent with R.C. 5713.03's directive to determine 'the true value of the fee simple estate, as if unencumbered,' so long as the appraisal assumes a lease that reflects the relevant real-estate market. See Appraisal Institute, The Appraisal of Real Estate 441 (14th Ed.2013) ('When the fee simple interest is valued, the presumption is that the property is available to be leased at market rates'); Ohio Adm.Code 5703-25-07(D)(2) (authorizing use of income-capitalization approach in valuing real estate)." *Harrah's Ohio Acquisition Co., L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 154 Ohio St.3d 340, 2018-Ohio-4370, ¶27.

Amherst also asks this board to conclude that the creditworthiness of the tenant and lease terms were factors in its purchase of the property but provided no testimony from an individual with knowledge of the buyer's motivations. Amherst correctly maintains that the terms of the lease, including the creditworthiness of the tenant, must be considered in determining the weight to be accorded the recent, arm's-length sale of a leased property. *GC Net Lease,* supra at ¶11. The court has held that sale prices of leased properties generally must be adjusted because the "encumbrance" of a lease may affect market value. *Steak 'n Shake, Inc. v. Warren Cty. Bd. of Revision*, 145 Ohio St.3d 244, 2015-Ohio4836. As discussed earlier, however, the court has not extended this idea in a way that changes the burdens of proof associated with sales of a subject property and the best evidence rule of real property valuation. Accordingly, in this case, this board must find that the sale price was inflated due to the tenant in place *based on the evidence* and not simply based on Racek's conclusions and Amherst's unpersuasive legal arguments.

As we consider the weight to accord to the sale, we must evaluate not only Racek's analysis, but also the evidence offered by the county appellees and BOE. Something that is notably missing and clearly in Amherst's possession is the lease in place at the time of the sale, which would verify not only the rental rates but also the amount of time remaining. According to Sprout's unrefuted testimony, the property was likely near the end of its initial term or in a five-year option period when it sold. This information is relevant because the court has directed the board to consider all lease terms, which would include its duration, and not simply the rental rates. Based on the evidence that is in the record, we find that Amherst has failed to rebut the sale, that Sprout's appraisal provides additional support for the reliability of the sale, and that the lease in place was consistent with the market. Importantly, we disagree with Racek's highest and best use, which forms the basis for all other decisions made throughout his appraisal. We find that Sprout's highest and best use as a single-tenant property is more closely aligned with the most likely user of the subject property than Racek's analysis based on its use as a larger multitenant strip center with more tenants, each utilizing a lower percentage of the overall footprint than the Giant Eagle occupying the subject property. Thus, even if we were to isolate our consideration only to the two appraisals and ignore the sale, we would find that Sprout's conclusions better reflect the value of the subject property.

Looking more closely at Racek's sales comparison approach, we find that it does not discredit the sale of the subject property or provide reliable evidence of value in its own right. In its reply brief, Amherst incorrectly asserts that physical similarities or similar users among the comparable properties "has no place in the valuation of the subject in the unencumbered interest required by R.C. 5713.03," because the only requirement is that the property be valued "as unleased." Not only is Amherst's underlying theory that the property must be valued "as

vacant" incorrect, but this specific argument is also inconsistent with appraisal practice and its own expert's appraisal. Racek himself did not follow this theory, as the properties he utilized in his sales comparison analysis were occupied by tenants at the time of the sales. Racek explained during this board's hearing that a commercial shopping plaza rarely sells as vacant unless it is distressed, despite claiming that he ignored the sale of the subject property because it was occupied at the time of the transfer.

The characteristics of the properties upon which Racek relied were not sufficiently similar based on the number of units in each shopping center as compared to the subject property. Racek's comparable sales were not physically comparable to the subject property and each had a different highest and best use. The anchor tenants (if any) in those centers were generally smaller than the subject's primary tenant and the centers contained more units than the subject property, in which the 76,737 square-foot anchor tenant occupies more than 95% of the total rentable area. We also question Racek's inclusion of a sale of a property where the anchor building was owned by the tenant pursuant to a ground lease and did not change hands with the shopping center, though Racek included the full building in his analysis of the sale.

We likewise find that Racek's income approach does not show that the sale should be disregarded. We acknowledge that there are properties for which a second-generation tenant is the most appropriate for the determination of market rent. We decline, however, to conclude that this board is restricted to consider only such leases and cannot consider leases such as those in place on the subject property when it transferred, provided the lease in place is consistent with its market. If this board excludes all properties occupied by a "first generation" tenant, as Racek did (and Amherst argues this board must do in all appraisal cases), that practice impedes the accurate valuation of a property that continues to have a highest and best use as a property

occupied and operated by a regional or national tenant. Here, because Racek restricted his analysis to second generation properties, we find that his "market rents" did not reflect the subject property's market, and, therefore, his conclusion that the subject's rents were not at market rates is unsupported. We note that if we were to accept Racek's report, it would result in an allocation of the total sale price attributing roughly 40% of the total sale price to real property with the remaining $6,925,000 to the value of the leases in place. Given that the buyer purchased the property and accepted the risk associated with the major tenant at or near the options period of its initial lease, we find that this allocation is not supported.

In this case, the record contains evidence of a recent, arm's-length sale and it is Amherst's burden to rebut its utility. Amherst, relying solely on Racek's report, did not meet its burden. Sprout's appraisal, on the other hand, provides additional support for the sale price. Both appraisals demonstrated that properties occupied by regional tenants (such as Giant Eagle) freely sell within the marketplace. Though the property may generate lower rent as a second-generation tenant, Amherst has not shown that the highest and best use of the property is by a second-generation user. At the time of the sale and on the tax lien date, the subject was occupied and there was no indication that the market was shifting or that retailers in the market or at the subject property itself would be vacating any time soon. We see no reason to conclude that continued use as a regional tenant is not appropriate and do not accept Racek's premise that it must be valued as though it were a vacant shopping center and as if Giant Eagle left the premises. Amherst has failed to establish that it is no longer operating at its highest and best use or that the leases in place at the time of the sale caused an elevated sales price. Furthermore, Sprout's appraisal supports the purchase price and demonstrates that the subject operates consistently with the market in which it is located.

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

$11,655,000

TAXABLE VALUE

$4,079,250

OHIO BOARD OF TAX APPEALS

ELISSAR I, LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2588
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, January 29, 2020

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 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, it filed notice of the appeal with the BOR forty-nine 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

ELISSAR I, LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2587
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ELISSAR I, LLC
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

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

Entered Wednesday, January 29, 2020

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 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 filed with the BOR forty-nine 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

LAKE AVENUE CHRISTIAN CHURCH INC, (et. al.), Appellant(s), vs. CLARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1201 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LAKE AVENUE CHRISTIAN CHURCH INC
Represented by:
MARK J. DEBRECENI
EXECUTIVE MINISTER
55 RESTORATION PARK DRIVE
MEDWAY, OH 45341

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, January 29, 2020

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

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, the taxable portion of parcel number 180-10-00024-000-040, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject property is the taxable portion of a parcel that is partially exempt from real property taxation. The portion at issue in this appeal consists of 15.57 acres of land improved with a commercial property occupied by a trucking restoration company and a landscaping company. Appellant purchased the entire property in 2013 for $1,200,000, and subsequently

sought exemption from real property tax for the portion of the property used exclusively for public worship. Appellant also filed a complaint with the BOR seeking to decrease the total true value for the parcel, for which it obtained an appraisal that opined the parcel's total true value was $1,200,000 as of January 1, 2014. The BOR reduced the value of the property, and the commissioner issued a final determination split-listing the property between the taxable and exempt portions. Following the split, the true value for the taxable portion (which is the property at issue in the present appeal) was $493,380, or 39.16% of the total value.

[3] In 2015, appellant renovated the church buildings, which caused the value of the taxable portion to increase for 2016. Appellant again sought exemption for the new construction, which was granted by the commissioner for tax year 2018. The auditor then assessed true value of the taxable portion of the subject at $879,680. Appellant filed a complaint with the BOR seeking a reduction in value to $380,217.

[4] At the BOR hearing, appellant's Executive Pastor, Mark Debreceni, testified regarding the value history of the property since appellant purchased the property in 2013. Debreceni also discussed a list of properties that either sold or were listed for sale at the time of the BOR hearing, which he obtained from a realtor who was also present at the hearing. Debreceni pointed to not only the sale/listing price, but moreover the assessed values of those properties for both 2014 and 2018, and their relationship to the sale/listing prices. Debreceni claimed that because the renovations were exempted by the latest final determination from the commissioner, the data showed that the value from 2014 should carry forward or be reduced by 14.55% consistent with the difference between the auditor's value and the sale prices for the comparable properties.

[5] The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. This board convened a hearing, at which Debreceni again discussed the value history for the parcel and the split listing. Debreceni acknowledged that appellant receives $9,000 per month (total) in rent from the two tenants, though the church plans to ultimately expand into that space, as

well. The county appellees were present to cross-examine Debreceni but provided no additional evidence of value. The county appellees argued that appellant did not present sufficient information to support a decrease in value. Appellant's primary argument is that the value set forth in 2014 should carry forward into 2018 because it was improper for the auditor to revalue the taxable portion of the subject property when the commissioner exempted the renovations. A county auditor must value and assess taxes against real property in the county, including the reappraisal of property values once every six years and an update at the three-year interim point. In addition to the sexennial countywide reappraisal and triennial update, 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 Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, ¶19; R.C. 5713.01(B), 5713.03,5715.33, and 5715.24; Ohio Admin. Code 5703-25-16(B). For example, "[t]his duty might be triggered by an arm's-length sale" or "the reporting of an improvement or casualty to the property." Id. The court affirmed that "[t]ypically, the auditor does carry over the value from the irst year of a triennium to the next year, unless some event that triggers a need to change the valuation." Id. at ¶32. Normally, when an auditor assesses the value of a property, that value will carry forward from the first year of each three-year period until the next, unless the auditor's duty to value within the triennial is triggered by some event. Because an auditor is presumed to have acted consistent with Ohio law, it is not a high bar to show that he or she has properly exercised his or her authority to adjust values mid-triennial. As such, an auditor does not need to defend the new values when he or she determines that a property's value has changed. Nevertheless, an auditor cannot simply adjust the assessed values arbitrarily without first making the determination that its value had in fact changed. See *Johnson v. Greene Cty. Bd. of Revision* (Apr. 3, 2018), BTA No. 2017-945, unreported.

[6] In this case, we find that there was sufficient reason for the auditor to revalue the property for tax year 2018. We acknowledge that the improvements themselves were not attributable to the taxable portion of the parcel based on the final determination from the

commissioner. Nonetheless, the auditor acted within his authority to redetermine the value of the taxable portion and to ensure a proper allocation of the total value among taxable and exempt portions. Thus, the burden lies with appellant to determine that an alternative value is more appropriate.

[7] In an appeal from a decision of a board of revision, an appellant must come forward with sufficient evidence not merely to show that is the auditor's value incorrect, but rather to establish that an alternative proposed value is the true value of the property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. Although a recent, arm's-length sale provides the best evidence of value, a sale that is too remote from the tax lien date does not benefit from a presumption of recency and the proponent of the sale is required to present evidence to show that market conditions and the character of the property had not changed between the date of the sale and the tax lien date. Id. at ¶18, quoting *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, ¶26. In this case, although appellant relies on the value established for tax year 2014 consistent with its sale price, it has not presented sufficient evidence to show that the purchase was recent despite the passage of time and renovation to portions of the property. Therefore, we find that appellant's 2014 purchase is too remote from the tax lien date to establish the value of any portion of the property for tax year 2018.

[8] Where evidence of a qualifying sale is unavailable, appraisal evidence becomes necessary, which may be in the form of a non-expert owner's opinion of value. *Schutz*, supra, 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. See, also, *Johnson v. Clark Cty. Bd. of Revision*, 155 Ohio St.3d 264, 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

[9] Appellant's evidence of sales or listings of other properties and the auditor's values for those properties do not support a reduction. While comparable sales data is frequently utilized by appraisers to determine the value of a given property, the list of sales provided by appellant is not probative evidence of value because its witnesses did not demonstrate adequate knowledge about the circumstances of those sales or adjust them for differences among the properties. *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002. Additionally, the values of other properties are not reliable evidence of value for the subject, and a property's valuation from one tax year is not competent and probative evidence of value for another tax year. *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."); *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 29 (1997). Accordingly, based upon our review of the record, we find that appellant has failed to establish a reduced value for the subject property.

[10] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$879,680

TAXABLE VALUE

$307,890

OHIO BOARD OF TAX APPEALS

MORAN CORNELIUS P, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1082
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - MORAN CORNELIUS P
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

Entered Wednesday, January 29, 2020

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. (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 does not demonstrate that appellant filed such notice with the BOR. We acknowledge that the county appellees claim that the notice of appeal was untimely filed with this board, but based on the date of the letter, it appears this argument is without merit. Regardless, because appellant failed to file a copy of the notice of appeal with the BOR, 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

JOSEPH AND NANCY SCHMITT, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1064 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOSEPH AND NANCY SCHMITT
Represented by:
JOSEPH SCHMITT
7136 BRIGHTWATERS COURT
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, January 29, 2020

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

[1] Joseph and Nancy Schmitt appeal from a decision of the Butler County Board of Revision ("BOR") denying an application for penalty remission for the first half of 2018. We decide the case on the notice of appeal and the statutory transcript.

[2] R.C. 5715.39 requires penalty remission for the following reasons:

(1) The 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.

(2) In cases other than those described in division (B)(1) of this section, and except as provided in division (B)(5) of this section, 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.

(3) The 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.

(4) The 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.

(5) With 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.

Penalties must also be remitted if the "taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." R.C. 5715.39(C).

[3] Appellants' taxes for the first half of 2018 were due in February 2019, but appellants did not timely pay. They requested a bill in April 2019 and paid the bill in May 2019. The treasurer's records show appellants have a history of making late payments, but appellants deny having made any late payments in the past five years.

[4] Upon review, we find appellants have not carried their burden because they have not shown the facts of this case match any of the scenarios enumerated in R.C. 5715.39. For example, the record does not show the county was negligent in collecting or administering the tax. The bill was sent to 7136 Brightwaters Court in Liberty Township, which is the correct tax mailing address per the parcel card and the return address on appellants' letters. Even if they did not receive a bill, appellants did not attempt to obtain a bill within thirty days after the taxes were due. See R.C. 5715.39(B)(2). Appellants do not claim the payment was late due to serious injury or the satisfaction of a mortgage. See R.C. 5715.39(B)(3), (5). Additionally, appellants do not claim they placed their payment in the mail before it was due. See R.C. 5715.39(B)(4).

[5] We likewise do not find appellants have shown a failure to timely pay was due to "reasonable cause and not willful neglect" for two reasons. First, the treasurer's records show appellants have a history of late payments, and those records are presumptively correct. *Plain Local Schs. Bd. of Edn. v. Stark Cty. Bd. of Revision* (Dec. 12, 2018), BTA No. 2017-1025, unreported. We do not find appellants' unsworn statement, submitted without corroborating evidence, rebuts the presumption of correctness. Second, even if the treasurer's records are wrong, we would still find appellants are not entitled to remission. "Reasonable cause" does not turn solely on payment history. Penalties can be assessed for a single missed payment. See *Snyder v. Zaino* (May 9, 2003), BTA No. 2003-V-246, unreported. Here, we find appellants have not shown they are entitled to remission because they have not shown reasonable cause why *this* payment was late.

[6] For these reasons, appellants' application for remission is denied.

OHIO BOARD OF TAX APPEALS

THOMAS R. AND ELIZABETH K. BRILL, (et. al.), Appellant(s), vs. BELMONT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1008 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THOMAS R. AND ELIZABETH K. BRILL
OWNER
62967 MCMILLAN RD
BARNESVILLE, OH 43713

For the Appellee(s) - BELMONT COUNTY BOARD OF REVISION
Represented by:
DANIEL P. FRY
PROSECUTING ATTORNEY
BELMONT COUNTY
147A WEST MAIN STREET
ST. CLAIRSVILLE, OH 43950

BELMONT COUNTY BOARD OF REVISION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

Entered Wednesday, January 29, 2020

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 41-01468.005, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and written argument submitted by the county appellees.

The property owners filed a complaint with the BOR, which requested that the subject property be revalued from its initially assessed value of $322,780 to $298,120. At the BOR

hearing on the matter, the property owners testified in support of their complaint. They asserted that the subject property "had been grossly overvalued," in part, because their home was built on top of a strip mine and, in part, because of its proximity to mobile homes. Statutory Transcript at BOR Hearing Record. They argued that at least one neighboring property experienced a decrease in its value when the subject property's value was increased for tax year 2018. The BOR voted to retain the subject property's $322,780 value. The property owners filed this appeal, which amended their opinion of the subject property's value to $248,120.

None of the parties availed themselves of the opportunity to supplement the record with additional evidence. However, the property owners attached several documents to their notice of appeal. Because these documents were not produced at the BOR hearing or a hearing before this board, we cannot consider them in our analysis. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (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."). The county appellees filed written argument to assert that the property owners failed to provide competent, credible, and probative evidence of the subject property's value and, therefore, this board should deny their request to reduce the subject property's value.

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

the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision,* 135 Ohio St.3d 227, 2013-Ohio-397. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). However, 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. *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 of the record, we find that the property owners failed to satisfy their evidentiary burden on appeal. We must reject their three primary arguments, i.e., that the subject property had been overvalued when compared to other properties' assessed values, that the subject property had been overvalued given its previous year's valuation, and that the subject property had been overvalued given its negative characteristics. First, we must acknowledge the fallacy of any argument relying on the assessed values of other properties in support of a requested reduction in value, as the basis of this challenge is the erroneous nature of the subject property's value. Indeed, "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996).

Second, the Supreme Court has previously held that each tax year stands alone, and the fact that value may have been modified in another year is not competent, credible, 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; *Freshwater v. Belmont Cty. Bd. of Revision* , 80 Ohio St.3d 26 (1997). See also *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468.

Third, the property owners failed to provide evidence to quantify the specific diminution in value that resulted from the defects, i.e., the subject property's location on top of a strip mine and any resultant damage, and near mobile homes. For example, how much should the subject property's value be reduced because of any aspect of its location, $1,000 or $10,000? We cannot say because the property owners failed to provide sufficient evidence to demonstrate such effects in value. 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." This board has repeatedly rejected the argument that defects, not quantified by a proper appraisal, are sufficient evidence to reduce real property value. See e.g., *Bardshar Apts., Inc. v. Erie Cty. Bd. of Revision* (Mar. 15, 2016), BTA No. 2015-1451, 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 conclude that the property owners failed to provide competent, credible, and probative evidence of the subject property's value before the

BOR and before this board. It is, therefore, the order of the board that the subject property's value shall be assessed consistent with the following, as of January 1, 2018:

True Value: $322,780

Taxable Value: $112,970

OHIO BOARD OF TAX APPEALS

MEL & JANET HANACEK, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1040 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MEL & JANET HANACEK
Represented by:
MEL HANACEK
OWNER
38639 MISTY MEADOW TRAIL
NORTH RIDGEVILLE, OH 44039

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Wednesday, January 29, 2020

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

[1] The property owners appeal a decision of the board of revision ("BOR"), which determined the value of the subject property, parcels 03-00-106-101-002, 03-00-107-102-026, 03-00-107-102-027, 03-00-107-102-028, 03-00-107-102-029, and 03-00-107-102-030, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and record of this board's hearing.

[2] The subject property was initially collectively assessed at $118,400. The property owners filed a complaint with the BOR, which requested a reduction to the subject property's value. By way of the complaint, the property owners asserted that comparable sales supported

their request. At the BOR hearing, Mr. Hanacek testified as to the lack of timber growing on the subject property, and a more recent comparable sale. He argued that the subject property is not buildable, in part, because there was no sewer system. The BOR voted to reduce the subject property's value to $87,650, based upon a recommendation from the county auditor's appraisal department, and this appeal ensued.

[3] At this board's hearing, the property owners and county appellees appeared to supplement the record with additional argument and/or evidence. Mr. Hanacek testified that the property owners had purchased the subject property in 2001, intending to build a residential subdivision; however, county officials reneged on a commitment to construct a sewer system in the area. As a result, he claimed, the subject property was rendered "unbuildable and pretty much worthless." Hearing Record at 7. He also argued that the subject property's value had remained the same, $54,600, for 18 years and that its sudden increase in value was unsupported by the $2,800 per acre price of a nearby comparable sale, and that lack of timber supported his request. In support of their appeal, the property owners submitted an appraisal report performed by appraiser Troy Hawke, who opined the value of the subject property to be $50,000 as of July 16, 2019. Counsel for the county appellees cross-examined Mr. Hanacek and objected to Hawke's appraisal report for a number of reasons. The attorney examiner deferred ruling and allowed the appraisal report to be proffered into evidence.

[4] Before we consider the merits of this appeal, we must first dispose of the objection raised at this board's hearing. As noted above, the county appellees objected to consideration of the property owners' appraisal report, in part, because they failed to disclose it consistent with

the case management schedule, i.e., on or before September 9, 2019. As will be more fully discussed below, we accord no weight to the appraisal report and overrule the county appellees' objection.

[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. 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.

[5] We begin our analysis with the property owners' appraisal evidence, i.e., the appraisal report performed by Hawke, which valued the subject property at $50,000 as of July 16, 2019. We do not find the appraisal report to be competent, credible, or probative evidence of the subject property's value for the reasons raised by the county appellees at this board's hearing. Hawke did not appear at this board's hearing. We generally reject an appraisal report when the appraiser fails to appear before this board or the BOR. *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. As we explained in *Speca*, when the appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials or authenticate the report (including addenda). Importantly, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed by this board. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. See also *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 *Copley-Fairlawn*, supra (affirming this board's use of a hearsay appraisal report when there was testimony about the reliance that the bank and property owner placed upon it in making business decisions).

[6] Moreover, Hawke's opinion of value did not relate to the tax lien date of January 1, 2018. As the court stated in *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997), "[a]n expert's opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion." See also *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 554-555 (1996) ("the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question.").

[7] We are also unpersuaded by the property owners' reference to sales prices of nearby properties. We have repeatedly held that information of this type is an insufficient basis to determine real property value because it fails to adequately consider and 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. See also *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 having found that the evidence was not probative).

[8] Likewise, we do not find the subject property's prior years' valuations to be probative evidence of value for tax year 2018. The Supreme Court has previously held that each tax year stands alone, and the fact that value may have been different or lower in another year is not competent, credible, and probative evidence that a different year's value should be changed. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009-Ohio-2461; *Freshwater*, supra. See also *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468.

[9] In sum, we do not find the property owners' evidence to be competent, credible, or probative evidence of the subject property's value. See *Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018), BTA No. 2018-414, unreported at 2 (though an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested.").

[10] We now turn to the propriety of the BOR's decision to reduce the subject property's value to $87,650. We note that "case law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, at ¶7. Though the BOR decision recording referenced a recommendation from the county auditor's appraisal department, the record is devoid of the basis for the recommendation and what calculations were made to reach the specific recommended value of $87,650. As a consequence, we cannot affirm the BOR's decision. See *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. *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."(Parallel citation omitted.)). Compare *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237.

[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 are constrained to conclude that the property owners failed to meet their burden before the BOR and before this board. We must also find that the record does not support the BOR's decision to reduce the subject property's value to $87,650. We must, therefore, reinstate the subject property's initially assessed values.

[12] It is the order of this board that the subject property's true and taxable values are as follows as of January 1, 2018:

PARCEL NUMBER 03-00-106-101-002

TRUE VALUE: $42,450

TAXABLE VALUE: $14,860

PARCEL NUMBER 03-00-107-102-026

TRUE VALUE: $10,500

TAXABLE VALUE: $3,680

PARCEL NUMBER 03-00-107-102-027

TRUE VALUE: $10,500

TAXABLE VALUE: $3,680

PARCEL NUMBER 03-00-107-102-028

TRUE VALUE: $10,500

TAXABLE VALUE: $3,680

PARCEL NUMBER 03-00-107-102-029

TRUE VALUE: $8,400

TAXABLE VALUE: $2,940

PARCEL NUMBER 03-00-107-102-030

TRUE VALUE: $36,050

TAXABLE VALUE: $12,620

OHIO BOARD OF TAX APPEALS

FERDINANT XHELILAJ, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-967
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
DELAWARE COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - FERDINANT XHELILAJ
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DELAWARE, OH 43015

For the Appellee(s) - DELAWARE COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
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DELAWARE, OH 43015

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

Entered Wednesday, January 29, 2020

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, 519-431-04-028-000, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and written argument submitted by any of the parties.

The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $80,000, a decrease from its initially assessed value of $141,200. By

way of the complaint, the property owner revealed that the subject property had been the subject of a $120,000 transfer in October 2018, that he failed to have the subject property inspected prior to his purchase, and that the subject property was in such poor condition that he would be unable to rent it out for approximately one year. The affected board of education ("BOE") filed a countercomplaint, which objected to the request. At the BOR hearing on the matter, only the BOE appeared to submit argument and/or evidence into the record. The BOE requested that the BOR retain the subject property's value because the property owner failed to appear to discuss the facts and circumstances of the transfer of October 2018. The BOR accepted that argument and proceeded to issue a decision that retained the subject property's initially assessed value. This appeal ensued. By way of the notice of appeal, the property owner amended his opinion of the subject property's value to $100,000.

None of the parties availed themselves of the opportunity to submit evidence at a hearing before this board. However, the BOE submitted written argument to fully assert its position that the property owner failed to satisfy his evidentiary burden before the BOR and 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.

We begin our analysis with the property owner's $120,000 purchase of the subject property in October 2018. As this board has held on multiple occasions, "evidence of a sale contained on a property record card, if undisputed, may serve as a sufficient basis upon which to rely in determining the value of a property." *Bd. of Edn. of the Westerville City Schools v. Delaware Cty. Bd. of Revision* (June 13, 2013), BTA No. 2011-A-155, unreported. See also *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075; *1192 Group Partnership LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 18, 2013), BTA No. 2010-Y-651, unreported; *Bd. of Edn. of the Cleveland Mun. School Dist. v. Cuyahoga Cty. Bd. of Revision* (May 10, 2013), BTA No. 2009-Y-1596, unreported. Such is the case here as there has been no dispute as to the sale information contained on the property record card. As such, a rebuttable presumption of validity attaches to the transfer, and the burden to rebut such presumption falls upon the opponents of utilizing such sale, here, the BOE and BOR, to prove that the sale price was not indicative of value. See *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. Though the BOE questioned the arm's-length character of the subject sale, neither it nor the BOR came forward with evidence to support a conclusion that such sale was anything other than an arm-length transaction. We conclude, therefore, that the BOE and BOR failed to satisfy their burden to rebut the presumption that the subject sale was indicative of the subject property's value.

We continue our analysis to consider whether the record supports the property owner's request to value the subject property at $100,000, $80,000, or some other quanta of value that deviates from the sale price. Simply put, the record does not support such a finding. Seemingly, the property owner believed that the subject sale should be rejected because he failed to conduct proper due diligence before he purchased the subject property, i.e., failing to have the subject property inspected before he purchased it, and he subsequently learned that the building was in poor condition. We have previously considered and rejected such argument. See *Snodgrass v. Franklin Cty. Bd. of Revision* (July 26, 2016), BTA No. 2015-1924, unreported at 3 (the buyer's failure to engage in greater due diligence does not necessitate rejection of the sale of real

property); *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.").

Furthermore, the property owner failed to provide any evidence to the BOR or to this board that would allow either tribunal to revalue the subject property consistent with either of his requests. Though the property owner referred to the disrepair of the building situsedon the subject property, he failed to provide evidence to quantify the specific diminution in value that resulted from the building's disrepair. 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."). This board has repeatedly rejected the argument that defects, not quantified by a proper appraisal, are sufficient evidence to reduce real property value. See e.g., *Bardshar Apts., Inc. v. Erie Cty. Bd. of Revision* unreported. (Mar. 15, 2016), BTA No. 2015-1451,

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 failed to provide competent, credible, and probative evidence of the subject property's value before the BOR and before this board. However, absent an affirmative demonstration that the property owner's $120,000 purchase of the subject property in October 2018 was anything other than a recent, arm's-length sale, we find that the subject property should be valued consistent with such sale. It is, therefore, the order of the board that the subject property's value shall be assessed consistent with the following, as of the relevant tax lien date:

TRUE VALUE

$120,000

TAXABLE VALUE

$42,000

OHIO BOARD OF TAX APPEALS

OHIO NAL LLC, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-1778
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

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

CLEVELAND MUNICIPAL CITY SCHOOL BOARD OF EDUCATION
Represented by:
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CLEVELAND, OH 44114

Entered Friday, January 31, 2020

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 was not filed with the county board of revision. This matter is decided upon the motion, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal. Although appellant requested additional time to respond to the motion, said time has now passed and appellant has not filed a response.

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

The record in this matter indicates that appellant's notice of appeal was filed with this board fifty-one days after the mailing of the BOR's decision. Further, the record does not demonstrate that appellant filed notice of the appeal with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

EDWARD & BEVERLY MALONE, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1548 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EDWARD & BEVERLY MALONE
Represented by:
EDWARD MALONE
OWNER
18826 HARVARD AVE
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 Monday, February 3, 2020

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 provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

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

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GENEVIEVE MILITELLO, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2595
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GENEVIEVE MILITELLO
OWNER
6776 WILSON MILLS RD
GATES MILLS, OH 44040

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, February 10, 2020

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. (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

RICHARD AND DENISE HORN, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2818 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RICHARD AND DENISE HORN
OWNERS
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COLUMBUS, OH 43235

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

Entered Monday, February 10, 2020

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 Cuyahoga County Board of Revision ("BOR") has not rendered a decision for the subject property. Appellants did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county BOR, and appellants' notice of appeal.

The appellant filed a notice of appeal with this board, however the documentation attached to appellant's notice of appeal does not constitute a BOR decision. The county appellees attached to their motion, certification that there is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, 150; *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68. Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the 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

ROGER LUTHANEN, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2768
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROGER LUTHANEN
111 EAST 270 ST.
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, February 10, 2020

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, appellant's response, 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 in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was filed with the BOR thirty-seven days after the mailing of the BOR's decision. Appellant's response provided documentation to establish timely file with this board but did not provide documentation to demonstrate that the appeal was timely filed with the Cuyahoga County Board of Revision. We also note the notice of appeal was filed on the county prosecutor but the county prosecutor is not the 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

RANDALL MAX KITZLER, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1198 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RANDALL MAX KITZLER
Represented by:
RANDALL KITZLER
174 TAYLOR BOULEVARD
LAGRANGE, OH 44050

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Tuesday, February 11, 2020

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

Randall Kitzler appeals from a decision of the Lorain County Board of Revision ("BOR"), retaining the auditor's value of the subject property for tax year 2018. No party requested a hearing. Therefore, we decide the case on the notice of appeal, the statutory transcript, and any written argument.

The subject property is a residence, which the auditor valued at $173,820 for tax year 2018. Kitzler filed a decrease complaint requesting a value of $96,724. In support, he supplied an itemized list of needed repairs and the estimated cost for each. The BOR retained the auditor's value. The decision reads:

> Case 956 - Kitzler: Testimony and evidence submitted attributed a loss in value due to a number of dwelling issues. A review of the evidence found most of these to be cosmetic in nature. Secondly, the complainant did not provide any objective third party verification of the cost associated with each item. Thirdly, the complainant determined that each cost would have a one to one effect on market value. A review of sales within the subject neighborhood found that the County's value is well within the area range. Therefore, no change in value is recommended to the BOR for its consideration.

Kitzler appealed 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). To prevail, an 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. Our factual review is confined to the statutory transcript when no hearing is requested. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

The best evidence of value is a recent arm's-length sale. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. There have been no recent sales of the subject property; therefore, we move on to Kitzler's other evidence of value. Upon review, we find Kitzler has not carried his burden. An owner is competent to provide an opinion of value, but this board need not adopt that value unless it is supported by probative evidence of value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994). Here, Kitzler relies solely on a list of needed repairs and estimated costs. The Supreme Court has been clear that, while negative characteristics can impact value, a party must present "adequate evidence of the specific impact that *** negative factors have on" property. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). Dollar-for-dollar costs do not necessarily correlate to value. Id. at 4.

For these reasons, we see no reason to deviate from the auditor's value for tax year 2018, as follows:

PARCEL NUMBER 15-00-046-101-218

TRUE VALUE

$173,820

TAXABLE VALUE

$60,840

OHIO BOARD OF TAX APPEALS

KEVAN D. FERREN, (et. al.),

Appellant(s),
vs.

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

Appellee(s).

CASE NO(S). 2019-825, 2019-826,
2019-827, 2019-828
REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KEVAN D. FERREN
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For the Appellee(s) - BELMONT COUNTY BOARD OF REVISION
Represented by:
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BELMONT COUNTY BOARD OF REVISION
Represented by:
DANIEL P. FRY
PROSECUTING ATTORNEY
BELMONT COUNTY
147A WEST MAIN STREET
ST. CLAIRSVILLE, OH 43950

Entered Tuesday, February 11, 2020

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

[1] Property owner Kevan Ferren appeals from a decision of the Belmont County Board of Revision ("BOR") valuing thirteen parcels for tax year 2018. Mr. Ferren appeals twelve of those parcels. We decide the case on the notices of appeal, the statutory transcript, this board's hearing record ("H.R."), and any written argument.

[2] While we evaluate each property individually below, we first survey the law governing our review. 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). To meet that burden, an 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. We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7). We will not rely on a BOR's value if it is unsupported by the evidence. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35.

[3]A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring less than 24 months before the tax-lien date is presumed recent. *Akron City School Dist. Bd. of Edn. v.Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. If a property has not recently sold, a proponent of different value must come forward with other competent and probative evidence of value. While an owner is competent to opine on the property's value, this board need not adopt that opinion of value unless probative evidence supports the owner's opinion. *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500 (1997). The fact a property suffers from negative characteristics is generally insufficient to warrant an adjustment unless a party shows what effect those characteristics have on value. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227

(1996)).

[4] We note the BOR granted a 5% reduction on all of the properties at issue in this case. However, even Mr. Ferren agrees the BOR's reduction was arbitrary. H.R. at 12. Therefore, we reinstate the auditor's value where appropriate. See *Sapina*, supra.

140 Newell Avenue (34-01608.000)

[5] The auditor valued this parcel at $95,150 for tax year 2018, and Mr. Ferren filed a decrease complaint with an opinion of value at $80,000. He purchased the property on March 12, 2019, for $80,000 in an arm's-length transaction.

[6] Upon review, we find the sale is the best evidence of value. Mr. Ferren testified the sale was arm's-length and the sale was recent to the tax-lien date. Therefore, we order the property valued as follows for tax year 2018:

PARCEL NUMBER 34-01608.000

TRUE VALUE

$80,000

TAXABLE VALUE

$28,000

135 Newell Avenue (34-00571.000)

[7] The auditor valued this parcel at $84,940 for tax year 2018, and Mr. Ferren filed a decrease complaint with an opinion of value at $65,000. He testified the property is older and no significant changes have been made to the property.

[8] Upon review, we find Mr. Ferren has not carried his burden of presenting probative evidence to support his proposed value. Simply because no changes have been made to the

property does not mean a property's value has not changed nor does it mean the market has not changed over time. See *Gallick*, supra. We order the property valued in accordance with the auditor's value as follows:

PARCEL NUMBER 34-00571.000

TRUE VALUE

$84,940

TAXABLE VALUE

$29,730

133 Newell Avenue (34-00086.000)

[9] The auditor valued this parcel at $82,850 for tax year 2018, and Mr. Ferren filed a decrease complaint with an opinion of value at $55,000. Mr. Ferren testified he purchased the property approximately five years ago for $50,000. He also testified no significant changes have been made to the property.

[10] Upon review, we find Mr. Ferren has not carried his burden of presenting probative evidence to support his proposed value. Simply because no changes have been made to the property does not mean a property's value has not changed nor does it mean the market has not changed over time. See *Gallick*, supra. We likewise find the sale is too remote to be probative evidence of value. See *Akron*, supra. We order the property valued in accordance with the auditor's value as follows:

PARCEL NUMBER 34-00086.000

TRUE VALUE

$82,850

TAXABLE VALUE

$29,000

106 Norris Street (34-01649.000)

[11] The auditor valued this parcel at $76,050 for tax year 2018, and Mr. Ferren filed a decrease complaint with an opinion of value at $55,000. He purchased the property in 2005 for $50,000, according to the parcel card. He testified the property suffers from negative characteristics, and he testified no significant changes had been made to the property.

[12] Upon review, we find Mr. Ferren has not carried his burden of presenting probative evidence to support his proposed value. Simply because no changes have been made to the property does not mean a property's value has not changed nor does it mean the market has not changed over time. See *Gallick*, supra. We likewise find the 2005 sale is too remote to be probative evidence of value. See *Akron*, supra. We order the property valued in accordance with the auditor's value as follows:

PARCEL NUMBER 34-01649.000

TRUE VALUE

$76,050

TAXABLE VALUE

$26,620

172 South Marietta Street (34-00176.000)

[13] The auditor valued this parcel at $78,610 for tax year 2018, and Mr. Ferren filed a decrease complaint with an opinion of value at $60,000. He testified the property suffers from negative characteristics and that no significant changes have been made to the property. He also noted he purchased the property in 1999 for $59,000. Further upgrades were made to the porch and kitchen.

[14] Upon review, we find Mr. Ferren has not carried his burden of presenting probative evidence to support his proposed value. Simply because no changes have been made to the property does not mean a property's value has not changed nor does it mean the market has not changed over time. See *Gallick*, supra. Additionally, it does appear some meaningful changes have been made to the property. We find the 1999 sale is too remote to be probative evidence of value. See *Akron*, supra. Therefore, we order the property valued in accordance with the auditor's value as follows:

PARCEL NUMBER 34-00176.000

TRUE VALUE

$78,610

TAXABLE VALUE

$27,510

268 East Main Street (34-00784.000)

[15] The auditor valued this parcel at $74,860 for tax year 2018, and Mr. Ferren filed a decrease complaint with an opinion of value at $40,000. He purchased the property via land contract for $35,000, and the conveyance fee statement was filed in January 2018. The Ohio Supreme Court held in *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 11, that "the effective date of a sale for real-property-valuation purposes is the date the conveyance-fee statement is filed with the county auditor's office." Per *Lone Star*, this board has held the effective date of a land contract sale is the date the conveyance fee statement is filed with the auditor. See *Gorodyuk Estate, LLC v. Franklin Cty. Bd. of Revision* (July 16, 2019), BTA No. 2018-1270, unreported. Accordingly, we find the land contract price to be the best evidence of value and order the property valued as follows for tax year 2018:

PARCEL NUMBER 34-00784.000

TRUE VALUE

$35,000

TAXABLE VALUE

$12,250

157 South Marietta Street (34-02215.000)

[16] The auditor valued this parcel at $74,680 for tax year 2018, and Mr. Ferren filed a decrease complaint with an opinion of value at $50,000. He testified the property suffers from negative characteristics and that no significant changes have been made to the property.

[17] Upon review, we find Mr. Ferren has not carried his burden of presenting probative evidence to support his proposed value. Simply because no changes have been made to the property does not mean a property's value has not changed nor does it mean the market has not changed over time. See *Gallick*, supra. Therefore, we order the property valued in accordance with the auditor's value as follows:

PARCEL NUMBER 34-02215.000

TRUE VALUE

$74,680

TAXABLE VALUE

$26,140

223 East Main Street (34-00572.000)

[18] The auditor valued this parcel at $91,150 for tax year 2018, and Mr. Ferren filed a decrease complaint with an opinion of value at $65,000. He testified the property suffers from negative characteristics and that no significant changes have been made to the property.

[19] Upon review, we find Mr. Ferren has not carried his burden of presenting probative evidence to support his proposed value. Simply because no changes have been made to the

property does not mean a property's value has not changed nor does it mean the market has not changed over time. See *Gallick*, supra. Therefore, we order the property valued in accordance with the auditor's value as follows:

PARCEL NUMBER 34-00572.000

TRUE VALUE

$91,150

TAXABLE VALUE

$31,900

1/2 Woodrow Avenue (34-00194.000)

[20] The auditor valued this parcel at $118,680 for tax year 2018, and Mr. Ferren filed a decrease complaint with an opinion of value at $90,000. He testified the property suffers from negative characteristics and that no significant changes have been made to the property.

[21] Upon review, we find Mr. Ferren has not carried his burden of presenting probative evidence to support his proposed value. Simply because no changes have been made to the property does not mean a property's value has not changed nor does it mean the market has not changed over time. See *Gallick*, supra. Therefore, we order the property valued in accordance with the auditor's value as follows:

PARCEL NUMBER 34-00194.000

TRUE VALUE

$118,680

TAXABLE VALUE

$41,540

117 West Main Street (34-02336.000)

[22] The auditor valued this parcel at $79,740 for tax year 2018, and Mr. Ferren filed a decrease complaint with an opinion of value at $70,000. He testified the property suffers from

negative characteristics and that no significant changes have been made to the property.

[23] Upon review, we find Mr. Ferren has not carried his burden of presenting probative evidence to support his proposed value. Simply because no changes have been made to the property does not mean a property's value has not changed nor does it mean the market has not changed over time. See *Gallick*, supra. Therefore, we order the property valued in accordance with the auditor's value as follows:

PARCEL NUMBER 34-02336.000

TRUE VALUE

$79,740

TAXABLE VALUE

$27,910

137 Newell Avenue (34-00573.000)

[24] The auditor valued this parcel at $97,410 for tax year 2018, and Mr. Ferren filed a decrease complaint with an opinion of value at $80,000. He testified the property suffers from negative characteristics and that no significant changes have been made to the property. He did note new floors had been added.

[25] Upon review, we find Mr. Ferren has not carried his burden of presenting probative evidence to support his proposed value. Simply because no changes have been made to the property does not mean a property's value has not changed nor does it mean the market has not changed over time. See *Gallick*, supra. Therefore, we order the property valued in accordance with the auditor's value as follows:

PARCEL NUMBER 34-00573.000

TRUE VALUE

$97,410

TAXABLE VALUE

$34,090

266 East Main Street (34-00749.00)

[26] The auditor valued this parcel at $98,920 for tax year 2018, and Mr. Ferren filed a decrease complaint with an opinion of value at $70,000. He testified the property suffers from negative characteristics and that no significant changes have been made to the property. He did note new floors had been added.

[27] Upon review, we find Mr. Ferren has not carried his burden of presenting probative evidence to support his proposed value. Simply because no changes have been made to the property does not mean a property's value has not changed nor does it mean the market has not changed over time. See *Gallick*, supra. Therefore, we order the property valued in accordance with the auditor's value as follows:

PARCEL NUMBER 34-00749.000

TRUE VALUE

$98,920

TAXABLE VALUE

$34,620

OHIO BOARD OF TAX APPEALS

DOW AND THELMA FOSSELMAN, (et. al.), Appellant(s), vs. PICKAWAY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-768 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DOW AND THELMA FOSSELMAN
Represented by:
THELMA FOSSELMAN
15153 MATVILLE ROAD
ORIENT, OH 43146

For the Appellee(s) - PICKAWAY COUNTY BOARD OF REVISION
Represented by:
JUDY C. WOLFORD
PROSECUTING ATTORNEY
PICKAWAY COUNTY
203 SOUTH SCIOTO STREET
CIRCLEVILLE, OH 43113

Entered Tuesday, February 11, 2020

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

Property owners Dow and Thelma Fosselman appeal from a decision of the Pickaway County Board of Revision ("BOR") removing the subject property from the current agricultural use value ("CAUV") program for tax year 2019. This board held an evidentiary hearing on September 18, 2019, but the BOR did not appear. We decide the case on the notice of appeal, the statutory transcript, this board's hearing record ("H.R."), and any written argument.

The subject property consists of two contiguous parcels. One parcel is 10.016 acres and the other 5.30 acres. Appellants own both and operate them as a single economic unit. One acre of the property is valued as a homesite. See generally *Johnson v. Clark Cty. Bd. of Revision* (Feb. 27, 2013), BTA No. 2011-Y-1699, unreported (discussing CAUV homesites). Appellants

filed their 2019 CAUV renewal application in February 2019. They reported the property was used for commercial husbandry and for growing crops. The auditor denied the application indicating the property did not meet the CAUV program's income requirement. Appellants appealed to the BOR who affirmed the denial based on informal guidance from the Ohio Department of Taxation. It appears that informal guidance was an email that stated: "Although the acreage is over 10 acres, the $2,500 income requirement is an appropriate benchmark for making an eligibility determination." Appellants filed a notice of appeal with this board and presented documentary and testamentary evidence at this board's hearing.

The owner bears the burden of proving his or her property qualifies for the CAUV program. *Killibrew v. Licking Cty. Bd. of Revision* (May 6, 1994), BTA No. 1992-M-1041, unreported. The CAUV program grants preferential tax treatment to "land devoted exclusively to agricultural use." R.C. 5713.31. CAUV eligibility is tested slightly differently depending on if the property is less than ten acres or if a parcel is ten or more acres. See R.C. 5713.30(A). Property that falls below the ten-acre mark must meet an income requirement. See id. There is no income requirement if the property is ten acres or more.

The Ohio Supreme Court has applied the single economic unit doctrine when determining if a property falls above or below the ten-acre rule. See *Renner v. Tuscarawas Cty. Bd. of Revision*, 59 Ohio St.3d 142 (1991). Tracts that are more than one parcel should bemconsidered the same property for CAUV purposes when the entire property is used as a single economic unit. See *Stults v. Delaware Cty. Bd. of Revision* (Aug. 20, 2004), BTA No. 2003-P-287, unreported. The undisputed evidence before this board is the parcels have common owners (appellants) and are operated a single economic unit. Therefore, we find the BOR erred in imposing the income requirement. The income requirement only applies to tracts that fall below the ten-acre mark. The subject property is greater than ten acres; therefore, no income requirement applies.

We also find the property is used exclusively for agricultural purposes and find the BOR erred in finding otherwise. Appellants presented evidence at this board's hearing that the property is used for husbandry and other agricultural purposes as defined by R.C. 5713.30(A). H.R. at 6. Appellants specifically offered the testimony of neighbor Carolyn Loxley, who testified that the property is used for husbandry.

For these reasons, the decision of the BOR is reversed. This case is remanded with instructions to return the property to the CAUV program.

OHIO BOARD OF TAX APPEALS

CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2018-2224
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION
Represented by:
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
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CLEVELAND, OH 44113

JAM HOLDINGS LLC
91-1051 MAKAHAIAKU ST
KAPOLEI, HI 96707

Entered Tuesday, February 11, 2020

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

The Cleveland Metropolitan Schools Board of Education ("BOE") appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's valuation of the subject property for tax year 2017. Each party either waived its appearance or failed to appear at this board's hearing. No party filed written argument. Accordingly, we decide the case on the notice of appeal and the statutory transcript ("S.T.").

The subject property is a single parcel improved with apartments. The fiscal officer valued the property at $100,000 for tax year 2017, and the BOE filed an increase complaint requesting a value $435,000. Appellee JAM Holdings, LLC ("JAM") filed a countercomplaint asking the fiscal officer's value be retained. The countercomplaint states the property is in disrepair and "seller misrepresented cashflow property was producing[.]"

The record shows the property has been subject to two recent sales. The BOE presented evidence of a December 2017 sale for $435,000. The BOE supplied a purchase statement, which confirms the sale price. The BOR also reviewed county records related to an earlier sale on February 10, 2016. The BOR considered the conveyance fee statement from that transfer, which indicates the property sold for $87,000 on February 10, 2016, and no portion of the sale was attributable to non-realty. The BOR also considered a purchase contract for the February 2016 sale.

The BOR ultimately retained the fiscal officer's value in holding:

> There was no appearance by the owner. Counsel for the BOE presented evidence of a sale of the subject on 12/19/2017 for the requested value. County records also indicate a sale of the subject on 2/10[/]16 for $87,000. This board is unable to determine the changes to the property as of 1/1/2017 or the true arms length nature of the transfers. No change is warranted.

S.T., Ex. E. The BOE appealed to this board.

The appellant must prove the adjustment in value requested when appealing from a board of revision to this board. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has been clear "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." *Terraza 8, L.L.C. v.*

Franklin Cty. Bd. of Revision, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶¶ 31-34 (quoting *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129).

Upon review, we find the February 2016 sale is the best evidence of value because it occurred closer to the tax-lien date. Both sales are presumed recent because they occurred less than 24 months before the tax-lien date or occurred after the tax-lien date. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. No evidence suggests either of the sales is not recent, e.g., the character of the property changed dramatically between tax-lien date and the sale date. Both sales are facially qualifying and supported by sale documents. In resolving the two, we find the February 2016 sale to be better evidence because it occurred only 11 months before tax-lien date. By contrast, the December 2017 sale occurred 12 months after the tax-lien date. In *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, the Ohio Supreme Court held "[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 period 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." See also *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092 (effective date of a sale is the date the conveyance fee statement is filed with the fiscal officer).

For these reasons, we find the true and taxable values of the subject property as of January 1, 2017, were as follows:

PARCEL NUMBER 019-06-058

TRUE VALUE

$87,000

TAXABLE VALUE

$30,450

OHIO BOARD OF TAX APPEALS

WENGER ACQUISITIONS, LLC, (et. al.), Appellant(s), vs. STARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-859 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WENGER ACQUISITIONS, LLC
Represented by:
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WENGER ACQUISITIONS, LLC
2100 VENTURE CIRCLE SE
MASSILLON, OH 44646

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

MASSILLON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

Entered Tuesday, February 11, 2020

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

Wenger Acquisitions LLC ("Wenger") appeals from a decision of the Stark County Board of Revision ("BOR"), retaining the auditor's value of the subject property for tax year 2018. We decide this case on the notice of appeal and the statutory transcript.

Wenger purchased the property in an auction sale for $125,220 in November 2016. Wenger filed a decrease complaint for tax year 2017 asking the BOR to value the property per

the sale. The BOR retained the auditor's value, and Wenger appealed to this board. See *Wenger Acquisitions, LLC v. Stark Cty. Bd. of Revision* (Mar. 28, 2019), BTA No. 2018-1555, unreported ("*Wenger I*"). Our decision in *Wenger I* outlined the general presumption that auction sales are presumed *not* to be the best evidence of value. However, we found Wengerhad overcome that presumption after presenting evidence about the auction, the number of bidders, the presence of a minimum bid, etc. We further found "no substantial changes to the property occurred between the date of sale and tax lien date ***." See id. Accordingly, we found the sale created a rebuttable presumption of value and ordered the property valued in accordance with the sale for tax year 2017.

Before this board issued our decision for tax year 2017, Wenger filed a decrease complaint asking the property be valued according to the sale for tax year 2018. The BOR retained the auditor's value, and Wenger appealed 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). We are required to independently review all evidence before us and "render a value determination consistent with such information." *Herbert J. Hope, Jr., Trustee v. Cuyahoga Cty. Bd. of Revision* 2012-L-2291, unreported. (July 26, 2013), BTA No. A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that precedes the tax-lien date by less than 24 months is presumed recent. See *Wenger I*. This board has recognized it will respect its own precedent in cases involving similar facts. See *Middleton v. Cuyahoga Cty. Bd. of Revision* (Jan. 13, 1995), BTA No. 1994-K-1137, unreported. We see no reason to revisit our finding in *Wenger I* that the "November 2016 sale was voluntary and arm's length." With regard to recency, we still presume the sale is recent because it occurred less than two years prior to tax-lien date. No party has pointed to any fact in the record showing there were any significant changes to the property between November 2016 and January 1, 2018.

For these reasons, this board finds the true and taxable value of the subject property as of January 1, 2018, were as follows:

PARCEL NUMBER 10008179

TRUE VALUE

$125,220

TAXABLE VALUE

$43,830

OHIO BOARD OF TAX APPEALS

CHARLES F. AND VIRGINIA KITCHENS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-806 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CHARLES F. AND VIRGINIA KITCHENS
OWNER
18900 SHELBURNE RD
SHAKER HTS, 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 Tuesday, February 11, 2020

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

This matter is now decided upon appellants' notice of appeal and the statutory transcript certified by the county board of revision. On June 24, 2019, appellants filed an application for remission with this board; however, appellants did not include a copy of a board of revision decision. On September 24, 2019, this board ordered the parties to show cause why this matter should not be dismissed for lack of jurisdiction as a premature appeal. None of the parties responded.

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, we find that 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

MARY ELLEN HOWITT, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-805
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARY ELLEN HOWITT
OWNER
1641 WITHERBEE DR
TROY, MI 48084

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, February 11, 2020

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

This matter is now decided upon appellant's notice of appeal and the statutory transcript certified by the county board of revision. On June 24, 2019, the appellant filed an application for remission with this board; however, appellant did not include a copy of a board of revision decision. On September 24, 2019, this board ordered the parties to show cause why this matter should not be dismissed as premature. None of the parties responded.

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, 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

AL GAMMARINO, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-279
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - AL GAMMARINO
OWNER
3020 GLENFARM COURT
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 Tuesday, February 11, 2020

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

This matter is now considered upon an appeal from a decision of the Hamilton County Board of Revision ("BOR") determining the value of parcel number 651-0002-0209-00 for tax year 2017. We proceed to decide the matter upon the notice of appeal, the statutory transcript certified by the auditor, the record of the hearing before this board, and the parties' written arguments.

The auditor valued the subject property, a 1,342-square-foot single-family residence, at $72,080 for tax year 2017. Al Gammarino filed a complaint requesting a decrease in value to $35,720, arguing the increase from the prior year's value was not justified based on the condition of the property and comparable sales data. At the BOR hearing, Mr. Gammarino

presented photos of the condition of the property and information about sales of other properties on the same street. Based on the average sale prices of his comparables, he requested a value of $42.53 per square foot, or $35,720 total after adjustments for condition. He further explained that the subject property had been flooded in August 2016, as had many other properties in the Norwood area. As a result of the flooding, the property has no working furnace. He testified the property would need approximately $20,000 of repairs to bring it to rentable condition. Mr. Gammarino also argued that the auditor had failed to comply with his statutory duty to view or cause to be viewed the interior of the property in accordance with R.C. 5713.01(B) and R.C. 5713.03.

On behalf of the auditor, appraiser Don Ross testified to his own selection of comparable sales, which included the sale of 5427 Hunter Avenue (relied upon by Mr. Gammarino), and indicated a value at the midpoint of his sales, between $24.22 and $37.30 per square foot, would be appropriate for the subject property. After reviewing the complainant's and auditor's appraiser's evidence, the BOR voted to reduce the value of the subject property to $50,000.

Mr. Gammarino appealed to this board, requesting a further reduction in value to $35,000. At this board's hearing, at which the county appellees waived their appearance, Mr. Gammarino reiterated his argument that the auditor failed to comply with R.C. 5713.01(B). For the reasons stated in this board's decision in *Gammarino v. Hamilton Cty. Bd. of Revision* (Sept. 5, 2019), 2019-278, unreported, we reject his argument and any argument that the prior year's value must carry forward to tax year 2017. As to the valuation of the property, Mr. Gammarino argued the flooding that occurred in August 2016 and comparable sales he presented support a value lower than the auditor's initial value and the BOR's reduced value. The county auditor

submitted written argument in lieu of appearing at the hearing. He moved to strike any legal argument made by appellant; we hereby deny the motion because Mr. Gammarino appeared on his own behalf, rather than on behalf of another. See *Gammarino*, BTA No. 2019-278, supra.

As we consider the valuation of the subject property, we are mindful that the burden is on the appellant to 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). We are also mindful of the Supreme Court's instruction "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 evidence before us consists of comparable sales presented by appellant and by the auditor's appraiser, and appellant's photos and testimony about the condition of the property. We find appellant's evidence of the condition of the property falls short of probative evidence of value. As the Supreme Court has indicated on several occasions, simply presenting evidence of the negative characteristics of a property is insufficient without further analysis establishing how such defects affect value. See, e.g., *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996); *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397; *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588. Appellant has presented no such analysis, e.g., an appraisal. We therefore find appellant's evidence of the condition of the property fails to meet his burden of proof.

Upon review of the comparable sales evidence in the record, we agree with appellant and the BOR that the auditor's value is not supported. We find support for the BOR's value based on the sales presented by the auditor's appraiser at the BOR hearing. While we acknowledge the sales presented by appellant, we have limited information about the circumstances of the sales or the comparability of the properties to the subject. As the owner, Mr. Gammarino is competent

to testify about the value of his property; however, he is not an expert qualified to opine value based on comparable properties. See *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d248, 2014-Ohio-3620, ¶19. Although appellant indicated he has been a real estate broker for many years, he did not indicate that he had any specialized training such that he could adjust the comparable properties to the subject in a competent analysis. See The Appraisal of Real Estate (14th Ed.2013) 2-3 (explaining that training and ethical obligations of appraisers). On the whole, therefore, we find Mr. Ross's comparable sales more reliable. We further find the BOR's reduced value supported by such sales, and find appellant has failed to establish that a lower value is more appropriate given the record before us.

Based upon the foregoing, we find appellant has failed to meet his burden of proof in this matter. It is therefore the order of this board that the true and taxable values of the subject property as of January 1, 2017, were as follows:

TRUE VALUE

$50,000

TAXABLE VALUE

$17,500

OHIO BOARD OF TAX APPEALS

CASA ANDINA LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2873
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - CASA ANDINA LLC
Represented by:
MARGARITA MUNDA
315 LAFAYETTE AVENUE
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, February 12, 2020

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 Hamilton County Board of Revision ("BOR") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county BOR, and appellant's notice of appeal.

The appellant filed a notice of appeal with this board, however the documentation attached to appellant's notice of appeal does not constitute a BOR decision. The county appellees attached to their motion, certification that there is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, 150; *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68. Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MARY K PAOLONI, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-2767
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARY K PAOLONI
Represented by:
MARY LUCEY
689 ROBLEY LANE
GATES MILLS, OH 44040

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 Wednesday, February 12, 2020

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. (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

JEFFREY J. KIMMELL, (et. al.),	)
	)
Appellant(s),	)
	)
vs.	)
	)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)
	)
Appellee(s).	)

CASE NO(S). 2019-1430

(REAL PROPERTY TAX) DECISION AND ORDER)

APPEARANCES:

For the Appellant(s) - JEFFREY J. KIMMELL
Represented by:
JEFFREY KIMMELL
8271 ASBURY HILLS DRIVE
CINCINNATI, OH 45255-4558

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, February 12, 2020

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

[1] The taxpayer appeals a decision of the board of revision ("BOR"), which denied his request for remission of the penalty for untimely paying the property tax bill for parcel 500-0112-0032-00 for the second half of tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

[2] We note that this board previously considered the taxpayer's application for remission of the late-payment penalty for the second half of tax year 2017 in *Kimmell v. Hamilton Cty. Bd. of Revision* (Apr. 29, 2019), BTA No. 2018-2120, unreported. There, we remanded the

matter to the BOR to consider the application under the specific provision requested, i.e., underR.C. 5715.39(C), which provides that remission would be appropriate if the taxpayer demonstrates "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." We held that "[i]t is evident that the treasurer, auditor, and BOR considered the application consistent with R.C. 5715.39(B)(2), which provides 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.' However, there is no evidence that the BOR considered whether the facts and circumstances described on the *** application fell within the rubric of 'reasonable cause and not willful neglect' as *** requested." Id. at 2. On remand, the BOR convened a hearing to discuss whether the taxpayer's allegations proved "reasonable cause and not willful neglect" for failing to timely pay the property tax bill. After an extensive discussion, the BOR concluded that the application did not demonstrate that remission of the late-payment penalty would be appropriate under R.C. 5715.39(C). The BOR subsequently issued a written decision to that effect and this appeal ensued. Neither the taxpayer nor the county appellees requested an opportunity to submit evidence at a hearing before this board. The county appellees filed written argument, which asserted that the taxpayer had failed to satisfy the evidentiary burden before the BOR and 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 also *Estate of Raymond J. Battaglia v. Zaino* (Oct. 12, 2001), BTA No. 2001-L-511, unreported.

[4] Upon review, we find that the taxpayer has failed to provide sufficient evidence to support this appeal. The taxpayer alleged that he failed to timely pay the property tax bill for the second half of tax year 2017 because he was unfamiliar with the property tax payment process in

Ohio, as a recent transplant from Texas. Though we recognize that the taxpayer may have been unfamiliar with the property tax payment cycle in Ohio, failure to educate oneself about this process was unreasonable and no excuse for failing to timely the property tax bill.

[5] We note that the statutory transcript includes written argument from the taxpayer, which asserted that the property tax bills were being sent to the wrong address, i.e., to the previous owner. Beyond the taxpayer's bare assertion, the record is devoid of any evidence to demonstrate that the property tax bills were mailed to the wrong address. See e.g., *Fischer v.Warren Cty. Bd. of Revision* (Nov. 8, 2019), BTA No. 2019-777, unreported. Furthermore, "[f]ailure to receive any bill *** does not excuse failure or delay to pay any taxes shown on such bill or, except as provided in division (B)(1) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay." R.C. 323.13.

[6] Based upon the foregoing, we must conclude that the taxpayer has failed to demonstrate that he qualifies for remission of the late payment penalty under R.C. 5715.39(C). As such, we deny the taxpayer's request for remission of the late payment penalty for the second half of tax year 2017.

OHIO BOARD OF TAX APPEALS

MARIA N. CARAS, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-1289
vs.	)	
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARIA N. CARAS
OWNER
3006 EARLY ROAD
DAYTON, OH 45415

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 Wednesday, February 12, 2020

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, a duplex identified as parcel R72 11209 0030, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and record certified pursuant to R.C. 5717.01.

The property owner filed a complaint with the BOR, which requested that the subject property be revalued from its initially assessed value of $57,850 to $30,000. The BOR held a hearing on the matter, at which time the property owner appeared via telephone. She testified as to the condition of the property and the rental income derived from it. In support of the requested revaluation, the property owner submitted an appraisal report that valued the subject property at

$30,000 as of August 26, 2016. At the BOR decision hearing, the BOR members voted to reduce the subject property's value to $43,640, and noted their decision was based upon the subject property's condition and rental income. This appeal ensued. Neither the property owner nor the county appellees requested an opportunity to submit additional evidence at a hearing before this board. We will, therefore, base our decision on the arguments and evidence submitted 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. 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 sale of the subject property by way of an Affidavit of Survivorship from Gregory S. Caras (and others) in October 2016, as indicated on the property record card. The record is devoid of sufficient evidence about this sale such that this board could conclude that it was a recent, arm's-length sale upon which we could rely to determine the subject property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶31. We must, therefore, reject such sale.

We continue our analysis with the property owner's remaining evidence, i.e., appraisal report and testimony submitted to the BOR. Unfortunately, we do not find the appraisal report to be competent, credible, and/or probative evidence of the subject property's value for two primary reasons. First, the appraiser who performed the appraisal report, James A. Herbig, failed to testify at a hearing before the BOR, or 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). We acknowledge that appraiser testimony is not always necessary to accept an appraisal report as the best indication of value, see *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485; however, the property owner failed to sufficiently testify about the reliance placed upon the appraisal report, which precludes this board from accepting the Herbig appraisal report, see *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058. As a result, we must reject Herbig's appraisal report as the best indication of the subject property's value.

Second, Herbig valued the subject property as of August 26, 2016, more than sixteen months before the tax lien date of January 1, 2018. As has been repeatedly stated by both the Supreme Court and this board, while we may "'consider pre- and post-tax lien date factors that affect the true value of the taxpayer's property on the tax lien date[,]' *** [we] must base [our] decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question." *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 554-555 (1996). See also *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997) ("The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. *** The real estate market may rise, fall, or stay constant between any two dates, and the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact."). We note the record is completely devoid of any evidence explaining why Herbig valued the subject property as of August 26, 2016 in light of his exterior inspection of the subject property in June 2018. As a result, we must reject Herbig's appraisal report as the best indication of the subject property's value.

We must also conclude that the property owner's testimony about the subject property's condition and rental income to be equally unpersuasive. As to the defects of the subject property, i.e., that the duplex situated on the subject property was not in the best condition, the property owner failed to quantify that condition. How much should the subject property's value be reduced because the duplex is not in the best condition, $1,000 or $10,000? 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." This board has repeatedly rejected the argument that defects, not quantified by a proper appraisal, are sufficient evidence to reduce real property value. See e.g., *Bardshar Apts., Inc. v. Erie Cty. Bd. of Revision* (Mar. 15, 2016), BTA No. 2015-1451, unreported. Moreover, we note that Herbig failed to conduct an interior inspection of the duplex, which supports rejection of his appraisal report. See, e.g., *Nusekabel v. Hamilton Cty. Bd. of Revision* (Feb. 15, 2011), BTA No. 2010-K-40, unreported.

As to the rental income derived from the subject property, the property owner failed to provide any information about market income and expenses. In *Olmsted Falls Village Assn.*,supra, at 555, the court commented that "an appraiser may employ actual income as reduced by actual expenses *if both amounts conform to market*." (Emphasis added.) Continuing, the court noted that it has "required the BTA to make factual findings, supported by the record, of the appropriate market rents and expenses to be used in the income approach to value." Id. While the income and expenses derived from the subject property are certainly important, the notable absence of market income and expenses is critical. We have previously stated that "[t]he evidence of actual income, while the beginning point of any valuation finding, see Ohio Adm. Code 5703-25-07(D)(2) (contract rent of a given property is to be considered), is not, in itself,

determinative of value. The contract rents must reflect the market in which the property is found. The record before this board contains no market survey, so this board cannot compare the rents collected from the subject property with market rents." See *N. Canton City School District Bd. of Edn. v. Stark Cty. Bd. of Revision* unreported at 6. (Jan. 25, 2011), BTA No. 2008-M-42,

Having concluded that the property owner failed to provide legally sufficient evidence to support her requested value of $30,000, we now turn to the BOR's decision to reduce the subject property's value to $43,640. As noted above, the BOR relied upon the property owner's testimony about the subject property's condition and rental income. We have already concluded that such evidence was not competent, credible, and/or probative evidence of the subject property's value for the above-stated reasons. Though the BOR hearing notes suggest that the BOR *may* have changed the subject property's condition from "average" to "fair," to reach its value decision, there is no evidence quantifying such change. Likewise, there is no evidence quantifying the impact of the subject property's rental income. Because we cannot replicate the BOR's decision, i.e., copy the analysis that led a value of $43,640, we cannot affirm the BOR's decision. See *Sapina v. Cuyahoga Cty. Bd. of Revision,* 136 Ohio St.3d 188, 2013-Ohio-3028.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15, (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we conclude the property owner failed to provide competent, credible, and/or probative evidence of the subject property's value before the BOR and before this board. Furthermore, because we are unable to replicate the BOR's decision, or to fully determine how the BOR arrived at its value, we are forced to conclude that the BOR's decision is unsupported. We therefore reinstate the subject property's initially assessed value. See *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. *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." (Parallel citations omitted.)).

It is, therefore, the order of this board that the subject property shall be valued, as follows, as of the tax lien date:

TRUE VALUE

$57,850

TAXABLE VALUE

$20,250

OHIO BOARD OF TAX APPEALS

JOSEPH CHIOFOLO, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1053
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, February 12, 2020

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 67-15849, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is improved with a single-family home built in 1903. The fiscal officer initially assessed the subject's total true value at $79,740. Appellant filed a complaint with the BOR seeking a reduction in value to $20,000. The BOR convened a hearing, though no one appeared on behalf of appellant. Nevertheless, the BOR considered evidence submitted by appellant, which included documents related to probate proceedings related to the estate of the prior owner (appellant's mother) that resulted in appellant's ownership of the property. The

BOR reviewed the documents, which reflected a value for the property of $20,000, and noted that it accorded no weight to them because there was no testimony or sufficient explanation for the $20,000 value. The BOR issued a decision maintaining the initially assessed valuation, which appellant appealed to this board. At this board's hearing, appellant testified about the ownership history of the property and its negative condition, asserting that it is badly in need of about $60,000 worth of repairs due to its dilapidated condition. Appellant also presented photographs to corroborate his testimony and an appraisal report to relate those condition issues to the property's value. The appraiser opined that the value of the property was $25,000 as of January 1, 2018, but did not appear to testify in support of his analysis. The county appellees waived the opportunity to present evidence or argument on appeal.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To satisfy this burden, appellant must produce competent and probative evidence to establish the correct value of the subject property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. 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, appellant has submitted two different valuation reports; however, both constitute unreliable hearsay because they were presented without testimony from the respective appraiser. 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*"). When a party submits a written

appraisal, the presentation of the appraiser as a witness allows the other parties and this board the opportunity to evaluate the credibility of the appraiser and the reliability of his or her analysis. 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; *Akron Natl. Bank & Trust Co. v. Freed & Co.* (Aug. 20, 1980), Medina App. No. 957, unreported; *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported.

In some instances, even without testimony from the author, the information contained within the appraisal may furnish an independent basis for valuing the property. *Team Rentals*, supra, at ¶27. The reports in this case do not meet the standard necessary to do so. 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). With respect to the probate valuation letter, although it was relied upon by the probate court, we are unable to review the details of the sales comparison approach, including the underlying data, to determine regarding adjustments made, if any. Additionally, the report was prepared several years before the tax lien date and no market information has been offered to relate the value to the tax lien date.

With respect to the appraisal prepared for this board's hearing, we have several unanswered questions regarding the methodology. For instance, the appraiser discussed deferred maintenance necessary at the subject and each of the comparable sales, but it is unclear whether he personally viewed the comparable properties to confirm their conditions. This is particularly relevant where he made considerable adjustments for condition (ranging from $15,000 to $50,000) and gross adjustments ranging from 71.4% to 81.8% without a more thorough explanation as to the way they were derived. Furthermore, we find that this appraisal provides some support for the fiscal officer's initial value. Appellant's primary contention is that the fiscal officer failed to take the subject's condition into consideration. After personally viewing the

property and the necessary repairs, the appraiser concluded that the property's condition was "fair," which is the same condition utilized by the fiscal officer for the initial valuation. Thus, we find that the appraisal evidence not only fails to demonstrate a new value, but moreover fails to negate the fiscal officer's value.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$79,740

TAXABLE VALUE

$27,910

OHIO BOARD OF TAX APPEALS

HUBER HEIGHTS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),
Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-2185
(REAL PROPERTY TAX DECISION AND ORDER)

APPEARANCES:

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Entered Wednesday, February 12, 2020

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

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number P70 04005 0128, 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, and the written argument of the parties. We note that during the pendency of this appeal, title to the property changed from appellee Jai Shreeram, Inc. to a new owner, Aashirvad LLC. Aashirvad moved to join the appeal as an appellee. To the extent that this board has not yet formally done so, we grant Aashirvad's motion.

[2] The subject property is improved with a three-story limited-service hotel operating as a Holiday Inn Express with 65 guest rooms. The auditor initially assessed the subject's total true value at $2,248,680. The BOE filed a complaint with the BOR seeking an increase in value to $4,850,000, and Jai Shreeram filed a countercomplaint in support of maintaining the auditor's value. At the BOR hearing, the BOE presented evidence that the subject property transferred on December 11, 2017 for a recorded sale price of $4,850,000. The BOE argued that the value of the subject property should be increased to the reported sale price.

[3] Jai Shreeram did not challenge the recency or arm's-length nature of the sale, but instead claimed that the transfer of the real property was part of a bulk transaction that included consideration for items other than real property and the reported sale price should be ignored. The purchase agreement reflected a total purchase price of $5,350,000 for the going concern, with an allocation of $4,500,000 for the building, $350,000 for the land, and $500,000 for personal property (including furniture, fixtures, and equipment ("FF&E")). The owner of Jai Shreeram testified that the seller made the allocation and offered it as "take it or leave it" after the parties had been negotiating for some time and significant funds had already been expended. Jai Shreeram further maintained that the allocation ignored the business value of the going concern. As such, Jai Shreeram asserted that the allocation in the purchase agreement should be ignored.

[4] Jai Shreeram offered testimony and a written appraisal report from Stephen J. Weis, MAI, who opined that the value of the going concern was $5,350,000, with $3,550,000 attributable to the subject real property. Weis performed the sales comparison and income approaches to value to determine the value of the going concern. For his sales comparison approach, Weis utilized the sales of six comparable properties, though he ignored the subject sale in his analysis and instead considered it a "data point." Weis concluded that per this approach, the value of the subject going concern was $5,330,000.

[5] Weis utilized data from other limited service hotels in the area to develop an income approach to value. The stabilized operating statement reflected that all income was attributed to the room rentals, as there was no income attributed to additional goods or services and a loss was attributed to "other income" because expenses to generate other income exceeded the actual income that was produced. After reducing for operating expenses, Weis concluded that the net operating income ("NOI") would be $667,297, to which he applied a capitalization rate of 10.5% plus a 1.97% tax additur (roughly 2/3 of the 2.97% full tax additur to account for the nonrealty contribution to income). Weis determined that the value of the going concern was $5,350,000 (rounded) based on the income approach. Weis reconciled to the income approach because it mirrored the 2017 sale price.

[6] In order to allocate the value of the going concern among its component parts, Weis "restructured" the income and expense statement to exclude real property taxes, reserves for replacement, management fees, and franchise fees. Weis then subtracted "business income" and "personal property income" by utilizing two different methodologies to allocate the value among the separate components. To estimate the value of personal property, Weis relied on data from his files from other similar properties and the Marshall Swift Valuation book. He stated that the property had undergone an improvement plan in 2016 that resulted in the replacement of much of

the FF&E, though not everything was replaced at that time. Weis estimated that the total replacement cost would be $1,095,000 and reduced it by 35% for depreciation, based on an average age of 3.5 years out of a 10-year economic life. Based on this calculation, Weis estimated that the value of the personal property was $710,000 (rounded) as of January 1, 2017. Weis next used "yield capitalization theory" to attribute value to the income-generating components, such as management contribution, personal property, and real property to arrive at allocations for business, personal property, and real property values. Weis utilized the management fees and franchise fees to calculate that 17.76% ($344,761) of the effective gross income ($1,941,309) was attributable directly to the hotel business. Weis then attributed $109,500 to the annual return of the cost of personal property (10% of the replacement cost each year over its 10-year economic life). Weis attributed an additional $81,650 as a return *on* personal property, asserting that an investor would expect not only recoup the cost of replacement but also earn a return on that investment. To calculate this number, Weis applied an 11.5% rate of return on the current value of the personal property ($710,000). Weis subtracted the income to the business ($344,761) and income to personal property ($191,150) from the total reconstructed NOI ($1,012,057), concluding that the remaining $476,146 constituted the income to the real property. Weis again applied the 10.5% capitalization rate plus the full 2.97% tax additur, which showed a value of $3,534,863 for the real property.

[7] For an alternate method of allocation, Weis again started with the "reconstructed income," from which he subtracted the return of personal property and real estate tax, resulting in $797,181 "net to total property." Weis applied a 30% rate of return to the $344,761 business income, an 11.5% return on the $81,650 personal property income, and 10% return on $370,770 real property income (reflecting that the real estate tax was already removed). Weis added these calculations together ($1,149,203, $710,000, and $3,707,697, respectively) for a total value of $5,566,900 for the going concern. Weis applied the percentage that each component contributed to that total

(20.64%, 12.75%, and 66.60%, respectively) to his conclusion of the value for the going concern. This resulted in an allocation of $1,104,000 for business value, $682,000 for personal property, and $3,563,000 for real property. Reconciling the two methods, Weis concluded that the value of the real property was $3,550,000 as of January 1, 2017.

[8] The BOR issued a decision increasing the initially assessed valuation to $3,550,000 based on the appraisal evidence. From this decision, the BOE filed the present appeal seeking an increase to $4,850,000 based on the recorded sale price, noting at this board's hearing that it was consistent with the allocation made by the parties to the transaction in the purchase agreement. The BOE argued that the parties' contemporaneous allocation is more probative than the value contained in an appraisal report performed for litigation purposes. The BOE further argued that the appellee property owners did not rebut the sale or provide reasons to disregard the sale and rely on appraisal evidence. The BOE challenged the propriety of Weis's deduction for business value, citing to *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011-Ohio-2258. The BOE asserted that if Weis's $1,090,000 business value is added to his value for the real estate, the resulting value ($4,640,000) supports the recorded purchase price. The appellee property owners argued that the BOE failed to meet its burden, asserting that they had met their burden to rebut the sale at the BOR. The appellee property owners further maintained that *Hilliard City Schools* is distinguishable because the present case includes the value of the Holiday Inn Express franchise name separable from other business assets.

[9] 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 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. 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.

[10] In the present appeal, there is no dispute that the subject property transferred via a recent, arm's-length transaction. The only disagreement is the proper sale price attributable to the real property. The BOE argues that the recorded sale price based on the parties' contemporaneous allocation establishes the proper sale price, while the property owners contend that the Weis's appraisal provides a more accurate allocation of the components that transferred in the transaction. The property owners challenge the allocation on two fronts. First, the property owners assert that the allocation was made by the seller and did not reflect Jai Shreeram's opinion of the value of the component parts. Second, the property owners argue that the recorded allocation does not reflect the "business value" that transferred with the real property and FF&E. The BOE maintains that such a business value is not separable from the value of the real property.

[11] Because the best evidence of value rule is a rebuttable presumption, we must determine whether the opponent of the sale price has provided evidence that constitutes a more accurate value of the subject property. See *Westerville City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 308, 2018-Ohio-3855, ¶14. Rebuttal evidence may include an appraisal to demonstrate that the sale was not reflective of market value or to provide affirmative evidence of value. *Spirit Master Funding IX, L.L.C. v. Cuyahoga Cty Bd. of Revision*, 155 Ohio St.3d 254, 2018-Ohio-4302, ¶9, citing *Westerville City School Dist.*, supra. In this case, however, Weis's conclusion of value for the going concern supported the unallocated sale

price for the going concern, and there is no challenge as to whether the sale provides reliable evidence of value of the going concern. Therefore, the only question before us is the proper allocation of that sale price.

[12] We disagree with the property owners' argument that the BOE must provide evidence on appeal regarding the allocation because the BOR adopted Weis's appraisal. An owner who seeks to reduce the valuation of real property below the full sale price bears the burden of showing the propriety of allocating some portion of that reported price to other assets. *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921; see, also, *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249. Nevertheless, as noted above, this board must perform a de novo review of the issues surrounding a sale. Therefore, we must independently weigh all evidence in the record to determine the appropriate allocation, giving due weight to both the recorded sale price and Weis's appraisal.

[12] In this case, it is uncontested that the full sale price of $5,350,000 includes nonreality items. As such, we find the court's direction regarding the allocation of a sale of a nursing home is relevant the present case. See *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611. In *Arbors E.*, the court noted that "[w]hether to use the sale price is not in dispute; the controversy lies in whether and how to allocate that sale price among assets." Id. at ¶4. The court explained that this board must first determine whether the record contained adequate support to establish that a portion of the sale price included consideration for assets other than real estate, and if so, then this board must determine the proper allocation of the total purchase price. Id. In that case, the court discussed that 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 where no contemporaneous allocation was made. Id. at ¶23, citing *Buckeye Terminals, L.L.C. v. Franklin*

Cty. Bd. of Revision, 152 Ohio St.3d 86, 2017-Ohio-7664, ¶35. Thus, if we find that the recorded sale price did not accurately reflect the consideration of each component that transferred, then this board may rely on Weis's appraisal.

[13] Based on the circumstances of this appeal, we find that Weis's personal property conclusion is more probative than the allocation attributable to personal property that was made at the time of the sale. Weis explained that he determined the replacement cost for the personal property based on market data and that much of the personal property, but not all, was replaced shortly before the sale. Weis took this into consideration and based his deprecation rates on an average age of 3.5 years. The owner asserted that he lacked the ability to negotiate a different distribution among the components. While the commemorations allocation is often a better demonstration of the value of property conveyed, here we find that Weis's personal property valuation better reflects its value at the time of the conveyance.

[14] The property owners maintain that in addition to the personal property, the transaction included the transfer of a "business value" through the transfer of the right to operate as a Holiday Inn Express. In *Hilliard City Schools*, the court affirmed this board's determination that any goodwill involved in the transaction was attributable to real property and not an intangible business value. The appellee property owners seek to distinguish that case from the present circumstances by highlighting the express contingency in the purchase agreement that the "flag," or Franchise Agreement that allowed Jai Shreeram to continue to operate the hotel as a Holiday Inn Express after the sale. This contingency does not distinguish the present appeal because the facts share an important parallel.

[15] In *Hilliard City Schools*, the buyer attempted to claim that the right to use the Hawthorn Suites trade name was an intangible asset that transferred with the real property. The court found that the purchase agreement disputed that contention and that no separate intangible right to use the trade name was included in the transaction. "To be sure, the bill of sale relating to the transfer of

personal property recites conveyance of the 'trade name of Hawthorn Suites,' but the asset-purchase agreement clarifies that the buyer must obtain the intangible right separately, with the seller's help. As a result, the 'conveyance' in the bill of sale appears to reflect the seller's quitting its claim to use the Hawthorn Suites trade name rather than actually constituting the transfer of a separate intangible right." Id. at ¶30. Similarly, here the purchase agreement shows that the seller did not simply transfer its rights as the franchisee. Rather, the contingency granted time for Jai Shreeram to obtain approval from the *franchisor* and required that a timely franchise application would be filed, proof of which must be provided to the seller. Accordingly, we find that the right to use the flag did not transfer with the property because the franchise agreement was reached with the franchisor in a separate agreement after an application process.

[16] Having determined that the flag was not included in the sale, we next look at whether some other business value was part of the transaction. We again look to *Arbors E.*, which discussed and distinguished *Hilliard City Schools* and *St. Bernard Self-Storage* and concluded that this board "erred by holding as a matter of law that any allocation to goodwill is improper." *Arbors E.*, at ¶20. The court explained that the goodwill was not separable from the real property in those cases because both a hotel and storage facility "involved businesses that derived profit by permitting others to use real estate." Id. at ¶21. The court concluded that the sale of a nursing home was a "the materially different circumstance," where the facility charges for care of its residents and a variety of additional services in addition to the permitted use of the space. Id.

[17] In light of the case law, we find that a deduction for goodwill in this case would be improper. In contrast to a service-heavy nursing home facility, the subject property is a limited service hotel and derives no income for other services, which falls squarely within *Hilliard City Schools*. We disagree with the appellee property owners' attempts to distinguish this case because contrary to their assertion, the right to operate as a Holiday Inn Express did not transfer from the seller with the real property. Thus, any goodwill that transferred was tied to buyer's ability to earn revenue from allowing the guests to utilize the real property (and, to some extent, the

personal property), and is not a separable asset.

[18] Even if we were to find that a business value deduction is proper, Weis's appraisal does not provide a basis to make this deduction. In order to calculate the business value, Weis combined the management fees and franchise fee into a single category. The management fee, however, is not properly included as a business expense. Because the subject operates as a limited service hotel, the management fee relates to the short-term rental of the subject real property and is tied to the real property rather than a separable business operation. Thus, Weis's inclusion of the management fee with the franchise fee increases the income attributable to the business and correspondingly decreases the income attributable to the real property. As such, we cannot rely on the income Weis attributed to the business value to establish an accurate value for business separable from real property. Furthermore, Weis provided no support for the 30% rate of return he applied to the calculated business income. Accordingly, we cannot rely on Weis's business value analysis.

[19] Weis also attempted to reconstruct the income approach to isolate the income attributable to real property and apply an adjusted capitalization rate to this income. While this methodology could result in an accurate allocation of value, Weis's analysis does not reach a reliable conclusion. First, we have questions about the reliability of Weis's NOI because of the treatment of other income. In his pro forma, Weis used a negative number for "other income," which reduced the effective gross income before any expenses were taken out. Weis then made a deduction for "other income" expenses. Weis explained that the negative number was due to expenses exceeding income. We find that a negative gross income component is not supported, particularly because an expense is subsequently taken to calculate net income. Although it appears to be only a small portion of the overall gross revenue, we cannot discern whether or how much revenue is generated from other income which clouds the entire report because the effective gross income is used to calculate the franchise and management fees in addition to the NOI conclusion.

[20] Second, the income attributable to the business includes the management fees, which

should not have been separated from the income attributable to real property. Third, Weis provided no support for the rate of return on personal property. Fourth, and significantly, Weis did not support the capitalization rate for the income attributable to real property. Weis used the same 10.5% capitalization rate for the value of the real property as he did to determine the value of the going concern. If he determined that the non-realty components required a higher rate of return and contributed to about 33.3% of the value, the capitalization rate should be lower. Weis did use a 10.0% rate of return in his alternate allocation method, but he offered no data to support that number and ultimately reduced the resulting value before he reconciled the two allocations. Accordingly, we find that Weis's allocation to real property is not reliable.

[21] In short, we find that the best evidence of the value of the subject real property is the purchase price for the going concern ($5,350,000) less the value of the personal property from Weis's [22] appraisal ($710,000).

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

$4,640,000

TAXABLE VALUE

$1,624,000

OHIO BOARD OF TAX APPEALS

SPRINGFIELD CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1275, 2018-1591 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, February 12, 2020

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

In these two consolidated cases, the Springfield Local School District Board of Education ("BOE") and property owner Harvest Station, LLC ("Harvest") appeal from a decision of the Summit County Board of Revision ("BOR") retaining the fiscal officer's value of the subject property for tax year 2017. We decide the case on the notice of appeal, the statutory transcript ("S.T."), and the parties' briefs.

The subject property comprises three parcels improved with a multi-tenant strip shopping center. A Giant Eagle anchors the center. Harvest purchased the property in February 2015 for $7,960,000. It bought the fee simple estate subject to several existing leases, including a lease to Giant Eagle. The BOE alleges Harvest relied on that sale in obtaining a reduction during a prior BOR proceeding for a previous tax year. Counsel for the BOE stated the parties settled that tax year for a value slightly higher than the sale.

Turning to tax year 2017, the fiscal officer valued the subject property at $7,214,080. Harvest filed a decrease complaint, and it presented the testimony and appraisal of Richard Racek, Jr., MAI, who valued the property at $5,250,000 for tax year 2017. Mr. Racek's opinion was that the Giant Eagle lease was above-market. Harvest argued the sale should be disregarded in favor of Mr. Racek's appraised value. The BOE argued the sale price should be adopted. The BOR ultimately retained the fiscal officer's valuation, and the parties appealed to this board. The parties submitted the case to this board on the briefs.

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). We are required to independently review all evidence before us and "render a value determination consistent with such information." *Herbert J. Hope, Jr., Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. When no hearing is requested, our factual review is confined to the evidence in the statutory transcript. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8,L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. The Ohio Supreme Court has been clear a leased fee sale creates a presumption of value; however, this board must, if prompted with evidence, consider whether a sale is indicative of value given the rental rates

in place, the creditworthiness of the tenant, and the lease terms. See *GC Net Lease @ (3) (Westerville) Inv'rs, L.L.C. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3856, ¶ 10 (discussing elements of a lease that might affect the utility of a sale). Mr. Racek's report states:

> Based upon a review of the rent roll which is provided in the Addendum of this report, the leases for the in-line tenants within the subject property generally fall within the range which has been established by the recent leases which have occurred in the marketplace. However, the Giant Eagle space appears to be significantly above market. Therefore, provided in the following chart are the projected rental rates for the various suites. All of these rental rates are projected to be on a triple net lease structure. The contributory value of the second floor area in the Giant Eagle space has been considered in the rent projection. Thus, the total gross potential income that the subject property is capable of generating on a triple net basis is developed as follows:
>
> Anchor Space 61,866 sq. ft. @ $ 5.00/sq. ft.= $309,330
>
> Larger Inline Space 7,600 sq. ft. @ $12.75/sq. ft.= $96,900
>
> Smaller Inline Space 6,400 sq. ft. @ $14.00/sq. ft.= $ 89 600

S.T., Ex. F at 43. Nineteen leases discussed in his report support Mr. Racek's table. The rent roll also supports Mr. Racek's analysis. The rent roll shows the Giant Eagle lease rate was approximately $9/SF, which is much higher than the lease comparables contained in Mr. Racek's report (before and after adjustments).

Turning to the rest of Mr. Racek's appraisal, he developed his opinion based on the sales comparison and the income capitalization approaches. For his sales comparison approach, he utilized five sales of properties located in the region. He adjusted the sales for size, location, occupancy, and property rights conveyed. His analysis led him to an indicated sales comparison

value of $5,310,000. For his income capitalization approach, he utilized nineteen leases to determine potential rent, and he developed his expense figures using operating expenses for nine nearby properties. After developing his capitalization rate, he calculated an indicated income approach value of $5,200,000. He ultimately valued the property at $5,250,000 after reconciling the two.

After review, we find Mr. Racek's appraisal is the best evidence of value. The only evidence before this board shows the existing lease to Giant Eagle was above-market, so we find the February 2015 sale is less probative of value than Mr. Racek's appraisal, which accounts for the above-market lease.

The BOE levels three primary arguments against Mr. Racek's appraisal, but we respectfully disagree with all three. First, the BOE argues Harvest cannot now disavow a sale it used in a prior BOR proceeding to obtain a reduction. However, the BOE has not provided this board with any evidence from the previous proceeding that would lead us to find Harvest is precluded from offering appraisal evidence contrary to the sale. We note we have previously held the issue of recency to a particular tax-lien date is not a matter subject to issue preclusion. See, e.g.,*McMahan v. Lorain Cty. Bd. of Revision* (July 31, 2015), BTA No. 2014-3473, unreported The BOE's second argument is Mr. Racek's appraisal "does not rise to the level of evidence necessary to rebut the recency or arm's length nature of the sale." BOE Br. at 5. We disagree. *GC Net Lease* makes clear a party may challenge a sale by showing it was subject to an above-market lease. *Terraza 8*, more generally, is clear a party may rebut a sale by showing its appraisal is better evidence of value.

Finally, the BOE argues Mr. Racek was not permitted to utilize the rent roll for the property. Instead, the BOE asserts, Harvest was required to call a representative of Harvest to authenticate a lease showing the rental rate. See BOE Br. at 5, 7 (citing *Hilliard City Schools*

Bd. of Edn. v. Franklin Cty. Bd. of Revision, 154 Ohio St.3d 449, 2018-Ohio-2046 ("*UTSI*")). However, *UTSI* acknowledges that an appraiser may properly rely on information provided to him or her when appraising the subject property. We also note the BOE does not claim the rent roll is incorrect, only that another witness should have authenticated it.

For these reasons, this board orders the property valued as follows for tax year 2017:

PARCEL NUMBER 51-03079

TRUE VALUE

$382,400

TAXABLE VALUE

$133,840

PARCEL NUMBER 51-03080

TRUE VALUE

$4,717,400

TAXABLE VALUE

$1,651,090

PARCEL NUMBER 51-08206

TRUE VALUE

$150,200

TAXABLE VALUE

$52,570

OHIO BOARD OF TAX APPEALS

HILLIARD CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1104 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HILLIARD CITY SCHOOLS BOARD OF EDUCATION
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
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TRINITY PLACE, LLC
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Entered Wednesday, February 12, 2020

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

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 050-009794-00, 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 is improved with a 24,000 square foot commercial building. A

fitness facility occupies 20,550 square feet (roughly 85.6%), a dance instructor occupies 3,000 square feet (12.5%), and a hair salon occupies the remaining 450 square feet (roughly 1.9%). The auditor initially assessed the subject's total true value at $1,780,000. The appellee property owner, Trinity Place, LLC, filed a complaint with the BOR seeking a reduction in value to $1,000,000. The BOE filed a countercomplaint in support of retaining the auditor's value.

[3] At the BOR hearing, Harry Lancz, a member of Trinity Place who is also a real estate broker acting as the property manager for the subject, testified regarding tenant and condition issues at the property since Trinity Place's purchase in 2011. Lancz explained that the fitness facility renting the majority of the space was the previous owner of the property but lost it following a foreclosure. Trinity Place allowed the fitness facility to remain in the space, though it was initially unable to pay all rent and expenses due to its financial difficulties. Trinity Place increased the required expense reimbursement, but claims that the fitness facility still could not cover the cost of the real property tax increase based on the auditor's new value. Lancz also explained that the building had fallen into some disrepair, particularly the stucco on the exterior, the roof, and the heating/cooling system. Lancz said that significant repairs were made to remedy these issues during 2017. Lancz also asserted that it would be expensive and difficult to alter the property to accommodate a different user for the gym space. Lancz maintained that the value of the property was $1,000,000.

[4] Trinity Place also presented testimony and a written report from appraiser Charles R. Porter, III, MAI. Porter opined that the value of the property was $1,200,000 as of January 1, 2017. Porter explained that when he visited the subject, it was in good condition had good curb appeal. He opined that the highest and best use for the subject was continued commercial use, and that the most likely purchaser would be either a fitness center or investor. Viewing the space as a big vanilla box, Porter chose four sales for his sales comparison approach, three of which

were single users and the fourth was a multitenant commercial building anchored by Salvation Army. After making adjustments for market conditions and physical characteristics of the properties, Porter concluded to a value of $50 per square foot, or $1,200,000.

[5] Porter also performed the income approach to value, utilizing a single rental rate of$6.00 (net) for the entire property, acknowledging it was lower than actual rents received by the three tenants, which he averaged at $7.76 per square foot. Porter explained that he placed significant weight on the $4.96 per square foot (net) rental rate paid by another fitness facility. Porter testified that he considered the rent in place at the subject property but believed that the rent in place was high, noting that the primary tenant had suffered financial difficulties and was month-to-month, not subject to a long-term lease agreement. Porter reduced his rent estimate for 5% vacancy and operating expenses, concluding to a net operating income of $121,760. Porter utilized one comparable sale and a band of investment analysis to rely on a 10% capitalization rate plus a 0.18% vacancy-weighted tax additur. Like the sales comparison approach, Porter's income analysis indicated a value of $1,200,000 (rounded).

[6] The BOE cross-examined Trinity Place's witnesses and challenged aspects of Porter's analysis but did not submit any independent evidence of value. Although the BOR stated that it was relying on Porter's appraisal, it issued a decision reducing the initially assessed valuation to $1,000,000. The BOE appealed the BOR's decision to this board.

[7] This board convened a hearing, at which the BOE presented testimony and written report from Thomas D. Sprout, MAI, who opined that the value of the property was $1,800,000 as of January 1, 2017. Sprout concluded that the subject's existing improvements contributed to its highest and best use, indicating that the property is multi-tenanted though the bulk of the

building is occupied by the fitness facility. Sprout described the property's location as being in a pocket of local neighborhood retail uses, noting that comparable properties for the smaller retail spaces were readily available within close proximity to the subject. Due to the layout of the larger space, however, Sprout expanded his search geographically to find comparable properties utilized by what he considers secondary fitness facilities.

[8] Like Porter, Sprout performed the sales comparison approach, adjusting the sales of four properties based on differences in market conditions and the physical characteristics of the properties. Sprout considered the sales of three multi-tenant properties and one with a single occupant, which was also considered by Porter in his sales-comparison approach. The unadjusted sale prices ranged from $58.50 to $105.37 per square foot, and Sprout concluded to a value of $75 per square foot, or $1,800,000.

[9] In his rental analysis, Sprout considered the rental rate of each portion of the property separately, placing significant weight on the leases in place on the tax lien date. Sprout calculated a gross potential rent at $176,738, based on rents of $7.25 per square foot (net) for the fitness space, $7.00 per square foot (net) for the dance instructor, and $15.00 per square foot (net) for the hair salon. Sprout applied a 4.5% vacancy rate and subtracted operating expenses, treating real property taxes as a reimbursed expense. Sprout calculated a net operating income of $157,499 at the current tax rate and $158,220 with taxes consistent with his determination of value. Sprout applied a market-derived capitalization rate of 8.75% plus a full tax additur, concluding to a value of $1,800,000 based on this approach.

[10] Sprout also offered some criticisms of Porter's appraisal, including his conclusion of market rent and lack of support for the capitalization rate. Sprout also stated that he believed Porter should have made additional adjustments in his sales comparison approach, and that several of the properties were not sufficiently similar based on their size and use.

[11] Lancz again testified for Trinity Place, making several criticisms of Sprout's appraisal. Lancz indicated that Sprout overstated the condition of the subject property because many of the repairs were made after the tax lien date. Lancz also described his unsuccessful attempts to sell the property. Porter also testified before this board to supplement his earlier testimony and express his opinion that the property had been exposed to the market for over a year and received few offers, all of which were below his opinion of value.

[12] 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 the 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*, 155 Ohio St.3d 247, 2018-Ohio-4286, ¶¶10-11.

[13] Upon review of the appraisals in this case, we find merit to the criticisms raised to each appraisal. For Porter's analysis, we find that he understated the quality of the subject property's

location as it compared to the other properties in his sales comparison approach. We further find that Porter did not provide sufficient support for his capitalization rate analysis or the basis for his overall rental rate. Porter considered market survey data that supported a higher rate and only one comparable property with a lower rate, upon which he placed significant weight. We disagree, however, with Sprout's criticism that by utilizing a single rent for the property, Porter disregarded the higher potential rental rates in the smaller spaces. Porter's report shows that he considered the weighted average of the space in his market rent analysis, and, as a practical matter, Sprout did not use a higher rent for all of the additional space. Sprout concluded a rent for the 3,000 square foot space lower than the fitness facility and used a higher rent only for the 450 square feet making up less than 2% of the building's total square footage.

[14] With respect to Sprout's appraisal, we place less weight on the rents in place at the subject property than he chose to do. While we acknowledge his position that the parties essentially renew the lease each month, we will not ignore the history of the fitness facility's questionable credit and payment history that affects the overall lease terms. Additionally, we find that the properties Sprout included in his sales comparison approach were superior to the subject in terms of their ability to attract an investor or potential tenant, particularly with respect to their locations and the surrounding users. Nevertheless, Sprout included sufficient market data within his report to support his rental rate conclusions irrespective of the rent in place on the subject property. Likewise, Sprout explained that the properties in his sales comparison approach bracketed the subject and that he adjusted them to account for the ways in which they were superior to the subject.

[15] We next consider the sale of a 29,059-square-foot former furniture store at $58.50 per square foot, which was considered by both appraisers in their respective sales comparison approaches. Porter made only one adjustment, which was 15% downward for his opinion that the comparable property had a superior location. Sprout made upward adjustments for size, physical condition, and land-to-building ratio, with a downward adjustment for market conditions at the time

of the sale. With respect to the appraisers' consideration of this particular sale, we find that Sprout's adjustments were better supported and establish that the true value of the subject property was above $58.50 per square foot, not below as was concluded by Porter.

[16] Finally, to the extent that Trinity Place relies on the failed attempts to sell the property, we find that this evidence does not support the requested value. 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 Trinity Place's failed attempts to sell the subject property does not establish its value.

[17] Upon consideration of the evidence in the record, we find that Sprout's appraisal analysis provides the most reliable evidence of value.

[18] 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

$1,800,000

TAXABLE VALUE

$630,000

OHIO BOARD OF TAX APPEALS

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fitness facility occupies 20,550 square feet (roughly 85.6%), a dance instructor occupies 3,000 square feet (12.5%), and a hair salon occupies the remaining 450 square feet (roughly 1.9%). The auditor initially assessed the subject's total true value at $1,780,000. The appellee property owner, Trinity Place, LLC, filed a complaint with the BOR seeking a reduction in value to $1,000,000. The BOE filed a countercomplaint in support of retaining the auditor's value.

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[13] Upon review of the appraisals in this case, we find merit to the criticisms raised to each appraisal. For Porter's analysis, we find that he understated the quality of the subject property's location as it compared to the other properties in his sales comparison approach. We further find that Porter did not provide sufficient support for his capitalization rate analysis or the basis for his overall rental rate. Porter considered market survey data that supported a higher rate and only one

comparable property with a lower rate, upon which he placed significant weight. We disagree, however, with Sprout's criticism that by utilizing a single rent for the property, Porter disregarded the higher potential rental rates in the smaller spaces. Porter's report shows that he considered the weighted average of the space in his market rent analysis, and, as a practical matter, Sprout did not use a higher rent for all of the additional space. Sprout concluded a rent for the 3,000 square foot space lower than the fitness facility and used a higher rent only for the 450 square feet making up less than 2% of the building's total square footage.

[14] With respect to Sprout's appraisal, we place less weight on the rents in place at the subject property than he chose to do. While we acknowledge his position that the parties essentially renew the lease each month, we will not ignore the history of the fitness facility's questionable credit and payment history that affects the overall lease terms. Additionally, we find that the properties Sprout included in his sales comparison approach were superior to the subject in terms of their ability to attract an investor or potential tenant, particularly with respect to their locations and the surrounding users. Nevertheless, Sprout included sufficient market data within his report to support his rental rate conclusions irrespective of the rent in place on the subject property. Likewise, Sprout explained that the properties in his sales comparison approach bracketed the subject and that he adjusted them to account for the ways in which they were superior to the subject.

[15] We next consider the sale of a 29,059-square-foot former furniture store at $58.50 per square foot, which was considered by both appraisers in their respective sales comparison approaches. Porter made only one adjustment, which was 15% downward for his opinion that the comparable property had a superior location. Sprout made upward adjustments for size, physical condition, and land-to-building ratio, with a downward adjustment for market conditions at the time of the sale. With respect to the appraisers' consideration of this particular sale, we find that Sprout's adjustments were better supported and establish that the true value of the subject property was above $58.50 per square foot, not below as was concluded by Porter.

[16] Finally, to the extent that Trinity Place relies on the failed attempts to sell the property, we find that this evidence does not support the requested value. 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 Trinity Place's failed attempts to sell the subject property does not establish its value.

[17] Upon consideration of the evidence in the record, we find that Sprout's appraisal analysis provides the most reliable evidence of value.

[18] 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

$1,800,000

TAXABLE VALUE
$630,000

OHIO BOARD OF TAX APPEALS

1346 MAIN ST LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1108
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 1346 MAIN ST LLC
Represented by:
MATTHEW MANN
PRESIDENT
1346 MAIN ST LLC
1335 MAIN ST
CINCINNATI, OH 45202

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

Entered Thursday, February 13, 2020

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

Property owner 1346 Main Street LLC appeals from a decision of the Hamilton County Board of Revision ("BOR") valuing the subject property at $209,000 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record ("H.R.").

The auditor valued the subject, commercial property, at $333,230 for tax year 2018. Appellant filed a complaint requesting a value of $140,900. At the BOR hearing, appellant presented evidence of negative characteristics, evidence about the auditor's valuation of nearby parcels, and the testimony and appraisal of W. Shaun Wilkins, MAI. He appraised the property

at $190,000 as of January 1, 2018. Mr. Wilkins valued the property using the sales and income approaches. He also testified the auditor had overestimated the size of the building on the subject property by approximately 10%. The BOR adopted a value of $209,000, and appellant filed a notice of appeal with this board.

At this board's hearing, appellant's owner testified about the history of the property. He supplied various documents showing needed repairs. He also testified he believed $190,000, Mr. Wilkins' appraised value, "would be the highest [fair market value] that can be assigned to the property***." See H.R., Ex. A. He also argued an even lower value would be appropriate, in his opinion, given ongoing issues with the prior owner and the association that manages the condominiums on the property. The auditor filed a brief in lieu of hearing arguing the auditor's value should be reinstated because appellant has not carried its burden.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). The best evidence of value is a recent arm's-length transaction, but there have been no recent sales of the subject property. *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129, 129 (1977). Accordingly, we turn to appellant's other evidence of value.

Upon review, we find Mr. Wilkins' appraisal to be the best evidence of value. In his sales comparison approach, he utilized six sales, which occurred between December 15, 2015, and October 18, 2018. He adjusted for location, physical conditions, market conditions, and conditions of sale. In his income capitalization approach, he utilized eleven leases between $11.87/SF and $25.00/SF. Mr. Wilkins estimated expenses and applied a capitalization rate of 8.763%.

At the BOR hearing, the auditor's appraiser argued there were several deficiencies with Mr. Wilkins' appraisal. First, she argued Mr. Wilkins used comparables from a different market. However, without actual market data to compare, we cannot determine she is correct. We also note Mr. Wilkins made location adjustments. Second, she argued the auditor's square footage estimate was correct based on county records. However, Mr. Wilkins pointed out the auditor was considering a portion of the building that should not have been included in the square footage calculation. He also testified he personally measured the property to determine the proper square footage. In conclusion, we see no reason to reject the appraisal based on the BOR's arguments and the arguments of the county's appraiser.

Finally, we do not find the appellant has carried its burden of showing a value below Mr. Wilkins' appraised value should be adopted. While the presence of negative characteristics may conceivably affect a property's value, a party must go further to show a specific impact on value. Dollar-for-dollar costs do not necessarily correlate to value. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). The same goes for the ongoing dispute with the condominium association. Appellant has not connected the dots by showing what effect that issue would have on value.

For these reasons, we find Mr. Wilkins' appraisal is the best evidence of value and order the property valued in accordance with that appraisal for tax year 2018, as follows.

PARCEL NUMBER 075-0004-0313-00

TRUE VALUE

$190,000

TAXABLE VALUE
$66,500

OHIO BOARD OF TAX APPEALS

ANTHONY T. WILLIAMS, SR., (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1055 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ANTHONY T. WILLIAMS, SR.
Represented by:
ANTHONY T. WILLIAMS SR
OWNER
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WHITEHALL, OH 43213

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

Entered Thursday, February 13, 2020

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

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 722-04-020 and 722-04-021, for tax year 2018. 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 appellant's post-hearing statement.

[2] The subject property consists of two parcels that total roughly 0.256 acres of land, including an unimproved corner lot and the adjacent parcel improved with a single-family home. The fiscal officer initially assessed the subject's total true value at $122,000. Appellant

filed a complaint with the BOR seeking a reduction in value to $76,399, indicating the requested value was justified because the basement was unfinished, the kitchen and bathrooms needed updating, and several other items needed to be repaired or replaced. Appellant did not appear at the hearing convened by the BOR, and the BOR determined that he failed to meet his burden to show that the value should be reduced. The BOR issued a decision maintaining the initially assessed valuation, which appellant appealed to this board. This board convened a hearing, at which appellant described the work that needed to be completed at the subject property. Appellant further argued that because the property included two parcels and a corner lot, he was responsible for the expense of maintaining much more sidewalk than many of his neighbors. Appellant argued that the increased maintenance should be taken into consideration in the taxation of corner lots. Appellant also submitted evidence of his real property tax obligations, asserting that they had increased substantially since he purchased the property in 1993.

[3] In the present appeal, appellant's burden was to come forward with evidence not only to show that the fiscal officer's value is incorrect, but also to establish that his proposed value is the true value of the property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. Where evidence of a qualifying sale is unavailable, appraisal evidence becomes necessary, which 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 its basis fails to demonstrate the value requested. Id. at ¶20. See, also, *Johnson v. Clark Cty. Bd. of Revision*, 155 Ohio St.3d 264, 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

[4] In this case, appellant relied on testimony of negative conditions, specifically a list of necessary repairs and updates. While we acknowledge the existence of these conditions, it is unclear whether and to what extent they affect the subject's value. "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. To the extent that appellant also claims that a purported increase in real property taxes over time makes the home less affordable, this also does not provide a basis for a change in *value*. While taxes paid correlate to value because the assessed value of property forms the basis for the taxes, the propriety or trending of the taxes themselves are not at issue in this appeal. Appellant filed a complaint against the *value* of the property, the BOR issued a decision determining *value*, and appellant appealed that decision to this board. Thus, only value is at issue before this board. See R.C. 5715.19(A)(1)(d); R.C. 5717.01. Therefore, the presence of adverse factors alone does not provide a basis for a reduction.

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

[6] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

PARCEL NUMBER 722-04-020

TRUE VALUE

$116,900

TAXABLE VALUE

$40,920

PARCEL NUMBER 722-04-021

TRUE VALUE

$5,100

TAXABLE VALUE

$1,790

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-417 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
FRANKLIN COUNTY BOARD OF REVISION
373 SOUTH HIGH STREET, 20TH FLOOR
COLUMBUS, OH 43215

ANDRE R. GREEN & CHRISTOPHER BROWN
617 E. THIRD AVENUE
COLUMBUS , OH 43201

Entered Thursday, February 13, 2020

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

[1] The Columbus City Schools Board of Education ("BOE") appeals from a decision of the Franklin County Board of Revision ("BOR") valuing the subject property for tax years 2017 and 2018. We sanctioned the appellee property owners by barring them from introducing new evidence after they failed to comply with this board's discovery rules. We decide the case on the notice of appeal, the statutory transcript, and the BOE's written argument.

[2] The subject property is a leased multi-family residence. The auditor valued the subject property at $106,000 for tax year 2017. Richard Mann, a broker, filed a 2017 complaint on behalf

of the property owners. At the BOR hearing, only Mr. Mann appeared (not the owners). He presented unadjusted market data. On cross-examination, Mr. Mann testified he had not seen the entire interior of the subject property. He further testified he was not involved with any of the sales he submitted, and the BOE objected to the evidence on that basis. The BOR issued its decision on March 6, 2019, valuing the property at $68,100 for both tax years 2017 and 2018, it appears, based on a gross rent multiplier. The BOE appealed.

[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). Our factual review is confined to the statutory transcript when no hearing is requested. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996). The BOE argues our review is not controlled by the *Bedford* rule. We agree. An appealing party may generally carry that party's burden by showing 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, ¶ 9. A narrow exception to that general principle, however, is the so-called *Bedford* rule announced in *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 "competent and at least minimally plausible" evidence, it has the effect of "shifting the burden of going forward to the BOE." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of* Revision, 147 OHio St.3d 38, 2016-Ohio-3025, ¶ 7; *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543, ¶ 16. When the *Bedford* rule applies, the school board must do more than rely on the auditor's valuation; the school board must "come forward with affirmative evidence of the subject property's value." *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Sept. 6, 2018), BTA No. 2017-1707, unreported. This board considered a similar fact pattern in *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of*

Revision (Jan. 25, 2019), BTA No. 2018-247, unreported ("*Brand Realty*"). There, the BOR reduced the value of a property based on a gross rent multiplier after a party presented unadjusted market data. We found the *Bedford* rule was not triggered because unadjusted market data is generally not sufficient to justify a reduction. We specifically held:

> We do not find comparable sales, generally, to be competent, credible, and probative evidence 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 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.

[4] We also note the comparables supplied in this case were compiled by a salesperson. However, as this board has noted, a salesperson is not an appraiser. See *Springfield Local Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision* (Sept. 17, 2018), BTA No. 2017-2014, unreported. As we have noted before, "real estate salespeople are licensed to sell real estate. They have training in their field but may or may not have extensive appraisal experience." Id. (quoting The Appraisal of Real Estate (13th Ed.2008)). We have also said, "salespeople evaluate specific properties, but they do not typically consider all the factors that professional appraisers do." Id. Moreover, Mr. Mann had no personal knowledge of the sales he offered. That means the market information is unreliable hearsay. *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶ 19.

[5] We recognized that the Ohio Supreme Court has held that "if a board of revision makes a valuation change that is completely unsupported in the record, the BTA may not affirm or adopt it." *Brand Realty* at 9 (quoting *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 567 (2001)). Here, we find no evidence in the record to support the BOR's reduction.

[6] For these reasons, we reinstate the auditor's value as follows for tax year 2017: PARCEL NUMBER 010-045368-00

TRUE VALUE

$106,000

TAXABLE VALUE

$37,100

[7] We also reverse the BOR's decision with regard to tax year 2018, which was still an open tax year when the BOR issued its decision. This board has repeatedly admonished the Franklin County Board of Revision not to exercise jurisdiction over a year for which a complaint may be filed since such a filing would render the earlier decision for the open tax year null and void. See, e.g., *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Apr. 23, 2018), BTA No. 2016-390, unreported. Therefore, we remand this case to the BOR with instructions to vacate its decision for tax year 2018, the practical effect being reinstatement of the auditor's initial value for tax year 2018.

OHIO BOARD OF TAX APPEALS

WILLIAM E. CAPLINGER, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-1283
vs.	)	
HIGHLAND COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WILLIAM E. CAPLINGER
OWNER
4454 WASHBURN RD
HILLSBORO, OH 45133

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

Entered Thursday, February 13, 2020

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

The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcels 03-22-000-262.00 and 03-22-000-263.00, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The property owner filed a complaint, which requested that the subject property be revalued from its initial combined value of $65,600 to $50,500. By way of the complaint, the property owner asserted that the subject property's value had increased too much over its prior value. At the BOR hearing on the matter, the property owner elaborated on his charge that the subject property's value had increased too much. He also testified that a portion of the subject property used to have timber; however, because of damage from various factors, he was forced to clear-cut the timber. Under examination by a BOR member, the property owner conceded that

he had no issue with the value of parcel of 03-22-000-263.000 but continued to dispute the value of the remaining parcel. The BOR voted to retain the subject property's combined value and this appeal ensued. The property owner attached written argument to the notice of appeal, which reiterated that the subject property's value had experienced too great a value increase. Neither the property owner nor the county appellees requested an opportunity to submit additional evidence into 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. 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 conclude that the property owner failed to provide competent, credible, and probative evidence of value. He primarily argued that the subject property's combined value was too great an increase given its prior valuation. The Supreme Court has previously held that each tax year stands alone, and the fact that value may have been modified in another year is not competent, credible, 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; *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26 (1997). See also *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468. This board has consistently rejected the notion that real property values must necessarily rise or fall commensurate with some preconceived notion of "historical trending" or

inflationary/deflationary rates. See, e.g., *Quinn v. Montgomery Cty. Bd. of Revision* (Sept. 12, 2016), BTA No. 2015-2258, 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 are constrained to conclude that the property owner failed to provide competent, credible, and probative evidence of the subject property's combined value before the BOR and before this board. As such, the subject property's value shall remain as initially assessed as of January 1, 2018:

Parcel Number 03-22-000-262.00

True Value: $16,500

Taxable Value: $5,780

Parcel Number 03-22-000-263.00

True Value: $49,100

Taxable Value: $17,190

OHIO BOARD OF TAX APPEALS

NEW DAY REALLTY LLC, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1237, 2019-1241, 2019-1242, 2019-1261, 2019-1262, 2019-1264 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - NEW DAY REALLTY LLC
Represented by:
ZACHARY A. ZIMMER
4376 BUCKINGHAM CIR.
UNIONTOWN, OH 44685

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
650 DAN STREET
AKRON, OH 44310

Entered Thursday, February 13, 2020

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

[1] The property owner appeals decisions of the board of revision ("BOR"), which determined the value of the subject properties, parcels 51-01769, 51-01770, 51-10422, 01-08894, 01-09452, 19-05721, 55-01389, 68-03371, 01-07340, and 01-08688, for tax year 2018. We proceed to consider these consolidated matters based upon the notices of appeal, statutory transcripts certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

[2] The property owner filed several complaints with the BOR, which requested reductions to the subject properties' values, purportedly to reflect the prices at which each of the parcels transferred in tax years 2016, 2017, or 2018. The BOR held a consolidated hearing on the

complaints; however, no one appeared on behalf of the property owner. (It appears that the BOR also considered the values of parcels that are not the subject of these appeals.) The BOR proceeded to read information from the complaints into the record, noting the various sale documents attached to the complaints. In reaching its decisions, the BOR noted that it had previously considered complaints involving the subject properties' values for tax year 2017 and that the lack of witness testimony was fatal to the property owner's requests for tax year 2018. The BOR proceeded to issue decisions that retained the subject properties' values. The property owner thereafter appealed to this board. Neither the property owner nor the county appellees requested an opportunity to supplement the record at a hearing before this board. The county appellees submitted written argument to assert that the property owner failed to satisfy its evidentiary burden before the BOR and before this board.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. 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.

[4] We proceed to consider whether the various sales of the subject properties are reflective of their respective values. As to parcels 01-09452, 01-07340, and 01-08688, the sale documents and/or property record cards demonstrate that these parcels transferred from Frank Goch in July 2018, Deutsche Bank in August 2016, and Martha Balash in October 2017, respectively. The BOR failed to present any evidence to rebut the presumptions accorded to each of these sales, i.e., that

the sales were recent and arm's-length. See *Huber Hts. City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 152 Ohio St.3d 182, 2017-Ohio-8819, at ¶13; *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. Compare *1192 Group Partnership LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 18, 2013), BTA No. 2010-Y-651, unreported. We find, therefore, that parcel 01-09452 shall be valued consistent with its $20,000 sale price, 01-07340 shall be valued consistent with its $28,333 sale price, and 01-08688 shall be valued consistent with its $32,500 sale price.

[5] As to parcels 51-01769, 51-01770, 51-10422, 01-08894, 19-05721, 55-01389, and 68-03371, the sale documents and/or property record cards demonstrate that these parcels transferred from Secretary of Housing and Urban Development ("HUD"), Secretary of Veterans Affairs ("VA"), or county sheriff. Unlike the sales noted above, sales of these types are presumptively considered to be "forced" and are invalid absent a showing that the parties were typically motivated. See R.C. 5713.04; *Schwartz v. Cuyahoga Cty. Bd. of Revision*, 149 Ohio St.3d 496, 2015-Ohio-3431; *Olentangy Local Schools. Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723; *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 127 Ohio St.3d 63, 2010-Ohio-4907. Because the record is devoid of any testimony about the facts and circumstances of these sales, we must conclude that the property owner failed to rebut the presumptions that these sales are, indeed, forced sales, which are not reflective of real property value.

[6] Based upon the foregoing, it is the order of this board that the subject properties shall be assessed as follows as of the effective tax lien date:

Parcel 51-01769

True Value: $68,530

Taxable Value: $23,990

Parcel 51-01770

True Value: $10,040

Taxable Value: $3,510

Parcel 51-10422

True Value: $75,050

Taxable Value: $26,270

Parcel 01-08894

True Value: $58,270

Taxable Value: $20,390

Parcel 01-09452

True Value: $20,000

Taxable Value: $7,000

Parcel 19-05721

True Value: $92,940

Taxable Value: $32,530

Parcel 55-01389

True Value: $89,330

Taxable Value: $31,270

Parcel 68-03371

True Value: $63,160

Taxable Value: $22,110

Parcel 01-07340

True Value: $28,330

Taxable Value: $9,920

Parcel 01-08688

True Value: $32,500

Taxable Value: $11,380

OHIO BOARD OF TAX APPEALS

LAURA SMITH, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1184
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LAURA SMITH
OWNER
19408 RIDGELAND AVE
CLEVELAND, OH 44135

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, February 13, 2020

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

The property owner appeals a decision of the board of revision ("BOR"), which valued the subject property, parcel number 026-16-042, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and statutory transcript certified pursuant to R.C. 5717.01.

The property owner filed a complaint with the BOR, which requested that the subject property be revalued from its initially assessed value of $113,000 to $85,900. By way of the complaint, the property owner asserted that the subject property's prior value of $85,900 should be its value for tax year 2018. In lieu of attending the scheduled BOR hearing on the matter, the property owner submitted a narrative explaining her position and supporting documents, i.e.,

asserting that the subject property should be valued at $85,900 as it had been after she disputed its value through the fiscal officer's informal process for tax year 2015. The BOR rejected the property owner's argument and evidence and issued a decision that retained the subject property's $113,000 value. This appeal ensued. Neither the property owner nor the county appellees requested an opportunity to submit additional evidence at a hearing before this board. We will, therefore, confine our review to the documents submitted at the BOR hearing (which the property owner resubmitted with her notice of 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. 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 must conclude that the property owner failed to provide competent, credible, and probative evidence of value. She solely argued that the subject property's initially assessed value was too great an increase given its prior years' valuations, specifically tax years 2015, 2016, and 2017. The Supreme Court has previously held that each tax year stands alone, and the fact that value may have been modified in another year is not competent, credible, 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; *Freshwater v. Belmont Cty. Bd. of Revision* 80 Ohio St.3d 26 (1997). See also *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468.

Furthermore, the property owner asserted that the subject property's value should revert to $85,900 to account for structural change of the subject property, i.e., removal of the garage. However, a review of the the property record card demonstrates that the subject property does not have a garage and, therefore, we must conclude that the subject property's $113,000 value does not reflect the value of a garage. See R.C. 5713.03 (the property record is the place where the county auditor should "record pertinent information and the true and taxable value of each building, structure, or improvement to land, which value shall be included as a separate part of the total value of each tract, lot, or parcel of real property.").

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 failed to provide competent, credible, and probative evidence of the subject property's value before the BOR and before this board. As such, the subject property's value shall remain as initially assessed.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$113,000

TAXABLE VALUE
$39,550

OHIO BOARD OF TAX APPEALS

CAREY HOLDINGS INC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1173, 2019-1174, 2019-1176, 2019-1177, 2019-1178, 2019-1179, 2019-1180, 2019-1181 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CAREY HOLDINGS INC
Represented by:
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CAREY ROOFING
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CLEVELAND, OH 44104

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

Entered Thursday, February 13, 2020

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

[1] Appellant appeals several decisions made by the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 124-12-018, 124-12-019, 124-12-021, 124-12-022, 124-12-023, 124-12-024, 124-12-029, 124-12-030, 124-12-031, 124-12-032, 124-12-034, 124-12-035, 124-12-036, 124-12-037, 124-12-047, 124-12-091, 124-12-097, 124-12-098, 124-12-099, 124-12-100, and 124-12-106, for tax year 2018. These matters are now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, and the county appellees' written argument.

[2] The subject property includes a 28,000 square-foot, two-story building with both office and warehouse space that spans multiple parcels, in addition to several nearby unimproved

parcels. The fiscal officer initially assessed the property's total true value at $424,500. Appellant filed complaints with the BOR seeking a total decrease in value to $115,600. The Cleveland Metropolitan School District Board of Education ("BOE") filed countercomplaints in support of the fiscal officer's value.

[3] At the BOR hearing, appellant's president, Joseph Carey, testified in support of the requested reduction. Carey described his acquisition and assemblage of the various parcels over the course of several decades, during which time he demolished homes that were located on several of the parcels. Carey explained that he operates three businesses out of the subject property and has listed much of the vacant acreage for sale by owner, though the property had not been marketed or listed by a broker. Carey testified regarding his knowledge about the transactions that have occurred in the neighborhood and provided a list of such sales. Carey primarily argued that the property was overvalued by the auditor during the reappraisal, though he acknowledged that the details of the property were accurate and the value of the land was likely within reason. The BOE was present and cross-examined Carey, providing its own list of sales.

[4] The BOR issued decisions retaining the initially assessed valuation, which led to the present appeals. On its notices of appeal, appellant claimed that other parcels are valued much lower and that there was no justification for the fiscal officer's increased value for the subject parcels. The county appellees submitted written argument maintaining that appellant failed to establish a right to the decrease requested. Although provided notice of the appeals, the BOE has not entered an appearance or participated in this board's proceedings.

[5] The fiscal officer has the duty to value and assess taxes against real property in the county, which includes the obligation to reappraise property values once every six years and

perform an update at the three-year interim point. *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, ¶19; R.C. 5713.01(B), 5713.03, 5715.33, and 5715.24; Ohio Admin. Code 5703-25-16(B). When a property owner seeks to challenge the values resulting from the reappraisal process, the owner must present sufficient evidence to establish that an alternative proposed value is the true value of the property and cannot merely challenge the accuracy of fiscal officer's value. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 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 its basis fails demonstrate the value requested. Id. at ¶20. See, also, *Johnson v. Clark Cty. Bd. of Revision*, 155 Ohio St.3d 264, 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

[6] Initially, we find that the comparable sales information submitted to the BOR does not establish the reduced value sought by appellant. While comparable sales data is frequently utilized by appraisers to determine the value of a given property, the unadjusted lists of sales are not probative evidence of value because Carey has not demonstrated knowledge about the circumstances of those sales or adjusted them for differences among the properties. *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002. Additionally, we find that Carey's description of negative conditions in the area or claims that other properties were valued disparately from the subject do not satisfy appellant's burden, particularly where Carey confirmed that the fiscal officer's property details were accurate. See, generally, *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996) (discussing the affirmative burden

attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value); *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.").

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

[8] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

PARCEL NUMBER 124-12-018

TRUE VALUE $284,200

TAXABLE VALUE $99,470

PARCEL NUMBER 124-12-019

TRUE VALUE $14,500

TAXABLE VALUE $5,080

PARCEL NUMBER 124-12-021

TRUE VALUE $2,500

TAXABLE VALUE $880

PARCEL NUMBER 124-12-022

TRUE VALUE $2,300

TAXABLE VALUE $810

PARCEL NUMBER 124-12-023

TRUE VALUE $6,200

TAXABLE VALUE $2,170

PARCEL NUMBER 124-12-024

TRUE VALUE $6,100

TAXABLE VALUE $2,140

PARCEL NUMBER 124-12-029

TRUE VALUE $7,900

TAXABLE VALUE $2,770

PARCEL NUMBER 124-12-030

TRUE VALUE $6,300

TAXABLE VALUE $2,210

PARCEL NUMBER 124-12-031

TRUE VALUE $4,100

TAXABLE VALUE $1,440

PARCEL NUMBER 124-12-032

TRUE VALUE $3,600

TAXABLE VALUE $1,260

PARCEL NUMBER 124-12-034

TRUE VALUE $8,900

TAXABLE VALUE $3,120

PARCEL NUMBER 124-12-035

TRUE VALUE $3,500

TAXABLE VALUE $1,230

PARCEL NUMBER 124-12-036

TRUE VALUE $3,800

TAXABLE VALUE $1,330

PARCEL NUMBER 124-12-037

TRUE VALUE $4,400

TAXABLE VALUE $1,540

PARCEL NUMBER 124-12-047

TRUE VALUE $2,300

TAXABLE VALUE $810

PARCEL NUMBER 124-12-091

TRUE VALUE $5,600

TAXABLE VALUE $1,960

PARCEL NUMBER 124-12-097

TRUE VALUE $6,900

TAXABLE VALUE $2,420

PARCEL NUMBER 124-12-098

TRUE VALUE $5,300

TAXABLE VALUE $1,860

PARCEL NUMBER 124-12-099

TRUE VALUE $1,600

TAXABLE VALUE $560

PARCEL NUMBER 124-12-100

TRUE VALUE $1,700

TAXABLE VALUE $600

PARCEL NUMBER 124-12-106

TRUE VALUE $42,800

TAXABLE VALUE $14,980

OHIO BOARD OF TAX APPEALS

DOWERS VICTOR AND SHIRLEY, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-801 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DOWERS VICTOR AND SHIRLEY
Represented by:
SHIRLEY DOWERS
6936 MARBEV DR.
CINCINNATI, OH 45239

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, February 13, 2020

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

[1] The property owners appeal a decision of the board of revision ("BOR"), which dismissed the underlying complaint for lack of jurisdiction. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and any written argument submitted by the parties.

[2] The property owners filed a complaint with the BOR, which requested that the parcel number 039-0003-00168-00 be revalued from its initial 2018 value of $189,000 to $50,400. On line 14 of the complaint, the property owners alleged that the subject property had lost value because of a casualty. The BOR held a hearing on the matter at which time property owner Shirley Dowers appeared in support of the complaint. As the hearing commenced, one of the

BOR members noted that the property owners had filed a complaint for tax year 2017 and that the property owners had to establish that the casualty occurred between January 1, 2017 and January 1, 2018 and affected the subject property's value. Mrs. Dowers noted that a fire occurred on the subject property several years prior but provided no testimony about any casualty that occured within the specific time frame. The BOR subsequently issued a decision that dismissed the complaint as an impermissible multiple filing within the same triennial period. This appeal ensued. Though the property owners initially requested a hearing before this board, they waived their appearance. The county appellees also waived their appearance of hearing but submitted written argument with supporting documentation to demonstrate that the BOR properly determined that it lacked jurisdiction to consider the underlying complaint. Because our jurisdiction is derivative, the only issue before us is the propriety of the BOR's dismissal.

[3] 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. See *Soyko Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 2014-Ohio-4511. "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 (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).

[4] In this matter, the applicable interim period in Hamilton County is 2017, 2018, and 2019; the first of these years having been the one in which the sexennial update was completed. See, generally, R.C. 5713.01(B), 5715.33, and 5715.34. The county appellees submitted evidence to

demonstrate that the property owners did, indeed, file a tax year 2017 complaint, which was identified as "2017023987." County Appellees' Merit Brief in Lieu of Appearance at Exhibit 1. The property owners' tax year 2018 complaint alleged that at least one of the permitted exceptions described in R.C. 5715.19(A)(2), i.e., the subject property lost value because of a casualty, as justification for the filing of a second complaint in the same interim period. This board has previously held that a casualty "must include an identifiable event" that occurred between the tax lien date of the earlier year and year currently under consideration. See *Overstreet v. Hamilton Cty. Bd. of Revision* (Jan. 19, 2010), BTA No 2008-M-2025, unreported, at 4. See also *Price v. Lucas Cty. Bd. of Revision* (June 30, 1994), BTA No. 1993-T-987, unreported. Unfortunately, the property owners failed to submit independent and specific corroborating evidence to demonstrate that "an identifiable event" occurred between January 1, 2017 and January 1, 2018. In fact, the "casualty" to which the property owners referred occurred several years prior to January 1, 2018. As a result, we must agree with the BOR and conclude that the property owners failed to satisfy the hurdle of R.C. 5715.19(A)(2).

[5] Based upon the foregoing, we affirm the BOR's decision to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

KIERSTON OLIVIA LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2664
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KIERSTON OLIVIA LLC
Represented by:
CLAYTON LUCKIE
69 HORACE STREET
DAYTON, OH 45402

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 Friday, February 14, 2020

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

The appellant property owner appeals a decision of the board of revision ("BOR") related to a complaint filed against the value of the subject real property, parcel number K46 01507 0045, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the county appellees' jurisdictional motion, to which appellant has not responded.

The county appellees have filed a motion to dismiss, which we construe as a motion to remand with instructions to dismiss the underlying complaint. The county appellees argue that the complaint was jurisdictionally deficient because it was not filed against the determination of value of a parcel appearing on the tax list. The county appellees maintain that because the

property was on the exempt list for tax year 2018, the complaint did not challenge one of the issues enumerated in R.C. 5715.19(A)(1) and failed to vest the BOR's jurisdiction.

As an administrative agency, a board of revision may only perform those functions expressly authorized by statute, and the property owner 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(A)(1)(d), a complaint may be filed against a "determination of the total valuation or assessment of any parcel *that appears on the tax list* ***." (Emphasis added.) As such, while the property is on the exempt list, a complaint against its valuation cannot be filed. See *Kuntz 2016, L.L.C. v. Montgomery Cty. Auditor*, 2nd Dist. Montgomery No. 28038, 2018-Ohio-4635. Therefore, we agree with the county appellees that the BOR lacked jurisdiction to consider the underlying complaint.

Accordingly, it is the order of this board that the matter is remanded to the BOR with instructions to dismiss the complaint before it.

OHIO BOARD OF TAX APPEALS

BRIAN W NORRIS AND BRYAN PETEL, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	))))))))	CASE NO(S). 2019-2592 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BRIAN W NORRIS AND BRYAN PETEL
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

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

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION
1111 SUPERIOR AVE E STE 1800
CLEVELAND, OH 44114

Entered Tuesday, February 18, 2020

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. (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 appellants timely filed the appeal with this board, a notice of the appeal was filed with the BOR forty-nine 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

EQUITY TRUST COMPANY, CUSTODIAN FBO MARTHA J. NEFF 401K, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-2789
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EQUITY TRUST COMPANY, CUSTODIAN FBO MARTHA J. NEFF 401K
Represented by:
MARTHA NEFF
7007 LAWNPARK DRIVE
BREKSVILLE, OH 44141

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, February 19, 2020

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. (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

NORMAN VINCENTI JR, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2591
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NORMAN VINCENTI JR
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

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, February 19, 2020

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 in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was filed with the BOR forty-nine 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

MARY CORNELY, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2590
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARY CORNELY
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

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

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION
1111 SUPERIOR AVE E STE 1800
CLEVELAND, OH 44114

Entered Wednesday, February 19, 2020

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 in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was filed with the BOR forty-nine 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

SHIRPAUL MCLAUGHLIN, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	Appellee(s). CASE NO(S). 2019-2240 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - SHIRPAUL MCLAUGHLIN
6030 AGLIERS PLACE
DULLES, VA 20189-6030

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, February 19, 2020

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. (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

MARTIN LENAGHAN, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2203
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - MARTIN LENAGHAN
7462 RICHMOND RD.
OAKWOOD VILLAGE, OH 44146

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

Entered Wednesday, February 19, 2020

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. (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

JOHN AND SUSAN TRISCHAN, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2036 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHN AND SUSAN TRISCHAN
Represented by:
SUSAN TRISCHAN
6934 CRYSTAL CREEK 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 Wednesday, February 19, 2020

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. 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

REESE F. EDWARDS, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1928
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - REESE F. EDWARDS
OWNER
4012 W. 161 ST.
CLEVELAND , OH 44135

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

Entered Wednesday, February 19, 2020

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

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On September 19, 2019, the appellant filed an application for remission with this board. Appellant did not include a copy of a BOR decision. There is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county

BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, 150; *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68. Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

STANLEY E. KULESA, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-2391
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - STANLEY E. KULESA
Represented by:
STANLEY KULESA
4302 MAGGIE MARIE BLVD.
MEDINA TOWNSHIP, OH 44256

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, February 19, 2020

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. (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

JEFF OBLAK, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1877
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JEFF OBLAK
13728 HOLLAND ROAD
BROOK PARK, OH 44142

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

Entered Wednesday, February 19, 2020

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. (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

MANUEL COLLAZO, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2465
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MANUEL COLLAZO
2315 OAK PARK AVENUE
CLEVELAND, OH 44109

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, February 20, 2020

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, appellant's response, 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. Appellant's response argued that the appeal was timely filed with this board, but did not provide documentation to demonstrate that 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

EDDY AND ANGIE TENNEY, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	Appellee(s). CASE NO(S). 2019-2444 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EDDY AND ANGIE TENNEY
OWNERS
1912 WEST 50 STREET
CLEVELAND, OH 44102

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, February 20, 2020

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, appellants' response, 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. Appellants were not able to provide documentation to demonstrate that 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

TAMARA RADER, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2415
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MAHONING COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - TAMARA RADER
2567 SOUTH LIPKEY
NORTH JACKSON, OH 44451

For the Appellee(s) - MAHONING COUNTY BOARD OF REVISION
Represented by:
GEORGE G. BRIACH
ASSISTANT PROSECUTING ATTORNEY
MAHONING COUNTY
21 W. BOARDMAN STREET, 6TH FLOOR
YOUNGSTOWN, OH 44503

Entered Thursday, February 20, 2020

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, appellant's response, 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. Appellant's response admitted that she 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

940 11TH LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2389
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - 940 11TH LLC
Represented by:
BRENDA MENDIZABAL
PEPZEE REALTY INC.
1013 NORTH MAIN STREET
DAYTON, OH 45405

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 Thursday, February 20, 2020

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. (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

115 BENNINGTON LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2388
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - 115 BENNINGTON LLC
Represented by:
BRENDA MENDIZABAL
PEPZEE REALTY INC.
1013 NORTH MAIN STREET
DAYTON, OH 45405

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

DAYTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
BENJAMIN YODER
ATTORNEY AT LAW
FROST BROWN TODD LLC
9277 CENTRE POINTE DRIVE
SUITE 300
WEST CHESTER, OH 45069

Entered Thursday, February 20, 2020

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. (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

59 BENNINGTON LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2387
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 59 BENNINGTON LLC
Represented by:
BRENDA MENDIZABAL
PEPZEE REALTY INC.
1013 NORTH MAIN STREET
DAYTON, OH 45405

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 Thursday, February 20, 2020

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. (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

TANGY COURT LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2386
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - TANGY COURT LLC
Represented by:
BRENDA MENDIZABAL
PEPZEE REALTY INC.
1013 NORTH MAIN STREET
DAYTON, OH 45405

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 Thursday, February 20, 2020

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. (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

3516 MAIN LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2385
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - 3516 MAIN LLC
Represented by:
BRENDA MENDIZABAL
PEPZEE REALTY INC.
1013 NORTH MAIN STREET
DAYTON, OH 45405

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 Thursday, February 20, 2020

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. (Emphasis added). See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential

to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record does not demonstrate that appellant filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

THOMAS F MACK, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2274
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THOMAS F MACK
Represented by:
THOMAS MACK
6801 GREAT OAKS PKY
INDEPENDENCE, OH 44131

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

INDEPENDENCE LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Thursday, February 20, 2020

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. (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

MIKE RAMSER, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2263
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MIKE RAMSER
OWNER
1503 NORTH AVE
PARMA, OH 44134

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

Entered Thursday, February 20, 2020

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. (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

RUSSELL KIRTZ, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1244
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - RUSSELL KIRTZ
4820 CHAGRIN RIVER ROAD
MORELAND HILLS, OH 44022

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

Entered Thursday, February 20, 2020

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. (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

EDWARD DALE LIVERNOIS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	Appellee(s). CASE NO(S). 2019-2917 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EDWARD DALE LIVERNOIS
Represented by:
EDWARD LIVERNOIS
3195 W. 14th STREET
CLEVELAND, OH 44109-1863

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

Entered Friday, February 21, 2020

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. (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

OLENTANGY LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. DELAWARE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1101 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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

For the Appellee(s) - DELAWARE COUNTY BOARD OF REVISION
Represented by:
MARK W. FOWLER
ASSISTANT PROSECUTING ATTORNEY
DELAWARE COUNTY
145 NORTH UNION STREET, 3RD FLOOR
P.O. BOX 8006
DELAWARE, OH 43015

VAZ PROPERTIES
951 RETREAT LN.
POWELL, OH 43065

Entered Friday, February 21, 2020

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

This matter is now considered by this board following two motions filed by the appellant board of education ("BOE"): a motion for sanctions for failure to respond to discovery, for which a hearing was convened, and a motion to remand with instructions to dismiss the underlying complaint. In the latter motion the BOE asserts that the property owner VAZ Properties' ("VAZ") complaint against the valuation of real property was an improper second filing under R.C. 5715.19(A)(2). This matter is decided upon the motions, any responses

thereto, the notice of appeal, the record of the hearing before this board, and the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01.

VAZ filed a tax year 2018 complaint against the valuation of real property for twelve parcels, i.e. parcel numbers 319-322-04-005-501 through 319-322-04-005-512. VAZ noted on line 10 of its tax year 2018 complaint, "The property is Rental [sic] with substantial issues that prevent us from getting it occupied along with raising any rent. The property has alway [sic] been Rental [sic] since insception [sic]." On Line 15, VAZ acknowledged it had filed a prior complaint against these same parcels, and indicated the current underlying complaint met the exception specified in R.C. 5715.19(A)(2)(d), i.e. an "[o]ccupancy change of at least 15% had a substantial economic impact on my property." S.T., Ex. A.

During the BOR proceedings Umesh Vazirani, VAZ member, testified that since the time it filed the tax year 2017 complaint, a fire occurred on June 11, 2018, on two of the parcels; i.e. 319-322-04-005-501 and 319-322-04-005-502. The fire resulted in decreased occupancy of two units. S.T., Ex. E at 7. Following the fire, two other units terminated their leases early. Such changes in occupancy resulted in a significant revenue loss. Id. at 19, 22. The BOE raised the present jurisdictional issue; ultimately the board of revision ("BOR") issued a decision decreasing the value of each parcel to $77,000. Subsequently the BOE appealed said decision to this board and now moves to remand the matter with instructions to dismiss the complaint.

R.C. 5715.19(A)(2) prohibits the filing of multiple complaints within a three-year interim period; the interim period relevant to this appeal involves tax years 2017, 2018, and 2019, with reappraisal update of values for Delaware County conducted in 2017. "Under R.C. 5715.19(A)(2), a party dissatisfied with the valuation of property may file only one complaint in the [interim period]," based on the "schedule in which a reappraisal is conducted by a county every six years, with an update of valuation performed in the third year[,]" unless an exception applies. *Soyko*

Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision, 141 Ohio St3d 43, 2014-Ohio-4511, ¶20.

A succeeding 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). In this matter, VAZ alleged on its complaint one such exception, R.C.5715.19(A)(2)(d); i.e. "[a]n increase of at least fifteen per cent in the property's occupancy has had a substantial economic impact on the property." To satisfy the requirements of this exception, VAZ's tax year 2018 complaint must establish that the property value should be changed as a result of the alleged occupancy change, and that the occupancy change must have occurred after the tax lien date for the year which the prior complaint was filed; i.e. must have occurred between January 1, 2017, and January 1, 2018. See *Soyko Kulchuystsky*, supra, at ¶¶23-26; *Akron Centre Plaza L.L.C. v. Summit Cty. Bd. of Revision*, 128 Ohio St.3d 145, 2010-Ohio-5035.

Although Mr. Vazirani provided testimony concerning the alleged changes in occupancy, he failed to provide documentation to establish that a change in occupancy of at least fifteen per cent occurred between January 1, 2017, and January 1, 2018. In fact, Mr. Vazirani's testimony specified that the occupancy changes occurred after a fire on June 11, 2018; well past the date required for the tax year 2018 complaint.

Upon review, we are not able to confirm that there was a change of at least fifteen per cent in occupancy, and that it had a substantial economic impact on the subject property during the relevant period. It is therefore the decision of this board that the BOR did not have jurisdiction to determine value for the subject property. Accordingly, the BOE's motion is granted and this matter must be, and hereby is remanded to the Delaware County Board of Revision with instructions to vacate its decision and to dismiss the underlying complaint. Finally, we hereby

deny the BOE's motion for sanctions as moot.

OHIO BOARD OF TAX APPEALS

JULIA MONTGOMERY, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1512
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
ALLEN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - JULIA MONTGOMERY
OWNER
740 LUTZ RD.
LIMA, OH 45801

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

Entered Friday, February 28, 2020

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 37-1602-01-006.000, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and statutory transcript certified pursuant to R.C. 5717.01.

The property owner filed a complaint with the BOR, which requested that the subject property be revalued from its initially assessed value of $142,400 to $118,000. She asserted that "[w]e just appraised & adjusted this 3 years ago" as the basis for her requested value. At the BOR hearing on the matter, the property owner amended her opinion of value to $115,000 as the hearing commenced. She argued that the subject property was not comparable to most nearby properties because the subject property was nearly 100 years old and the comparable properties were newer with better amenities. She testified as to the structures situsued on the subject

property, and their condition, as well as the monthly income derived from renting portions of the subject property. In support of the complaint, she submitted an appraisal report performed by appraiser Janet Conrad, which valued the subject property at $112,000 as of April 29, 2016. The BOR voted to reduce the subject property's value to $123,700 based upon changes to the property record card, i.e., condition and obsolescence of the outbuildings. This appeal ensued. The property owner submitted written argument with additional documents attached. She asserted that the subject property's value, and property tax bills, had increased too much over time. Because the property owner did not avail herself of the opportunity to submit new evidence into the record at a hearing before this board, we will not consider those documents that were not submitted at the BOR hearing. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 76 Ohio St.3d 13 (1996). We note, however, that the property owner also resubmitted Conrad's appraisal report, which we will consider in our analysis.

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 owner failed to provide competent, credible, and probative evidence of the subject property's value. As an initial matter, we note that the she failed to provide any evidence that supported *specifically* valuing the subject property at $115,000 as she has requested. Furthermore, we do not find Conrad's appraisal report to be persuasive. This board

generally rejects an appraiser's opinion of value when the appraiser does not appear before either the BOR or this board. See *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. As we explained in *Speca*, when the appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials, authenticate or identify the report, or describe the efforts undertaken to estimate value. Most important, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed at a hearing before the BOR or before this board. See *Evenson v.Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, 2002 unreported. In addition, Conrad's appraisal report does not opine a value as of the relevant tax-lien date, January 1, 2018. See *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818. The court has been clear "[t]he vintage of an appraisal matters because 'the essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time.'" Id. at ¶15 (quoting *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997)).

We acknowledge that the Supreme Court has held that this board may accept an appraisal report without accompanying appraiser testimony. In *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 ("*Team Rentals*"), the Supreme Court held this board should have given weight to a non-tax-lien dated appraisal when the proponent of using the appraisal report testified about why it was created and a party relied upon the appraisal report in a business or financial transaction. Id. at ¶¶30-31. However, the Supreme Court clarified *Team Rentals* in *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058. In *Musto*, the court held this board need not credit an appraisal that had been relied upon in a financial or business transaction "[i]n the absence of direct testimony about the preparation and actual use of" the appraisal. Id. at ¶42; *Ciccotti v.Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2018-352, unreported. Here, the

property owner failed to provide "direct testimony about the preparation and actual use of" the appraisal report. See *Musto*, supra.

Likewise, we reject the property owner's argument that the subject property's value had increased too much over many years. This board has consistently rejected the notion that real property values must necessarily rise or fall commensurate with some preconceived notion of "historical trending" or inflationary/deflationary rates. See, e.g., *Quinn v. Montgomery Cty. Bd. of Revision* (Sept. 12, 2016), BTA No. 2015-2258, unreported.

We conclude that the property owner failed to satisfy the evidentiary burden on appeal and now turn to the propriety of the BOR's decision to reduce the subject property's value to $123,700. See *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 122, 2017-Ohio-8384. A review of the property record card demonstrates the changes the BOR made and calculations the BOR undertook to arrive at its decision value. We find, therefore, that the BOR's decision to reduce the subject property's value to $123,700 is supported by the record and affirm such decision.

Based upon the foregoing, it is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2018:

TRUE VALUE:

$123,700

TAXABLE VALUE:

$43,300

OHIO BOARD OF TAX APPEALS

KEVIN AND NANCY POSEY, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	Appellee(s). CASE NO(S). 2019-2620 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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

Entered Monday, March 2, 2020

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

[1] Appellants appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 016-24-058, for tax year 2018. This board convened a hearing, after which the county appellees filed a motion to dismiss the appeal. Although given the opportunity, appellants have not responded to the motion. Therefore, this matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the county appellees' jurisdictional motion.

[2] The fiscal officer initially assessed the subject's total true value at $31,600. Appellants filed a complaint with the BOR seeking a reduction in value to $15,000. At the BOR hearing, appellants relied on evidence of negative conditions, including photographs of the property,

repair estimates, and testimony from the property manager, who resides in the same neighborhood as the subject property and owns several other houses. The property manager described a decline in the neighborhood that had taken place over several years that included an increase in crime, drug use, and vacant or poorly maintained properties. The property manager also stated that the subject property's assessed value increased when others he owns decreased. The BOR provided a list of sales in the neighborhood. The BOR issued a decision reducing the initially assessed valuation to $28,400 based on a 10% condition adjustment. From this decision, appellants filed the present appeal.

[3] This board convened a hearing, at which appellants again relied on evidence of negative conditions to both the property (foundation issues from water, a chimney that needs to be replaced) and the neighborhood (crime maps, vacant lots/houses, absentee landlords). the property manager again appeared to reiterate many of the points made during the proceedings before the BOR. Appellants also relied on federal income tax returns to demonstrate that the property experienced a loss in 2017, 2018, and 2019. Although the county appellees did not participate in the hearing, after it concluded they filed a written motion to dismiss, alleging that appellants failed to file a copy of the notice of appeal with the BOR, in violation of R.C. 5717.01.

[4] Before we reach the merits of the appeal, we must address the county appellees' jurisdictional motion, despite it being so late in the proceedings. *Diley Ridge Med. Ctr. v. Fairfield Cty. Bd. of Revision*, 141 Ohio St.3d 149, 2014- Ohio-5030. 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."). Although given more than fourteen days to submit proof of proper filing, appellants have not provided any additional documentation to establish they properly filed notice with the BOR. Accordingly, we find that he county appellees' motion has merit and that we lack jurisdiction to determine the value of the property for tax year 2018.

[5] Even if we had jurisdiction to reach the merits of the appeal, however, we would find that appellants failed to meet their burden to establish their right to a reduction. Here, the burden is on 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 photographs, maps, and testimony demonstrating difficult conditions in the subject's neighborhood, estimates to show negative conditions experienced by the subject property itself, and the presentation of evidence regarding the the assessed values for other properties in the area.

[6] First, we must reject appellants' evidence of negative conditions, including difficulties finding quality tenants and earning sufficient rental income to cover the expenses. In *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996), the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the

impact they have upon the property's value. See, also, *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997). Thus, without appraisal evidence to correlate the factors with value, we are unable to rely on this evidence to adjust the value of the subject property.

[7] Second, we find that the evidence regarding other properties' assessed values is insufficient to meet appellants' burden of proof. It is well established that the assessed values of other properties do not establish a new value for a subject property or even that the subject property was valued improperly. The court has explained, "[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." *Benedict v. Bd. of Revision*, 170 Ohio St. 62, 63 (1959). See, also, *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision* (1996), 76 Ohio St.3d 29, 31 ("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."). Accordingly, we would have found that appellants failed to establish their right to a further reduction. *Moskowitz*, supra, at ¶10. For the reasons described above, however, it is the order of this board that this matter is hereby dismissed.

OHIO BOARD OF TAX APPEALS

ROBERT BURTSCHER, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-2347
vs.	)	
LUCAS COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROBERT BURTSCHER
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For the Appellee(s) - LUCAS COUNTY BOARD OF REVISION
Represented by:
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Entered Monday, March 2, 2020

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

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On October 18, 2019, the appellant filed an application for remission with this board. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion the affidavit of the BOR director for the Lucas County Auditor, 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* (1946), 147 Ohio St. 147, 150; *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68. Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MATTHEW M. AND KAREN A. MAYHER, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2089 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MATTHEW M. AND KAREN A. MAYHER
Represented by:
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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INDEPENDENCE LOCAL SCHOOLS BOARD OF EDUCATION

Represented by:
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Entered Monday, March 2, 2020

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. 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

AKEEL INVESTMENT LIMITED, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-2004 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AKEEL INVESTMENT LIMITED
Represented by:
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
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Entered Monday, March 2, 2020

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

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 010-051297-00, 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 is improved with a 3,068 square foot commercial auto service

garage. An unimproved adjacent parcel is part of the same economic unit but is not at issue in the present appeal. The auditor initially assessed the subject's total true value at $65,300. The appellee board of education ("BOE") filed a complaint with the BOR seeking an increase in value to $140,800 (the total requested value was $195,000 for both parcels). At the BOR hearing, the BOE submitted a deed and conveyance fee statement that demonstrated appellant purchased the two parcels on September 1, 2017 for a total recorded sale price of $195,000. The BOE argued that the value of the property should be increased consistent with the sale price.

[3] Appellant's owner and another representative appeared at the BOR hearing to contest the requested increase. Appellant's representatives did not contest that the sale was a recent arm's-length transaction but maintained that the sale price included consideration for tools, other equipment, and the value of the business that had operated in the location for 40 years. Appellant's owner further explained that the parties to the sale had originally signed a land installment contract in 2015, at which time appellant began selling some of the tools. The owner presented a list of sales in the area to establish the appropriate price per square foot for the subject real property. The owner also utilized an income analysis, in which a capitalization rate of 6.93% was applied to a net operating income ("NOI") derived from the then-current income and expenses to establish a value of $92,482. The owner also calculated the NOI based on the requested increase in real property taxes, resulting in an estimated value of $54,964. Appellant's representative also referenced some documents during the hearing, including tax returns and a copy of the land installment contract, though such documents were not included in the transcript. The BOR issued a decision increasing the initially assessed valuation to $169,800 (retaining the auditor's value of $25,200 for the adjacent lot), which appellant appealed to this board.

[4] This board convened a hearing at which appellant's representatives again appeared and maintained that the sale included items other than real property and submitted evidence in attempts to demonstrate as much. Appellant's owner presented an appraisal report opining a total value of $115,000 as of January 1, 2018, though the appraiser was not present to testify, and the owner expressed that he did not agree with the valuation. The owner also submitted a Columbus market overview, a tool quote dated September 26, 2018, several years' worth of his personal tax returns, and a breakdown of the tools and equipment that purportedly transferred with the real property, including values for each item. This list of tools and their values was created after the board of revision hearing and purportedly submitted for the BOR's consideration, though it was also excluded from the transcript. The BOE asserted that appellant had failed to meet its burden to demonstrate that consideration for any non-real property items were in fact included in the recorded purchase price and, therefore, the BOR's value should be retained.

[5] After the hearing, this board attempted to obtain any documents that were presented to the BOR but not already included in the transcript from the county appellees. When the BOR certified that no such documents were in its possession, this board ordered the parties to supplement the record with the information. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094. Nevertheless, none of the parties submitted any additional evidence despite being given the express opportunity to do so. Thus, to the extent that any documents have not been included elsewhere in the record, we are unable to consider any evidence that was offered to the BOR but not included in the transcript. We note that it appears that the 2015 land installment contract was included in the addendum of the appraisal, and the owner provided the tax returns as evidence at this board's hearing.

[6] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction."

Conalco v. Bd. of Revision, 50 Ohio St.2d 129 (1977). 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. 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.

[7] In the present appeal, there is no dispute that the subject property transferred via a recent, arm's-length transaction. The only disagreement is the proper sale price attributable to the real property. When this board determines that the record contains adequate support to find that any of the consideration paid in a bulk 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. The party advocating for a reduction below the full sale price due to an allocation of other assets bears the burden of showing the propriety of such action and must provide "corroborating indicia" of the appropriate allocation. *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249, ¶17. See, also, *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011-Ohio-2258. The court has clarified that even without negotiation of the allocation of the sale price among the parties contemporaneous with the time of the sale, an after-the-fact appraisal may be used to show the proper reduction of the overall sale price to account for those non-realty items. *Arbors E.*, supra, at ¶23, citing *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664, ¶35. Nevertheless, 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.

[8] We find that some deduction is necessary to account for consideration paid for non-realty items. This amount, however, is less than that amount proposed by the owner. We find that neither the quote from Snap-on Tools providing a cost new for equipment nor the tool and equipment value list created after the BOR hearing provide a reliable indication of the value of the personal property that transferred. We do, however, find that the 2015 federal income tax return provides a reliable basis for some personal property reduction. The owner's return reflects a capital gain for the disposition of "tools & machines" that were acquired at the time the parties entered into the sales agreement and were sold within the same year. According to Form 4797, the cost basis of the personal property was $33,500. Although this personal property did not constitute the totality of the personal property included in the relevant transaction, we find it is the only non-realty for which we are able to reliably accord a particular value.

[9] Furthermore, although appellant submitted additional evidence seeking to establish a lower value for the property, we find that such evidence fails to establish an alternative value. Because the best evidence of value rule is a rebuttable presumption, we must determine whether the opponent of the sale price has provided evidence that constitutes a more accurate value of the subject property. See *Westerville City School Dist. Bd. of Edn. v. Franklin Cty. Bd. Of Revision*, 154 Ohio St.3d 308, 2018-Ohio-3855, ¶14. Rebuttal evidence may include an appraisal to demonstrate that the sale was not reflective of market value or to provide affirmative evidence of value. *Spirit Master Funding IX, L.L.C. v. Cuyahoga Cty. Bd. Of Revision*, 155 Ohio St.3d 254, 2018-Ohio-4302, ¶9, citing *Westerville City School Dist.*, supra.

[10] Appellant's rebuttal evidence constituted the appraisal opining value as of January 1, 2018, general market information, comparable sales, and an income approach. We find that this

information fails to establish an alternative value, whether each is considered for its own merits or they are weighed together as a whole body of evidence. The appraisal report constitutes unreliable hearsay because it was presented without testimony from the appraiser. 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*"). While in certain instances, the information contained within the appraisal may furnish an independent basis for valuing the property even without testimony from the author, we find that the appraisal presented here does not meet the standard necessary to do so. See *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058, ¶42 (distinguishing a *Team Rentals* from the circumstances where the record lacked direct testimony about both the preparation and use of an appraisal). Moreover, we find that the sales data and income approach prepared by the representative are not competent and probative evidence of value. Not only has the representative failed to demonstrate that he has requisite expertise to perform a qualifying appraisal of the property, but he also failed to adequately demonstrate whether and to what extent particular characteristics of the property impact its value within the market.

[11] Accordingly, we find that the best evidence of value is the sale price as reported on the conveyance fee statement ($195,000) less the cash basis reported for the personal property that subsequently sold ($33,500). Additionally, we note that the BOR allocated the full value of the increase to the improved subject parcel and retained the initial land value on the vacant lot. We find that this allocation is supported and allocate the value accordingly, though the vacant lot is not part of this appeal.

[12] 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

$136,300

TAXABLE VALUE

$47,710

OHIO BOARD OF TAX APPEALS

SUGARTREE LIMITED PARTNERSHIP, (et. al.), Appellant(s), vs. PERRY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-333 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SUGARTREE LIMITED PARTNERSHIP
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For the Appellee(s) - PERRY COUNTY BOARD OF REVISION
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NEW LEXINGTON, OH 43764

Entered Thursday, March 5, 2020

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

Sugartree Limited Partnership ("Sugartree") appeals from a decision of the Perry County Board of Revision ("BOR") valuing the subject property for tax year 2017. This board held a merit hearing, but only Sugartree appeared. Accordingly, we decide the case on the notice of appeal, the statutory transcript, and this board's hearing record).

The subject is a 24-unit apartment complex subsidized through the USDA's Rural Development program. See *Frontier Run L.L.C. v. Van Wert County Board of Revision* (Apr. 4, 2016), BTA No. 2015-838, unreported (generally describing the Rural Development program). The auditor valued the subject at $848,680 for tax year 2017, and Sugartree filed a decrease

complaint with an opinion of value at $300,000. At the BOR hearing, Sugartree called its representative who testified to the general character of the property and described the nature of the Rural Development program. Sugartree also supplied the BOR with a packet of business records, photographs, information from the USDA on the Rural Development program, and case law. The BOR ultimately valued the property at $506,500, and Sugartree appealed to this board.

At this board's hearing, Sugartree presented the testimony and appraisal of Richard G. Racek, Jr., MAI. The BOR did not appear. Mr. Racek valued the subject at $300,000 using the income capitalization method. He testified he developed the appraisal using a method substantially similar to the one he used in *Rootstown Elderly Housing Ltd. Partnership v. Portage Cty. Bd. of Revision* (June 7, 2017), BTA No. 2016-1048, unreported, and *Villa Allegra Ltd. Partnership v. Mercer Cty. Bd. of Revision* (Sept. 23, 2019), BTA No. 2018-2050, unreported. This board adopted his appraisal in both cases. Here, Mr. Racek stated he accounted for the restrictions imposed by the Rural Development program, and his report likewise reflects that he accounted for those restrictions. Sugartree asks this board to adopt Mr. Racek's opinion of value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). The best evidence of value is a recent arm's-length transaction, but there have been no recent sales of the subject property. *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129, 129 (1977). Accordingly, we turn to Mr. Racek's appraisal, which we find is the best and most persuasive evidence of value.

Mr. Racek used basic rental rates for the subject property, which he stated was

appropriate given the nature of the Rural Development rental rate formula. He calculated his vacancy/credit loss and expenses figures after considering the subject's operational history, tailored market data, and information from the Ohio Housing Finance Agency. He then calculated a capitalization rate using comparables subject to low-income housing tax credit restrictions, and he ultimately concluded to a value of $300,000.

This board finds Mr. Racek's appraisal to be competent, probative, and persuasive evidence of value. Furthermore, we note there have been no specific challenges to any aspect of his appraisal. Accordingly, this board decides that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 06-009050.0000

TRUE VALUE

$300,000

TAXABLE VALUE

$105,000

OHIO BOARD OF TAX APPEALS

BUCKEYE COMMUNITY HOPE 8, L.P., (et. al.), Appellant(s), vs. PERRY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-330 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BUCKEYE COMMUNITY HOPE 8, L.P.
Represented by:
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Represented by:
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Entered Thursday, March 5, 2020

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

Buckeye Community Hope 8 Limited Partnership ("Buckeye") appeals from a decision of the Perry County Board of Revision ("BOR") valuing the subject property for tax year 2017. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

The subject property comprises two parcels improved with 48 apartments subsidized through the USDA's Rural Development program. See *Frontier Run L.L.C. v. Van Wert County Board of Revision* (Apr. 4, 2016), BTA No. 2015-838, unreported (generally describing the Rural Development program). The auditor valued the subject at a combined $1,556,100 for tax year 2017, and Buckeye filed a decrease complaint with an opinion of value at $775,000. At the

BOR hearing, Buckeye called its representative who testified to the general character of the property and described the nature of the Rural Development program. Buckeye also supplied the BOR with a packet of business records, photographs, information from the USDA on the Rural Development program, and case law. The BOR ultimately valued the property at $1,231,800, and Buckeye appealed to this board.

At this board's hearing, Buckeye presented the testimony and appraisal of Richard G. Racek, Jr., MAI. The BOR did not appear. Mr. Racek valued the subject at $730,000 using the income capitalization method. He testified he developed the appraisal using a method substantially similar to the method he used in *Rootstown Elderly Housing Ltd. Partnership v. Portage Cty. Bd. of Revision* (June 7, 2017), BTA No. 2016-1048, unreported, and *Villa Allegra Ltd. Partnership v. Mercer Cty. Bd. of Revision* (Sept. 23, 2019), BTA No. 2018-2050, unreported. We note we adopted Mr. Racek's opinion of value in both cases. Here, he stated he accounted for the restrictions imposed by the Rural Development program, and his report likewise reflects that he accounted for those restrictions. Buckeye asks this board to adopt Mr. Racek's opinion of value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). The best evidence of value is a recent arm's-length transaction, but there have been no recent sales of the subject property. *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129, 129 (1977). Accordingly, we turn to Mr. Racek's appraisal, which we find is the best and most persuasive evidence of value.

Mr. Racek used basic rental rates for the subject property, which he stated was appropriate given the nature of the Rural Development rental rate formula. He calculated his vacancy/credit loss and expenses figures after considering the subject's operational history, tailored market data,

and information from the Ohio Housing Finance Agency. He then calculated a capitalization rate using comparables subject to low-income housing tax credit restrictions. He ultimately concluded to a value of $730,000.

This board finds Mr. Racek's appraisal to be competent, probative, and persuasive evidence of value. Furthermore, we note there have been no specific challenges to any aspect of his appraisal. Accordingly, this board decides that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 11-000692.0000

TRUE VALUE

$397,700

TAXABLE VALUE

$139,200

PARCEL NUMBER 11-000693.0000

TRUE VALUE

$332,300

TAXABLE VALUE

$116,310

OHIO BOARD OF TAX APPEALS

HEATH CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. LICKING COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1712 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HEATH CITY SCHOOLS BOARD OF EDUCATION
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NEWARK, OH 43055

PARK PLAZA, INC.
RONALD SCHENK, PRESIDENT
1 E. SUMMTERTON DR.
BLUFFTON, SC 29910

Entered Thursday, March 5, 2020

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

The board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel number 030-088518-00.000, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, transcript of this board's hearing, and any written argument submitted by the parties.

The property owner filed a complaint with the BOR, which requested that the subject property be revalued from its initially assessed value of $4,000,000 to $3,600,000. The BOE filed

a countercomplaint, which objected to the request. At the hearing on the matter, both parties appeared through their representatives. Brad and Ron Schenck, members of the property owner, appeared on behalf of the property owner; however, Ron Schenck participated by way of telephone. Ron Schneck discussed the occupancy/vacancy issues with the subject property, a shopping center, which he alleged was an industry-wide issue for brick-and-mortar retail stores. He asserted that the subject property had previously been appraised, for mortgage refinancing purposes, and that such appraisal valued the subject property at $3,000,000. Counsel for the BOE cross-examined the Schencks about the subject property's occupancy/vacancy as of the tax lien date. Because the appraisal report had not been provided prior to the hearing, the BOR members requested that the property owner supplement the record with such report. After receiving the appraisal report, the BOR voted to reduce the subject property to $3,600,000, and this appeal ensued.

At this board's hearing, Ron Schneck appeared on behalf of the property owner. He expanded upon his prior testimony about the issues facing the brick-and-mortar retail industry. The property owner submitted a solicitation from a business that assists property owners with the real-property valuation challenge process, which suggested that the subject property might be worth $2,880,000 and resubmitted the refinancing appraisal report. In lieu of attending this board's hearing, the BOE submitted written argument to assert that the BOR erred in its decision.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. 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 evidence, i.e., the refinancing appraisal report, testimony about the market in which the subject property operates, and the subject property's performance in such market, and the solicitation to assist with the property-tax valuation challenge process. First, we must conclude that the refinancing appraisal report carries little evidentiary weight. The property owner only provided the transmittal page that was attached to the appraisal report, which demonstrated that the appraiser valued the subject property's leased fee estate at $3,000,000 as of July 28, 2014; the underlying data and methodologies used to derive the conclusion of value were not provided to the BOR or to this board. In *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 548, 2018-Ohio-919, the court considered whether a sheriff's-sale appraisal, which contained nothing more than a conclusion of value without any supporting analysis, was competent and probative evidence of real property value. The court noted:

> [E]ven 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.

Id. at ¶ 18. (Parallel citations omitted.)

The refinancing appraisal report is not competent, credible, and probative evidence of value for other reasons as well. The appraisal report did not opine value as of the tax lien date of January 1, 2017 as required by case law. See e.g., *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26 (1997). The appraiser did not testify at either the hearing before the BOR or before this board, to discuss the underlying data and methodologies used to derive the conclusion.

Id. This board has consistently held that appraisal reports performed for purposes other than tax valuation are not necessarily a complete and thorough evaluation of the property at issue. See, e.g., *Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported.

Second, we must find the general testimony about the brick-and-mortar retail market and the specific testimony about the subject property's own performance in such market to be unpersuasive. The record is void of any market driven information that would allow this board to determine the subject property's value based upon an income approach to valuing real property. See *Schroyer v. Mercer Cty. Bd. of Revision* (Apr. 8, 2019), BTA No. 2018-1273, unreported at 2-3 ("[A]ppellants offered documents to show how much, or little, appellant profits from ownership of the subject. While that data could be relevant for an income capitalization appraisal, appellant's data alone is not competent evidence of value. *** Here, that complex calculation cannot be completed with appellant's evidence alone. As the Supreme Court explained in *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996), an appraiser must determine whether a property's actual income and expenses conform to the market before relying on such information to opine value.").

Third, based upon several factors discussed above, we must also conclude that there is little evidentiary value for the solicitation to assist with the property-tax valuation challenge process.

Based upon our analysis of the property owner's arguments and evidence, we must find that the property owner failed to satisfy its burden to provide legally sufficient evidence to support a reduction to the subject property's value. As a result, we conclude that the BOR committed error when it decided to reduce the subject property's value. We must also note that we are unable to discern why the BOR decided to reduce the subject property's value to $3,600,000. For

example, the record is devoid of any evidence to show why the BOR decided to reduce the subject property's value to $3,600,000, as opposed to $3,500,000 or $3,700,000. See *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. *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." (Parallel citation omitted.)).

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 property owner failed to satisfy its evidentiary burden before the BOR and before this board. As a result, we are constrained to reinstate the subject property's initially assessed value. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 127 Ohio St.3d 63, 2010-Ohio-4907, ¶35 (reinstating county auditor's original valuation when "the record did not contain sufficient evidence for the BTA to perform an independent valuation of the property.").

It is, therefore, the order of this board that the subject property's value shall be as following as of January 1, 2017:

True Value: $4,000,000

OHIO BOARD OF TAX APPEALS

HUDSON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),
Appellant(s),

vs.

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

Appellee(s).

CASE NO(S). 2018-1037
REAL PROPERTY TAX DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HUDSON CITY SCHOOLS BOARD OF EDUCATION
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Entered Thursday, March 5, 2020

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

[1] The appellant school board appeals from a decision of the Summit County Board of Revision ("BOR") valuing the subject property for tax year 2017. Both the school board and the appellee property owner, Crown Castle GT Company, LLC ("Crown Castle"), filed briefs. We decide the case on the notice of appeal, the statutory transcript, and the briefs.

[2] The property is a 1.012-acre cell tower site. The fiscal officer valued the property at $320,840 for tax year 2017. Crown Castle filed a decrease complaint with an opinion of value $110,000 based on the appraisal of Samual Koon, MAI, and Owen Heisey. At the BOR hearing, Crown Castle presented the testimony of Mr. Heisey who authenticated and discussed the appraisal. The appraisers utilized the cost approach using eight adjusted land sales. The land sold for between $57,933 and $103,226 per acre between January 2015 and May 2018. The appraisers then valued the improvements, i.e., two storage sheds, using Marshall & Swift to determine reproduction cost, excluding business fixtures, i.e., the cell tower. The BOR adopted the appraisal, and the school board appealed. The parties waived their appearances at this board's hearing and filed written argument.

[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). Because the school board is the appellant, we must first determine if our review is governed by the *Bedford* rule. See *Gahanna-Jefferson City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (June 6, 2018), BTA No. 2016-2634, unreported. The rule applies when the four elements are met: (1) the property owner either filed the original complaint or a countercomplaint; (2) the BOR ordered a reduced valuation based on competent, minimally plausible evidence offered by the property owner; (3) the school board is the appellant before this board; and (4) the BOR's decision is based on appraisal evidence rather than a sale. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025. The *Bedford* rule does not apply when the BOR's reduction was based upon noncompetent evidence or legal error. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 700, 2016-Ohio-8375. If the rule does apply, the school board must come forward with affirmative evidence of value and cannot rely on the auditor's value as the default value. See id.

[4] Based on its brief, the school board argues the appraisal is not competent and minimally plausible for three reasons. First, the school board argues the appraisal does not account for the value of being able to place the tower on the subject property, despite the fact the use is nonconforming and not in compliance with current zoning regulations. Second, the school board argues the appraisers utilized inappropriate comparables. Third, the school board argues the appraisers erred it utilizing the cost approach. We respectfully disagree with all three arguments for the following reasons.

[5] The school board's contributory value argument rests on two cases, *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Nov. 7, 2016), BTA No. 2016-132,unreported ("*American Tower*"), and *CDC Cleveland L.L.C. v. Cuyahoga Cty. Bd. of Revision* (Apr. 22, 2008), unreported. Crown Castle argues *American Tower* does not control this case because that case was about the allocation of a sale price amongst real property and personal property, i.e., the tower. We agree. We do not find that case disposes of this case because this case does not involve the allocation of a sale. *CDC Cleveland* required this board to decide the effect of an existing cell tower lease on a sale. Again, we do not find that case on point because this case does not involve a sale.

[6] Turning to the school board's second argument, we are unable to find the appraisers utilized inappropriate comparables. The school board's primary issue is that the appraisers selected comparable land sales zoned residential and cell towers are not permitted on such sites. In response, Crown Castle argues the "subject property was zoned residential as of the tax lien date, which necessitates the use of residentially zoned properties." Reply Br. at 5. Again, it appears use as a cell tower site is a nonconforming use. Id.; see also Appraisal Report at C-1. We do not find that the appraisal is legally incorrect by using residential land sales when the subject is zoned residential. We note the school board has provided no appraisal evidence to show better sales were available.

[7] Finally, we reject the school board's argument against the cost approach. Ohio law permits the property to be appraised using the cost approach. See Ohio Adm. Code 5703-25-05. As Crown Castle notes in its brief, "[i]f comparable sales are not available, they cannot be analyzed to develop an opinion of the market value of such properties. Therefore, current market indications of depreciated cost or the costs to acquire and refurbish an existing building are the best reflections of market value." See Reply Br. at 6 (quoting The Appraisal of Real Estate 13th Ed. 2013), 382). Here, an MAI appraiser utilized the cost approach to produce an appraisal. The cost approach is legally permissible and the resulting appraisal is competent and minimally plausible.

[8] In sum, we disagree with the school board that the appraisal evidence presented by the owner was not competent, minimally plausible evidence of value. We also do not find the BOR committed legal error. Thus, we find that the *Bedford* rule applies. Because it applies, and the school board has presented no evidence of value, we find the school board has not carried its burden.

[9] It is the decision of this board that the true and taxable values of the subject property as of January 1, 2017, were as follows:

PARCEL NUMBER 30-04859

TRUE VALUE

$110,000

TAXABLE VALUE

$38,500

OHIO BOARD OF TAX APPEALS

WODA MEADOW GLEN LIMITED PARTNERSHIP, (et. al.), Appellant(s), vs. WYANDOT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2017-1458 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Thursday, March 5, 2020

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 10-073000.0000, 10-292500.0000, 10-291500.0000, and 10-292000.0000, 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, record of this board's hearing, and post-hearing briefs filed by the parties.

The subject property, a 50-unit apartment complex, was initially, collectively assessed at $856,000. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $700,000. The affected board of education ("BOE") filed countercomplaints, which objected to the request.

At the BOR hearing on the matter, both parties appeared through counsel. The property owner argued that the subject property participated in the Rural Development ("RD") program, administered by United States Department of Agriculture ("USDA"), to provide housing for people who meet specific income guidelines. The property owner submitted the testimony of James Zambori to detail how the RD program worked, i.e., the property owner is restricted in the amount of rent it can charge in exchange to favorable mortgage interest rates. (See *Vernon Ridge 2 L.P. v. Knox Cty. Bd. of Revision* (Jan. 29, 2013), BTA No. 2009-2789 et al., unreported, for more information about the RD program.) In support of the complaint, the property owner submitted a packet of documents entitled "Owner's Opinion of Value." Based upon its presentation, the property owner requested that the subject property be revalued at $700,000. The BOE cross-examined Zambori. The BOR subsequently voted to retain the subject property's initially assessed value and issued a written decision to that effect. This appeal ensued.

This board held a consolidated hearing with another matter, BTA No. 2017-1457, which involved the same counsel, same legal issues, and a substantially similar property. (A separate decision will be issued for BTA No. 2017-1457.) The property owner, county appellees, and BOE appeared through counsel to supplement the record with argument and/or evidence. The property owner submitted the appraisal report and testimony of appraiser Richard G. Racek, Jr., who opined the value of the subject property to be $750,000 (exclusive of $12,500 allocated to furniture, fixtures, and equipment) as of the tax lien date. Racek was examined, and cross-examined, about the underlying data and methodologies used to derive his conclusion of value.

The county appellees and BOE jointly submitted the appraisal report and testimony of appraiser Thomas D. Sprout, who opined the value of the subject property to be $1,155,000 (exclusive of $30,000 allocated to furniture, fixtures, and equipment) as of the tax lien date. Sprout was examined, and cross-examined, about the underlying data and methodologies used to derive his conclusion of value.

Subsequent to the hearing, the parties submitted written argument to more fully assert their respective positions. By way of its submissions, the property owner argued that the subject property received below-market rents, which puts this matter in line with the Supreme Court's decision in *Notestine Manor, Inc. v. Logan Cty. Bd. Of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2, by which the court noted that "the preference for market rent over contract rent is presumptive, not conclusive[,]" id. at ¶22, in a decision that affirmed this board's decision to accept an appraisal report that relied upon a property's below-market rents. The property owner also asserted that that this board previously accepted Racek's methodology, valuing a RD property, in *Rootstown Elderly Housing Ltd. Partnership v. Portage Cty. Bd. of Revision* (June 7, 2017), BTA No. 2016-1048, unreported, and should do so in this matter. As such, the property owner argued, Racek's appraisal report, relying upon the subject property's actual, below-market rents, did not run afoul of relevant law. By way of its submissions, the BOE and county appellees conversely argued that this matter is in line with the Supreme Court decision in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734 ("*Network Restorations III*), by which the court noted "the rule for using a market-rent income approach when valuing government-subsidized residential properties" id. at ¶22, in a decision that affirmed this board's decision to accept an appraisal report that relied upon conventional market rents instead of actual rents of the property under consideration. The BOE and county appellees also asserted that neither *Notestine* nor *Rootstown* apply to this matter because those

cases did not involve competing appraisal reports. As such, the BOE and county appellees argued, Sprout's appraisal report, relying upon conventional market rents, did not run afoul of relevant law. Later, while this matter was pending for decision, the property owner submitted recent decisions from this board, involving the valuation of low-income housing, as additional authority for its position.

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 his appraisal report, Racek first determined that the subject property's highest and best use, "as vacant" and "as improved," were for "permitted residential use" and "for continued use in an affordable housing multi-family capacity," respectively. Hearing Record ("H.R.") at Exhibit ("Ex.") B at 23. He determined that the cost approach to valuing real property would not accurately estimate the subject property's value because of a large amount of economic obsolescence, and that the sales comparison approach to valuing real property would not be used by investors, who would focus on a property's income production. Therefore, he solely developed the income approach to valuing real property. In doing so, he relied upon the subject property's "basic" rent payments, i.e., $450 per month for the ten, one-bedroom units, $500 per month for the thirty-four, two-bedroom units, and $530 for the six, three-bedroom units. He did not consider any "note rate" rental payments that exceed the "basic" rent because the property owner

was required to return overpayments to RD. He concluded to total gross potential income of $296,160, from which he deducted 7% for vacancy and credit loss, based upon the subject property's historical performance and market information, and then added $6,300 of additional income from sources other than rent. After these calculations, he concluded to effective gross income of $281,729. From that number, he deducted total expenses of $207,500, to conclude to net operating income of $74,229. He capitalized the net operating income at 9.75% (which included a 1.75% tax additur to account for property taxes) to conclude the subject property's value to be $750,000 (exclusive of $12,500 allocated to furniture, fixtures, and equipment) as of January 1, 2016.

In his appraisal report, Sprout first determined that the subject property's highest and best use, "as vacant" and "as improved," "would be multi-family residential development that is likely subsidized" and "would be as its exists as a multi-family development subsidized by USDA/Rural Development," respectively. H.R. at Ex. 2 at 26-27. However, he appraised the subject property under the hypothetical condition that it operated in the conventional housing market, not the subsidized housing market. Sprout determined that the cost approach to valuing real property would not accurately estimate the subject property's value because of various factors of obsolescence and because of its income-producing nature. He proceeded to develop the sales comparison approach, which he gave little weight, and income approach to valuing real property. Under the sales comparison approach, he compared the subject property's features and income-producing potential to those same factors of five properties located in central or northwest Ohio, which sold between 2014 and 2017. Comparable sales three and five were income-restricted communities. After qualitatively adjusting the comparable sales for differences with the subject property, Sprout concluded to a per unit value of $23,000, which he then applied to the subject property's 50 units, to conclude to a lower range in value of $1,150,000. He continued his

analysis by relying upon the reported gross-rent multipliers from comparable sales one (6.06), two (3.78), and four (4.92), to conclude to a gross-rent multiplier of 3.75 because of the subject property's higher expense profile. He applied the subject property's gross-rent multiplier to its gross potential income of $323,400 (which will be discussed in Sprout's income approach analysis), to conclude to a higher range in value of $1,215,000. Based upon this two-part analysis, Sprout preliminarily concluded to an indicated range in value between $1,150,000 to $1,215,000.

Under the income approach, Sprout relied upon the conventional apartment market to determine market rent, i.e., $450 per month for the ten, one-bedroom units, $550 per month for the thirty-four, two-bedroom units, and $625 for the six, three-bedroom units. He concluded to total gross potential income of $323,400, from which he deducted 7.5% for vacancy and credit loss, based upon a market survey from Co-Star, and then added $6,250 of additional income from sources other than rent. After these calculations, he concluded to effective gross income of $305,395. From that number, he deducted total expenses of $187,074, to conclude to net operating income of $118,321. He capitalized the net operating income at 10% (which included a 1.75% tax additur to account for property taxes) to preliminarily conclude to a value of $1,185,000. He reconciled the indicated values from both approaches to valuing real property, placing primary emphasis on the income approach, to finally conclude the subject property's value to be $1,155,000 (exclusive of $30,000 allocated to furniture, fixtures, and equipment) as of January 1, 2016.

We have often acknowledged in cases where competing appraisals are offered that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an

opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported. This board must weigh the appraisal reports and assess their credibility. *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 247, 2018-Ohio-4286.

Upon review, we find Racek's appraisal report best estimated the subject property's value as of the tax lien date. We agree with the property owner that *Notestine*, supra, as opposed to *Network Restorations III* and *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254 ("*Network Restoration I*), control the facts of this matter. This property, just like the property in *Notestine*, receives below-market rents, a fact that distinguishes this matter from the *Network Restorations* decisions. This property, just like the property in *Notestine*, is limited in the amount of rent that can be charged to tenants because of USDA restrictions. See S.T. at BOR Hearing Record at Zambori Testimony. This property, just like the property in *Notestine*, is required to pass on surplus profit to USDA. Indeed, the court noted *Network Restoration III* had no application to *Notestine* because below-market rents were at issue instead of above-market rents, i.e., "affirmative value" of government subsidies. Id. at ¶¶22-23. Accord *Network Restorations I*. We note, however, that case law does not *require* this board to accept Racek's appraisal report because it relied upon the subject property's actual income and expenses. *Notestine*, at ¶22 ("Although we did state that use of market rents and expenses constituted a 'rule' to be applied when valuing low-income government housing generally, *** the preference for market rent over contract rent is presumptive, not conclusive." (Internal citation omitted.)). But only Racek's appraisal report accounts for the government restrictions imposed by the RD program; Sprout's appraisal report does not. It is undisputed that Sprout appraised the subject property under the hypothetical assumption that the subject property

operated in the conventional housing market, not the restricted housing market, on tax lien date. Because Sprout's appraisal report does not conform to the requirement to consider government restrictions under *Woda Ivy Glen Partnership v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762, we are constrained to reject it. See, also, R.C. 5713.03 ("The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions ***."). Thus, we must accept Racek's appraisal report as the best indication of the subject property's value.

Though we agree with the property owner that the facts and evidence in this matter necessitates acceptance of Racek's appraisal report, we disagree that we are *required* to accept Racek's appraisal report because we previously accepted his methodologies appraising a RD property in *Rootstown*, supra. As the Tenth District Court of Appeals aptly noted "[t]ax valuation cases are highly fact specific and contained to their own record *** ." *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 17AP-691, 2018-Ohio-4622, at ¶54.

We note that the BOE and county appellees argued that valuing low-income housing properties differently based upon the type of governmental program involved, i.e., low-income housing tax credits under 26 U.S.C. § 42, favorable mortgage, interest rates under 42 U.S.C. § 1485, or construction capital and/or housing assistance under 12 U.S.C. § 1701, is unconstitutional. While the Supreme Court has authorized this board to accept evidence on constitutional issues, it has clearly stated that this board has no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229, (1988); *MCI Telecommunications Corp. v. Limbach*, 68 Ohio St.3d 195 (1994). Therefore, we make no finding on this issue.

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 Racek's appraisal report provides the best evidence of the subject property's value. It is, therefore, the order of this board that the subject property's true and taxable value are as follows as of January 1, 2016:

PARCEL NUMBER 10-073000.0000

TRUE VALUE: $584,600

TAXABLE VALUE: $204,610

PARCEL NUMBER 10-292500.0000

TRUE VALUE: $145,800

TAXABLE VALUE: $51,030

PARCEL NUMBER 10-291500.0000

TRUE VALUE: $10,600

TAXABLE VALUE: $3,710

PARCEL NUMBER 10-292000.0000

TRUE VALUE: $9,000

TAXABLE VALUE: $3,150

OHIO BOARD OF TAX APPEALS

CRAWFORD PLACE LIMITED PARTNERSHIP, (et. al.), Appellant(s), vs. WYANDOT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2017-1457 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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UPPER SANDUSKY EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION
Represented by:
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COLUMBUS, OH 43215

Entered Thursday, March 5, 2020

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 06-450282.000, 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, record of this board's hearing, and post-hearing briefs filed by the parties.

The subject property, a 30-unit apartment complex, was initially assessed at $416,800.

The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $275,000. The affected board of education ("BOE") filed a countercomplaint, which objected to the request.

At the BOR hearing on the matter, both parties appeared through counsel to submit argument and/or evidence in support of their respective positions. The property owner argued that the subject property participated in the Rural Development ("RD") program, administered by United States Department of Agriculture ("USDA"), to provide housing for people who meet specific income guidelines. The property owner submitted the testimony of James Zambori to detail how the RD program worked, i.e., the property owner is restricted in the amount of rent it can charge in exchange to favorable mortgage interest rates. (See *Vernon Ridge 2 L.P. v. Knox Cty. Bd. of Revision* (Jan. 29, 2013), BTA No. 2009-2789 et al., unreported, for more information about the RD program.) In support of the complaint, the property owner submitted a packet of documents entitled "Owner's Opinion of Value." Based upon its presentation, the property owner requested that the subject property be revalued at $275,000. The BOE cross-examined Zambori. The BOR subsequently voted to retain the subject property's initially assessed value and issued a written decision to that effect. This appeal ensued.

This board held a consolidated hearing with another matter, BTA No. 2017-1458, which involved the same counsel, same legal issues, and substantially similar properties. (A separate decision will be issued for BTA No. 2017-1458.) The property owner, county appellees, and BOE appeared through counsel. The property owner submitted the appraisal report and testimony of appraiser Richard G. Racek, Jr., who opined the value of the subject property to be $300,000 (exclusive of $7,500 allocated to furniture, fixtures, and equipment) as of the tax lien date. Racek was examined, and cross-examined, about the underlying data and methodologies used to derive his conclusion of value. The county appellees and BOE jointly submitted the appraisal report and

testimony of appraiser Thomas D. Sprout, who opined the value of the subject property to be $515,000 (exclusive of $15,000 allocated to furniture, fixtures, and equipment) as of the tax lien date. Sprout was examined, and cross-examined, about the underlying data and methodologies used to derive his conclusion of value.

Subsequent to the hearing, the parties submitted written argument to more fully assert their respective positions. By way of its submissions, the property owner argued that the subject property received below-market rents, which puts this matter in line with the Supreme Court's decision in *Notestine Manor, Inc. v. Logan Cty. Bd. Of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2, in which the court noted that "the preference for market rent over contract rent is presumptive, not conclusive[,]" id. at ¶22, in a decision that affirmed this board's decision to accept an appraisal report that relied upon a property's below-market rents. The property owner also asserted that that this board previously accepted Racek's methodology, valuing a RD property, in *Rootstown Elderly Housing Ltd. Partnership v. Portage Cty. Bd. of Revision* (June 7, 2017), BTA No. 2016-1048, unreported, and should do so in this matter. As such, the property owner argued, Racek's appraisal report, relying upon the subject property's actual, below-market rents, did not run afoul of relevant law. By way of its submissions, the BOE and county appellees conversely argued that this matter is in line with the Supreme Court decision in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734 ("*Network Restorations III*), by which the court noted "the rule for using a market-rent income approach when valuing government-subsidized residential properties," id. at ¶22, in a decision that affirmed this board's decision to accept an appraisal report that relied upon conventional market rents instead of actual rents of the property under consideration. The BOE and county appellees also asserted that neither *Notestine* nor *Rootstown* apply to this matter because those cases did not involve competing appraisal reports. As such, the BOE and county

appellees argued, Sprout's appraisal report, relying upon conventional market rents, did not run afoul of relevant law. Later, while this matter was pending for decision, the property owner submitted recent decisions from this board, involving the valuation of low-income housing, as additional authority for its position.

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 his appraisal report, Racek first determined that the subject property's highest and best use, "as vacant" and "as improved," were for "permitted residential use" and "for continued use in an affordable housing multi-family capacity," respectively. Hearing Record ("H.R.") at Exhibit ("Ex.") A at 21. He determined that the cost approach to valuing real property would not accurately estimate the subject property's value because of a large amount of economic obsolescence, and that the sales comparison approach to valuing real property would not be used by investors, who would focus on a property's income production. Therefore, he solely developed the income approach to valuing real property. In doing so, he relied upon the subject property's "basic" rent payments, i.e., $432 per month for the twenty, one-bedroom units and $495 per month for the ten, two-bedroom units. He did not consider any "note rate" rental payments that exceed the "basic" rent because the property owner was required to return overpayments to RD. He concluded to total gross potential income of $163,080, from which he deducted 6% for vacancy

and credit loss, based upon the subject property's historical performance and market information, and then added $6,000 of additional income from sources other than rent. After these calculations, he concluded to effective gross income of $159,925. From that number, he deducted total expenses of $130,500, to conclude to net operating income of $28,795. He capitalized the net operating income at 9.41% (which included a 1.41% tax additur to account for property taxes) to conclude the subject property's value to be $300,000 (exclusive of $7,500 allocated to furniture, fixtures, and equipment) as of January 1, 2016.

In his appraisal report, Sprout first determined that the subject property's highest and best use, "as vacant" and "as improved," "would be multi-family residential development that is likely subsidized" and "would be as its exists as a multi-family development subsidized by USDA/Rural Development," respectively. H.R. at Ex. 1 at 24-25. However, he appraised the subject property under the hypothetical condition that it operated in the conventional housing market, not the subsidized housing market. Sprout determined that the cost approach to valuing real property would not accurately estimate the subject property's value because of various factors of obsolescence and because of its income-producing nature. He proceeded to develop the sales comparison approach, which he gave little weight, and income approach to valuing real property. Under the sales comparison approach, he compared the subject property's features and income-producing potential to those same factors of five properties located in central or northwest Ohio, which sold between 2014 and 2017. Comparable sales three and five were income-restricted communities. After qualitatively adjusting the comparable sales for differences with the subject property, Sprout concluded to a per unit value of $20,000, which he then applied to the subject property's 30 units, to conclude to an upper range in value of $600,000. He continued his analysis by relying upon the reported gross-rent multipliers from comparable sales one (6.06), two (3.78), and four (4.92), to conclude to a gross-rent multiplier of 3.00 because of the subject

property's higher expense profile. He applied the subject property's gross-rent multiplier to its gross potential income of $174,000 (which will be discussed in Sprout's income approach analysis), to conclude to a lower range in value of $525,000. Based upon this two-part analysis, Sprout preliminarily concluded to an indicated range in value between $525,000 to $600,000.

Under the income approach, Sprout relied upon the conventional apartment market to determine market rent, i.e., $450 per month for the twenty, one-bedroom units and $550 per month for the ten, two-bedroom units. He concluded to total gross potential income of $174,000, from which he deducted 9% for vacancy and credit loss, based upon a market survey from Co-Star, and then added $3,750 of additional income from sources other than rent. After these calculations, he concluded to effective gross income of $162,090. From that number, he deducted total expenses of $110,975, to conclude to net operating income of $51,115. He capitalized the net operating income at 9.66% (which included a 1.41% tax additur to account for property taxes) to preliminarily conclude to a value of $530,00. He reconciled the indicated values from both approaches to valuing real property, placing primary emphasis on the income approach, to finally conclude the subject property's value to be $515,000 (exclusive of $15,000 allocated to furniture, fixtures, and equipment) as of January 1, 2016.

We have often acknowledged in cases where competing appraisals are offered thainherent 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. This board must weigh the appraisal reports and assess their credibility. *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 247, 2018-Ohio-4286.

Upon review, we find Racek's appraisal report best estimated the subject property's value as of the tax lien date. We agree with the property owner that *Notestine,* as opposed to*Network Restorations III* and *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 154 Ohio St.3d 146, 2018-Ohio-3254 ("*Network Restoration I*), control the facts of this matter. This property, just like the property in *Notestine,* receives below-market rents, a fact that distinguishes this matter from the *Network Restorations* decisions. This property, just like the property in *Notestine,* is limited in the amount of rent that can be charged to tenants because of USDA restrictions. See S.T. at BOR Hearing Record at Zambori Testimony. This property, just like the property in *Notestine,* is required to pass on surplus profit to USDA. Indeed, the court noted *Network Restoration III* had no application to *Notestine* because below-market rents were at issue instead of the above-market rents, i.e., "affirmative value" of government subsidies. Id. at ¶¶22-23. Accord *Network Restorations I.*

We note, however, that case law does not *require* this board to accept Racek's appraisal report because it relied upon the subject property's actual income and expenses. *Notestine,* at ¶22 ("Although we did state that use of market rents and expenses constituted a 'rule' to be applied when valuing low-income government housing generally, *** the preference for market rent over contract rent is presumptive, not conclusive." (Internal citation omitted.)). But only Racek's appraisal report accounts for the government restrictions imposed by the RD program; Sprout's appraisal report does not. It is undisputed that Sprout appraised the subject property under the hypothetical assumption that the subject property operated in the conventional housing market, not the restricted housing market, on tax lien date. Because Sprout's appraisal report does not conform to the requirement to consider government restrictions under *Woda Ivy Glen Partnership v. Fayette Cty. Bd. of Revision,* 121 Ohio St.3d 175, 2009-Ohio-762, we are constrained to reject it. See, also, R.C. 5713.03 ("The county auditor, from the best sources of information available, shall determine, as nearly as practicable, the true value of the fee simple estate, as if unencumbered

but subject to any effects from the exercise of police powers or from other governmental actions ***."). Thus, we must accept Racek's appraisal report as the best indication of the subject property's value.

Though we agree with the property owner that the facts and evidence in this matter necessitates acceptance of Racek's appraisal report, we disagree that we are *required* to accept Racek's appraisal report because we previously accepted his methodologies appraising a RD property in *Rootstown*. As the Tenth District Court of Appeals aptly noted "[t]ax valuation cases are highly fact specific and contained to their own record *** ." *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 17AP-691, 2018-Ohio-4622, at ¶54.

We note that the BOE and county appellees argued that valuing low-income housing properties differently based upon the type of governmental program involved, i.e., low-income housing tax credits under 26 U.S.C. § 42, favorable mortgage interest rates under 42 U.S.C. § 1485, or construction capital and/or housing assistance under 12 U.S.C. § 1701, is unconstitutional. While the Supreme Court has authorized this board to accept evidence on constitutional issues, it has clearly stated that this board has no jurisdiction to decide constitutional claims. *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229, (1988); *MCI Telecommunications Corp. v. Limbach*, 68 Ohio St.3d 195 (1994). Therefore, we make no finding on this issue.

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 Racek's appraisal report provides the best evidence of the subject property's value. It is, therefore, the order of this board that the subject property's true and taxable value are as follows as of January 1, 2016:

TRUE VALUE

$300,000

TAXABLE VALUE

$105,000

OHIO BOARD OF TAX APPEALS

MARK AND KATHLEEN SCHLESINGER, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2202 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARK AND KATHLEEN SCHLESINGER
Represented by:
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
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LAKEWOOD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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CLEVELAND, OH 44114

Entered Friday, March 6, 2020

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. 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

MT ADAMS LIVING LLC, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-1282
vs.	)	
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MT ADAMS LIVING LLC
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
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CINCINNATI, OH 45202

Entered Friday, March 6, 2020

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

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 072-0002-0179-00, for tax year 2018. 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 county appellees' written argument.

[2] The subject property is a vacant residential lot, with 50 feet of road frontage and 100-foot depth. The auditor initially assessed the subject's total true value at $225,000. The property owners filed a complaint with the BOR seeking a reduction in value to $130,000. At the BOR hearing, appellant's sole member, Shane Qualls, appeared to testify in support of the

requested reduction. Qualls testified that they had purchased the property in 2003 for $145,000, but that it has been more complicated to build on because of a major sewer system that goes right through its center. Qualls referenced the assessed values of other properties near the subject, asserting that those with structures on the property had been valued at rates much lower than the unimproved subject parcel. Qualls testified that he owns many properties in the neighborhood and knows the area quite well. He discussed sales from 2003, 2011, and 2017, of both unimproved lots and lots improved with houses, that sold for amounts lower than the subject property's assessed value, despite the comparable lots being roughly the same size as the subject.

[3] An appraiser with the auditor's Real Estate Department attended the hearing and submitted a report indicating that the value of the subject should be retained. The appraiser also discussed the auditor's value of the property and indicted that the parcel was valued as a primary residential lot. One of the members of the BOR indicated that it appeared that there was some disparity between the value of the subject property and the values of other same-sized lots with houses. The BOR determined, however, that there was insufficient evidence upon which it could rely to choose an alternative value. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

[4] This board convened a hearing, at which Qualls appeared to testify in support of the requested reduction. Qualls referenced a spreadsheet with details about ten properties that provided the land use, assessed land value, date and amount of most recent sale, lot size, and size of any improvements located on the parcel. Qualls also provided the 2017 National Building Cost Manual, attempting to utilize the data within the manual to back out the value attributable to any structures located on the various lots. Qualls also described the value trends in the neighborhood. The county appellees waived the opportunity to appear before the board, relying on written argument claiming that appellant failed to provide sufficient evidence to determine a value other

than that originally determined by the auditor.

[5] When a property owner seeks to challenge the values initially determined by an auditor or fiscal officer, that owner must present sufficient evidence to establish that an alternative proposed value is the true value of the property and cannot merely challenge the accuracy of auditor's value. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 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 its basis fails demonstrate the value requested. Id. at ¶20. See, also, *Johnson v. Clark Cty. Bd. of Revision*, 155 Ohio St.3d 264, 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

[6] Initially, we must reject Qualls' attempt to utilize a building cost manual from 2017 to establish the value of improvements that were more than a century old. We recognize that the cost approach to value is a methodology that appraisers may utilize to determine the value of a property. See, generally, The Appraisal of Real Estate (14th Ed.2013). Here, appellant has attempted to utilize the cost approach to allocate the total value of each comparable property among the improvements and the land. See Ohio Adm. Code 5703-25-11(C) ("Land may be valued by four principal methods: *** (2) The allocation method in which the land value is estimated by subtracting the value of the improvements from a known sale price. This is primarily used in an area where there are very few sales of vacant land and the improvements to land are of a generally uniform type."). Ordinarily, however, the cost approach requires an adjustment of the replacement costs to account for physical and external depreciation, a step which Qualls failed to take. Thus, even if we were to accept the values within the manual as accurate as it relates to the

properties at issue or find that he was qualified to perform this analysis, Qualls failed to account for the impact of physical and external factors that impact the value of the improvements.

[7] In lieu of an appraisal of the subject property, appellant relies on the auditor's assessed land value for other parcels near the subject as well as the sales of other properties. This evidence is not sufficient to support a change in the subject's value. It is well established that the assessed values of other properties do not establish a new value for a subject property or even that the subject property was valued improperly. The court has explained, "[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." *Benedict v. Bd. of Revision*, 170 Ohio St. 62, 63 (1959). See, also, *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996)("Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner."). For this reason, the auditor's value for other properties does not support a reduction.

[8] Additionally, while comparable sales data is frequently utilized by appraisers to determine the value of a given property, the sales discussed by Qualls do not support a reduction in the values of the subject property. Significantly, we find that Qualls has failed to adjust the sale prices for differences among the properties. *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002. Qualls not only failed to properly account for the contributory value of any improvements (where applicable), but also did not adjust the sales to account for any differences in size, location, or other physical attributes of the parcels that would impact their sale

prices.

[9] Finally, we find that Qualls' description of negative conditions in the area and claim of downward trends in the values in the neighborhood do not satisfy appellant's burden without a qualifying appraisal to establish their influence on the value of the property. See, generally, *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996) (discussing the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value); *Freshwater v. Belmont Cty. Bd. of Revision* , 80 Ohio St.3d 26, 30 (1997) ("The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. *** The real estate market may rise, fall, or stay constant between any two dates, and the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact.").

[10] 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.").

[11] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$225,000

TAXABLE VALUE

$78,750

OHIO BOARD OF TAX APPEALS

OLMSTED FALLS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2018-2140
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - OLMSTED FALLS CITY SCHOOLS BOARD OF EDUCATION
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Entered Monday, March 9, 2020

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

[1] The Olmsted Falls City Schools Board of Education ("BOE") appeals from a decision of the Cuyahoga County Board of Revision ("BOR") valuing the subject property for tax year 2017. We decide the case on the notice of appeal, the statutory transcript, this board's hearing record, and the parties' briefs.

[2] The subject property is 4.69 acres of land used as a retention basin and green space for

residents of an adjacent condominium association, appellee Chandlers Lane Condominium Owner's Association, Inc. ("Chandlers Lane"). The city of Olmsted Falls sold the property to Chandlers Lane in 2016. The fiscal officer valued the property at $234,300 for tax year 2017, and Chandlers Lane filed a decrease complaint requesting a value of $0. In its brief to the BOR, Chandlers Lane argued as follows:

> The parcel listed in the Complaint is part of the Chandlers Lane Condominium Owners Association and is subject to the Declaration of Condominium Ownership (hereinafter "Declaration") on file with the Cuyahoga County Recorder at Instrument Number 200009200656. The Declaration regulates that Chandlers Lane is responsible for the maintenance, care, use, and repair of the Common Elements. The parcel named in the Complaint is an open, green space area within the Association, that is vacant and unbuildable. The parcel serves to add and enhance the value of each unit within Chandlers Lane.
>
> Each unit owner in Chandlers Lane, by purchasing their unit and recording their deed, along with the Declaration, has an ownership interest in this parcel. The parcel has no independent value and cannot be developed for sale. The value of this parcel lies in the value of the individual units in the development whose values are increased by the presence of the parcel. The parcel cannot be sold, does not generate income, and is required in modern developments. Currently, the units are being independently taxed, resulting in a double tax on the property because the value in this parcel lies within the enhanced value of the individual units within Chandlers Lane.

[3] The property manager was present at the hearing but was not called to testify. Instead, counsel presented the factual contentions. Chandlers Lane also claimed it had an agreement with the city of Olmsted Falls not to improve the property. The BOR determined the subject property had nominal value and issued a decision valuing the property at $1,000/acre or $5,000 in total. The BOE appealed to this board.

[4] At this board's hearing, Chandlers Lane presented the testimony of Charles Schulman, the property manager. It then presented the testimony and appraisal of James Huber, MAI, who appraised the property at $470 in a two-page appraisal. The BOE objected to references to the condominium declaration because it was never presented to the BOR, only references were made to it in the brief Chandlers Lane presented to the BOR. The school board argued the *Bedford* rule

does not apply in this case because BOR did not base its decision on competent evidence and was also legally incorrect in valuing the property nominally. The BOE's counsel argued the BOR did not base its decision on competent evidence because Chandlers Lane presented "[n]othing more than an aerial map of the property on the day of the [BOR] hearing." H.R. at 5.

[5] The appellant must prove the adjustment in value requested when appealing from a board of revision to this board. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. However, we must first determine if our review is governed by the *Bedford* rule. See *Gahanna-Jefferson City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (June 6, 2018), BTA No. 2016-2634, unreported. The *Bedford* rule applies when four elements are met: (1) the property owner either filed the original complaint or a countercomplaint; (2) the BOR ordered a reduced valuation based on competent, minimally plausible evidence offered by the property owner; (3) the school board is the appellant before this board; and (4) the BOR's decision is based on appraisal evidence not a sale. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025. The *Bedford* rule does not apply when the BOR's reduction was based upon noncompetent evidence or legal error. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 700, 2016-Ohio-8375. If the rule does apply, the school board must come forward with affirmative evidence of value and cannot rely on the auditor's value as the default value. See id. We find the *Bedford* rule does not apply here because the BOR's decision was based on noncompetent evidence, legal error, or both. The aerial map and statements of counsel alone are not competent evidence of value. To the extent the BOR believed it was legally required to value the property at $5,000, we find that was legal error.

[6] Turning to the merits, we find Chandlers Lane has not carried its burden. In its brief, it argues the subject is valueless because of the condominium deed restrictions. The Ohio

Supreme Court has been clear that private, voluntary encumbrances do not generally "complicate the true value of property." *Muirfield Assn. v. Franklin Cty. Bd. of Revision*, 73 Ohio St.3d 710 (1995). That is because the valuation of real property must assume the property is unencumbered. See *Bainbrook/Laural Springs Homeowners Assn., Inc. v. Geauga Cty. Bd. of Revision* (Sept. 30, 2019), BTA No. 2018-1444, unreported.

[7] Notably, Chandlers Lane cites no substantive condominium law that would alter our analysis in this case. We further note we have expressly rejected the argument that common areas in a condominium development have no value for real property taxation purposes. See, e.g., *Orange Hill Estates Homeowners Assn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 29, 2013), BTA No. 2012-2609, unreported. We also note our historical hesitance that a property's value is zero or nominal. See *Loriz v. Butler Cty. Bd. of Revision* (Mar. 6, 2008), BTA No. 2006-K-1503, unreported. We also do not find Mr. Huber's letter to be probative evidence of value. The report is barely over one page and contains no actual data. Finally, we note there are other various infirmities with Chandlers Lane's argument, as indicated in the BOE's brief. For example, the declaration itself was never presented to the BOR nor was it presented to this board. It is also unclear to this board that the condominium units actually capture the value of the subject property. Chandlers Lane has not presented evidence on that point.

[8] We are also mindful of our duty to independently review the BOR's decision to deviate from the auditor's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996); *Cleveland Mun. Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Sept. 20, 2016), BTA No. 2015-2211, unreported. Because we find no support for the BOR's value, we reinstate the fiscal officer's value. Therefore, it is the decision and order of this board that the true and taxable value of the subject property as of January 1, 2017, were as follows:

PARCEL NUMBER 291-35-154

TRUE VALUE

$234,300

TAXABLE VALUE

$82,010

OHIO BOARD OF TAX APPEALS

CLEVELAND AVENUE VALLEY EQUITY GROUP LLC, (et. al.), Appellant(s), vs. DELAWARE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1896, 2018-1993 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, March 9, 2020

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

Cleveland Avenue Valley Equity Group LLC ("Cleveland Avenue") appeals from a decision of the Delaware County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2017. The parties opted to submit this case to us on the existing record and briefs. We decide the case on the notice of appeal, the statutory transcript, and the briefs.

The subject property is a two-story office building constructed in 2003. Cleveland Avenue previously appealed the 2016 value of the subject property in *Cleveland Avenue ValleyEquity Group v. Delaware Cty. Bd. of Revision* (Feb. 12, 2018), BTA No. 2017-1043, unreported. We dismissed that appeal for failure to serve the BOR.

The auditor valued the property at $7,182,200 for tax year 2017. Cleveland Avenue filed a decrease complaint requesting a value of $3,100,000 based on a November 2015 auction sale, and the appellee board of education ("BOE") filed a counter-complaint asking the auditor's value be retained. The BOR held two hearings on the matter. The first was held on July 19, 2018, and counsel for both Cleveland Avenue and the BOE appeared. No witnesses were called. Counsel for Cleveland Avenue indicated Cleveland Avenue was relying on an auction sale but counsel was not involved with that auction sale. Counsel supplied the BOR with a packet of documents including photographs, a factual narrative, a settlement statement, and a limited use consulting appraisal summary. The BOR continued the case in order to review the record in the 2016 case, i.e., the case we dismissed for lack of jurisdiction. The BOR resumed its hearing on August 27, 2018. Counsel for the BOE and different counsel for Cleveland Avenue appeared but no witnesses were presented. Counsel for Cleveland Avenue presented a new packet of evidence containing many of the same documents in the packet submitted at the first hearing. The BOE objected to the materials since they were unauthenticated and hearsay. The BOR retained the auditor's value, and Cleveland Avenue appealed to this board. The parties submitted the case to this board on their briefs and the existing record.

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). A recent arm's-length sale constitutes the best

evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

However, the Ohio Supreme Court has been clear that auction sales are typically distressed and are presumed not to be arm's-length. In *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723 ("*TaDa*"), the court held taxing authorities must "presume that an auction sale price is not a voluntary arm's-length transaction." Id. at ¶ 2. That presumption can be rebutted. In fact, the *TaDa* court found an auction sale was arm's-length because the subject was on the open market for a meaningful period of time, and testimony indicated the "auction was publicly advertised for a significant period of time, it was well attended, and there were multiple bidders for the property." Id. at ¶ 51. The Ohio Supreme Court analyzed auction sales, *TaDa* included, in *N. Canton City Sch. Dist. Bd. of Edn. v. Stark Cty. Bd. of Revision*, 152 Ohio St.3d 292, 2018-Ohio-1 ("*LFG*"). In *LFG*, the court found an auction sale was arm's-length when the auction was well marketed, a significant number of bids were placed on the subject, and there was no preexisting relationship between a buyer and seller. Id. at ¶ 5.

> This board recently reviewed the law on auction sales, as the BOE's brief notes, in *DeVaughn v. Montgomery Cty. Bd. of Revision* unreported. In *DeVaughn*, at 3, we said:(Sept. 30, 2019), BTA No. 2019-342,
>
> When we read *TaDa* and *LFG* together, we see the Supreme Court has provided several factors for us to consider in determining whether an auction sale is arm's-length: 1) whether, and how long, the property was on the market prior to auction; 2) whether and how the auction was advertised; 3) the number of willing and able buyers who attended the auction; 4) whether multiple bids were placed. Those factors are not exhaustive, but they are factors the Ohio Supreme Court found probative in *TaDa* and *LFG*. Those factors, of course, are to be considered alongside the standard arm's-length transaction factors applicable to every sale. Namely, a sale is arm's-length when "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989).

Because Cleveland Avenue has presented little if any probative evidence about the auction itself, we find it has not rebutted the presumption the auction sale was not arm's-length. Despite multiple opportunities to do so, Cleveland Avenue presented no evidence on how long the property was marketed or about the actual auction. We find no evidence about how the auction was advertised, if at all. We also find no credible evidence about the number of bidders, the number of bids, or the terms of the auction. In addition to being unreliable hearsay, both packets of documents submitted to the BOR fail to shed light on the auction itself.

The valuation of property "is a question of fact, the determination of which is primarily within the province of the taxing authorities" including this board. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶ 6. Having reviewed the evidence independently, we do not find Cleveland Avenue has carried its burden of showing the auction sale was arm's-length.

Per *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, we see no reason to deviate from the auditor's value as retained by the BOR. It is the decision and order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 318-444-01-003-006

TRUE VALUE

$7,182,200

TAXABLE VALUE

$2,513,770

OHIO BOARD OF TAX APPEALS

TWIN FARMS, LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2018-1885
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LICKING COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - TWIN FARMS, LLC
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For the Appellee(s) - LICKING COUNTY BOARD OF REVISION
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Entered Monday, March 9, 2020

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

Twin Farms, LLC, appeals from a decision of the Licking County Board of Revision ("BOR") removing the subject property, parcel number 052-173100-00.000, from the current agricultural use value ("CAUV") program for tax year 2017. The BOR also order recoupment of tax savings for the prior three years. We decide the case on the notice of appeal, statutory transcript, this board's hearing record ("H.R."), and the parties' briefs.

When cases are appealed from a board of revision to this board, an appellant bears the burden. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). The owner must show property qualifies for the CAUV program to prevail.

Johnson v. Clark Cty. Bd. of Revision, 155 Ohio St.3d 264, 2018-Ohio-4390. Property qualifies for the CAUV program when it is "devoted exclusively to agricultural use." R.C. 5713.30(A). This board looks to the primary use when determining eligibility. See *Chrisman v. Licking Cty. Bd. of Revision* (Sept. 19, 1986), BTA No. 1985-C-1986, unreported. When multiple parcels are used as a single economic unit, we look to the use of the whole property. See *Stults v. Delaware Cty. Bd. of Revision* (Aug. 20, 2004), BTA No. 2003-P-287, unreported.

The parties agree on nearly all the salient facts. Twin Farms purchased the subject property in 2015; it was a soybean farm before that. Twin Farms owned a horse farm adjoining the soybean farm. After it bought the soybean farm, Twin Farms converted the soybean farm to a horse farm and took steps to merge the properties into a single unit. For example, Twin Farms built paths connecting its existing horse farm with the subject property. The preexisting horse farm is not in dispute here. The parties do not dispute the preexisting horse farm qualifies for CAUV, is currently enrolled in the CAUV program, and should remain there unless a conversion occurs. Twin Farms uses that property for long-term boarding, training, and breeding. See H.R., Ex. 12 (sample boarding agreement).

The purchase and modification of the subject property by Twin Farms constituted a conversion for purposes of CAUV, meaning Ohio law required the auditor to reevaluate the use of the subject property. The auditor determined the property did not qualify, and Twin Farms filed a BOR complaint. At the BOR hearing, Twin Farms, represented by counsel, called Matthew Harris to testify. Mr. Harris is Twin Farms' managing member.

He authenticated aerial photographs showing how the property looked in 2015 versus how the property looked after Twin Farms converted the property. The photographs show Twin Farms improved the property with multiple stables and arenas. Mr. Harris testified Twin Farms

uses the property for training, selling, and showing horses, and he indicated the property was used for no other purposes. Mr. Harris authenticated other documents showing over thirty horse shows, competitions, and auctions that occurred between 2016 and 2018. The events typically occurred over a three to five day period. Mr. Harris also testified about the property on the whole, including the preexisting horse farm. Mr. Harris testified Twin Farms boards, cares for, and breeds horses; it also offers lessons and camps for riders. He further testified the riders use the entire facility for training. Mr. Harris clarified that the property was not rented out to third parties for nonequine related events such as weddings or parties. The BOR denied CAUV status, and Twin Farms appealed to this board.

At this board's hearing, Twin Farms called Kim Cortright from the auditor's office to testify about the decision to deny CAUV status to the property. This board reviews legal CAUV determinations de novo; however, we summarize her interpretation of the legal basis for the BOR's decision for clarity and because some of her testimony was factual. See *Synergy Development, Ltd. v. Greene Cty. Bd. of Revision* (Sept. 15, 2006), BTA No. 2005-T-585, unreported. Ms. Cortright testified to her understanding that the property was not used exclusively for agricultural purposes as Ohio law defines the phrase. She testified to her belief the subject property was only used for *temporary* boarding instead of long-term boarding. It appears the auditor and BOR found that distinction meaningful in rendering their decisions. See, e.g., H.R. at 18-19 ("A. Correct. They're bringing horses in for an event and then they're leaving."). It does not appear there is any dispute that hundreds of horses are kept on the property in a given year, albeit in spurts. Ms. Cortright also testified the auditor received some guidance from the Ohio Department of Taxation regarding CAUV eligibility, and the county followed that guidance. H.R. at 25. Twin Farms submitted many exhibits, and the parties filed post-hearing briefs.

Now, to the law. Property is eligible for CAUV status if it is "devoted exclusively to

agricultural use." R.C. 5713.30. The CAUV statutes require us to look back three calendar years. See R.C. 5713.30(A)(1). The parties do not dispute the property qualified for CAUV status when it was a soybean farm, i.e., before Twin Farms purchased the property in 2015. So, we must only determine how the property was used from 2015-2017. Because the subject property is more than ten acres, no income requirement applies. R.C. 5713.30(A)(2).

R.C. 5713.30(A)(1)(a) states land is "devoted exclusively to agricultural use" when devoted to the following:

> commercial animal or poultry husbandry, aquaculture, algaculture meaning the farming of algae, apiculture, the cultivation of hemp by a person issued a hemp cultivation license under section 928.02 of the Revised Code, the production for a commercial purpose of timber, field crops, tobacco, fruits, vegetables, nursery stock, ornamental trees, sod, or flowers, or the growth of timber for a noncommercial purpose, if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use.

Here, Twin Farms argues it uses the subject property for animal husbandry. However, neither R.C. Title 57 nor section 5703 of the Ohio Administrative Code defines animal husbandry. Therefore, we interpret the phrase, "according to the rules of grammar and common usage." R.C. 1.42. We also look at how the phrase is used in other statutes. See *Lake Shore Elec. Ry. Co. v. PUCO*, 115 Ohio St. 311 (1926); but see *State ex rel. Belford v. Hueston*, 44 Ohio St. 1 (1886) (finding the same word may have different meanings when used in different contexts).

We find the subject property qualifies for CAUV status for two reasons. First, the testimony presented to this board is that the entire property is used as a single economic unit, i.e., it is under common ownership and used primarily for equine purposes. Both our decisions and decisions from the Ohio Supreme Court make clear arbitrary parcels lines make little difference

when a whole "tract" is used as a single economic unit. See *Maralgate, L.L.C. v. Greene Cty. Bd. of Revision*, 130 Ohio St.3d 316, 2011-Ohio-5448; *Kling v. Medina Cty. Bd. of Revision* (Mar. 11, 2019), BTA No. 2018-1160, unreported. Therefore, we find the property should be analyzed on the whole. We also note testimony in the record that some of the horses boarded and cared for on adjacent properties use the subject property. The parties do not dispute those parcels qualify for CAUV, and the evidence before us tends to show the subject property is merely a continuation of a much larger equine operation. See *Waterloo Farms, Inc. v. Athens Cty. Bd. of Revision* (June 29, 2016), BTA No. 2015-1325, unreported. The use of the property as a whole qualifies as animal husbandry under any conventional definition. Horses are boarded, cared for, fed, watered, bathed, breed, auctioned, and sold on the property. Therefore, we find the property qualifies for CAUV status on this basis alone.

We are also disinclined to find property does not qualify for CAUV status simply because the horses are kept on the property only for several days at a time or are sometimes shown in competitions. Those kinds of bright-line distinctions are for the General Assembly to make by statute or the Tax Commissioner by rule.

We also find the best case on point supports a broad interpretation of animal husbandry. In *Mentor Lagoons, Inc. v. Zoning Bd. of Appeals*, 168 Ohio St. 113 (1958), the Ohio Supreme Court accepted a broad definition of animal husbandry, including "breeding, judging, care and production***." Granted *Mentor Lagoons* occurred in the zoning context; however, no party cites better authority for the proposition animal husbandry has a narrow definition. We also note a significant number of cases from this board and other courts conform to the Ohio Supreme Court's *Mentor Lagoons* decision by defining animal husbandry broadly. See Twin Farms Br. at 9-10 (citing, e.g., *Zaffer v. City of N. Ridgeville Bd. of Zoning and Bldg. Appeals*, 9th Dist. Lorain No. 2692, 1978 Ohio App. LEXIS 7978 (Nov. 22, 1978)). The Ohio Attorney General has likewise

issued several opinions defining animal husbandry broadly. See, e.g., 1983 Ohio Atty. Gen. Ops. No. 44 (finding the care and housing of horses for "recreational purposes" constitutes animal husbandry); 1989 Ohio Atty. Gen. Ops. No. 67. (finding operation of a "horse training center" on the property was animal husbandry).

For these reasons, we reverse the decision of the BOR. We remand this case with instructions to return the property to the CAUV program and vacate the recoupment order.

OHIO BOARD OF TAX APPEALS

NATIONAL CHURCH RESIDENCES OF AARON DRIVE OH, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2018-1156
vs.	)	(REAL PROPERTY TAX)
BUTLER COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

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Entered Monday, March 9, 2020

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

National Church Residences of Aaron Drive ("NCR") appeals from a decision of the Butler County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2017. This board held a merit hearing on March 25, 2019. We now decide the case on the notice of appeal, the statutory transcript, this board's hearing record ("H.R."), and the

parties' briefs.

The subject property operates as low-income senior housing, often referred to as Section 202 housing. See generally *Notestine Manor, Inc. v. Logan Cty. Bd. of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2. The auditor valued the property at $1,299,360 for tax year 2017, and NCR filed a valuation complaint requesting a value of $230,000, citing the Section 202 restrictions. At the BOR hearing, NCR presented the appraisal and testimony of Donald Miller II, MAI, who valued the property at $280,000 as of January 1, 2017. Mr. Miller testified he appraised the property after reviewing the Ohio Supreme Court's *Notestine* decision as well as our decision in *Massillon City Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (July 30, 2018), BTA No. 2017-86, unreported. Mr. Miller developed his appraisal using the income capitalization approach, and he used contract rents after determining contract rents fell within market rents. Mr. Miller estimated operating expenses using comparable Section 202 properties. He applied a capitalization rate using market data, which led him to a final opinion of value of $280,000. The BOR ultimately retained the auditor's value. The BOR's speaking member indicated the BOR found Mr. Miller's operating expenses were too high, especially in light of actual operating expenses and expenses estimated by Cynthia Hatton Tepe, MAI, in an appraisal submitted to the BOR for a prior tax year.

At this board's hearing, NCR called Tricia Braniff, a representative of NCR, to discuss the Section 202 program generally and the subject property specifically. She testified NCR employed a "serviced coordinator" for the subject property. The service coordinator, per Ms. Brainiff, is paid using rents and coordinates services for residents. She also testified that Section 202 expenses are higher than conventional housing because of the added administrative requirements. She further testified about the subject's project rental assistance contract or "PRAC." See *Notestine* at ¶ 5 (discussing PRACs generally). Ms. Brainiff also authenticated and

discussed several financial and HUD documents related to the subject property. See H.R., Ex. 1. After, NCR and the appellee school board then filed post-hearing briefs.

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). We are also required to independently review all evidence before us and "render a value determination consistent with such information." *Herbert J. Hope, Jr., Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. No party advocates for a recent sale price; therefore, we continue to the appraisal evidence.

NCR's brief essentially argues Mr. Miller valued the property according to the mandates of *Notestine*, i.e., fee simple subject to the Section 202 restrictions. NCR argues Mr. Miller appropriately utilized contract rents after he determined contract rents fell within the market rent range. He developed his operating expenses estimates using historical data and market data. Mr. Miller's operating expenses are supported, according to NCR, by Ms. Brainiff's testimony about the added expenses of operating a Section 202 property.

The school board's brief argues Mr. Miller overstated his expenses. For example, according to the school board, Mr. Miller estimated expenses at over 90% while Ms. Tepe's 2014 appraisal estimated "expenses at roughly" 70%. See School Board Br. at 3. The school board also argues Mr. Miller's appraisal suffers from an inflated capitalization rate. See id. at 6 (citing *Abbey Church Village Housing Ltd. Partnership v. Franklin Cty. Bd. of Revision* (Jan. 28, 2019), BTA No. 2017-1055, unreported). Finally, the school board argues Mr. Miller "failed to explain the significant discrepancy between his appraised value" for tax year 2017 with Ms. Tepe's 2014

appraisal.

We respectfully disagree with the school board and find Mr. Miller's appraisal to be the best evidence of value. The school board's brief states that Mr. Miller used "a similar capitalization rate in the appraisal at issue as he used in *Abbey Church*." The school board argues this board's *Abbey Church* decision held Mr. Miller had overstated the risk associated with properties like the subject. The brief also states, "[b]ased on the demand for affordable housing and its undersupply in the area, a capitalization rate of 7.25% likely overstates the risk associated" with the property. Id. at 7. In response, NCR's reply states, "[t]he property in *Abbey Church* is a LIHTC property with portable tenant-based subsidies." The subject property, argues NRC, is a Section 202 property and the "ways the properties are developed and operated are significantly different, and the appraisal methods used in valuing property with these different subsidies are unique." NCR Reply at 2.

We are not persuaded Mr. Miller's capitalization rate is defective simply because the rate is numerically similar to the capitalization rate he used in *Abbey Church*. Every property is different; every market is different. In *Abbey Church*, we found another appraiser's capitalization rate was better supported largely because the competing appraiser supplied more underlying data. We also found the competing appraiser's capitalization rate was better evidence of value because we found a tension between Mr. Miller's report and his oral testimony. Here, we find no such tension. Mr. Miller's testimony on his capitalization rate is consistent with his report, and no party has presented this board with a competing appraisal We likewise find Mr. Miller's estimated operating expenses are supported. The school board's arguments are largely conjecture. For example, the school board notes Ms. Braniff testified in another case that there were increased expenses for LIHTC properties, in part, because two sets of files must be maintained, one for Section 202 and one for Section 8. This property, the school board argues,

"maintains only one set of files." Therefore, it follows that the subject property's "administrative costs should be about half of the administrative costs" of a property subject to both sets of restrictions. See School Board Br. at 7. NCR argues the school board's arguments are speculative and unsupported by actual expenses. We agree. We specifically note Mr. Miller's pro forma expense estimate was $30,090, which is within the range of actual expenses for the subject property and within market. See Miller Appraisal at 28 (outlining expenses for comparable Section 202 properties).

We also do not find Mr. Miller's appraisal should be disregarded simply because he opined to a value of $280,000 for tax year 2017 and Ms. Tepe opined to a value of $700,000 for tax year 2014. Ms. Tepe was never called to testify by any party. Ms. Tepe's appraisal was clearly developed for tax valuation purposes, and this board has been clear it will typically not rely on an appraisal when the appraiser is not called to authenticate and answer questions aboutthe appraisal. See *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. That concern is particularly salient in this case because both this board and the Ohio Supreme Court have rendered several important decisions regarding the valuation of low-income housing generally and Section 202 housing specifically since 2014. See, e.g., *Notestine*. We also note there is no evidence any party relied on the appraisal in a business or financial transaction. See *Copley-Fairlawn City Sch. Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485.

To the extent Ms. Tepe's appraisal is proper impeachment evidence, we find support for NCR's argument that Ms. Tepe understated reserves and repairs. Concerning reserves, NCR's regulatory agreement requires $460 in reserves per unit, but Ms. Tepe only estimated $300 per unit in reserves. See Tepe Appraisal at 37. Regarding repairs, Ms. Tepe estimated $700 per unit in repairs, but Mr. Miller estimated $1,085. Compare Tepe Appraisal at 37 with Miller Appraisal at 29. Mr. Miller's repair estimate is more consistent with both actual repair expenses and the market.

For example, actual repair expenses were between $946 and $1088 per year. Market expenses for Section 202 properties ranged from $997-$2,793 per unit. See Miller Appraisal at 28-29. Ms. Tepe's market data is lower, but she pulled data from both Section 202 properties and non-Section 202 properties. See Tepe Appraisal 36.

For these reasons, we find Mr. Miller's appraisal to be the best and most persuasive evidence of value. It is the decision and order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER Q6542-063-000-090

TRUE VALUE

$280,000

TAXABLE VALUE

$98,000

OHIO BOARD OF TAX APPEALS

LOWE'S HOME CENTERS, LLC, (et. al.), Appellant(s), vs. WASHINGTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-598 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LOWE'S HOME CENTERS, LLC
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Entered Monday, March 9, 2020

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

Lowe's Home Centers, LLC ("Lowe's"), appeals from a decision of the Washington County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2017. We decide the case on the notice of appeal, the statutory transcript, the record of this board's hearing ("H.R."), and the parties' briefs. Lowe's pending motion to strike is denied.

The subject property is a 142,633-square-foot retail store built in 2002 and occupied by Lowe's on tax-lien date. The auditor valued the property at $9,801,260 for tax year 2017. Lowe's filed a decrease complaint requesting a value of $4,985,610. Lowe's waived its appearance at the BOR hearing, and the BOR issued a decision retaining the auditor's value.

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

the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). At this board's hearing, Lowe's presented the appraisal report and testimony of Richard Racek, Jr., MAI, who opined a value of $4,280,000 for the subject property as of January 1, 2017. The county appellees presented the appraisal report and testimony of Thomas Sprout, MAI, who opined a value of $10,000,000 as of January 1, 2017. For reasons discussed below, we find Mr. Sprout's appraisal is more probative.

The appraisers differed in their fundamental views of how to appraise property in its "fee simple estate, as if unencumbered***," as required by R.C. 5713.03. This board recently discussed those opposing views in *Lowe's Home Centers, LLC v. Lorain Cty. Bd. of Revision* (Aug. 12, 2019), BTA No. 2017-1023, unreported. In that opinion we explained each appraiser's views as such:

> Mr. Racek appraised the property under the theory that "fee simple unencumbered" requires that a property be vacant on tax lien date, and assumes a hypothetical sale of the property without a tenant in place. Such a sale allows the buyer of a property in the hypothetical sale to acquire the complete "bundle of rights" associated with ownership of real property. Mr. Racek therefore used sales of only vacant properties in his sales comparison approach. Mr. Sprout, on the other hand, appraised the property as if it could be purchased with a lease in place at market terms. Rather than a purchaser acquiring a possessory interest in the property, the purchaser could exchange such right for the income generated from leasing the property. Mr. Sprout therefore utilized some sale comparables sold with leases in place, and adjusted those leases to account for any non-market terms. It is these divergent theories of valuation that guide the appraisers' approaches to valuing this property and the parties' arguments.

Id. at 2-3. Lowe's argues in this case—as it did in *Lowe's Home Centers, LLC*, BTA No. 2017-1023—that R.C. 5713.03 requires us to value property as if vacant on tax-lien date. We have rejected that argument in several cases. This board specifically held in *Lowe's Home Centers, LLC*, BTA No. 2017-1023 the following:

> We first address Lowe's argument that R.C. 5713.03 requires that we accept its view that real property in Ohio must be valued as if it were vacant on tax lien date. This board confronted a similar argument in *Lowe's Home Centers LLC v. Cuyahoga Cty. Bd. of Revision* (Feb. 26, 2019), BTA No. 2017-39, unreported, appeal pending, 10th Dist. No. 19AP179. We rejected the argument, citing to the Supreme Court's recent decision in *Harrah's Ohio Acquisition Co., L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 154 Ohio St.3d 340, 2018-Ohio-4370, where it found no error in an appraiser valuing an owner-occupied property as it were generating market rate income under a hypothetical lease. "Appraising property in this way is consistent with R.C. 5713.03's directive to determine 'the true value of the fee simple estate as if unencumbered,' so long as the appraisal assumes a lease that reflects the relevant real-estate market." Id. at ¶27. Here, we likewise reject Lowe's argument that R.C. 5713.03 requires that the subject real property be valued as if it were vacant on tax lien date.

Id. at 3. We see no compelling reason to revisit our prior decisions on the issue and reject Lowe's interpretation of "unencumbered" for purposes of real property tax valuation.

We now turn to the appraisals. Mr. Sprout developed his appraisal using the sales comparison and income capitalization approaches. For his sales comparison approach, Mr. Sprout selected similar big-box store sales ranging from $36.38/SF to 104.52/SF. The sales occurred between December 2013 to December 2017. The buildings on each parcel were built between

1962 and 1996. For his income approach, Mr. Sprout utilized ten properties leased for between $3.00 and $6.55/SF. His indicated income capitalization value was $10,050,000. He reconciled the two approaches, giving each equal weight, and came to a final conclusion of value of $10,000,000.

Mr. Racek also utilized the sales comparison and income capitalization approaches. For his sales comparison approach, he selected nine sales, ranging from $11.46/SF to $36.38/SF. He adjusted the comparables for various reasons, including size, location, and age. His indicated sales comparison value was $4,280,000. For his income capitalization approach, he selected thirteen leases, which range from $1.00/SF to $5.50/SF. He estimated the subject could achieve a net operating income amount of $388,710, which he capitalized at 9%. He reconciled the two values, and his final opinion of value was $4,280,000.

We turn now to the briefs. Lowe's brief focuses on its reading of R.C. 5713.03. Mr. Sprout's appraisal is fundamentally flawed, according to Lowe's, because he chose occupied properties as comparables. Accordingly, Lowe's argues, Mr. Racek's appraisal should be adopted because he intentionally chose vacant properties, which comports with Lowe's reading of R.C. 5713.03. As noted above, this board has rejected that argument, and no court has reversed our reading of the statute. Accordingly, we again reject Lowe's argument. As a consequence, we find Mr. Racek's appraisal uses the incorrect legal standard, which caused him to select vacant comparables and intentionally disregard potential comparables that were occupied. We likewise find Mr. Sprout's comparables are more comparable to the subject than Mr. Racek's comparables. For example, Mr. Sprout's comparables are generally closer geographically to the subject. Mr. Sprout's rent comparables are also closer in age. We find nothing wrong with Mr. Sprout's highest and best use determination and do not find it violates R.C. 5713.03 simply because it assumes the property was occupied.

Lowe's makes two additional arguments against Mr. Sprout's appraisal, but we respectfully disagree with those arguments. First, Lowe's argues Mr. Sprout developed a value in use appraisal based on his highest and best use. Mr. Sprout's highest and best use as improved was for the existing improvements to be "occupied by a national retailer." We do not find Mr. Sprout conducted a value in use appraisal simply because he recognized the current use of the property. In *Johnston Coca-Cola Bottling Co. v. Hamilton Cty. Bd. of Revision*, 149 Ohio St.3d 155, 2017-Ohio-870 ("*Johnston*"), the Ohio Supreme Court court clarified that "[a]lthough present use cannot be the *only* measure of value, in a proper case it may be considered in determining true value for tax purposes." Id. at ¶ 14; see also *Dinner Bell Meats, Inc. v. Cuyahoga Cty. Bd. of Revision*, 12 Ohio St.3d 270, 271 (1984) (Ohio law "does not prohibit altogether any consideration of the present use of a property"). The takeaway from *Johnston* is present use can be considered but not "to the exclusion of other factors relevant to exchange value." Id. at ¶ 15. This board need not pretend property was not used as it was on tax-lien date, nor must it disregard that fact when determining which comparables are "more analogous" to the subject. Id. In comparing the comparables utilized between the two appraisers, use by a national tenant is a higher and better use than a vacant property. We also note Mr. Sprout's comparables are generally more analogous to the subject both in age and size.

Second, Lowe's argues Mr. Sprout did not properly adjust for property rights conveyed. The county argues Mr. Sprout made the same types of adjustments he made in *Hilliard CitySchools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 268, 2018-Ohio-4282 ("*Hilliard Station*"), which the Ohio Supreme Court said comported with *Steak 'n Shake, Inv. v.Warren Cty. Bd. of Revision*, 145 Ohio St.3d 244, 2015-Ohio-4836, and its progeny. The *Hilliard Station* court held Mr. Sprout met his responsibility by adjusting leased fee sales by taking into account the lease terms and rates. He did likewise in this case, and his report explicitly states such. H.R., Ex. A at 36. We note that determination is consistent with our recent decision involving the same property.

See *Lowe's Home Centers, Inc. v. Washington Cty. Bd. of Revision* (Sept. 10, 2019), BTA No. 2014-4606, unreported, appeal pending, 4th Dist. Washington No. 2019CA000022.

For these reasons, we find Mr. Sprout's appraisal is the best evidence of value and order the property valued per that appraisal for tax year 2017, as follows:

PARCEL NUMBER 24-0084566.001

TRUE VALUE

$9,210,180

TAXABLE VALUE

$3,223,560

PARCEL NUMBER 24-0084566.004

TRUE VALUE

$4,160

TAXABLE VALUE

$1,460

PARCEL NUMBER 23-0084565.001 TRUE VALUE
$150,510

TAXABLE VALUE

$52,680

PARCEL NUMBER 24-0084563.001

TRUE VALUE

$527,690

TAXABLE VALUE

$184,690

PARCEL NUMBER 24-0084570.002

TRUE VALUE

$107,460

TAXABLE VALUE

$37,610

OHIO BOARD OF TAX APPEALS

WAPAKONETA VILLAGE SENIOR HOUSING LIMITED PARTNERSHIP, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2018-570
vs.	)	(REAL PROPERTY TAX)
AUGLAIZE COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WAPAKONETA VILLAGE SENIOR HOUSING LIMITED PARTNERSHIP
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For the Appellee(s) - AUGLAIZE COUNTY BOARD OF REVISION
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Entered Monday, March 9, 2020

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

Wapakoneta Village Senior Housing Limited Partnership ("Village") appeals from a decision of the Auglaize County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2017. We decide the appeal on the notice of appeal, the statutory transcript, this board's hearing record ("H.R."), and the parties' briefs.

Village is an operating entity of National Church Residences, which provides senior housing and services. Village owns and operates the subject property, a 41-unit apartment

building. There are 40 one-bedroom units and a single two-bedroom unit, built in 1982 and renovated in 2016. The property operates as a low-income housing tax credit ("LIHTC") project.

The auditor valued the property at $3,567,030 for tax year 2017, and Village filed a decrease complaint citing the LIHTC restrictions. At the BOR hearing, Village presented the appraisal of Donald Miller II, MAI who valued the property at $650,000 as of January 1, 2017. The BOR retained the auditor's value, and Village appealed to this board.

At this board's hearing, Village again presented the testimony and appraisal of Mr. Miller. He discussed his appraisal report and supplemented it with a memorandum unpacking the data underlying his capitalization rate. Village also called Kathleen McDonnell, vice president of National Church Residences, to testify about the property. The BOR presented the testimony and appraisal of Thomas Sprout, MAI, who valued the property at $1,940,500 as of January 1, 2017.

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). We are also required to independently review all evidence before us and "render a value determination consistent with such information." *Herbert J. Hope, Jr., Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. No party advocates for a recent sale price; therefore, we continue to the appraisals.

Both this board and expert appraisers are required to consider the impact LIHTC restrictions have on value. *Notestine Manor, Inc. v. Logan Cty. Bd. of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2. There are two layers of restrictions on this property. The first layer is the LIHTC restriction. That restriction caps Village's rents, as of tax-lien date, at 30%, 50%, and 60% of area median gross income. The second layer is the housing assistance payments ("HAP") contract, which imposes separate restrictions and supplies separate benefits to Village. The HAP permits a higher rental rate.

Both appraisers relied primarily on the income approach. The central difference between the two is how each determined market rent. Each came to similar estimates regarding operating expenses and capitalization rate. Returning to rents, Mr. Miller began his appraisal by comparing the conventional market with the LIHTC market but found no significant difference between the two in terms of the rental rate. See Miller Appraisal at 19-20. Mr. Sprout also looked to the conventional market but Mr. Sprout's comparables achieved higher rental rates. Accordingly, we must determine whose conventional market data is more comparable to the subject property.

We find Mr. Sprout's comparables slightly better because they better reflect the age and condition of the subject property. The subject property was built in 1982 but renovated in 2016. Mr. Miller's comparables were built between 1914-1982, meaning all are older or substantially older than the subject property. Mr. Sprout's comparables were built between 1972 and 2017, meaning his comparables were built both before and after the subject property was built. His comparables also better account for the 2016 renovation.

For these reasons, we find Mr. Sprout's appraisal to be the best evidence of value. We order the property valued as follows for tax year 2017:

PARCEL NUMBER B0709100206

TRUE VALUE

$1,940,500

TAXABLE VALUE

$679,180

OHIO BOARD OF TAX APPEALS

LEXINGTON PARK ASSOCIATES LIMITED PARTNERSHIP, (et. al.), Appellant(s), vs. PERRY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-507 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LEXINGTON PARK ASSOCIATES LIMITED PARTNERSHIP
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Entered Tuesday, March 10, 2020

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

Lexington Park Associated Limited Partnership ("Lexington") appeals from a decision of the Perry County Board of Revision ("BOR") valuing the subject property for tax year 2017. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

The subject is improved with 32 apartments subsidized through the USDA's Rural Development program. See *Frontier Run L.L.C. v. Van Wert County Board of Revision* (Apr. 4, 2016), BTA No. 2015-838, unreported (generally describing the Rural Development program). The auditor valued the subject at $938,880 for tax year 2017, and Lexington filed a decrease

complaint with an opinion of value at $400,000. At the BOR hearing, Lexington called its representative who testified to the general character of the property and described the nature of the Rural Development program. Lexington also supplied the BOR with a packet of business records, photographs, information from the USDA on the Rural Development program, and case law. The BOR ultimately valued the property at $760,000, and Lexington appealed to this board.

At this board's hearing, Lexington presented the testimony and appraisal of Richard G. Racek, Jr., MAI. The county appellees did not appear. Mr. Racek valued the subject at $430,000 using the income capitalization method. He testified his appraisal was methodologically similar to the appraisal he presented to this board in *Rootstown Elderly Housing Ltd. Partnership v. Portage Cty. Bd. of Revision* (June 7, 2017), BTA No. 2016-1048, unreported, and *Villa Allegra Limited Partnership v. Mercer Cty. Bd. of Revision* (Sept. 23, 2019), BTA No. 2018-2050, unreported. He stated he accounted for the restrictions imposed by the Rural Development program, and his report likewise reflects that he accounted for those restrictions. Lexington asks this board to adopt Mr. Racek's opinion of value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). The best evidence of value is a recent arm's-length transaction, but there have been no recent sales of the subject property. *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129, 129 (1977). Accordingly, we turn to Mr. Racek's appraisal, which we find is the best and most persuasive evidence of value.

Mr. Racek used basic rental rates for the subject property, which he stated was appropriate given the nature of the Rural Development rental rate formula. He calculated his

vacancy/credit loss and expenses figures after considering the subject's operational history, tailored market data, and information from the Ohio Housing Finance Agency. He then calculated a capitalization rate of using comparables subject to low-income housing tax credit restrictions.

This board finds Mr. Racek's appraisal to be competent, probative, and persuasive evidence of value. Furthermore, we note there have been no specific challenges to any aspect of his appraisal. Accordingly, this board decides that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 27-001452.0000

TRUE VALUE

$430,000

TAXABLE VALUE

$150,500

OHIO BOARD OF TAX APPEALS

JUNCTION CITY ASSOCIATES LIMITED PARTNERSHIP, (et. al.), Appellant(s), vs. PERRY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	))))))))	CASE NO(S). 2019-335 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JUNCTION CITY ASSOCIATES LIMITED PARTNERSHIP
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Entered Tuesday, March 10, 2020

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

Junction City Associates Limited Partnership ("Junction") appeals from a decision of the Perry County Board of Revision ("BOR") valuing the subject property for tax year 2017. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

The subject is improved with 24 apartments subsidized through the USDA's Rural Development program. See *Frontier Run L.L.C. v. Van Wert County Board of Revision* (Apr. 4, 2016), BTA No. 2015-838, unreported (generally describing the Rural Development program). The auditor valued the subject at $772,150 for tax year 2017, and Junction filed a decrease complaint with an opinion of value at $560,000. At the BOR hearing, Junction called its

representative who testified to the general character of the property and described the nature of the Rural Development program. Junction also supplied the BOR with a packet of business records, photographs, information from the USDA on the Rural Development program, and case law. The BOR ultimately valued the property at $712,990, and Junction appealed to this board.

At this board's hearing, Junction presented the testimony and appraisal of Richard G. Racek, Jr., MAI. The BOR did not appear. Mr. Racek valued the subject at $525,000 using the income capitalization method. He testified his appraisal was methodologically similar to the appraisal he presented to this board in *Rootstown Elderly Housing Ltd. Partnership v. Portage Cty. Bd. of Revision* (June 7, 2017), BTA No. 2016-1048, unreported, and *Villa Allegra Ltd. Partnership v. Mercer Cty. Bd. of Revision* (Sept. 23, 2019), BTA No. 2018-2050, unreported. He stated he accounted for the restrictions imposed by the Rural Development program, and his report likewise reflects that he accounted for those restrictions. Junction asks this board to adopt Mr. Racek's opinion of value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). The best evidence of value is a recent arm's-length transaction, but there have been no recent sales of the subject property. *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129, 129 (1977). Accordingly, we turn to Mr. Racek's appraisal, which we find is the best and most persuasive evidence of value.

Mr. Racek used basic rental rates for the subject property, which he stated was appropriate given the nature of the Rural Development rental rate formula. He calculated his vacancy/credit loss and expenses figures after considering the subject's operational history, tailored market data, and information from the Ohio Housing Finance Agency. He then calculated a capitalization rate of using comparables subject to low-income housing tax credit restrictions. He ultimately

concluded to a value of $525,000.

This board finds Mr. Racek's appraisal to be competent, probative, and persuasive evidence of value. Furthermore, we note there have been no specific challenges to any aspect of his appraisal. Accordingly, this board decides that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL 16-000219-0000

TRUE VALUE

$525,000

TAXABLE VALUE

$183,750

OHIO BOARD OF TAX APPEALS

N. S. SCHOOL COMMONS, LTD, (et. al.), Appellant(s), vs. PERRY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-332 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - N. S. SCHOOL COMMONS, LTD
Represented by:
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6700 BETA DRIVE
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MAYFIELD VILLAGE, OH 44143

For the Appellee(s) - PERRY COUNTY BOARD OF REVISION
Represented by:
JOSEPH A. FLAUTT
PROSECUTING ATTORNEY
PERRY COUNTY
111 NORTH MAIN STREET
P.O. BOX 569
NEW LEXINGTON, OH 43764

Entered Tuesday, March 10, 2020

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

N.S. School Commons Limited appeals from a decision of the Perry County Board of Revision ("BOR") valuing the property for tax year 2017. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

The subject property, a former school, is operated as an apartment building subject to low-income housing credit ("LIHTC") restrictions. The auditor valued the property at $736,770 for tax year 2017, and appellant filed a complaint with an opinion of value at $320,000. At the

BOR hearing, appellant called its representative who testified about the property. Appellant also supplied a packet of financial statements, photographs, and case law. The BOR valued the property at $510,000, and appellant filed a notice of appeal with this board.

At this board's hearing, appellant presented the appraisal and testimony of Richard G. Racek, Jr., MAI, who valued the property at $260,000 as of January 1, 2017. Mr. Racek testified he reviewed actual rents as well as market data. He testified he used the same methodology he utilized in several of this board's prior cases, including *Frank Cook Senior Housing v. Muskingum Cty. Bd. of Revision* (May 13, 2019, BTA No. 2016-1043, unreported, and *Huron Senior Residence v. Erie Cty. Bd. of Revision* (July 26, 2019), BTA No. 2017-1603, unreported. We note we adopted Mr. Racek's opinion of value in both cases.

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). We are required to independently review all evidence before us and "render a value determination consistent with such information." *Herbert J. Hope, Jr., Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. Because there have been no recent sales, we move on to Mr. Racek's appraisal. We find Mr. Racek's appraisal is the best and most persuasive evidence of value. He relied on market data and properly considered the rent restrictions in place. We find his income approach to be reasonable and well-supported. His report contains market data on rental rates and operating expenses. He utilized ten comparable properties in determining the appropriate capitalization rate. We also note the auditor's value was based on the cost approach, which is disfavored when valuing

LIHTC restricted properties. See *Columbus City Schools Bd. of Edn. v.Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254.

For these reasons, this board finds the true and taxable value of the subject property as of January 1, 2017, were as follows:

PARCEL 06-009034.0000

TRUE VALUE

$260,000

TAXABLE VALUE

$91,000

OHIO BOARD OF TAX APPEALS

BUCKEYE COMMUNITY NINE LIMITED PARTNERSHIP, (et. al.), Appellant(s), vs. PERRY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-331 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BUCKEYE COMMUNITY NINE LIMITED PARTNERSHIP
Represented by:
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6700 BETA DRIVE
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MAYFIELD VILLAGE, OH 44143

For the Appellee(s) - PERRY COUNTY BOARD OF REVISION
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NEW LEXINGTON, OH 43764

Entered Tuesday, March 10, 2020

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

Buckeye Community Nine Limited Partnership ("Buckeye") appeals from a decision of the Perry County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2017. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

The subject property is a traditional Section 8 housing project improved with 50 apartments. The property is subject to a low-income housing tax credit overlay, but the Section 8 restrictions control. The auditor valued the property at $2,006,710 for tax year 2017, and Buckeye filed a decrease complaint with an opinion of value at $1,600,000. At the BOR

hearing, Buckeye called its representative who testified about the property and the restrictions in place. Buckeye also supplied the BOR with a packet of financial documents, photographs, and the Section 8 contract. The BOR retained the auditor's value, and Buckeye appealed to this board.

At this board's hearing, Buckeye presented the appraisal and testimony of Richard G. Racek, Jr., MAI, who valued the property at $1,725,000 as of January 1, 2017. Mr. Racek came to his opinion of value using the income capitalization and sales comparison approaches. He described his methodology as follows:

> This property, the controlling rent is Section 8, and it's project-based Section 8, not a tenant voucher style Section 8, so that the entire property is limited to low income people, they have to qualify financially to live there. The contract rent is established by the government, but from my understanding of how to value project-based Section 8 properties, since many times the contract rent that is in place exceeds market rent from a conventional style apartment community, it's my understanding that we disregard the contract on the property and compare it to conventional nonsubsidized apartment communities. So that in developing a sales comparison approach I looked for properties that sold on a conventional basis without any subsidies. In developing an income approach I surveyed conventional apartment communities that didn't have any subsidies. Expenses and capitalization rates also came from properties that were conventional and not subsidized.

H.R. at 12-13. Mr. Racek utilized comparables for both approaches from surrounding counties noting he was unable to find any conventional apartment projects in Perry County.

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). We are required to independently review all

evidence before us and "render a value determination consistent with such information." *Herbert J. Hope, Jr., Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. A recent, arm' s-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. Because there have been no recent sales, we move on to Mr. Racek's appraisal.

We find Mr. Racek's appraisal is the best and most persuasive evidence of value. He relied on market data and properly considered the rent restrictions in place. See generally *Alliance Towers v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16 (1987); *Woda Ivy Glen L.P. v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175 (2009). We find his approaches to be reasonable and well-supported. His report contains market data on rental rates and operating expenses from the conventional market. We also note the auditor's value was based on the cost approach, which is disfavored when valuing low-income housing. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254.

For these reasons, this board finds the true and taxable value of the subject property as of January 1, 2017, were as follows:

PARCEL NUMBER 27-001952-0100

TRUE VALUE

$1,750,000

TAXABLE VALUE
$612,500

OHIO BOARD OF TAX APPEALS

TALLMADGE CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2017-1500 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TALLMADGE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

AHEPA 63 APARTMENTS, LTD
Represented by:
KRISTINA S. DAHMANN
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ICE MILLER LLP
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SUITE 700
COLUMBUS, OH 43215

Entered Tuesday, March 10, 2020

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 60-06145, 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, record of this board's hearing, and post-hearing briefs filed by

the parties.

[2] The subject property, a 50-unit, one-bedroom and one-bath, apartment complex, was initially assessed at $2,679,620 for tax year 2016. The property owner filed a complaint with the BOR, which requested that the subject property's value be reduced; the BOE filed a countercomplaint, which objected to the request.

[3] At the BOR hearing on the matter, both parties appeared through counsel to submit argument and evidence in support of their respective positions. The property owner submitted the appraisal report and testimony of appraiser Roger Sours, who opined the value of the subject property to be $737,000 (exclusive of $43,000 allocated to personal property) as of January 1, 2016. Sours testified that, on tax lien date, the subject property operated as a low-income housing tax credit ("LIHTC") property, subject to a restrictive covenant that limited the apartment units to low-income seniors, and the amount of monthly rent that could be charged. As such, he valued the subject property in light of the LIHTC restrictions. Sours was examined, and cross-examined, about the underlying data and methodologies used to derive his final conclusion of value. Counsel debated the then current state of law about valuing LIHTC properties for tax valuation purposes. The BOR voted to reduce the subject property's value consistent with Sours' $780,000 overall opinion of value, which included $737,000 allocated to the subject real property and $43,000 allocated to personal property. This appeal ensued.

[4] At this board's hearing, both parties appeared through counsel. The BOE submitted the appraisal report and testimony of appraiser Gary Barker, who opined the value of the subject property to be $2,040,000 as of January 1, 2016. He testified that he had not been provided a copy of the restrictive covenant, which purportedly detailed the subject property's LIHTC restrictions, and did not see a copy in Sours' appraisal report. He valued the subject property without consideration of any LIHTC restrictions. Barker was examined, and cross-examined, about the

underlying data and methodologies used to derive his final conclusion of value. After the hearing, the parties submitted written argument to more fully articulate their positions. By way of its submissions, the BOE argued that the Supreme Court's decisions in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734 ("*Network Restorations III"*) and *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254 ("*Network Restorations I"*), necessitated rejection of Sours' appraisal report and acceptance of Barker's appraisal report. By way of its submissions, the property owner argued that the rule derived from *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237, placed the evidentiary burden on appeal on the BOE and that Barker's appraisal report, which did not consider the LIHTC restrictions, consistent with the Supreme Court decision in *Notestine Manor, Inc. v. Logan Cty. Bd. Of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2, failed to satisfy such burden. As such, the property owner argued, this board should affirm the BOR's decision.

[5] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. First, the property owner attached two documents to its initial post-hearing brief, which were neither submitted at the BOR hearing nor this board's hearing. The property owner requests that we take judicial notice of these documents; however, we decline the opportunity to do so. See *Ross v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 373, 2018-Ohio-4746, at ¶4, fn.1 ("The rule allowing courts to take judicial notice of certain facts is not 'an exception to the rule that evidence must be timely offered in a judicial proceeding.' *AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 343, 2008-Ohio-2565, ***, ¶ 8, fn. 1. Because the Rosses did not timely present the meeting minutes to the BTA, we decline to take judicial notice of them." (Parallel citation omitted.)). It is well established that this board must consider an appeal upon the transcript certified by the board of revision and evidence properly submitted and

accepted during our proceedings. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

[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. This is particularly so in circumstances when a board of revision reduces value based upon an owner's appraisal evidence, as such evidence has been found to overcome a property's initially assessed value. See *Bedford Bd. of Edn, supra; Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, at ¶¶ 9-11. Nevertheless, 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.

[7] In his appraisal report, Sours first determined that the subject property's highest and best use, "as vacant," was "for future development of a commercial use[,]" and "as improved," was "for continued use as a 50-unit apartment building encumbered by a rent restricted LIHTC contract[,]" respectively. Hearing Record ("H.R."), Exhibit ("Ex.") B at 28. He appraised the subject property under the extraordinary assumption that the subject property was restricted in its rental income because of a LIHTC contract. Sours solely developed the income approach to valuing real property by which he relied upon the subject property's actual financials for tax year 2016. He concluded to gross potential income of $313,200, based upon $312,000 of rental income and $1,200 of laundry income, from which he deducted total expenses of $236,900, to conclude to net operating income of $76,300. He capitalized the net operating income at 9.8% (which

included a 2.8% tax additur to account for property taxes) to conclude the subject property's value to be $780,000 (inclusive of $43,000 allocated to furniture, fixtures, and equipment) as of January 1, 2016.

[8] In his appraisal report, Barker first determined that the subject property's highest and best use, "as vacant" and "as improved," would be multi-family use. He appraised the subject property under the hypothetical condition that it operated in the conventional housing market. Barker developed the sales comparison approach, which he gave little weight, and income approach to valuing real property. Under the sales comparison approach, he compared the subject property's features to the features of four properties located in Summit County, Ohio, which sold between 2014 and 2016. After quantitatively adjusting the comparable sales for differences with the subject property, he concluded to a per unit adjusted range in value between $33,651 and $46,343. He selected a per unit value in the middle of the range, $40,000, which he then applied to the subject property's 50 units, to conclude to an indicated value of $2,000,000. Under the income approach, Barker relied upon the conventional apartment market in Summit County, Ohio to determine market rent for the subject property's 50 one-bedroom, one-bathroom units, at $700 per month. He concluded to total gross potential income of $420,000, from which he deducted 2.0% for vacancy and credit loss, based upon the subject property's actual experience, to conclude to effective gross income of $411,600. From that number, he deducted total expenses of $197,500, to conclude to net operating income of $214,100. He capitalized the net operating income at 10.48% (which included a 2.98% tax additur to account for property taxes) to preliminarily conclude to an indicated value of $2,040,000. He reconciled the indicated values from both approaches to valuing real property, placing primary emphasis on the income approach, to finally conclude the subject property's value to be $2,040,000 as of January 1, 2016. We have often acknowledged in cases where competing appraisals are offered that inherent in the appraisal

process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported. This board must weigh the appraisal reports and assess their credibility. *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 247, 2018-Ohio-4286.

[9] We begin our analysis with *Network Restorations III* in which the court plainly stated the guiding principles of valuing low-income housing properties:

> The first rule is that in applying the income approach, market rents and expenses, as opposed to the actual rents of the properties at issue, are used. ***
>
> The second rule is a corollary to the first. The case law establishes that in valuing low-income housing using an income approach, government subsidies should not be taken into account in a way that would increase the value of the property. ***Finally, the case law disfavors a cost approach for valuing government-subsidized low-income housing, even for a newly constructed property. *** .

Id. at ¶¶16-18. However, in *Notestine*, the court refined the "rule" and noted that "[a]lthough wedid state that use of market rents and expenses constituted a 'rule' to be applied when valuing low-income government housing generally, [*Network Restorations III* at ¶ 16, 22], the preference for market rent over contract rent is presumptive, not conclusive." *Notestine* at ¶22. Thus, our beginning point is market rent and market expenses unless the record supports deviating from the "rule."

Upon review, we find Barker's appraisal report best estimated the subject property's value as of the tax lien date. We agree with the BOE that this matter is more akin to the *Network Restorations* duo of cases and conclude that this matter is less like *Notestine* as the property owner asserted. Only Barker's appraisal report relied upon market information to support his analysis and conclusion of value under the income approach; Sours' appraisal report relied upon

the subject property's actual income and expense to support his analysis and conclusion of value. Barker relied upon four lease comparables to determine conventional market rent; Sours did not. Barker relied upon three expense comparables to determine conventional market expenses; Sours did not. Thus, under the prevailing case law on low-income housing properties, we find that only Barker utilized proper data and methodologies in rendering a competent, credible, and probative opinion of the subject property's value.

[10] Furthermore, we find that the record does *not* overcome the presumption in favor of market income and expense information and do not agree with the property owner that the record supports using the subject property's actual income and expense information. In *Notestine,* there was testimony that detailed the specific low-income housing program by which the property was bound (the Capital Advance Program), terms of such program, limited income-producing potential as the consequence of such program, and consequences of surplus profit (must be returned to Department of Housing and Urban Development ("HUD")). Here, we have very little, if any, of this information. For example, we do not have sufficient information about the low-income population eligible to live at the subject property. Do eligible residents have incomes at or below 35% of the area median gross income ("AMGI"), 50% AMGI, or 60% AMGI? What is the maximum allowable rent? Are residents responsible for paying their utilities and, if so, are they given utility allowances? We cannot say because the record is devoid of such information. For this reason, we find Barker's appraisal report, which relied on market information, to be the best evidence of the subject property's value.

[11] Moreover, we cannot confirm that the subject property was subject to LIHTC use restrictions as of the tax lien date because the restrictive covenant was not submitted into evidence at the BOR hearing or this board's hearing. We acknowledge that the property owner cited to *Network Restorations I,* at ¶27, to argue that it was unnecessary to submit the LIHTC restrictive covenant into the record because none of the parties dispute the level of subsidy and because Barker accepted that the subject property was purportedly subject to LIHTC restrictions.

However, we disagree for two reasons. A review of the record indicates that counsel for the BOE disputed that the subject property was encumbered by LIHTC restrictions, on appeal. In addition, the level of subsidy related to the subject property cannot "be derived from the report[,]" see *Network Restorations I,* at ¶27, as indicated above.

[12] We acknowledge that the property owner argued that Barker's appraisal report should be rejected because his highest and best use analysis, "as improved," of the subject property, as "continued multifamily use," was unsupported by zoning regulations. H.R., Ex. A. at 30. We find no merit with this argument. In his highest and best use analysis, Sours made a similar conclusion, i.e., "for continued use as a 50-unit apartment building." H.R., Ex. B. at 28.

[13] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the BOE satisfied its burden on appeal, through Barker's appraisal report, as required by the rule derived from *Bedford*, supra. Notwithstanding our acceptance of Barker's appraisal report, we find it appropriate to adjust his value to account for furniture, fixtures, and equipment contained within the 50 apartment units, for which he made no deduction. We will, therefore, apply the $43,000 allocation to these items from Sour's appraisal report, and adjust Barker's final conclusion of value accordingly.

[14] It is, therefore, the order of this board that the subject property's true and taxable value are as follows as of January 1, 2016:

TRUE VALUE

$1,997,000

TAXABLE VALUE

$698,950

OHIO BOARD OF TAX APPEALS

JARYL R GRIFFON, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1813
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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

Entered Tuesday, March 10, 2020

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

This matter is now considered upon a motion to dismiss filed by the county appellees, who assert that this board lacks jurisdiction to consider this matter because appellant failed to file a copy of his notice of appeal with the Cuyahoga County Board of Revision ("BOR"). During this board's small claims telephone hearing, appellant maintained that he filed notices of appeal with several different places, including the BOR. Appellant further asserted that he had certified mail receipts to demonstrate as much. Although given more than fourteen days to submit proof of proper filing, appellant has not provided any additional documentation to corroborate his claims to this board. Additionally, although not expressly raised by the county appellees, appellant filed the present appeal on September 13, 2019, which is 31 days after the BOR mailed

its decision letter on August 13, 2019.

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.").

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

OHIO BOARD OF TAX APPEALS

WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-292 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION
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VEREIT GS WORTHINGTON OH, LLC
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Entered Tuesday, March 10, 2020

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

[1] The Worthington City Schools Board of Education ("BOE") appeals from a decision of the Franklin County Board of Revision ("BOR") valuing the subject property, parcel number 100-006757-00, for tax years 2017 and 2018. The parties submitted this case to us on the existing record and briefs. Therefore, we decide the case on the notice of appeal, the statutory transcript, and the briefs.

[2] The subject property is approximately 2.5 acres improved with a Fresh Thyme grocery

store. The property owner, Vereit GS Worthington OH, LLC ("Vereit"), purchased the property in August 2016 for $10,670,000. The BOE filed a valuation complaint asking the sale price to be adopted for tax year 2017, and Vereit filed a counter-complaint requesting the auditor's value be retained.

[3] Counsel represented each party at the BOR hearing. The BOE presented its case first. It supplied the BOR with the conveyance fee statement and deed memorializing the August 2017 sale. The conveyance fee statement indicates no portion of the sale price was attributable to non-realty. The BOE also argued the BOR had adopted the sale for a prior tax year. Vereit presented the appraisal and testimony of Samuel Koon, MAI, who valued the property at $8,800,000 as of January 1, 2017. Mr. Koon developed his appraisal using the cost, income capitalization, and sales comparison approach. Mr. Koon indicated he was not involved in the sale and had no personal knowledge of it. The BOE objected to much of Mr. Koon's testimony and appraisal because he had no actual knowledge of the sale. The BOR adopted Mr. Koon's appraised value, and the BOE appealed to this board. The BOE argues the sale price should be adopted.

[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). The *Bedford* rule does not modify our review because the BOE relies on a sale of the subject property. See *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶ 11 ("*Union Savings Bank* ") ("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.").

[5] A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an

open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring less than 24 months before the tax-lien date is presumed recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. The Ohio Supreme Court has explained that a party creates a rebuttable presumption of value when it demonstrates the basic terms of the sale using, e.g., a deed, conveyance fee statement, and purchase agreement. See *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932. Here, the BOE presented the conveyance fee statement and deed. Those documents supply the essential details of the sale, and no party disputes those basic details. Therefore, the sale creates a rebuttable presumption of value in favor of the sale price. Per *Terraza 8*, a party may rebut a sale with appraisal evidence. For example, a party may show an appraisal is a better indication of value because property sold subject to an above-market lease. *Menlo Realty Income Properties 28, L.L.C. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 19AP-316, 2019-Ohio-4872.

[6] We now turn to the briefs. Vereit's brief solely argues the BOE has the burden and has failed to supply appraisal evidence of its own. The BOE argues it was not required to come forward with appraisal evidence because it relies on an arm's-length sale. We agree with the BOE. An appealing BOE can proceed on a sale alone and need not offer additional appraisal evidence in support of a sale. See *Union Savings Bank* at ¶¶ 9-11. Instead, it is the burden of any party disputing a prima facie sale to rebut the sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075.

[7] Here, we do not find Vereit has rebutted the presumption created by the sale, and we do not find Mr. Koon's appraisal is better, more persuasive evidence of value than the sale. While Vereit's brief does not discuss its view on why the sale should be disregarded, it made various arguments to the BOR. We group those arguments for clarity.

[8] First, Vereit argued the sale should be disregarded because it was subject to a build-

to-suit lease. However, Vereit presented no evidence about the original lease negotiation, testimony or otherwise. Vereit also cites no case for the argument the presence of a build-to-suit lease means a subsequent sale should be categorically disregarded. Second, Vereit argued the lease was above-market. Again, no evidence was presented about the lease. See *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046 (noting the role of an appraiser is to appraise property in light of the market not to serve as a conduit for information about the subject property or the sale of a subject property). Even if we assume Mr. Koon's report uses the correct rental rate in place, approximately $26/SF, the rate was not clearly outside the range of the market. As the BOE notes, the upper end of Mr. Koon's range was $25/SF. Vereit also made an argument about vacancy. Again, as the BOE notes in its briefs, Vereit has presented no actual evidence about whether occupancy affected the purchase price.

[9] For these reasons, we find the sale is the best, most persuasive evidence of value. We order the property valued as follows for tax year 2017: PARCEL NUMBER 100-006757-00

TRUE VALUE

$10,670,000

TAXABLE VALUE

$3,734,500

[10] We also note the BOR took jurisdiction over tax year 2018, despite numerous cases from this board finding that action is improper. See, e.g., *Select Medical Property Ventures LLC v. Franklin Cty. Bd. of Revision* (Nov. 19, 2019), BTA No. 2018-2103, unreported.

[11] Accordingly, we remand this case with instructions to vacate the 2018 decision. See *Finlayson Logistics Assets LLC v. Franklin Cty. Bd. of Revision* (Sept. 5, 2019), BTA No. 2019-129, unreported.

OHIO BOARD OF TAX APPEALS

YI CHOU KOU, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1557
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
BUTLER COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

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Entered Wednesday, March 11, 2020

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

[1] The taxpayer appeals a decision of the board of revision ("BOR"), which denied the underlying application to remit the penalty related to the untimely pay of the property-tax bill for the second half of tax year 2018. We proceed to consider this matter based upon the notice of appeal, record certified pursuant to R.C. 5717.01, and taxpayer's written argument.

[2] The taxpayer untimely paid the property-tax bill for the above-referenced period on August 13, 2019, although it was due on or before August 2, 2019. The taxpayer alleged that the untimely payment was sent to the wrong address, which amounted to "reasonable cause, not willful neglect." The county treasurer, auditor, and BOR all agreed that the taxpayer's application should be denied because the taxpayer had a history of untimely payments of property-tax bills.

The BOR issued a decision that denied the taxpayer's application and this appeal ensued. Neither the taxpayer nor the county appellees availed themselves of the opportunity to submit evidence at a hearing before this board. However, the taxpayer provided a written narrative to more fully explain the circumstances of sending the property-tax bill payment to the wrong address.

[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] Upon review, we find that the taxpayer 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. The taxpayer specifically alleged that this situation fit within the parameters of R.C. 5715.39(C), which provides that the late-payment penalty shall be remitted if the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. Here, the record provided by the BOR demonstrated that the taxpayer had a history of untimely payments of property-tax bills. The taxpayer did not dispute such history. We note that the record suggests that the taxpayer's late payment history involves other properties, not the subject property. However, a review of R.C. 5715.39 demonstrates that it is the actions, or inactions, of a taxpayer that are relevant to determine whether to remit or to deny the late payment penalty. As a result, we agree with the BOR that the taxpayer does not qualify for remission of the late payment penalty under R.C. 5715.39(C).

[5] Based upon the foregoing, we find that the taxpayer failed to satisfy the evidentiary

burden on appeal. As a result, we deny the request for remission of the late payment penalty for the property tax bill for the second half of tax year 2018.

OHIO BOARD OF TAX APPEALS

MIDWAY REALTY PROPERTY HOLDINGS, LLC, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	))))))))	CASE NO(S). 2018-692 (REAL PROPERTY TAX) DECISION AND ORDER

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Entered Friday, March 13, 2020

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

Appellant Midway Realty Property Holdings, LLC ("Midway") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 06-24-032-108-039, 06-24-032-108-040, and 06-24-032-108-041, 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."), and the parties' written arguments.

The subject property is improved with a commercial building constructed in 1994 that is operated as a Lowe's home improvement store located in the Midway Mall area of Elyria. The auditor initially assessed the subject's total true value at $4,510,320. Midway filed a complaint with the BOR seeking a reduction in value to $3,527,640. The appellee board of education ("BOE") filed a countercomplaint in support of the auditor's value. At the BOR hearing, Midway asserted that the auditor's value was too high, but provided no evidence to support the claimed reduction. The BOE asserted that Midway had failed to meet its burden to establish a reduced value. The BOR issued a decision maintaining the initially assessed valuation, which Midway appealed to this board.

This board convened a hearing, at which Midway presented testimony and a written report from appraiser Richard G. Racek, Jr., MAI, who opined that the value of the property was $1,870,000 as of January 1, 2017. Racek determined that the size of the building was 124,441 square feet based on an aerial measurement from the county's geographic information system ("GIS") mapping. Racek described the market in which the subject is located, concluding that the neighborhood is "very developed and moderately active," with "good access to various transportation arteries." H.R., Appellant's Ex. 1 at 21. Nevertheless, citing decreased demand for retail in the area, Racek determined that the neighborhood has a fair to poor outlook for continued retail use, and it is likely that many of the stores in the immediate area will continue to close and the area will be redeveloped. Racek concluded that the highest and best use of the subject property as improved is for the continued use as a single tenant retail facility. Racek noted that due to the age and condition of the improvements, in addition to its location in an area where most of the

original retail occupants had left, the property experienced a substantial amount of accrued depreciation resulting from functional and economic obsolescence. Thus, Racek declined to utilize the cost approach, opting to perform the sales comparison and income approaches to value. Ultimately, Racek gave primary weight to the sales comparison approach and relied on the income approach only as additional support.

For his sales comparison approach, Racek considered the sales of nine properties, the unadjusted prices of which ranged from $4.73 to $24.69 per square foot. Two of the properties were located in the Midway Mall area, including a vacant former Walmart ($4.73 per square foot unadjusted) and a former Macy's that is attached to the mall ($6.04 per square foot unadjusted). Racek concluded that both of these properties required upward adjustments due to inferior access/visibility and condition, with some downward adjustment for land-to-building ratios. For the remainder of his comparable sales, Racek looked outside of Lorain County to consider the sales of "big box" retail properties from which the original occupant vacated but were intended to have continued retail use. Racek noted that the sales bracketed the property in terms of age and sale date. After adjustments, Racek concluded to a value of $15.00 per square foot, or $1,870,000 (rounded). Racek also included a summary of sales of six properties throughout Ohio that were similar to the subject in terms of size and age, though they were leased to Lowe's at the time of the transfer. The unadjusted sale prices were higher than this concluded value (ranging from $50.35 per square foot to $109.04 per square foot), which Racek asserted demonstrates the value attributable to the tenant and lease terms as opposed to age, condition, and location of the property.

Racek next performed the income approach to value, utilizing leasing information for

comparable facilities throughout Ohio, acknowledging that the subject was leased at a rate of $4.38 per square foot. Racek considered the rent paid by the tenant at six properties, which ranged from $1.00 to $2.50 per square foot (net leasing terms), asserting that the properties bracket the property in size and location, and that the leasing commencement dates bracket the tax lien date. Racek also included asking rates for eight vacant retail properties that bracket the subject in size, age, and location, commenting that the rates (ranging $3.50 to $5.50 per square foot) would be adjusted downward since actual rental rates would tend to be lower than asking rents. Racek estimated that the market rent for the subject would be $2.25 per square foot, or $279,992 per year based on net leasing terms. Racek applied a 10% vacancy and collection loss rate, then further projected a 3% management expense and $0.50 per square foot expense for replacement reserves, which resulted in a net operating income ("NOI") of $182,212. Racek applied a capitalization rate of 10%, concluding to a value of $1,820,000 (rounded) based on this approach, which he found supported the value developed by his sales comparison approach. The county appellees presented a written report and testimony from appraiser Thomas D. Sprout, MAI, CPA, who opined that the true value of the subject was $6,825,000 as of January 1, 2017. Sprout explained that he photographed and measured the building during his visit to the property and concluded that there was a discrepancy between his and the auditor's measurements. Based on his measurement of the property, Sprout concluded the building is comprised of 135,463 square feet, as compared to the 124,441 square feet on the auditor's records (and utilized by Racek). Sprout described the subject's market as having other supportive retail and commercial uses surrounding the subject property, remarking that "[j]ust south of the Mall is a theater and power center which includes Target, Home Depot, and Giant Eagle. This area has helped drive commerce in the subject's neighborhood." H.R., Appellees' Ex. A at 14. Sprout concluded that the neighborhood "should continue to remain stable but with no significant changes occurring in

the foreseeable future." Id. at 15. Sprout determined that the highest and best use for the property as improved was continued occupation by a single regional/national retailer. Like Racek, Sprout declined to perform a cost approach analysis, citing the current economic environment, and gave significant weight to both the sales comparison and income approaches to value.

Sprout considered the sales of eight properties throughout Ohio, though none were located in the subject's neighborhood or Lorain County. Five of the properties were occupied by Lowe's at the time of the transfer, a sixth was leased to Walmart, and the final two were sold for occupancy by "second generation" users (a furniture store and a U-Haul operator). The unadjusted sale prices for these seven properties ranged from $36.68 per square foot to $104.52 per square foot. Sprout adjusted the sales to account for the property rights conveyed (for the six leased sales), market conditions at the time of the sale, improvement size, location, condition, and land-to-building ratio. Sprout concluded to a value of $6,775,000 (rounded), or $50.00 per square foot, noting that the lowest sales took place during inferior economic periods and were of inferior condition but several of the higher sales had superior lease attributes.

Sprout performed the income approach to value based on leases for twelve single-tenant retail properties throughout Ohio, seven of which were renegotiated or renewal leases for the original tenant (rates range from $4.25 to $6.55 per square foot), in addition to five listings for properties from which the original tenant had vacated (asking rates range from $3.00 to $12.00 per square foot). Sprout estimated a market rent near the low to middle end of the range at $4.50 per square foot net. Sprout added back reimbursable expenses for a gross potential rent of $7.00 per square foot, then applied an 8% vacancy and collection loss rate. Sprout then subtracted

expenses ($2.75 per square foot), including the property taxes, insurance and common area maintenance (which were reimbursed) plus the reserves for replacement. Sprout applied a capitalization rate of 7.25% to the resulting NOI ($499,910 rounded), concluding to a value of $6,895,000 (rounded). Sprout performed an additional analysis using a tax additur that indicated a value of $6,885,000 (rounded), which he utilized as his conclusion of value based on the income approach.

Sprout reconciled his two approaches to value, remarking that he gave both equivalent weight because they were both based on quality data. Sprout concluded that the retrospective value of the subject property was $6,825,000.

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 the 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*, 155 Ohio St.3d 247, 2018-Ohio-4286, ¶¶10-11.

As we review the evidence in this case, we find that both appraisals are reasonable and well-supported, with neither report running astray of necessary legal standards for the valuation of real property. We acknowledge, and again reject, Midway's argument (which mirrors Racek's underlying presumption about the legal interest being appraised) that the appraisal of a property in "fee simple unencumbered" must assume a property is vacant and available to be occupied at the time of the sale. See, e.g., *Lowe's Home Centers, LLC v. Cuyahoga Cty. Bd. of Revision* (Feb. 26, 2019), BTA No. 2017-39, unreported, appeal pending 10th Dist. Franklin No. 19AP179, citing to *Harrah's Ohio Acquisition Co., L.L.C. v. Cuyahoga Cty. Bd. of Revision* , 154 Ohio St.3d 340, 2018-Ohio-4370. In *Harrah's*, the court recognized that an appraiser may value "'the fee simple estate, as if unencumbered,' so long as the appraisal assumes a lease that reflects the relevant real-estate market." Id., at ¶27. Consequently, while an appraiser *may* value a property as though it is vacant on the date of valuation (as Racek does), an appraiser is certainly not *required* to do so. Moreover, the present use of a property may be considered among the relevant factors without an appraiser adopting a "value in use" for the property. See, *Johnston Coca-Cola Bottling Co., Inc. v. Hamilton Cty. Bd. of Revision*, 149 Ohio St.3d 155, 2017-Ohio-870, ¶¶14-15. See, also, *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 268, 2018-Ohio-4282.

Because both appraisers have performed a credible and supported analysis of the property, we must determine which appraiser better captured the subject's market and weigh all available information to independently determine value. In the valuation of real property for purposes of taxation, equalization requires that "all facts and circumstances relating to the value of the

property, its availability for the purposes for which it is constructed or being used, its obsolete character, if any, the income capacity of the property, if any, and any other factor that tends to prove its true value shall be used." R.C. 5715.01(A)(1). With this in mind, we agree with Racek that the subject's proximity to Midway Mall (including the vacancies therein) is a relevant indicator of the subject's market information and economic obsolescence. We also agree with Sprout that it is not the only indicator and that other retail and commercial uses in the area provide additional context about the subject's market. For that reason, we disagree with Racek that the vacancies of the anchor tenants at the mall establish that the area will not continue to support other types of retail. We acknowledge that only Racek considered sales that are geographically near the subject property, which he maintains show the state of the subject's market. We find, however, that neither the retail space attached to the mall nor the former Walmart with poor access and visibility are sufficient to prove his market conclusion.

Notably, while these stores (many of which were apparel and department stores) have vacated, other "big box" retail remains present in the area, including a nearby center with a Home Depot, Giant Eagle, and Target. Likewise, there has been no evidence offered that despite its age or condition, Lowe's intends to vacate the subject property. Thus, we find no basis to conclude that the subject property is no longer available for the purpose for which it was constructed, i.e., occupancy by a regional/national "big box" retailer. We cannot and do not ignore the influence that the creditworthiness of a regional or national tenant may have on a potential buyer of a property aside from the terms of the lease. In a property such as the subject, however, where the original term of the lease has expired and the tenant may choose to vacate the property without consequence at the conclusion of the five-year option period, a potential buyer would take this possibility into account in determining the purchase price for the property.

Based on the characteristics of the subject property and the market in which it is located,

we find that Sprout's sales comparison analysis provides the best available evidence of its true value. Racek looked solely at vacant properties and excluded any property that continues to be occupied by the original tenant because he rejected the premise that the location could continue to support the existing use of the property by a "first generation" tenant. Racek's adjustments account for physical differences in the property, but we find that he has undervalued the property due to his conclusions regarding the quality of the subject's location, which continues to support its existing use. This factor alone is not determinative, but it is certainly relevant.

While Sprout relies on the conclusion that the property will continue to be occupied by a particular type of tenant, we find that Sprout's analysis in this case does not devolve into a "value in use." In addition to the properties that were leased at the transfer (unadjusted sale prices ranged from $83.52 to $104.52 per square foot), Sprout utilized sales of two vacant properties (selling at $36 and $39 per square foot, respectively). Not only did Sprout utilize sales of properties that were of similar age, condition, and location, but he also indicated that he adjusted the sales of occupied properties down to account for several factors, including vacancy, reserves, income, and the remaining terms of the lease. In doing so, Sprout removed the value attributable to the lease over the value of the property. While he relied primarily on the occupied properties, at $50 per square foot, his conclusion of value was closer to the "fee simple" sales, which demonstrates his adjustment to remove the value associated with a particular brand to focus instead on the type of likely tenant.

We find that while supported, Sprout's income analysis relies too heavily on the value of

the brand as compared to the value of a similarly situated property. While it provides support for the sales comparison approach, we find that it does not reflect the economic and physical condition of the property as well as his sales comparison approach does. Racek did not rely on his income analysis, and we find that it suffers from the same critiques as his sales comparison approach. Accordingly, we find that Sprout's sales comparison analysis provides the best indication of value for the subject property as of the tax lien date. Finally, we rely on Sprout's measurements of the property. Racek's measurements are based on the auditor's records, which are the subject of Midway's challenge in this appeal. We allocate the $6,775,000 value among the parcels based on the auditor's initial allocation.

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 06-24-032-108-039

TRUE VALUE

$201,990

TAXABLE VALUE

$70,700

PARCEL NUMBER 06-24-032-108-040

TRUE VALUE

$38,830

TAXABLE VALUE

$13,590

PARCEL NUMBER 06-24-032-108-041

TRUE VALUE

$6,534,180

TAXABLE VALUE

$2,286,960

OHIO BOARD OF TAX APPEALS

DAVID J. BAILEY AND MARY B. VIDOUREK, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1217 (REAL PROPERTY TAX) DECISION AND ORDER

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Entered Tuesday, March 17, 2020

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

Appellants appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 097-0001-0082-00, for tax year 2018. 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 from the appellee auditor.

The subject property is a 12-unit apartment building with a retail storefront that was formerly a motel. The auditor initially assessed the subject's total true value at $255,850. Appellants filed a complaint with the BOR seeking a reduction in value to $104,000. The BOR convened a hearing, at which appellants amended their request to $65,000, consistent with an

appraisal performed by certified general appraiser Robert J. Bigner. Appellants explained that they purchased the subject property from an online auction by a private selling officer in February 2019 without the ability to walk through the property before the sale. Appellants paid $187,110, which included their bid amount ($170,100) plus a 10% buyer's premium. After their purchase, appellants were able to view the interior and discovered that its condition was far worse than they had expected. The property needed a new roof, heating system, and water. The property had only one occupant, and he was utilizing space heaters for warmth and collecting rainwater to flush the toilet.

Bigner appeared at the hearing to explain his methodology and answer questions about his appraisal. Bigner provided photographs of the interior of the property, which corroborated appellants' description regarding its poor condition. Bigner relied exclusively on the sales comparison approach to value, explaining that the cost approach was not applicable due to the property's advanced age (49 years). Bigner further stated that the income approach was not viable based on the property's condition, which made it difficult to estimate appropriate occupancy and capitalization rates. Bigner's sales comparison approach utilized the sales of four properties, which he adjusted for differences in size, condition, and age, resulting in an adjusted price range from $5,100 to $20,125 per unit, and $4.89 to $12.98 per square foot. Bigner weighted the sales based on the comparable properties' similarity to the subject property, concluding to a value of $10.00 per square foot and a price per unit from the lowest end of the range. Bigner applied this value to the both the apartment units and the storefront space (total 6,490 square feet), concluding to a value of $65,000 (rounded).

A staff appraiser from the auditor's Real Estate Department, Don Ross, was also present at the hearing and submitted a report opining that no reduction was warranted. Ross noted that the conveyance statement (which was not included in the record) reflected that the sale was a

sheriff's sale and did not justify a reduction. Ross also commented on Bigner's report, criticizing his decision not to perform an income analysis. The BOR issued a decision reducing the initially assessed valuation to $150,000. During its decision hearing, the BOR indicated that it did not find the appraisal or the sheriff's sale persuasive. From this decision, the appellants filed the present appeal, reiterating much of the testimony from the BOR and again relying on Bigner's appraisal at our merit hearing. The auditor submitted written argument claiming that the value that was initially assessed should be reinstated because appellants failed to meet their burden and the BOR's decision was not supported.

In the present appeal, appellants' burden was to come forward with evidence to show not only that the auditor's value incorrect, but also that their proposed value is the true value of the property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d, 2018-Ohio-1588, ¶9. To satisfy their burden, appellants discussed their purchase but relied primarily on Bigner's appraisal of the property. The best evidence of value rule instructs that a recent, arm's-length sale price constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. A sale via sheriff's auction following the seller's foreclosure, however, is considered a forced sale and generally does not provide a reliable basis to value a property. See *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. See *Olentangy Local School Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723.

In the present appeal, it is undisputed that appellants purchased the subject property via an auction held by an online private selling officer in lieu of a sheriff's auction following the seller's foreclosure. As such, we find that the subject was a "forced sale" and is presumed to be unreliable evidence of value. Additionally, we find that the evidence regarding the circumstances of the sale

fails to establish that it "was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value." Id. at ¶43. Accordingly, we find that appellants' purchase of the property was not a qualifying arm's-length transaction and is not competent evidence of value.

Even if we were to find that the sale is qualifying for purposes of valuation, we would nonetheless be required to weigh the probative value of Bigner's appraisal. The court has held that the best evidence of value rule is a rebuttable presumption (and not a conclusive determination), when the opponent of the sale presents evidence that purports to explain why the sale price did not reflect the value of the property, this board must consider such evidence. *Terraza 8*, supra, at ¶39. In *Cardinal Federal S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), 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 the witnesses which come before [it]." Indeed, this board may accept all, part, or none of an appraiser's opinions. *Witt Co. v. Hamilton Cty. Bd. of Revision*, 61 Ohio St.3d 155 (1991); *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision*, 85 Ohio St.3d 609 (1999).

Upon review of appellants' appraisal evidence, which provides an opinion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find the appraisal is competent and probative, and the value conclusion is reasonable and well-supported. We acknowledge that the county appellees have challenged various aspects of the appraisal, particularly the lack of an income approach, Bigner's choice of comparable properties, and his use of the residential value for the entire building rather than valuing the retail and residential spaces separately. We find, however, that Bigner adequately explained the bases for his decisions and the difficulty of performing a valuation of this property due to its poor condition. We further find that his use of the same value for the residential and retail spaces was supported

by his analysis. We disagree with the BOR members that the utilization of a gross rent multiplier with a market rent and dollar-for-dollar reduction for repairs would have provided a reliable indication of value. Moreover, we find that the auditor's value, which (according to the property record card) is based on an "average" condition, fails to accurately capture the poor condition of the property and the extent of the necessary deferred maintenance. Accordingly, we find that Bigner's valuation provides the best evidence of the value of the subject property as of the tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$65,000

TAXABLE VALUE

$22,750

OHIO BOARD OF TAX APPEALS

CHARLES L. DEVORE, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1182
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
OTTAWA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CHARLES L. DEVORE
Represented by:
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For the Appellee(s) - OTTAWA COUNTY BOARD OF REVISION
Represented by:
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OTTAWA COUNTY
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Represented by:
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Entered Tuesday, March 17, 2020

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 0270326404977000, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is improved with a two-family home built in 1910. The auditor initially assessed the subject's total true value at $148,050. Appellant filed a complaint with the BOR seeking a reduction in value to $75,000. The appellee board of education ("BOE") filed a

countercomplaint in support of the auditor's value.

The BOR convened a hearing, at which appellant testified that he purchased the property in 2014 and had made limited updates or repairs since that time, though he did replace the roof shortly after his purchase. Appellant challenged the increase in the assessed value of the property between 2017 and 2018. To demonstrate that the auditor's value did not reflect the true value of the property, appellant presented an appraisal that was prepared for his (now) ex-wife related to their divorce. The appraiser opined that the value of the property was $75,000 as of April 4, 2018, based on the sales comparison and income approaches to value. During the divorce proceedings, she procured the appraisal to establish the amount that he would need to pay her for her to transfer her ownership interest to him. Appellant asserted that the divorce was not amicable and his wife sought appraised values as high as possible to maximize her payment. Appellant also testified that he submitted the appraisal to his bank, which relied on its value conclusion in deciding whether to offer a commercial or residential loan when he refinanced in conjunction with the divorce proceedings.

Members of the BOR noted that they had questions about the appraisal that could not be answered because the appraiser was not present. The BOE asked appellant a few questions but did not present any independent evidence of value. The BOE argued that the appraisal was unreliable hearsay because the appraiser did not appear to discuss his report. Appellant maintained that it was reliable evidence of value because it was prepared by a licensed appraiser, emphasizing that it was relied upon by the court and the bank.

The BOR issued a decision maintaining the initially assessed valuation, and appellant filed the present appeal to this board. Appellant appeared before this board, again relying on the appraisal. Appellant also expressed his disagreement with the increase in value for 2018. Neither the county appellees nor the BOE appeared at the hearing or submitted written argument 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). 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, appellant has submitted an appraisal report prepared by a state-certified appraiser who viewed the exterior and interior of the property, in addition to appellant's testimony. Although an owner is qualified to express an opinion of value, to adopt that opinion, this board must find that the evidence that forms the basis for the owner's opinion is sufficiently reliable to demonstrate the value requested. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶20. Therefore, we will consider all of appellant'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, offered an opinion of value as of a date other

than January 1, 2018, and was performed for use during divorce proceedings rather than ad valorem taxation. 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*"). Even so, where such an appraisal contains sufficient indicia of reliability, the information contained therein may furnish an independent basis for valuing the property. Id. at ¶27.

In this case, we find that the appraisal meets this standard and its contents constitute reliable evidence of value. Despite the absence of direct testimony about the preparation of the appraisal by the appraiser, appellant 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). Importantly, based on appellant's unrefuted testimony, the appraisal was relied upon by at least four separate individuals or institutions: appellant, his ex-wife, the court presiding over their divorce, and his lending institution. Additionally, the appraiser explained his choices for the comparable properties he chose for both the sales comparison and income approaches to value, added details about the condition of each comparable sale, and included the basis for his adjustments. Furthermore, the appraisal's effective date was roughly 3 months after the tax lien date and there is no indication that the market changed so drastically during the course of those three months that it renders the appraisal unreliable.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$75,000

TAXABLE VALUE

$26,250

OHIO BOARD OF TAX APPEALS

KULWANT AULAK, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2350, 2019-2351, 2019-2352 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KULWANT AULAK
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Tuesday, March 17, 2020

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 motion, 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. (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 notices 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 matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

WALDORF SHOPPING MALL, INC., (et. al.), Appellant(s), vs. MORROW COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-828 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WALDORF SHOPPING MALL, INC.
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MOUNT GILEAD EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION
Represented by:
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DUBLIN, OH 43017

Entered Tuesday, March 17, 2020

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

Appellant Waldorf Shopping Mall Inc. ("Waldorf") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number G20-001-00-003-00, 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, the record of the hearing before this board, and the parties' written arguments.

The subject property consists of 9.56 acres of land improved with a roughly 50,000 square-foot free-standing commercial retail building and associated parking, with additional acreage behind the improvements. The building is occupied by a Kroger store and was originally constructed in 1988, expanded in 2004, renovated in 2010, and again remodeled in 2017 (which was after the tax lien date). The auditor initially assessed the subject's total true value at $2,398,900. Waldorf filed a complaint with the BOR seeking a reduction in value to $1,500,000, and the appellee board of education ("BOE") filed a countercomplaint in support of the auditor's value. At the BOR hearing, Waldorf amended its requested value to $1,700,000. Waldorf relied on the testimony and written report from appraiser Curtis P. Hannah MAI, AI-GRS, who opined that the total true value was $1,700,000 as of January 1, 2017.

Hannah determined that continued retail use is the maximally productive highest and best use for the subject property and valued the four acres of undeveloped land behind the store as surplus acreage. To value the surplus land, Hannah considered the sales of four undeveloped land sales and adjusted them based on the area's population demographics (density, trends, and income levels), in addition to each area's retail occupancy, the property's street frontage, and regional access to the site. Based on these adjusted sales, Hannah concluded that the land had a value of $60,000 per acre, or $240,000 total.

Hannah next considered the sales of ten improved sales, adjusting for the demographics of the locations, retail occupancy, impact of any leases in place, and physical characteristics of each property. The unadjusted sale prices ranged from $8.42 to $74.34, and Hannah concluded to a value of $25.00 per square foot, or $1,308,975 total value for the improvements, to which he added the value of the land and then rounded to $1,550,000. For his income approach, Hannah considered ten leases, concluding to a market rent of $2.75 per square foot and vacancy/collection loss rate of 3%. After reducing for expenses, Hannah calculated a net operating income (NOI) of

$126,511, to which he applied a capitalization rate of 8.00% plus 0.06% vacancy-weighted tax additur, for an indicated value of $1,569,621. Hannah added the value of the undeveloped land and rounded to $1,810,000. Hannah did not perform the cost approach to value, and gave the two other approaches roughly equal weight, reconciling them at $1,700,000.

The BOR issued a decision maintaining the initially assessed valuation, which Waldorf appealed to this board. At the hearing before this board, Waldorf relied on Hannah's report and testimony from the BOR, though they called him as a rebuttal witness after the appellees presented their case. The county appellees and BOE relied on the testimony and written report from appraiser Thomas D. Sprout, MAI, CPA, who opined that the true value of the property was $2,400,000 as of January 1, 2017. Like Hannah, Sprout determined that the highest and best use for the property was continued retail, and, like Hannah, excluded the cost approach from his consideration. Unlike Hannah, Sprout did not value the undeveloped land to the rear of the property as surplus and instead addressed it through his adjustments.

Sprout performed the sales comparison approach, considering the sales of six properties that ranged in unadjusted prices from $32.70 to $75.16 per square foot, making adjustments for market conditions, improvement size, location, physical features of the properties, and the property rights conveyed if a lease was in place at the time of the sale. Sprout concluded that the lower and upper range indications were $45 and $50 per square foot, or $2,315,000 and $2,570,000 (rounded). Sprout gave primary weight to his income approach, which was based on a market rent of $4.78 per square foot and vacancy/credit loss at 4.00%, then reduced for expenses, resulting in a NOI of $215,970. Sprout applied a capitalization rate of 9.00%, for a value opinion of $2,400,000 (rounded), which was supported by his sales comparison analysis. Sprout also reviewed Hannah's report, criticizing the comparability of his sales and leases.

Waldorf again offered testimony from Hannah to review Sprout's appraisal and provide

some support for his analysis following Sprout's criticism. Hannah testified that the subject is in a rural area several miles from the nearest regional interchange. Hannah asserted that his sales were from more rural markets than Sprout's, which were in larger metro areas with larger population and traffic counts. Hannah also criticized the leases upon which Sprout relied and the extent of his adjustments for a comparable property that had a lease in place at the time of the sale.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 90 Ohio St.3d 564, 566 (2001). 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. 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 to "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,* 155 Ohio St.3d 247, 2018-Ohio-4286, ¶¶10-11.

In this case, both appraisers considered the attributes of the subject's location as well as the characteristics of its physical condition, concluding that its highest and best use would be continued retail. Additionally, although the subject is currently occupied by its original tenant, both appraisers relied primarily on "second generation" properties, or those from which the original occupant has vacated. After a review of both appraisals, we find that Hannah has better captured the market in which the subject is located and provided support for his conclusions.

Not only did Hannah provide general market information for the subject and comparable properties, but he also provided a more detailed analysis regarding the surrounding area's demographics and retail activity. In contrast, we find that Sprout's comparable properties were

dissimilar from the subject in terms of location and that he did not adequately account for the differences in his adjustments. While we recognize the appellees' argument regarding reduced competition for the properties located in areas with reduced population, we find that they did not provide sufficient market information to demonstrate the impact of competition in areas of greater density and higher traffic counts. Because Hannah's comparable properties were similar to the subject in these regards, no adjustment was necessary to account for such a factor. Additionally, we find that Hannah supported his inclusion of multi-tenant properties and their utility in his analysis. Finally, we find that Hannah provided the best support for the value of the surplus land and how it contributed to his overall valuation analysis.

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

$1,700,000

TAXABLE VALUE

$595,000

OHIO BOARD OF TAX APPEALS

TERRAZA 7, LLC (SUBSIDIARY OF REALTY INCOME CORPORATION), (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-1044
vs.	)	(REAL PROPERTY TAX)
JACKSON COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TERRAZA 7, LLC (SUBSIDIARY OF REALTY INCOME CORPORATION)
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For the Appellee(s) - JACKSON COUNTY BOARD OF REVISION
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JACKSON CITY SCHOOLS BOARD OF EDUCATION
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Entered Wednesday, March 18, 2020

This matter is considered upon motion filed by the appellee board of education ("BOE") to dismiss this appeal for lack of jurisdiction. The BOE alleges the appeal was filed by a person not authorized to do so. Additionally, the BOE requests this board to stay the matter pending resolution of this jurisdictional issue. This matter is decided upon the motion, the responses thereto, the statutory transcript certified by the board of revision ("BOR"), and appellant's notice of appeal.

A review of the statutory transcript reveals that the BOE filed a complaint to increase the valuation of three parcels owned by Terraza 7, LLC ("Terraza") for tax year 2018 based upon an alleged sale. Two countercomplaints were filed by AES Tri-State, Inc. ("AES"), both of which identify the complainant's relationship to the property as lessee. On one countercomplaint, the contact person, Joseph Davitt, signed as countercomplainant/agent using the title of chief strategy officer. The other countercomplaint was signed by an attorney. During the BOR hearing, Mr. Davitt testified that he is not an attorney, that AES is a lessee of Terraza, and that AES does not own other property in Jackson County. Mr. Davitt also testified that he does not have personal knowledge, nor did he participate in the negotiation of the purchase price for the subject property, and therefore cannot testify regarding the sales transaction.

The BOE objected to Mr. Davitt's testimony due to lack of standing as a tenant/lessee, thereby making the countercomplaint jurisdictionally defective, in addition to his lack of knowledge regarding the purchase price of the subject property. The BOR ultimately issued a decision to increase the value of parcel #H140010700200, and to make no changes to the value of parcels #H140010700300 and #H140010700700. Subsequently, Terraza appealed the decision to increase the value for parcel #H140010700200 to this board. Such appeal was filed by Joseph Davitt, CSO-AES Tri State, LLC.

An appeal from a decision of a county board of revision is governed by R.C. 5717.01, which specifies that an appeal may be filed by a taxpayer who is authorized by section 5715.19 of the Revised Code. Under that section, certain individuals in addition to the taxpayer, are authorized to file valuation complaints. Initially, this board agrees with the BOE that as a tenant, AES lacks independent standing to file a complaint or appeal the issue of valuation. See *Beavercreek Towne Station, L.L.C. v. Greene Cty. Bd. of Revision*, 154 Ohio St. 3d 274, 2018-Ohio-4300, ¶20. See, also, *Diley Ridge Med. Ctr. v. Fairfield Cty. Bd. of Revision*, 141

Ohio St.3d 149, 2014-Ohio-5030. In this case, however, although the BOE characterizes the matter as an issue of standing, it is more accurately considered an issue of agency. Despite its lack independent standing to file, a tenant may nevertheless file *on behalf of* an owner if the contractual agency relationship is established. *Beavercreek Towne Station*, supra. See, also, *Toledo Pub. Schools Bd. of Edn. v. Lucas Cty. Bd. of Revision*, 124 Ohio St.3d 490, 2010-Ohio-253; *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 230, 2018-Ohio-4244, ¶16 ("we clarified that 'the list of persons *** does not override the agency principle of *Jemo* [*Assocs., Inc. v. Lindley*, 64 Ohio St.2d 365 *** (1980)],' *Toledo Pub. Schools* at ¶28, under which 'the question of agency is determined by reference to whether the person filing the appeal was in fact authorized by its principle to file it.' *Toledo Pub. Schools* at ¶24. Accordingly, the two crucial elements of *Toledo Pub. Schools* are that (1) Vistula was in fact contractually authorized to file on behalf of the property owner and (2) a lawyer prepared and filed the complaint.").

On appeal, despite the BOE's insistence to the contrary, the review is somewhat different because the Ohio Supreme Court has held the filing of a notice of appeal with this board by a non-attorney vests this board with jurisdiction, even if the filing constitutes the unauthorized practice of law. See *NASCAR Holdings, Inc. v. Testa,* 152 Ohio St.3d 405, 2017-Ohio-9118. Therefore, this board must only consider the question of agency.

Here, through its attorney, Terraza responded to the BOE's motion and attached correspondence between Terraza and Mr. Davitt that clearly gave authority to file an appeal on its behalf. Accordingly, it is the finding of this board that the notice of appeal filed by Davitt, acting as agent of Terraza, was sufficient to invoke this board's jurisdiction. Therefore, the BOE's jurisdictional motion must be, and herby is, denied. In its motion, the BOE also requested that this board stay all proceedings and deadlines pending the resolution of the jurisdictional issue. As the board has now denied the motion and found the notice of appeal sufficient to invoke this board's jurisdiction, this motion is likewise denied.

OHIO BOARD OF TAX APPEALS

SOEHNKE HASSELHOF, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1710
	)	
vs.	)	
	)	
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SOEHNKE HASSELHOF
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For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
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AKRON CITY SCHOOLS BOARD OF EDUCATION
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Entered Thursday, March 19, 2020

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 number 67-22637, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and appellant's written argument.

[2] The subject property is comprised of a seven-unit apartment building. The affected board of education ("BOE") filed a complaint with the BOR, which requested that the subject property's value be increased from its initially assessed value of $119,510 to $190,000 based

upon a recent sale. The property owner filed a countercomplaint, which objected to the request, and attached a statement that asserted that the $190,000 sale price should be reduced to account for items other than realty included in the sale and for costs associated with repairs that occurred between the tax lien and sale dates.

[3] At the BOR hearing on the matter, the BOE submitted sale documents, which memorialized the $190,000 transfer of the subject property from B.R. Colvin, Inc. to the property owner in October 2018. Based upon the evidence presented, the BOE requested that the subject property be revalued accordingly. In her presentation, the property owner submitted the testimony of the property manager, who detailed the facts and circumstances, as he understood them, that led to the subject sale. The property owner submitted a copy of the purchase agreement, which demonstrated the parties' agreement to transfer the subject property and a neighboring property, which is not the subject of this appeal, for $225,000. The property manager testified that $190,000 of the overall purchase price was allocated to the subject property and the remainder allocated to the neighboring property. Based upon the evidence presented, the property owner amended her countercomplaint to $178,000 but asserted that the subject sale should be disregarded for tax year 2018. At the BOR decision hearing, the BOR members voted to increase the subject property's value to $178,500 to account for the recent arm's-length sale price of $190,000, less the value of the non-realty items, $11,500. This appeal ensued. Neither the property owner nor the appellees elected to submit additional evidence into the record at a hearing before this board. However, the property owner submitted written argument to more fully assert her position that the subject sale should be disregarded for tax year 2018.

[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 OhioSt.3d 227, 2013-Ohio-397. In this matter, the presentation of sale documents, by the BOE, 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 opponent of the subject sale 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. The property owner does not challenge the arm's-length nature of the October 2018 sale. Instead, she argued that such sale was too remote from the tax lien date, because the subject property experienced material changes to its condition between the tax lien and sale dates, and that subject sale price of $190,000 was overstated because it included the value of non-realty items and repair work.

[5] After review of the record and relevant law, we find that the property owner failed to satisfy the evidentiary burden on appeal. We must reject the argument that the subject property's condition materially changed because of repair work that purportedly took place between the tax lien and sale dates, which rendered the subject sale too remote from the tax lien date. See *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473. We do not find the repair work discussed in the statement attached to the property owner's countercomplaint, and the property owner's testimony at the BOR hearing, had the effect of materially changing the subject property's condition. We find such work was more cosmetic in nature. For example, the property owner asserted that seller painted "apartment #5" to induce the property owner to enter into the purchase agreement. This board has previously held that painting a property prior to its sale was an insufficient basis to reject a sale. See *Fairview Capital, LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 14, 2015), BTA No. 2014-927, unreported.

[6] Likewise, we reject the argument that the subject sale price should be reduced to reflect the value of non-realty items that were purportedly included in such sale. It is undisputed that the parties to the subject sale did *not* allocate a portion of the $190,000 sale price to items other than

realty. It is equally undisputed that the alleged allocations to various non-realty items were *not* agreed upon by the parties contemporaneous with the subject sale and that the specific allocations were estimates provided by the property manager in preparation for the BOR hearing, well after the subject sale was consummated. In *Cincinnati School Dist. Bd. of Edn. v.Hamilton Cty. Bd. of Revision*, 151 Ohio St.3d 109, 2017-Ohio-7650, at ¶9, the court reaffirmed that "'[a]n owner who favors the use of an allocated bulk-sale price to reduce the value assigned to real property must bear the burden of proving the propriety of the allocation.' *RNG Properties, Ltd. v. Summit Cty. Bd. of Revision*, 140 Ohio St.3d 455, 2014-Ohio-4036, ***, at ¶36." (Parallel citation omitted.) The Supreme Court has instructed this board that "if the record clearly establishes that a portion of a sale price pertains to personal property, the BTA should subtract that portion from the stated sale price to arrive at the amount of consideration paid for the realty." *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 125 Ohio St.3d 103, 2010-Ohio-1040, ¶22. To satisfy that burden, the proponent of using an allocated bulk-sale price must provide "corroborating indicia" of such allocation. *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 1, 2014-Ohio-853. As the court further pointed out in *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921, at ¶25, it is the purchaser of the property who performs the allocation provided to the auditor and possesses the information necessary to demonstrate the relationship of value to the real property.

[7] Here, there is no way for this board to confirm that the items listed, and only the items listed, were actually allocated to the subject property given that the purchase agreement included one additional parcel that is not before us. Furthermore, we have previously rejected the reliance upon an allocation to real property when such allocation was documented after a sale in an attempt to provide "corroborating indicia." See *Giant Oil Inc. v. Ashland Cty. Bd. Of Revision* (Apr. 14,

2016), BTA No. 2015-930, unreported, at 4 ("We recognize that the list contains several items that would be considered equipment and properly valued separate from the realty. Exhibit 1, however, does not meet the standard of 'corroborating indicia' of Giant Oil's allocation. Instead, Exhibit 1 is merely a written statement meant to supplement Mr. Ali's testimony and not a contemporaneous document from the time of the sale. Additionally, it is unclear whether the items in the list are even an accurate representation of the personal property that transferred at the time of the sale."). We also question the propriety of the claimed allocations to the non-realty items, based upon the property manager's conservative estimates, which is how he referred to the claimed allocations to value, because there was no demonstration that such allocations were, in fact, based upon some objective means of determining value. See *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. Of Revision* (Apr. 1, 2015), BTA No. 2014-1220, unreported ("While we recognize the property owner's representatives' experience buying, selling and operating gas stations, we simply cannot allocate value to personal property based upon their opinion."). See also *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Apr. 9, 2015), BTA No. 2014-1231, unreported. Therefore, based upon the property owner's failure to provide "corroborating indicia" of specific allocations to value of the non-realty items, we are constrained to find that the record does not support the claimed allocations.

[8] To the extent that the property owner requested that the subject sale price be reduced to reflect the "conservative estimates" of the value of the repair work, this board has consistently followed Supreme Court precedent and rejected this argument. See *Hotel Statler v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 299 (1997) (cost of repairs does not necessarily correlate to a dollar-for-dollar reduction in value).

[9] Based upon the foregoing, we find that the property owner failed to satisfy the evidentiary burden on appeal. We now turn to the propriety of the BOR's decision to reduce the

subject property's value to $178,500. Because this matter involves the sale of the subject property, we review the sale de novo. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. Of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, at ¶¶ 9-11. As noted above, the property owner's evidence fell short of providing "corroborating indicia" of the claimed value allocations to non-realty items and, therefore, could not have provided a sound basis for the BOR's decision to reduce the sale price to reflect the claimed value of non-realty items. We find, therefore, the BOR's decision to be legal error to the extent that it failed to accept the full $190,000 purchase as the best indication of the subject property's value.

[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.3d13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to rebut the presumptions accorded to the property owner's $190,000 purchase of the subject property in October 2018. It is, therefore, the order of this board that the subject property's value are as follows as of January 1, 2018:

TRUE VALUE: $190,000

TAXABLE VALUE: $66,500

BILLY JONES, (et. al.), Appellant(s), vs. LUCAS COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-536, 2019-537, 2019-538, 2019-539, 2019-540, 2019-541 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Thursday, March 19, 2020

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

[1] The appellant taxpayer challenges five decisions issued by the board of revision ("BOR") denying his request for remission of real property tax late payment penalties, along with a sixth decision in which the BOR granted his request. This matter is now considered upon the notices of appeal, the transcripts certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board. Because remission was granted in BTA No. 2019-541, we find that there is no justiciable issue and, therefore, dismiss the appeal as moot. See *R.R. Kelsch v. Hamilton Cty. Bd. of Revision* (Feb. 7, 2003), BTA No. 2002-T-1271, unreported.

[2] The history of these proceedings begins several years ago when appellant entered into

payment plans with the county as part of bankruptcy proceedings. Appellant filed applications for the remission of the real property late payment penalties, asserting that he did not receive his tax bills while in the payment plans. It appears that the county treasurer advised that the application should be denied, and the county auditor did not complete the corresponding portion of DTE Form 23A. The BOR then denied remission based on the treasurer's recommendation, with the auditor dissenting because appellant did not receive his tax bill while in the payment plan. Appellant appealed these decisions to this board, which convened a hearing. At the hearing, appellant acknowledged that he ultimately defaulted on the payment plans, but argued that over time, the county charged excessive penalties. Appellant expressed frustration with the process and further challenged whether the increases to the value of the properties during the past two decades were warranted.

[3] When a taxpayer requests remission of a real property tax late payment penalty, R.C. 5715.39 sets forth a two-step process, for which the Tax Commissioner prescribed DTE Form 23A to ensure uniform implementation. First, the auditor must review the application "upon consultation with the county treasurer," and "shall remit" the late payment penalty if one of five enumerated circumstances applies. R.C. 5715.39(B). Under these circumstances, the auditor must notify the taxpayer by completing the appropriate section of the DTE Form 23A and returning a copy of the form to the taxpayer. Second, "[i]f the auditor determines that remission is not required under division (B) of this section, the auditor shall present the application to the board of revision. The 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." R.C. 5715.39(C).

[4] In the present appeals, it does not appear that the county appellees followed the

statutory process. Specifically, it appears that the auditor failed to first consider whether any of the circumstances in (B) applied before presenting the application to the BOR. Most notably, it appears that the auditor may have concluded that one of such circumstances – that alleged by the taxpayer on the form – did apply and dissented from the BOR's decision on that basis. If that is the case, then the auditor is required to notify the taxpayer and remit the late payment penalties associated therewith. In this case, however, the auditor failed to fill out the corresponding portion of DTE Form 23A before presenting the case to the BOR. As such, we are unable to determine whether she concluded that R.C. 5715.39(B) applied or whether she determined that the failure to receive the tax bill constituted reasonable cause, which must be approved by the BOR. Therefore, we must remand these matters to ensure that the county appellees follow the proper procedure.

[5] Finally, we note that appellant challenged the value of the real property during the previous years. This issue is not properly before the board in the present cases because this board is limited to the review of decisions from the BOR that have been properly appealed. R.C. 5717.01. The BOR did not issue value decisions in these cases, and there is no indication that a complaint against the auditor's value was filed as set forth in R.C. 5715.19. Thus, this board lacks jurisdiction to consider valuation.

[6] Accordingly, we hereby remand BTA Nos. 2019-536 through 2019-540 to the auditor to first determine whether any of the circumstances set forth in R.C. 5715.39(B) applied and proceed accordingly. We reiterate that due to a lack of justiciable issue, BTA No. 2019-541 is dismissed.

OHIO BOARD OF TAX APPEALS

BETH ANN KABBAGE, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-2462
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:
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Entered Monday, March 23, 2020

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. (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

321 S OHIO LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-622
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	

APPEARANCES:

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Entered Monday, March 23, 2020

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

321 South Ohio LLC appeals from a decision of the Franklin County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

This case involves the interplay between the community reinvestment area ("CRA") abatement statutes and general real property valuation law. As we recently noted in *ECC-Center, LLC v. Hamilton Cty. Bd. of Revision* (May 6, 2019), BTA No. 2018-1977,

unreported, when an abated property is before this board, the issue this board must determine is value, not the validity or impact of the abatement. Any issue a property owner has with the abatement must be addressed by the government entity granting the abatement, that entity's "housing officer," or the CRA housing council. See *State ex rel. Lorain v. Stewart*, 119 Ohio St.3d 222, 2008-Ohio-4062. As we stated in *ECC-Center*, "our review is limited to questions of valuation, which is still a relevant issue for CRA properties because the CRA program only grants a partial exemption***." Id. at 9 (citing *Bd. of Edn. of the Columbus City School Dist. v. Franklin Cty. Bd. of Revision* (Aug. 10, 2001), BTA No. 2000-E-792, unreported.).

We now turn to the facts of this case. Appellant purchased the property, a single-family rental, for $135,000 on September 22, 2017, in a multi-property transaction. The deed and conveyance fee statement are in the statutory transcript. The city of Columbus granted a CRA abatement on the property. While the 2017 record is not before us, it appears the appellee board of education ("BOE") filed an initial 2017 valuation complaint. The BOR held a hearing and set a value of $128,700, based on the sale price minus the value the BOR attributed the other parcel involved in the sale. No party appealed that decision, and no party disputes the arm's-length nature of that sale. However, appellant's member stated at this board's hearing that appellant did not appeal the 2017 decision because an attorney for the BOE had informed her the tax liability would not increase because a portion of the property had been abated.

The 2017 value carried forward to 2018, and appellant filed a valuation complaint stating the value should not have been increased because of the abatement and because the BOE's counsel had informed the appellant's member that tax liability would not increase because of the abatement. The record contains several email conversations between appellant's member and the auditor's office discussing the abatement and what portion of the property should be abated. The BOR held a hearing on the 2018 complaint but retained the auditor's value based on the sale.

The BOR's speaking member indicated the reason for the misunderstanding was because the abatement did not take effect until after the sale and because the abatement only covers renovations. The appellant filed a notice of appeal with this board, and this board held a hearing.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Neither the 2017 value nor the CRA abatement is before us. The 2017 value is not before us because the BOR decision for that year was not appealed. The CRA abatement is not before us because this board is a creature of statute with limited jurisdiction. That jurisdiction does not encompass jurisdiction over CRA abatements. See *ECC-Center*, supra. The only question before this board is the value of the property as of January 1, 2018.

The auditor valued the property at $128,700 for tax year 2018. The Ohio Supreme Court has held neither the auditor nor the BOR bear the burden of proving the auditor's value is correct, "with the result being [this board] is justified in retaining the county's valuation of the property when an appellant fails to sustain its burden of proof." *Colonial Village, Ltd. v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975. The valuation of property, including valuation based on a sale, falls "within the auditor's ordinary duties of office" and a "presumption of regularity applies." *Plain Local Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Dec. 12, 2018), BTA No. 2017-1025, unreported.

We find in this case that appellant has not presented probative evidence of a value different from the auditor's value. Appellant's argument is primarily one of the effects of the CRA and what portion of the value is abated. To the extent appellant argues the value was not $128,700 as of January 1, 2017, it has not presented this board with evidence that a different value is appropriate.

We likewise find the 2017 sale does not change our analysis. While a sale is the best evidence of value, the parties agree the subject property sold as part of a multi-property sale, but no party has presented this board with evidence that the BOR's allocation of the sale price to this property was incorrect. More fundamentally, the appellant does not dispute the allocation of the sale for 2017, which was the basis for the 2018 carry-forward, was incorrect. Therefore, we see no reason to deviate from the auditor's value based on the sale.

While we understand there was some confusion regarding what was said to appellant's member at the 2017 hearing, those statements would not and do not change our analysis. First, the 2017 case is not before us nor are those statements substantiated in the record. Even if they were, incorrect or incomplete comments by the BOE's counsel do not somehow estop the auditor or BOR from valuing the property according to law. See generally *Raffa v. Lake Cty. Bd. of Revision* (Dec. 11, 2019), BTA No. 2019-1309, unreported.

This board decides that the true and taxable values of the subject property as of January 1, 2018, were as follows:

PARCEL NUMBER 010-007856-00

TRUE VALUE

$128,700

TAXABLE VALUE

$45,050

OHIO BOARD OF TAX APPEALS

GAHANNA-JEFFERSON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-414
vs.	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

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

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 025-012936-00, for tax years 2017 and 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject property is improved with a commercial building operating as a Bob Evans restaurant. The auditor initially assessed the subject's total true value at $3,977,900. Bob Evans Restaurants, LLC ("Bob Evans") filed a complaint with the BOR seeking a reduction in value to $3,000,000. The BOE filed a countercomplaint in support of the auditor's value. At the BOR hearing, Bob Evans indicated that it had no evidence to present. The BOE amended its countercomplaint to $4,887,515 based on an April 24, 2018 sale of the property. The BOE provided evidence to demonstrate that the subject property transferred with two adjacent parcels for $10,000,000. Bob Evans objected to the sale documents because they were not certified copies or otherwise authenticated, and argued that the sale was not relevant to the tax lien date because it took place in 2018. Bob Evans further claimed that the sale price as allocated to the subject property does not reflect the value of the subject but rather a business decision. The BOR issued a decision maintaining the initially assessed valuation for both 2017 and 2018, commenting during the decision hearing that the sale was more applicable to 2019 and noting a lack of allocation among parcels.

[3] From the BOR's decision, the BOE filed the present appeal. At this board's hearing, the BOE first argued that the BOR exceeded its authority when it found value for 2018 because the tax year was still open for the filing of a valid complaint, which the BOE ultimately filed.

Second, the BOE argued that the sale provides the best evidence of the subject's value as it was recent to the tax lien date and provided the basis for an increase in value by the BOR for 2018 based on its 2018 complaint for all three parcels. The BOE provided the property record cards for all three parcels as evidence of their assessed values and the BOR's decision letters for 2018. The BOE indicated that the property owner appealed these decisions to this board, and the case is pending as BTA No. 2019-2289. None of the appellees appeared at this board's hearing or submitted written argument in support of their respective legal positions.

[4] Before we reach the merits of the instant appeal, we first must address the argument raised by the BOE regarding the BOR's decision for tax year 2018, which was issued on March 7, 2019. This board has repeatedly admonished the Franklin County Board of Revision not to exercise jurisdiction over a year for which a complaint may be filed, since such a filing would render the earlier decision for the "open tax year" null and void. See, e.g., *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 10, 2016), BTA No. 2015-449, unreported; *Big Walnut Apartments, LLC v. Franklin Cty. Bd. of Revision* (Nov. 6, 2012), BTA No. 2012-K-767, unreported; *GnA Properties, LLC v. Franklin Cty. Bd. of Revision* (May 29, 2012), BTA No. 2012-K-688, unreported. In the instant appeal, it was again improper for the BOR to issue a decision on tax year 2018. Accordingly, we hereby remand tax year 2018 to the BOR with instructions to vacate its March 2019 decision for tax year 2018.

[5] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction."*Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). 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. 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.

[6] In the present appeal, despite the objection to the sale documents, there is no dispute that the subject property transferred in April 2018 among unrelated parties as part of a bulk three-parcel sale for a total price of $10,000,000. As such, we find the objection to the evidence is without merit. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Oct. 28, 2019), BTA No. 2018-1604, unreported, at 4-5 (discussing the reliability of sale documents where the property owner did not dispute the accuracy of the information contained therein, noting that any evidence to contradict their accuracy would be in the owner's possession). Thus, we give the sale documents their appropriate weight in the board's analysis.

[7] Next, we reject the argument that the 2018 sale of the subject property is not relevant to the tax lien date. The court has held that a sale of a subject property after the tax lien date still enjoys the presumption of recency, even where it takes place more than 24 months later. *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612. In the present appeal, the sale took place only sixteen months after the tax lien date and is presumed recent and relevant for purposes of valuation. As such, we find that the appellees were required, but failed, to demonstrate that some factor rendered the sale too remote to establish the subject's value as of January 1, 2017.

[8] We further reject the argument that an unspecified "business motivation" by the parties to the sale necessarily disqualifies it as evidence of value. We observe, as we have done many times before, that every transaction involves a buyer and seller with subjective motives. There is nothing about the circumstances of this sale that demonstrates the parties were not willing parties acting in their own best interest. See *Terraza*, supra, at ¶ 9, quoting *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412 (1964). Accordingly, we find that the sale is a recent, arm's-length transaction and presumptively the best evidence of value.

[9] Having found the transaction was a recent arm's-length sale, the burden shifts to the appellees to demonstrate that the purchase price does not reflect the subject's true value. *Terraza*, supra; *Spirit Master Funding IX, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 254, 2018-Ohio-4302. A number of factors may cause the sale of a leased property to be unreliable evidence of value, such as whether the actual rent was at market rates, creditworthiness of the tenant, and whether the lease was a net lease, under which the tenant defrays the expenses relating to the real estate. *GC Net Lease @ (3) (Westerville) Investors, L.L.C. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3856, ¶11. The appellees have presented no evidence, however, to prove that any of these factors were present in this case, much less any of these factors were reflected in the sale price. Accordingly, we find that the sale price is the best evidence of value.

[10] Finally, the sale in this case included three separate parcels, only one of which is included in the present appeal. The BOE argues that the board should allocate the value among parcels based on the auditor's assessed values. The appellees maintain that the board should disregard the sale altogether due to the lack of an allocation.

[11] "A bulk sale differs from a single-parcel 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.' (Emphasis added.) *FirstCal* [*Indus. 2 Acquisitions, L.L.C. v. Franklin Cty.Bd. of Revision*], 125 Ohio St.3d 485, 2010-Ohio1921, *** at ¶16." (Parallel citation omitted.)*Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664, ¶18. Where an owner opposes using the reported sale price, it is their burden to demonstrate why it did not properly reflect the aggregate true value of the parcels. *FirstCal*, at ¶25. Additionally, "the auditor'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." Id. at ¶31. In this case, we find that the appropriate allocation of the sale price is based on the auditor's initial values and allocate the $10,000,000 to the subject property based on its proportionate share of the auditor's assessed values.

[12] 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

$4,887,520

TAXABLE VALUE

$1,710,630

OHIO BOARD OF TAX APPEALS

PETRI AND KLEJDA SPIROLLARI, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2907 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PETRI AND KLEJDA SPIROLLARI
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
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CLEVELAND, OH 44113

Entered Monday, March 23, 2020

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. 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

PETRI AND KLEJDA SPIROLLARI, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2907 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PETRI AND KLEJDA SPIROLLARI
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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 Monday, March 23, 2020

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. 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 WADSWORTH, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1907
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, March 24, 2020

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 395-11-007, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and record of this board's hearing.

The property owner filed a complaint with the BOR, which requested that the subject property's value be reduced from its initially assessed value of $172,000 to $58,000. (Another parcel was included in the proceedings below; however, the property owner did not appeal the BOR's decision as to that parcel, and it is not the subject of this appeal.) The affected board of

education ("BOE") filed a countercomplaint, which objected to the request. The BOR held a hearing on the complaint, at which the property owner and his wife and the BOE appeared to offer argument and/or evidence in support of the complaint and countercomplaint. The property owner and his wife testified that the subject property included two improvements, a main house and a cottage. They testified as to the poor condition of the improvements and their unsuccessful in their attempts to remediate cited condition issues. As a result, they testified, it would be more cost-efficient to demolish the improvements and to rebuild them. As additional support for his requested value of this parcel, they submitted a written opinion from a home improvement contractor, which provided an opinion of the condition of the improvements, recommended action to address their poor condition, and a cost estimate for such action. They submitted photographs to illustrate the condition issues they raised. The BOR members asked a number of questions about the subject property and subsequently issued a decision, which retained its initially assessed value. This appeal ensued.

At this board's hearing, the property owner and his wife appeared to supplement the record with argument and evidence. In doing so, they argued that the condition of the improvements necessitated a reduction to the subject property's value. In addition to their testimony about the condition of the subject property, conversations with various people about issues affecting the subject property's value, and prior efforts to reduce the subject property's value, the property owner and his wife submitted a packet of documents that included written argument and other documents.

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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record

to independently determine real property 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 are constrained to find that the property owner failed to satisfy the evidentiary burden on appeal. The property owner advanced a number of arguments in support of the request to reduce the subject property's value. First, he argued that the subject property's initially assessed value failed to account for the various cited defects, which made the improvements uninhabitable. Unfortunately, the property owner failed to provide evidence to quantify the specific diminution in value that resulted from the cited defects. For example, the property owner argued that he valued the improvements at $6,000 each because of their poor condition. However, he failed to provide any competent, credible, and probative evidence that supports such a value. The record is void of any evidence that would allow this board to value the improvements at any value less than what was initially assessed by the fiscal officer, whether $600, $6,000, or $60,000 each. 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." (Internal citations omitted.) This board has repeatedly rejected the argument that defects, not quantified by a proper appraisal, are sufficient evidence to reduce real property value. See e.g., *Bardshar Apts., Inc. v. Erie Cty. Bd. of Revision* (Mar. 15, 2016), BTA No. 2015-1451, unreported.

Second, the property owner asserted that the subject property should be valued in light of the written opinion from a home improvement contractor, which provided an opinion of the

condition of the improvements, recommended action to address their poor condition, and a cost estimate for such action. This argument is unpersuasive. The contractor did not testify at either the BOR hearing or this board's hearing. As a result, he was not subject to questioning about the bases for his opinions by the BOE's counsel, BOR members, or this board's attorney examiner. For example, according to his statement, the contractor believed that it would cost approximately $125 to $175 per square foot to build a 2,000 square foot improvement. However, there is no information about the source of his opinion and whether such source was credible and verifiable. As for another example, the contractor noted that his opinion of the cost was dependent on the type of improvement was built. However, the record is void whether his opinion applies equally to each of the improvements on the subject property. As a result of this lack of testimony, the contractor's written opinion amounts to unreliable hearsay, which will not be considered in our analysis. See, e.g., *Dellick v. Eaton Corp.*, 7th Dist. Mahoning No. 03-MA-246, 2005-Ohio-566, at ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). *** Generally, hearsay is inadmissible. Evid.R. 802."). For this same reason, we also find references to conversations with Carl Naso, president of the Strongsville School Board, to be unpersuasive.

Third, the property owner argued that the subject property's assessed value was clearly out of line when compared to the assessed values of nearby properties. This argument is equally unavailing as it is very possible that it is the nearby properties, not the subject property, that have been assessed too low. Many factors could affect how a specific property's value might increase or decrease over time, including a recent, arm's-length sale of the property, changing market conditions, and changes in the condition of the property itself. "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).

Fourth, the property owner argued that comparable sales of nearby properties, submitted at this board's hearing, demonstrated that the subject property had been overvalued. We have repeatedly held that unadjusted comparable sales data are 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). In fact, we cannot discern any differences between the properties because the property owner failed to provide any of the salient features of the comparable properties, i.e., type, age and condition of the improvements situsued on the properties and acreage, such that we could determine what type of adjustments should be made. 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).

Seemingly, the property owner argued that this board should grant his valuation out of a sense of fairness because of financial and health concerns. As an administrative body, this board does not have equitable jurisdiction and, therefore, cannot make determinations based upon equity or fairness. *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564, 569 (1953).

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 satisfy the evidentiary burden before the BOR and before this board. As a result, we must conclude that the subject property's true and taxable values are as follows as of January 1, 2018:

True Value: $172,000

Taxable Value: $60,200

OHIO BOARD OF TAX APPEALS

MENTAL HEALTH PARTNERS HUDSON LLC, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1133 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MENTAL HEALTH PARTNERS HUDSON LLC
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Represented by:
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Entered Tuesday, March 24, 2020

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

Mental Health Partners Hudson LLC appeals from a decision of the Summit County Board of Revision ("BOR") retaining the fiscal officer's value of the subject property, two

parcels, for tax year 2018. Appellant requested a hearing but then waived its appearance at that hearing. No party filed written argument. We decide the case on the notice of appeal and the statutory transcript.

Per the complaint, the subject property is medical office space. The auditor valued the property at a combined value of $3,721,260 for tax year 2018. Appellant filed a decrease complaint requesting a value of $2,900,000. The affected board of education ("BOE") filed a counter-complaint asking the BOR to retain the fiscal officer's value.

At the BOR hearing, counsel for the appellant appeared and presented several documents including a K-1 filing, appellant's federal partnership return, appellant's Indiana return, and an income statement. He argued the appellant was in an unfavorable financial position. No party appeared for the appellant to testify.

The BOR retained the fiscal officer's value. The BOR noted the subject property is already significantly abated. Appellant filed a notice of appeal with this board. It requested a hearing then waived its appearance at that hearing. No party filed a brief.

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). To meet that burden, an 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. Neither the fiscal officer nor the BOR bears the "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." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12(quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.). A

recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. However, there have been no recent transfers of the subject property. Therefore, we move on to the appellant's exhibits, i.e., the financial documents.

Upon review, we do not find the appellant has carried its burden. The only evidence the appellant submitted to the BOR and this board are the financial documents. Those documents alone are not probative and competent evidence of value. See *EOP-BP*, supra. While financial records might help develop an appraisal using the income capitalization approach, financials alone are insufficient to establish the value of real property. See generally The Appraisal of Real Estate (13th Ed.2008); see also generally *JTB La Bella Vita v. Montgomery Cty. Bd. of Revision* (July 5, 2019), BTA No. 2018-2059, unreported. Moreover, no party appeared to authenticate or discuss the financials meaning they are unreliable hearsay.

For these reasons, we order the property valued as follows for tax year 2018:

PARCEL NUMBER 30-10162

TRUE VALUE

$2,058,510

TAXABLE VALUE

$720,480

PARCEL NUMBER 30-10253

TRUE VALUE

$1,662,750

TAXABLE VALUE
$581,960

OHIO BOARD OF TAX APPEALS

MASOUMEA ASLANPOUR, (et. al.),	)	Appellee(s).)
Appellant(s),	)	
vs.	)	CASE NO(S). 2019-1588
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MASOUMEH ASLANPOUR
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
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Entered Tuesday, March 24, 2020

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

[1] The taxpayer appeals decisions of the board of revision ("BOR"), which denied requests for remission of the late payment penalties associated with the property tax bills for parcel 171-001286-00 for the second half of tax year 2017 and first half of tax year 2018. We proceed to consider this matter based upon the underlying applications and statutory transcript certified pursuant to R.C. 5717.01.

[2] The taxpayer applied for remission of the late payment penalties for the previously mentioned tax periods. By way of the applications, the taxpayer alleged that the mortgage associated with the property was satisfied, that the lender failed to notify the county auditor of such action, and that, as a result, the property tax bill was not sent to the taxpayer. Apparently, the taxpayer also submitted an application for remission of the late payment penalty for the first

half of tax year 2017, which was granted as it was the first property tax payment due after satisfaction of the mortgage. However, the BOR denied the taxpayer's applications for remission of the late payment penalties for the second half of tax year 2017 and first half of tax year 2018. This appeal ensued.

[3] On appeal, the burden is on the appellant to demonstrate that the BOR improperly denied the request for remission. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001).

[4] Upon review, we find that the taxpayer has failed to demonstrate that the facts and circumstances of this matter qualifies 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. The taxpayer specifically requested remission under R.C. 5715.39(B)(5), which provides that "[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." Here, it appears that the taxpayer was, indeed, granted remission of the late payment penalty for *the first payment due* after satisfaction of the mortgage, i.e., the property tax bill payment for the first half of tax year 2017 payable in January 2018. The taxpayer was not entitled to remission of the late payment penalty for any later periods. To the extent that the taxpayer asserted that the property tax bills for the second half of tax year 2017 and first half of tax year 2018 were sent to the lender, and not to the taxpayer, there is no evidence that the taxpayer updated the tax mailing address with county officials as required by law. See R.C. 323.13. Also, "[f]ailure to receive any bill *** does not excuse failure or delay to pay any taxes shown on such bill or, except as provided in division (B)(1) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay." Id. As a result, we agree with the BOR that the taxpayer does not qualify for remission of

the late payment penalties under R.C. 5715.39(B)(5).

[5] Furthermore, the BOR considered whether remission 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. See, e.g., *Garcia v. Testa* (Aug.17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. Here, it is undisputed that the taxpayer had one prior late payment of property tax bills, i.e., the payment for the first half of tax year 2017. As a result, we agree with the BOR that the taxpayer does not qualify for remission of the late payment penalties under R.C. 5715.39(C).

[6] Based upon the foregoing, we find that the taxpayer failed to satisfy the evidentiary burden on appeal. As a result, we deny the request for remission of the late payment penalties for the second half of tax year 2017 and first half of tax year 2018.

OHIO BOARD OF TAX APPEALS

MUDDY RUN LIMITED PARTNERSHIP, (et. al.), Appellant(s), vs. HARRISON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1238 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MUDDY RUN LIMITED PARTNERSHIP
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Represented by:
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Entered Tuesday, March 24, 2020

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 05-0001287.001, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and record of this board's hearing.

The subject property, a forty-unit apartment complex, was initially valued at $1,266,570.

The property owner filed a complaint with the BOR, which requested a reduction to the subject property's value. The affected board of education ("BOE") filed a countercomplaint, which objected to the request. At the hearing before the BOR, the property owner submitted the testimony of its employee, James Zambori, who detailed the subject property's participation in the low-income housing tax credit ("LIHTC") program and the effects such participation had upon the income and expenses derived from the subject property. It also submitted a packet of documents in support of its position. The BOE submitted a recent Supreme Court decision to argue that the subject property should be valued consistent with market income and market expenses, not the subject property's actual income and actual expenses. The BOR voted to retain the subject property's initially assessed value and this appeal ensued.

At this board's merit hearing, only the property owner appeared to supplement the record with argument and/or evidence. In doing so, the property owner submitted the appraisal report and testimony of appraiser Richard G. Racek, Jr., which opined the value of the subject property to be $490,000 as of the tax lien date. Racek was examined about the underlying data and methodologies used to derive his estimate of the subject property's value. The property owner argued that its evidence properly valued the subject property in light of the LIHTC restrictions as required by Supreme Court case law.

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, the record does not disclose a recent, arm's-length sale of the subject property; therefore, we proceed to evaluate Racek's appraisal report and testimony. In his appraisal report, Racek first determined that the subject property's highest and best use, "as vacant," would be "permitted multi-family use," and "as improved," was for continued use for multi-family, affordable housing. Hearing Record at Exhibit A at 23. He determined that the cost approach would not accurately estimate the subject property's value because of a large amount of economic obsolescence and that the sales comparison approach would not be used by investors, who would focus on a property's income production. Therefore, he solely developed the income approach. In doing so, he relied upon five comparable LIHTC properties to determine a LIHTC monthly rental rate of $486 for the subject property's twenty, one-bedroom units and $583 for the subject property's twenty, two-bedroom units, to conclude total gross potential income of $256,560. From that number, he deducted 3% for vacancy and credit loss ($7,697) based upon the subject property's historic performance, and then added $1,000 of additional income from sources other than rent. Next, he concluded to effective gross income of $249,863. From that number, he deducted total expenses of $196,000, to conclude to net operating income of $53,863. He capitalized the net operating income at 10.16% (which included a 2.16% tax additur to account for property taxes) to preliminarily conclude to a value of $530,148. He deducted $10,000 to account for appliances in each apartment unit and allocated $31,510 to a parcel that is part of the same economic unit as the subject property but is not the subject of this appeal. Based upon this analysis, he finally concluded the subject property's value to be $490,000 (rounded) as of January 1, 2017.

We find Racek's appraisal report to be competent, credible, and probative evidence of the subject property's value. Racek relied upon a subset of market income and expenses,

specifically the LIHTC market, in his analysis. The court approved of such methodology in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254. The court acknowledged that, in valuing low-income housing properties, the law "permit[s] consideration of an appropriate *subset* of market rents, here, the appropriate subset is rents from the LIHTC market. *** 'Market rent is derived from the market place a property competes within.' Thus, in developing a market rent for a LIHTC property, *** it is permissible to look to rents from other LIHTC properties because these types of properties compete against each other." (Emphasis in original.) Id. at ¶20. See, also *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734. Compare *Notestine Manor, Inc. v. Logan Cty. Bd. of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2. Furthermore, we note there have been no specific challenges to any aspect of Racek's appraisal report.

Accordingly, it is the decision of this board that the true and taxable values of the subject property, as of January 1, 2017, shall be as follows:

TRUE VALUE: $490,000

TAXABLE VALUE: $171,500

OHIO BOARD OF TAX APPEALS

NAGLER LAWRENCE H TRS & JILIAN R NAGLER TRS, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1158 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, March 24, 2020

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 602-0008-0266-00, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and record of this board's hearing.

The property owners filed a complaint with the BOR, which requested that the subject property be revalued from its initially assessed value of $151,740 to $80,000. At the BOR hearing on the matter, the property owners submitted the testimony of trustee Lawrence Nagler who detailed the condition of the subject property and difficulty in finding tenants to rent its

commercial units. As additional support for the complaint, the property owners submitted a packet of documents, which included written argument, income and expense information related to the subject property, realtor opinion of value with supporting comparable sales, photographs, and letters from various people (appraisers, village manager, and tenants). He was examined by members of the BOR. An appraiser from the county auditor's office, Emmitt Ford, testified to his contemporaneous review of the property owners' evidence. He concluded that the subject property's condition might suggest that it had been overvalued, in light of the rental income derived from the subject property, but that the property owners had failed to prove that the subject property should be valued at $80,000. Ford also noted that, even if the BOR accepted the property owners' contention that the building's roof needed to be replaced, the property owners had failed to provide any corroborating evidence to support their contention that it would cost $20,000 to do so. The BOR determined that the property owners' evidence failed to satisfy their evidentiary burden and voted to retain the subject property's value. This appeal ensued.

At this board's hearing, the property owners and appellees appeared through counsel to supplement the record. As the hearing commenced, the appellees noted their objection to certain documents contained in the statutory transcript, specifically letters from various people, because they did not testify at the BOR. The attorney examiner deferred ruling on the objection. In their presentation, the property owners submitted additional testimony from Lawrence Nagler about the difficulties of finding tenants for the subject property and an emerging problem with a then, current tenant, and about his conclusion that the building sitused on the subject property was a detriment to its value. In support of their position, the property owners submitted a zoning ordinance, and purchase agreement related to properties within close proximity to the subject property, and proffered a letter from Tom Carroll, manager for Village of Silverton, to which the appellees objected. The appellees cross-examined Nagler. Based upon their presentation, the

property owners argued that they had demonstrated that the subject property should be revalued at $89,000 consistent with realtor's opinion of value. In their presentation, the appellees submitted an updated property record card to replace the outdated version contained in the statutory transcript. Based upon their cross-examination of Nagler, the appellees argued that, though he may have enumerated negative issues with the subject property, the property owners failed to provide legally sufficient evidence to demonstrate that the subject property's value should be reduced to a specific value.

Before we consider the merits of this appeal, we must first dispose of preliminary issues. As noted above, at this board's hearing, the appellees objected to letters from various people who did not testify at either of the two hearings in this matter. The objection is now overruled and the letters will be given their appropriate evidentiary weight.

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. Nevertheless, 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, 2017-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 must agree with the appellees and find that the property owners failed to provide legally sufficient evidence to support its claimed valuation. The property owners primarily relied upon the written opinion of value from realtor Steve Sharrock, who opined the value of the subject property to be $89,000. We find his opinion of value to be unpersuasive. The record is devoid of any evidence to demonstrate that Sharrock was an appraiser, i.e., an expert qualified to opine on real property value. We have previously noted that "[r]eal 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." See The Appraisal of Real Estate (13th Ed.2008) 8-9. Furthermore, Sharrock's written opinion of value omits several important aspects of a typical appraisal report, including a highest and best use analysis, market data to support the many aspects of an income approach to value, and adjustments to comparable properties under the sales comparison approach to value. Though an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested." *Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018), BTA No. 2018-414, unreported.

Moreover, there is no indication that Sharrock's opinion of value related to the tax lien date of January 1, 2017. See *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30, (1997) ("[a]n expert's opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion."); *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 554-555 (1996) ("the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question."). In addition, because Sharrock did not testify at any of the hearings on this matter, his written opinion of value amounts to 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."). For this reason, we also find the other letters from individuals who did not testify at any of the hearings to be just as unhelpful and unpersuasive in our quest to independently determine the subject property's value.

The property owners also relied upon various defects of the subject property (lack of dedicated parking, disrepair of roof, sewer and water problems) to assert that the subject

property's value should be reduced. Unfortunately, the property owners failed to quantify the impact of the cited defects. 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."). For example, although Lawrence Nagler repeatedly referred to the problems associated with the lack of parking options for visitors to the subject property, there was no evidence to demonstrate the resultant diminution of value. Should the subject property's value be reduced by $1,000, $10,000, or $100,000 because of the parking problems? We cannot say because the property owners failed to provide sufficient information that would allow this board to make such determination. This board has repeatedly rejected the argument that defects, not quantified by a proper appraisal, are sufficient evidence to reduce real property value. See e.g., *Bardshar Apts., Inc. v. Erie Cty. Bd. of Revision* unreported. (Mar. 15, 2016), BTA No. 2015-1451,

We also find the subject property's actual income and expense information to be unpersuasive. The property owners did not demonstrate that the subject property's performance reflected market income and expenses. In *Olmsted Falls*, supra, at 555, the court commented that "an appraiser may employ actual income as reduced by actual expenses *if both amounts conform to market*." (Emphasis added.) Continuing, the court noted that it has "required the BTA to make factual findings, supported by the record, of the appropriate market rents and expenses to be used in the income approach to value." Id.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we conclude that the property owners failed to provide competent, credible, and probative evidence of the subject property's value before the

BOR and before this board. As such, the subject property's value shall remain as initially assessed as of January 1, 2017, as follows:

TRUE VALUE	TAXABLE VALUE
$151,740	$53,110

OHIO BOARD OF TAX APPEALS

TALLMADGE CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1577 (REAL PROPERTY TAX) DECISION AND ORDER

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Entered Tuesday, March 24, 2020

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 number 60-06145, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, record of this board's hearing, and post-hearing briefs and

motions filed by the parties.

[2] The subject property, a 50-unit apartment complex, was initially assessed at $2,547,910 for tax year 2017. The property owner filed a complaint with the BOR, which requested that the subject property's value be reduced; the BOE filed a countercomplaint, which objected to the request.

[3] At the BOR hearing on the matter, the property owner submitted the appraisal report and testimony of appraiser Roger Sours, who opined the value of the subject property to be $757,000 (exclusive of $43,000 allocated to personal property) as of January 1, 2017. Sours testified that the subject property operated as a low-income housing tax credit ("LIHTC") property on tax lien date, subject to a restrictive covenant that limited the apartment units to low-income seniors, and the amount of monthly rent that could be charged. He testified to his belief that the subject property was encumbered by the LIHTC restrictions for at least fifteen years and possibly up to thirty years. As such, he valued the subject property in light of the LIHTC restrictions. Sours was examined, and cross-examined, about the underlying data and methodologies used to derive his final conclusion of value.

[4] The BOE submitted the appraisal report and testimony of appraiser Gary Barker, who opined the value of the subject property to be $2,100,000 as of January 1, 2017. He valued the subject property without consideration of any LIHTC restrictions. Barker was examined, and cross-examined, about the underlying data and methodologies used to derive his final conclusion of value. Counsel debated the then current state of law about valuing LIHTC properties for tax valuation purposes. The BOR voted to reduce the subject property's value consistent with Sours' $800,000 overall opinion of value, which included $757,000 allocated to the subject property and $43,000 allocated to personal property. This appeal ensued.

[5] On appeal, in lieu of attending a hearing before this board, the parties opted to submit

written argument to more fully articulate their arguments. By way of its submission, the BOE argued that the Supreme Court's decisions in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734 ("*Network Restorations III"*) and *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254 ("*Network Restorations I"*), necessitated rejection of Sours' appraisal report and acceptance of Barker's appraisal report. By way of its submissions, the property owner argued that the rule derived from *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237, placed the evidentiary burden on appeal on the BOE and that Barker's appraisal report, which did not consider the LIHTC restrictions consistent with the Supreme Court's decision in *Notestine Manor, Inc. v. Logan Cty. Bd. Of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2, failed to satisfy such burden. As such, the property owner argued, this board should affirm the BOR's decision.

[6] Before we consider the merits of this appeal, we must dispose of preliminary issues. First, by way of its initial merit brief, the property owner requested that this appeal be dismissed because the BOE waived its opportunity to submit new evidence at a hearing before this board and failed to timely file its merit brief. As a result, the property owner asserted, the BOE cannot meet its burden on appeal. We reject this argument as this board must "eschew a presumption of the validity of the BOR's value and instead to perform its own independent weighing of the evidence in the record." *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, at ¶7, citing *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381, at ¶¶15, 22; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, at ¶13, citing *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011-Ohio-2258, at ¶17. We will, therefore, accord the appropriate

weight to all the evidence that is properly before us.

[7] Second, the property owner attached documents to its initial brief, which were neither submitted at the BOR hearing nor presented at a hearing before this board. The property owner requested that we take judicial notice of these documents; however, we decline the opportunity to do so. See *Ross v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 373, 2018-Ohio-4746, at ¶4, fn.1 ("The rule allowing courts to take judicial notice of certain facts is not 'an exception to the rule that evidence must be timely offered in a judicial proceeding.' *AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 343, 2008-Ohio-2565, ***, ¶ 8, fn.1. Because the Rosses did not timely present the meeting minutes to the BTA, we decline to take judicial notice of them." (Parallel citation omitted.)). It is well established that this board must consider an appeal upon the transcript certified by the board of revision and evidence properly submitted and accepted during our proceedings. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996). We will not consider those documents attached to the property owner's brief.

[8] Third, the property owner requested that we strike the BOE's brief because it was filed beyond the established briefing schedule. Written argument is typically filed for the benefit of the board, and, generally, will not be excluded absent a demonstration that consideration of such brief would either prejudice the other party or adversely impact the board's ability to consider the appeal. In this instance, no such assertions have been made, and the property owner did, in fact, respond to the arguments asserted in the BOE's brief by way of the motion to strike. Therefore, the property owner's motion to strike is denied. Ohio Adm. Code 5717-1-17.

[9] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. This is particularly so in circumstances when a board of revision

reduces value based upon an owner's appraisal evidence, as such evidence has been found to overcome a property's initially assessed value. See *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237; *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2017-Ohio-3025, at ¶¶ 9-11. Nevertheless, 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, 2017-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.

[10] In his appraisal report, Sours first determined that the subject property's highest and best use, "as vacant," was "for future development of a commercial use[,]" and "as improved," was "for continued use as a 50-unit apartment building encumbered by a rent restricted LIHTC contract[,]" respectively. Hearing Record ("H.R.") , Exhibit ("Ex.") B at 27. He appraised the subject property under the extraordinary assumption that the subject property was restricted in its rental income because of a LIHTC contract. Sours solely developed the income approach, by which he relied upon the subject property's actual financials for tax year 2017 and prior tax years. To derive effective gross income, he started with the subject property's actual $360,000 of rental income and $1,200 of income from other sources and deducted $3,600 for vacancy and collection loss. In doing so, he concluded to $357,600, from which he deducted total expenses of $279,000, to conclude to net operating income of $78,600. He capitalized the net operating income at 9.8% (which included a 2.8% tax additur to account for property taxes) to conclude the subject property's value to be $800,000 (inclusive of $43,000 allocated to furniture, fixtures, and equipment) as of January 1, 2017.

[11] In his appraisal report, Barker first determined that the subject property's highest and best use, "as vacant" and "as improved," would be multi-family use. He appraised the subject property under the hypothetical condition that it operated in the conventional housing market. Barker developed the sales comparison approach, which he gave little weight, and income approach. Under the sales comparison approach, he compared the subject property's features to the features of four properties located in Summit County, which sold between 2014 and 2017. After adjusting the comparable sales for differences with the subject property, he concluded to a per unit adjusted range in value between $34,318 and $47,244. He selected a per unit value in the middle of the range, $41,000, which he then applied to the subject property's 50 units, to conclude to an indicated value of $2,050,000. Under the income approach, Barker relied upon the conventional apartment market in Summit County to determine market rent for the subject property's 50 one-bedroom, one-bathroom units, of $715 per month. He concluded to total gross potential income of $429,000, from which he deducted 2.0% for vacancy and credit loss, based upon the subject property's actual experience, to conclude to effective gross income of $420,420. From that number, he deducted total expenses of $197,500, to conclude to net operating income of $222,920. He capitalized the net operating income at 10.63% (which included a 2.98% tax additur to account for property taxes) to preliminarily conclude to an indicated value of $2,100,000. He reconciled the indicated values from both approaches to valuing real property, placing primary emphasis on the income approach, to finally conclude the subject property's value to be $2,100,000 as of January 1, 2017.

[12] We have often acknowledged in cases where competing appraisals are offered that inherent in the appraisal process is the fact that an appraiser must necessarily make a wide variety of subjective judgments in selecting the data to rely upon, effect adjustments deemed necessary to render such data usable, and interpret and evaluate the information gathered in forming an

opinion. See, e.g., *Developers Diversified Realty Corp. v. Ashland Cty. Bd. of Revision* (Mar. 17, 2000), BTA Nos. 1998-A-500, et seq., unreported; *Armco Inc. v. Richland Cty. Bd. of Revision* (Nov. 19, 2004), BTA No. 2003-A-1058, unreported. This board must weigh the appraisal reports and assess their credibility. *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 247, 2018-Ohio-4286.

> [13] We begin our analysis with *Network Restorations III* in which the court plainly stated

the guiding principles of valuing low-income housing properties:

> The first rule is that in applying the income approach, market rents and expenses, as opposed to the actual rents of the properties at issue, are used. ***The second rule is a corollary to the first. The case law establishes that in valuing low-income housing using an income approach, government subsidies should not be taken into account in a way that would increase the value of the property. *** Finally, the case law disfavors a cost approach for valuing government-subsidized low-income housing, even for a newly constructed property.

Id. at ¶¶16-18. However, in *Notestine*, the court refined the "rule" and noted that "[a]lthough we did state that use of market rents and expenses constituted a 'rule' to be applied when valuing low-income government housing generally, *** the preference for market rent over contract rent is presumptive, not conclusive." (Internal citation omitted.) *Notestine*, supra, at ¶22. Thus, our beginning point is market rent and market expenses unless the record supports deviating from the "rule."

[14] Upon review, we find Barker's appraisal report best estimated the subject property's value as of the tax lien date. We agree with the BOE that this matter is more akin to the *Network Restorations* duo of cases and conclude that this matter is less like *Notestine* as the property owner asserted. (Because neither the parties nor the case law supports consideration of the sales comparison approach, we will focus on the income approach to valuing real property.) Only Barker's appraisal report relied upon market information to support his analysis and conclusion of value under the income approach; Sours' appraisal report relied upon the subject property's

actual income and expense to support his analysis and conclusion of value. Barker relied upon four lease comparables to determine conventional market rent; Sours did not. Barker relied upon three expense comparables to determine conventional market expenses; Sours did not. Thus, under the prevailing case law on low-income housing properties, we find that only Barker utilized proper data and methodologies in rendering a competent, credible, and probative opinion of the subject property's value.

[15] Furthermore, we find that the record does *not* overcome the presumption in favor of market income and expense information and do not agree with the property owner that the record supports using the subject property's actual income and expense information. In *Notestine,* there was testimony detailing the specific low-income housing program by which the property was bound (the Capital Advance Program), terms of such program, limited income-producing potential as the consequence of such program, and consequences of surplus profit (must be returned to Department of Housing and Urban Development ("HUD")). Here, we have very little, if any, of this information. For example, we do not have sufficient information about the low-income population eligible to live at the subject property. Do eligible residents have incomes at or below 35% of the area median gross income ("AMGI"), 50% AMGI, or 60% AMGI? What is the maximum allowable rent? Are residents responsible for paying their utilities and, if so, are they given utility allowances? We cannot say because the record is devoid of such information. For this reason, we find Barker's appraisal report, which relied on market information, to be the best evidence of the subject property's value.

[16] Moreover, we cannot confirm that the subject property was subject to LIHTC use restrictions as of the tax lien date because the restrictive covenant was not submitted into evidence at the BOR hearing or this board's hearing. We acknowledge that the property owner cited to *Network Restorations I,* at ¶27, to argue that it was unnecessary to submit the LIHTC restrictive covenant into the record because none of the parties dispute the level of subsidy and that Barker accepted that the subject property was purportedly subject to LIHTC restrictions. However, we

disagree for two reasons. A review of the record indicates that counsel for the BOE disputed that the subject property was encumbered by LIHTC restrictions, on appeal. In addition, the level of subsidy related to the subject property cannot "be derived from the report[,]" see *Network Restoration I*, at ¶27, as indicated above.

[17] We acknowledge that the property owner argued that Barker's appraisal report should be rejected because his highest and best use analysis, "as improved," of the subject property, as "continued multifamily use," was unsupported by zoning regulations. H.R., Ex. A. at 30. We find no merit with this argument. In his highest and best use analysis, Sours made a similar conclusion, i.e., "for continued use as a 50-unit apartment building[.]" H.R., Ex. B. at 28. 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 BOE satisfied its burden on appeal, through Barker's appraisal report, as required by the rule derived from *Bedford*, supra. Notwithstanding our acceptance of Barker's appraisal report, we find it appropriate to adjust his value to account for furniture, fixtures, and equipment contained within the 50 apartment units, for which he failed to account. We will, therefore, apply the $43,000 allocation to these items from Sours' appraisal report, and adjust Barker's final conclusion of value accordingly.

[18] It is, therefore, the order of this board that the subject property's true and taxable value are as follows as of January 1, 2017:

TRUE VALUE

$2,057,000

TAXABLE VALUE

$719,950

OHIO BOARD OF TAX APPEALS

DJ KEMPER RD LLC, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-2646
vs.	)	
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

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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 Tuesday, March 24, 2020

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

This matter is before us on a motion to dismiss jointly filed by the Hamilton County Auditor and the Princeton City Schools Board of Education ("BOE"). The motion alleges the appellant property DJ Kemper Road LLC failed to timely appeal to this board and failed to timely send notice of the appeal to the Hamilton County Board of Revision ("BOR") as required by R.C. 5717.01. We decide the issue on the statutory transcript, the motion, the response, and the reply.

The auditor valued the subject property at $792,080 for tax year 2018. The BOE filed an increase complaint based on a September 2018 sale. The BOR sent a hearing notice to the property owner at its tax mailing address, i.e., 9891 Montgomery Road #201, Cincinnati, Ohio 45242. Counsel for the property owner appeared at the BOR hearing, which was held on August 16, 2019. The BOR adopted the sale value and issued a decision on August 20, 2019. The decision was mailed to the Montgomery Road address, and the green card indicates the decision was received on August 21, 2019. The recipient signed the green card.

The property owner filed a notice of appeal with this board on November 15, 2019, which was well past the thirty-day window permitted by R.C. 5717.01. However, the property owner attached two affidavits to the notice of appeal. The first was sworn by counsel who indicated he did not receive a copy of the decision. A representative of the property owner swore the second affidavit, which indicated the property owner had "diligently searched its records and mail received since August 16, 2019" but alleged it did not receive the decision. The DTE 3 filed by the BOR states it received the notice of appeal on November 15, 2019.

Upon review, we find we lack jurisdiction because the notice of appeal was not timely filed with this board or the BOR. Ohio law imposes on the BOR an obligation to serve the property owner with a decision "at an address that is reasonably calculated to give notice to the owner." See *Knickerbocker Props. v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192, ¶ 17; see also R.C. 5715.12; R.C. 5715.19(C). Here, the record is clear the BOR sent the decision to the tax mailing address and that address was reasonably calculated to give notice to the property owner. The property owner has not supplied a better address the BOR should have used other than the address for its counsel. However, service on the property owner is sufficient to satisfy R.C. 5715.20. See *2815 Partners, LLC v. Cuyahoga Cty. Bd. of Revision* (Dec. 9, 2008), BTA No. 2007-T-1567, unreported. We note as a practical matter that the decision was actually

delivered per the green card signature and tracking information. We also note the BOR hearing notice was sent to the Montgomery Road address, and the property owner clearly received that notice because it appeared at the BOR hearing.

For these reasons, this case is dismissed for want of jurisdiction.

OHIO BOARD OF TAX APPEALS

MINERVA LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. CARROLL COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	))))))))	CASE NO(S). 2018-630 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MINERVA 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) - CARROLL COUNTY BOARD OF REVISION
Represented by:
STEVEN D. BARNETT
PROSECUTING ATTORNEY
CARROLL COUNTY
7 EAST MAIN STREET
CARROLLTON, OH 44615-1221

LYKINS REALTY II AND LYKINS REALTY LLC
5163 WOLFPEN-PLEASANT HILL RD
MILFORD, OH 45150

Entered Tuesday, March 24, 2020

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

The appellant board of education ("BOE") filed the present appeal from a decision issued by the Carroll County Board of Revision ("BOR"), which determined the value of the subject real property. Upon review of the record and correspondence received from the auditor, it appeared that the BOR did not provide the requisite notice to the property owner that the BOE had filed the underlying complaint or notice of the hearing convened by the BOR on the matter. On February 21, 2020, this board issued an order describing the apparent jurisdictional issue and providing fourteen days for any interested party to provide written argument to address why

the matter should not be remanded to the BOR based on the jurisdictional deficiencies. *Minerva Local Schools Bd. of Edn. v. Carrol Cty. Bd. of Revision* (Interim Order Feb. 21, 2020), BTA No. 2018-630, unreported. None of the parties responded to the order.

As this board explained in our interim order, several statutory provisions exist to ensure proper notice is provided to owners of property in valuation contests before boards of revision. See, e.g., R.C. 5715.19, R.C. 5715.12. For example, R.C. 5715.19(C) provides, in pertinent part, that "[e]ach board of revision shall notify any complainant and also the property owner, if the property owner's address is known, when a complaint is filed by one other than the property owner, not less than ten days prior to the hearing, either by certified mail or, if the board has record of an internet identifier of record associated with the owner, by ordinary mail and by that internet identifier of record of the time and place the same will be heard." "That notice *** 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." *L.J. Smith, Inc. v. Harrison Cty. Bd. of Revision*, 140 Ohio St.3d 114, 2014-Ohio-2872, ¶32.

In the present appeal, there is no dispute that the BOR failed to properly notify the property owner of the BOE's complaint or the hearing convened by the BOR, as is required by Ohio law. Accordingly, this matter is hereby remanded to the Carroll County Board of Revision with instructions that it properly notify the property owner and conduct further proceedings.

OHIO BOARD OF TAX APPEALS

YOUNG, PATRICIA, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1582
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - YOUNG, PATRICIA
Represented by:
PATRICIA YOUNG
OWNER
11153 DANDRIDGE DRIVE
WARRENSVILLE HEIGHTS, OH 44128

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

Entered Tuesday, March 24, 2020

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

The property owner appeals a decision of the board of revision ("BOR"), which valued the subject property, parcel number 762-08-019, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, record certified pursuant to R.C. 5717.01, and written argument submitted by the parties.

The property owner filed a complaint with the BOR, which requested that the subject property's value be reduced from its initially assessed value of $223,000 to $188,300. Prior to the scheduled BOR hearing on the matter, she amended her opinion of value to $172,966.67. At the BOR hearing, the property owner presented information about the sales and/or the assessed values of nearby properties, from which she derived an average value, i.e., $172,966.67, to

support her opinion of the subject property's value. The BOR provided a list of comparable sales of properties located within close proximity to the subject property. The BOR voted to retain the subject property's initially assessed value and the property owner appealed to this board. Neither the property owner nor the county appellees availed themselves of an opportunity to supplement the record with additional evidence at a hearing before this board. However, the property owner and county appellees submitted written argument to more fully assert their respective positions.

Before we consider the merits of this appeal, we must first dispose of a preliminary issue. As noted above, the property owner did not avail herself of the opportunity to submit additional evidence into the record; however, she attached a number of documents to the written argument submitted to this board. Because these documents were submitted outside of the hearing context, and were not previously submitted at the BOR hearing, we cannot consider them in our analysis. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996); *S. Euclid-Lyndhurst City School Dist. Bd. of Edn. v. Cuyahoga County Bd. of Revision* (Oct. 28, 2008), BTA No. 2007-V-99, unreported. To the extent that the documents were offered for the truth of the matter asserted, we further find such documents 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.").

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 of the evidence, we find that the property owner has failed to provide competent, credible, and probative evidence of the subject property's value. The property owner primarily relied upon the assessed values of other properties, to assert that her property had been valued differently. 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, at 8, unreported ("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.").

The property owner also relied upon the sales prices of nearby homes to assert that the subject property had 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 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, no information about the comparable sales was properly submitted into the record and the record is devoid of any adjustments to account for any differences among the properties. See, generally, The Appraisal of Real Estate (14th Ed.2013). 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).

She also asserted that negative characteristics of the neighborhood (state of the housing market in the area, and resultant number of foreclosures, and a special assessment) necessitated reduction to the subject property's value. In *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7, the court rejected a similar argument, stating: "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."). Similarly, the property owner failed to

quantify how the cited defects negatively impacted the subject property and the impact those negative characteristics could have on value is not self evident.

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn.*, supra, at 15 (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). We find that property owner failed to satisfy her evidentiary burden before the BOR and before this board. It is, therefore, the order of this board that the subject property's value shall be as follows as of January 1, 2018:

TRUE VALUE

$223,000

TAXABLE VALUE

$78,050

OHIO BOARD OF TAX APPEALS

FIRST EQUITY CAPITAL LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	Appellee(s). CASE NO(S). 2019-2460, 2019-2463, 2019-2464 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FIRST EQUITY CAPITAL LLC
Represented by:
ALEC VINOKUR
FIRST EQUITY CAPITAL LLC
23400 MERCANTILE ROAD - SUITE 6
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 Tuesday, March 24, 2020

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, 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. (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 notices with the BOR. Upon consideration of the existing record, and for the reasons stated in the motions, we must conclude that this board does not have jurisdiction to consider the instant matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

CHRISTOPHER A. ROBERTS, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-3002 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CHRISTOPHER A. ROBERTS
OWNER
1150 SHADY HILL DRIVE
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 Tuesday, March 24, 2020

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") 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.

The appellant filed a notice of appeal with this board, however the documentation attached to appellant's notice of appeal does not constitute a BOR decision. The county appellees attached to their motion, the affidavit of the clerk to the BOR, asserting that is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and

determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander* (1946), 147 Ohio St. 147, 150; *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68. Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DUBLIN HOUSE SENIOR HOUSING LIMITED PARTNERSHIP, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2018-1157
vs.	)	(REAL PROPERTY TAX)
BUTLER COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DUBLIN HOUSE SENIOR HOUSING LIMITED PARTNERSHIP
Represented by:
TIMOTHY A. PIRTLE
ATTORNEY
2935 KENNY ROAD, SUITE 225
COLUMBUS, OH 43221

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

MIDDLETOWN CITY SCHOOLS BOARD OF EDUCATION
Represented by:
BENJAMIN YODER
ATTORNEY AT LAW
FROST BROWN TODD LLC
9277 CENTRE POINTE DRIVE
SUITE 300
WEST CHESTER, OH 45069

Entered Wednesday, March 25, 2020

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

Dublin House Senior Housing Limited Partnership ("Dublin") appeals from a decision of the Butler County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2017. We decide the case on the notice of appeal, the statutory transcript,

this board's hearing record ("H.R."), and the parties' briefs.

The subject property operates as low-income housing subject to low-income housing tax credit ("LIHTC") restrictions. The auditor valued the entire subject property, three parcels, at $945,490 for tax year 2017, and Dublin filed a valuation complaint citing the LIHTC restrictions. The affected school board ("BOE") filed a counter-complaint requesting the auditor's value be retained. At the BOR hearing, Dublin presented the testimony and appraisal of Donald Miller II, MAI, who valued the property at $470,000 as of January 1, 2017. The BOR retained the auditor's value, and Dublin appealed to this board.

At this board's hearing, Dublin called Tricia Braniff, vice president of National Church Residences. She described the subject property and elaborated on the LIHTC restrictions and HUD contract in place. While the BOR was not represented by counsel, Michael Gildea from the BOR appeared to testify and present an appraisal review. After, the parties filed post-hearing briefs. We address their arguments below.

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). We are also required to independently review all evidence before us and "render a value determination consistent with such information."*Herbert J. Hope, Jr., Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. No party advocates for a recent sale price; therefore, we continue to the appraisal evidence. In *Abbey Church Village (TC2) Housing Ltd. Partnership v. Franklin Cty. Bd. of Revision* (Jan. 28, 2019), BTA No. 2017-1055, unreported, at 5, we summarized case law surrounding low-income housing as such:

> In short, the case law is clear that when determining the value of a property that receives government subsidies, those subsidies should be disregarded to the extent that they provide an affirmative value above "market." The case law also establishes that restrictions imposed pursuant to the government's police powers, as is the case with the LIHTC property in the present appeal, must be considered.

The parties agree subsidized low-income housing, including that encumbered by LIHTC restrictions, is unique and requires appropriately tailored appraisals. Because Mr. Miller is the only appraiser who developed a complete appraisal, we start with his appraisal.

Mr. Miller developed his opinion of value using the income capitalization approach. He determined the subject property could obtain a market-based rent of $490 per month for a one-bedroom and $785 per month for a two-bedroom. Miller Appraisal at 20. He also determined those rates fell within the range of the conventional market. He estimated an effective gross income figure of $5,746/unit. He estimated $5,805 in expenses per unit, a number derived from other low-income housing properties. Accordingly, he determined each unit could obtain $1,212 in net operating income. He used an overall capitalization rate of 10.06%, which led him to a conclusion of value at $470,000.

The BOE argues Mr. Miller's appraisal suffers from the same infirmity we identified in *Abbey Church*, i.e., that he removed the value of the HUD subsidies causing him to understate the value. The BOE also argues Mr. Miller "overstated the risk associated with operating this type of property" by using a higher capitalization rate. See BOE Br. at 9 (quoting *Abbey Church*). We find this case distinguishable because there are no tenant-based, portable vouchers at issue, unlike in *Abbey Church*. We likewise find Mr. Miller's capitalization rate has not been shown to be wrong. In *Abbey Church*, we disregarded his capitalization rate in favor of that of another appraiser because we found tension between Mr. Miller's report and his testimony. We likewise find Mr. Gildea's appraisal review does not show Mr. Miller's appraisal is fatally flawed. The appraisal review focuses primarily on ways Mr. Miller's appraisal could have been improved but

does not necessarily show Mr. Miller's appraisal is wrong. We likewise decline to reject Mr. Miller's appraisal for failure to consider the sales comparison approach given the evidence about limited LIHTC market data.

For these reasons, we find Mr. Miller's appraisal is the best evidence of value and order the property valued as such for tax year 2017:

PARCEL NUMBER Q6532-014-000-007/T

TRUE VALUE

$16,400

TAXABLE VALUE

$5,740

PARCEL NUMBER Q6532-014-000-019/T

TRUE VALUE

$3,530

TAXABLE VALUE

$1,240

PARCEL NUMBER Q6532-014-000-020/T

TRUE VALUE

$450,070

TAXABLE VALUE

$157,520

OHIO BOARD OF TAX APPEALS

TUTTLE KEITH A TUTTLE TRUSTEE, (et. al.), Appellant(s), vs. LUCAS COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-556 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TUTTLE KEITH A TUTTLE TRUSTEE
Represented by:
KEITH TUTTLE
12201 LAGOON
CURTICE, OH 43412

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

Entered Wednesday, March 25, 2020

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 33-64415, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, record of this board's hearing, and written argument filed by the county appellees.

The property owner filed a complaint with the BOR, which requested that the subject property be revalued from its initially assessed value of $348,100 to $250,000. The affected board of education filed a countercomplaint, which objected to the request. However, the BOE withdrew its countercomplaint and opted not to pursue the matter. At the BOR hearing on the

matter, Keith Tuttle, trustee, appeared on behalf of the property owner. He testified as to the recently built home sitused on the subject property and character of the neighborhood in which the subject property is located. He argued that recent sales and assessed values of other properties demonstrated that the subject property had been overvalued and submitted documentary evidence to support such argument. He noted that the property owner also owned adjacent parcels, which are not the subject of this appeal. The BOR voted to reduce the subject property's value to $327,900 and the property owner filed this appeal. At this board's hearing, only the property owner appeared to supplement the record with additional evidence. Keith Tuttle reiterated and/or expanded upon the testimony he provided to the BOR. In lieu of attending the hearing, the county appellees filed written argument to assert that five comparable sales supported the BOR's decision and that the property owner had failed to provide sufficient evidence to support its requested value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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 evidence. The property owner

primarily argued that recent sales and assessed values of other properties demonstrated that the subject property had been overvalued. However, we do not find this argument, and corresponding supporting evidence, to be probative evidence of the subject property's value. First, we must acknowledge the fallacy of reliance upon other properties' assessed values, since the fundamental basis of this challenge is the erroneous nature of the subject property's value. Further, many factors could affect how a specific property's value might increase or decrease over time, including a recent, arm's-length sale of the property, changing market conditions, and changes in the condition of the property itself. For example, the record demonstrated that the home sitused on the subject property was newly constructed, which may very well impact its value in comparison to other properties. Indeed, the Ohio Supreme Court has likewise held that "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996).

Second, we have repeatedly held that unadjusted comparable sales data is an insufficient basis to determine real property value because it fails to adequately 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 record demonstrated that the subject property was located on a lake. However, there was no indication whether the unadjusted comparable sales, submitted by the property owner at the BOR hearing, were also located on a lake. As for another example, there were no adjustments made to account for the difference between the newly constructed home sitused on the subject property and the ages of the homes sitused on other properties. 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).

As mentioned above, the record demonstrated that the home sitused on the subject property was constructed recent to the tax lien date of January 1, 2018. By way of their written argument, the county appellees assert that construction permits noted construction costs of $359,000; however, such information is not in the record. Though it would be appropriate to value the subject property consistent with its construction costs, the record is devoid of any competent, credible, and/or probative evidence that proved such costs. 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')."). Compare *W. Carrollton City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 150 Ohio St.3d 215, 2017-Ohio-4328. As a result, we cannot value the subject property consistent with the cost approach to valuing real property.

Based upon our review, we find that the property owner failed to satisfy the evidentiary

burden at the BOR and on appeal before this board.

Because the BOR reduced the subject property's value, we must now review the propriety of such decision. By way of its written argument, the county appellees asserted that the average price per square foot, $131, of five comparable properties supported the BOR decision. We have previously stated that: "[w]e *** find the simple averaging of *** sales to be suspect. An appraiser is to make adjustments to his sale comparables 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*, at 9. The record is devoid of any evidence that the BOR adjusted the comparable sales to account for differences with the subject property. See discussion, supra. As a result, we cannot affirm the BOR's decision.

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 provide legally sufficient evidence to support its requested value. Furthermore, we must also find that the BOR erred in its decision to reduce the subject property's value to $327,900 as such decision was not supported by evidence in the record. Because of the insufficiency of the evidence in the record, we are constrained to reinstate the subject property's initially assessed value. See *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. *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." (Parallel citation omitted.)).

It is, therefore, the order of this board that the subject property's true and taxable values

are as follows as of January 1, 2018:

True Value: $348,100

OHIO BOARD OF TAX APPEALS

ALL ERECTION & CRANE RENTAL CO, (et. al.), Appellant(s), vs. GEAUGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1292 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ALL ERECTION & CRANE RENTAL CO
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CHARDON, OH 44024-1293

Entered Wednesday, March 25, 2020

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 23-358248, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified by the BOR, and record of this board's hearing.

The subject property was an industrial property with a mix of office and warehouse uses. The property owner filed a complaint with the BOR, which requested that the subject property be revalued from its initially assessed value of $573,000 to $262,000. At the hearing, the property owner appeared and submitted the testimony of its employee, Douglas Diamond, who

testified as to the problems with the subject property. According to Diamond, the township changed the zoning of the area in which the subject property was located, from light industrial to professional office, in the 1990s and, as a consequence, it could not longer be used for its light industrial purpose, with warehouse and large office space, unless the zoning board granted a variance. Counsel argued that the sale of a similar property, at $16 per square foot, supported the property owner's requested value. One of the BOR members asked how the property owner could request a value of $262,000 when it was trying to sell the subject property for $800,000; Diamond noted that the sale price was aspirational. He also testified that the property owner had previously been the lender to the subject property's prior owner, which is how it obtained ownership. An appraiser from the auditor's office testified in support of the auditor's initial value, noting that he searched the market for sales of comparable properties and developed a pro-forma to estimate the value of the subject property to be $590,000. The BOR voted to retain the subject property's initially assessed value and this appeal ensued.

At this board's hearing, the property owner appeared through counsel to supplement the record with additional argument and evidence. In doing so, the property owner submitted additional testimony from Diamond, who essentially reiterated or expanded upon the testimony provided to the BOR. Appraiser Paul D. Provencher also testified in support of the property owner's request to decrease the subject property's value. He testified consistent with his written appraisal report, which opined the value of the subject property to be $320,000 as of January 1, 2017. According to him, the zoning prohibition against industrial use was "really the overriding constraint[,]" limiting the subject property's current and future uses and negatively impacting its value. Hearing Record at 18. As a result, Provencher considered the impact the zoning restrictions had upon the subject property's value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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.

As the record does not disclose a recent, arm's-length sale of the subject property, we begin our analysis with Provencher's appraisal report. He began his analysis by determining the subject property's highest and best use, as if vacant, to be "a speculative hold of the parcel awaiting demand for this specific use for office use in compliance with zoning" and, as improved, to be "speculative use within zoning compliance based on a renovation and or (sic) conversion of an undetermined scope." Hearing Record at Exhibit A at xx-xxi. Provencher considered and developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he compared the subject property's features to those of four other properties that sold in Geauga County, Ohio between June 2013 and November 2018. After adjusting the comparable properties to account for differences from the subject property, including the effect of the zoning ordinance, and from market conditions as of the tax lien date, Provencher concluded to an estimated value of $328,000 as of the tax lien date. Under the income approach to value, he relied upon three comparable properties to determine a rental rate of $4/SF for the subject property's 7,500 square feet of office space and $1/SF for the subject property's

warehouse space, to conclude total gross potential income of $38,875. From that number, he deducted 10% for vacancy and credit loss ($3,888) to conclude to an effective gross income of $34,987. From that number, he deducted total expenses of $5,143, to conclude to net operating income of $29,844. He capitalized the net operating income at 9.5%, without a tax additur, and at 10.5%, with a tax additur, which provided a range in value between $284,000 and $314,000. Provencher concluded to an estimated value of $300,000. He reconciled the various values, placing the most weight on the sales comparison approach, to finally conclude the subject property's value to be $320,000 as of January 1, 2017.

Upon review, we find Provencher's appraisal report to be competent, credible, and probative evidence of the subject property's value. His analysis is underpinned by market data, which sufficiently supports his conclusion of value. Furthermore, pursuant to R.C. 5713.03, real property should be valued, "as nearly as practicable, the true value of the fee simple estate, as if unencumbered but subject to any effects from the exercise of police powers or from other governmental actions, of each separate tract, lot, or parcel of real property and of buildings, structures, and improvements located thereon." Here, the record demonstrates that governmental action, i.e., the zoning restrictions, impact the subject property's use and, therefore, we conclude that it was proper for Provencher to consider the impact the zoning restrictions had upon the subject property. *Health Care REIT, Inc. v. Cuyahoga Cty. Bd. of Revision*, 140 Ohio St.3d 30, 2014-Ohio-2574, ¶33. Furthermore, we note there have been no specific challenges to any aspect of Provencher's appraisal report.

Accordingly, it is the decision of this board that the true and taxable values of the subject property, as of January 1, 2017, shall be as follows:

True Value: $320,000

OHIO BOARD OF TAX APPEALS

CADIZ HOMES LIMITED PARTNERSHIP, (et. al.), Appellant(s), vs. HARRISON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1239 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, March 25, 2020

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

The property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcels 05-0001286.002, 05-0001287.007, 05-0001287.008, and 05-0001287.009, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and record of this board's hearing.

The subject property, twenty-eight single family homes operated as one-economic unit, was initially valued at $1,594,630. The property owner filed a complaint with the BOR, which requested a reduction to the subject property's value. The affected board of education ("BOE") filed a countercomplaint, which objected to the request. At the hearing before the BOR, the property owner submitted the testimony of its employee, James Zambori, who detailed the subject property's participation in the low-income housing tax credit ("LIHTC") program and the effects such participation had upon the income and expenses derived from the subject property. It also submitted a packet of documents in support of its position. The BOE argued that the subject property should be valued consistent with market income and market expenses, not the subject property's actual income and actual expenses. The BOR voted to retain the subject property's initially assessed value and this appeal ensued.

At this board's merit hearing, only the property owner appeared to supplement the record. It submitted the appraisal report and testimony of appraiser Richard G. Racek, Jr., who opined the value of the subject property to be $772,000 as of the tax lien date. Racek was examined about the underlying data and methodologies used to derive his estimate of the subject property's value. The property owner argued that its evidence properly valued the subject property in light of the LIHTC restrictions as required by Supreme Court case law.

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, the record does not disclose a recent, arm's-length sale of the subject property; therefore, we proceed to evaluate appraisal report and testimony from Racek. In his appraisal report, Racek first determined that the subject property's highest and best use, "as vacant," would be "permitted multi-family use," and "as improved," was for "continued use as an affordable housing community." Hearing Record at Exhibit A at 22. He determined that the cost approach to valuing real property would not accurately estimate the subject property's value because of a large amount of economic obsolescence and that the sales comparison approach to valuing real property would not be used by investors, who would focus on a property's income production. Therefore, he solely developed the income approach to valuing real property. In doing so, he relied upon five comparable LIHTC properties to determine LIHTC monthly rental rates of $490 for the subject property's two, two-bedroom units, $533 for the sixteen, three-bedroom units, and $596 for the ten, four-bedroom units, to conclude total gross potential income of $185,616. From that number, he deducted 5% for vacancy and credit loss ($9,281) based upon the subject property's historical performance, and then added $5,000 of additional income from sources other than rent. Next, he concluded to effective gross income of $181,335. From that number, he deducted total expenses of $102,200, to conclude to net operating income of $79,135. He capitalized the net operating income at 10.16% (which included a 2.16% tax additur to account for property taxes) to preliminarily conclude to a value of $778,888. He deducted $7,000 to account for appliances in each apartment unit. Based upon this analysis, he finally concluded the subject property's value to be $772,000 (rounded) as of January 1, 2017.

We find Racek's appraisal report to be competent, credible, and probative evidence of the subject property's value. Racek relied upon a subset of market income and expenses, specifically the LIHTC market, in his analysis. The court approved of such methodology in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 146, 2018-Ohio-3254. The court acknowledged that, in valuing low-income housing properties, the law "permit[s] consideration of an appropriate *subset* of market rents, here, the appropriate subset is rents from the LIHTC market. *** '[m]arket rent is derived from the market place a property competes within.' Thus, in developing a market rent for a LIHTC property, *** it is permissible to look to rents from other LIHTC properties because these types of properties compete against each other." (Emphasis in original.) Id. at ¶20. See also *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 12, 2017-Ohio-2734. Compare *Notestine Manor, Inc. v. Logan Cty. Bd. of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2. Furthermore, we note there have been no specific challenges to any aspect of Racek's appraisal report.

Accordingly, it is the decision of this board that the true and taxable values of the subject property, as of January 1, 2017, shall be as follows:

Parcel Number 05-0001286.002

True Value: $141,600

Taxable Value: $49,560

Parcel Number 05-0001287.007

True Value: $243,400

Taxable Value: $85,190

Parcel Number 05-0001287.008

True Value: $138,400

Taxable Value: $48,440

Parcel Number 05-0001287.009

True Value: $248,600

Taxable Value: $87,010

OHIO BOARD OF TAX APPEALS

LAURA HORNING, (et. al.),	)
	)
Appellant(s),	)
	)
vs.	)
	)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)
	)
Appellee(s).	)

CASE NO(S). 2019-2140

(REAL PROPERTY TAX) DECISION

AND ORDER

APPEARANCES:
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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Entered Wednesday, March 25, 2020

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 number 214-12-022, for tax year 2018. We proceed to consider the matter based upon the notice of appeal and certified statutory transcript.

A complaint was filed with the BOR, which requested that the subject property's value be reduced from its initially assessed value of $146,300 to $125,000. By way of the complaint, the appellant noted the age and condition of the home sitused on the subject property, suggested that comparable properties were selling between $115,000 and $130,000, and referenced an increase in the associated property tax bill(s). Although the BOR scheduled the matter for a hearing, no one appeared on behalf of the appellant. The BOR voted to retain the subject property's initially assessed value because the appellant failed to provide any evidence in support of the complaint. This appeal ensued. None of the parties availed themselves of the opportunity to submit 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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of*

Edn. v. Franklin Cty. Bd. of Revision, 151 Ohio St.3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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, there is no evidence in the record to support deviating from the subject property's initial value of $146,300. Though the appellant raised a number of issues that she claimed justified reducing the subject property's value to $125,000, on the complaint, she did not submit any evidence to support the request. We have repeatedly held that unsworn statements contained in filings are "not an adequate substitute for reliable documentary and testimonial evidence. The Notice of Appeal [or complaint] 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. See also *Powderhorn v. Lake Cty. Bd. of Revision*, 11th Dist. Lake No. 2007-L-071, 2008-Ohio-1024. Thus, the appellant's written statements do not rise to the level of evidence upon which we can rely in making our determination, as they constitute mere contentions, submitted outside the 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.

Even if we had had the comparable sales that were referenced on the complaint, we likely would not have found them to be probative evidence of the subject property's value. We have

repeatedly held that unadjusted comparable sales data are an insufficient basis to determine real property value because such information fails to adequately consider and 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. We also would not have found the information about the defects of the subject property, i.e., the home's age and condition, to be persuasive evidence. See *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions having found that the evidence was not probative).

In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn.*, supra, at 15 (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the appellant failed to satisfy the evidentiary burden before the BOR and before this board. We conclude, therefore, that the subject property's value shall remain as initially assessed.

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2018:

True Value: $146,300

Taxable Value: $51,210

OHIO BOARD OF TAX APPEALS

TRINITY MANOR SENIOR HOUSING LIMITED PARTNERSHIP, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2018-1155
vs.	)	(REAL PROPERTY TAX)
BUTLER COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TRINITY MANOR SENIOR HOUSING LIMITED PARTNERSHIP
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MIDDLETOWN CITY SCHOOLS BOARD OF EDUCATION
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Entered Wednesday, March 25, 2020

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

Trinity Manor Senior Housing Limited Partnership ("Trinity") appeals from a decision of the Butler County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2017. We decide the case on the notice of appeal, the statutory transcript,

this board's hearing record, and the parties' briefs.

The subject property operates as low-income housing subject to low-income housing tax credit ("LIHTC") restrictions. The auditor valued the entire subject property, three parcels, at $1,646,630 for tax year 2017, and Trinity filed a valuation complaint citing the LIHTC restrictions. The affected school board ("BOE") filed a counter-complaint requesting the auditor's value be retained. At the BOR hearing, Trinity presented the testimony and appraisal of Donald Miller II, MAI, who valued the property at $900,000 as of January 1, 2017. The BOR retained the auditor's value, and Trinity appealed to this board.

At this board's hearing, Trinity called Tricia Braniff, vice president of National Church Residences. She described the subject property and elaborated on the LIHTC restrictions and HUD contract in place. While the BOR was not represented by counsel, Michael Gildea from the BOR appeared to testify and present an appraisal review. After, the parties filed post-hearing briefs. We address their arguments below.

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). We are also required to independently review all evidence before us and "render a value determination consistent with such information." *Herbert J. Hope, Jr., Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. A recent, arm' s-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527,2017-Ohio-4415, ¶ 31. No party advocates for a recent sale price; therefore, we continue to the appraisal evidence.

In *Abbey Church Village (TC2) Housing Ltd. Partnership v. Franklin Cty. Bd. of Revision* (Jan. 28, 2019), BTA No. 2017-1055, unreported, at 5, we summarized case law surrounding low-income housing as such:

> In short, the case law is clear that when determining the value of a property that receives government subsidies, those subsidies should be disregarded to the extent that they provide an affirmative value above "market." The case law also establishes that restrictions imposed pursuant to the government's police powers, as is the case with the LIHTC property in the present appeal, must be considered.

The parties agree subsidized low-income housing, including that encumbered by LIHTC restrictions, is unique and requires appropriately tailored appraisals. Because Mr. Miller is the only appraiser who developed a complete appraisal, we start with his appraisal.

Mr. Miller developed his opinion of value using the income capitalization approach. He determined the subject property could obtain a market-based rent of $490 per month for a one-bedroom and $520 per month for a two-bedroom. Miller Appraisal at 20. He also determined those rates fell within the range of the conventional market. He estimated an effective gross income figure of $5,746/unit. He estimated $4,723 in expenses per unit, a number derived from other low-income housing properties. Accordingly, he determined each unit could obtain $1,024 in net operating income. He used an overall capitalization rate of 10.06%, which led him to a conclusion of value at $900,000.

The BOE argues Mr. Miller's appraisal suffers from the same infirmity we identified in *Abbey Church*, i.e., that he removed the value of the HUD subsidies causing him to understate the value. The BOE also argues Mr. Miller "overstated the risk associated with operating this type of property" by using a higher capitalization rate. See BOE Br. at 9 (quoting *Abbey Church*). We find this case distinguishable because there are no tenant-based, portable vouchers at issue, unlike in *Abbey Church*. We likewise find Mr. Miller's capitalization rate has not been shown to be wrong. In *Abbey Church*, we disregarded his capitalization rate in favor of that of another appraiser because we found tension between Mr. Miller's report and his testimony. We likewise

find Mr. Gildea's appraisal review does not show Mr. Miller's appraisal is fatally flawed. The appraisal review focuses primarily on ways Mr. Miller's appraisal could have been improved but does not necessarily show Mr. Miller's appraisal is wrong. We likewise decline to reject Mr. Miller's appraisal for failure to consider the sales comparison approach given the evidence about limited LIHTC market data.

For these reasons, we find Mr. Miller's appraisal is the best evidence of value and order the property valued as such for tax year 2017:

PARCEL NUMBER Q6532-012-000-019

TRUE VALUE

$20,300

TAXABLE VALUE

$7,110

PARCEL NUMBER Q6532-012-000-021

TRUE VALUE

$20,300

TAXABLE VALUE

$7,110

PARCEL NUMBER Q6532-012-000-022

TRUE VALUE

$859,400

TAXABLE VALUE

$300,790

OHIO BOARD OF TAX APPEALS

SCHWAIGER DANIEL, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-711
vs.	)	
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SCHWAIGER DANIEL
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

Entered Tuesday, March 31, 2020

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

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number N64 00302 0095, for tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

[2] The subject property is improved with a single-family home, and the auditor initially assessed its total true value at $86,770. Appellant filed a complaint with the BOR seeking a reduction in value to $70,500. At the BOR hearing, appellant relied on evidence regarding the subject's ownership history, including sale documents and testimony from Sandra Manzon, an employee of the property management company. Appellant purchased the property from Rehab

to Rent Inc., a company that purchases homes, makes repairs or updates, and then sells the properties to investors who often utilize a related company to manage the property. Rent to Rehab purchased the property from the Secretary of Housing and Urban Development ("HUD") on March 24, 2018 for $70,500, then sold it to appellant on May 30, 2018 for $129,950. Manzon explained that she did not have personal knowledge regarding Rehab to Rent's purchase but described the condition of the property at that time and the repairs that were made prior to the subsequent sale to the appellant. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeals. Neither appellant nor the county appellees submitted additional written argument or requested a hearing to present additional evidence.

[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). There is a well-established 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. 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. [4] In the present appeal, it is undisputed that Rehab to Rent purchased the property from HUD in March 2018. The court has held that a HUD sale is a forced sale that is presumptively not arm's-length. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 127 Ohio St.3d 63, 2010-Ohio-4907.

Nevertheless, this presumption is not an absolute bar and can be rebutted by the party relying upon the sale. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision,* 141 Ohio St.3d 243, 2014-Ohio-4723. In this case, however, appellant provided no competent evidence regarding the circumstances of the sale that could rebut the presumption. Notably, Manzon had no knowledge of the transaction and the record contains no information regarding marketing of or interest in the subject property. Accordingly, we find that the March 2018 sale is not reliable evidence of value.

[5] The record also contains information about Rehab to Rent's sale of the subject property to appellant. This sale took place on May 30, 2018, just five months after the tax lien date. The determination of whether a sale is sufficiently "recent" to a tax lien date includes the consideration of a number of factors, including changing conditions to the market generally or more specifically to the property itself. *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, ¶35. Here, there were several repairs made to the subject property before the sale, but appellant has failed to show that this work changed the character of the subject property so substantially that his purchase price was not reliable evidence of the property's value on January 1, 2018. Accordingly, we find that appellant's $129,950 purchase price constitutes the best evidence of the subject's true value as of the tax lien date.

[6] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$129,950

TAXABLE VALUE

$45,480

OHIO BOARD OF TAX APPEALS

LAND PAZ LLC, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-2538
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LAND PAZ LLC
Represented by:
MUKHLESS MUSTAFA
11309 WADE PARK
CLEVELAND, OH 44106

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND MUNICIPAL SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Wednesday, April 1, 2020

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 in this matter indicates that appellant's notice of appeal was filed with this board and with the BOR forty-three days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

LAND PAZ LLC, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-2539
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - Land Paz, LLC
Represented by:
JAMES ALEXANDER, JR.
ATTORNEY AT LAW
2000 LEE RD., SUITE 14
CLEVELAND 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

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, April 1, 2020

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. This matter is decided upon the motion, appellant's response, 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.").

Appellant's response requested an additional 30 days to respond to the motion, however that amount of time has nearly doubled without such response filed. The record in this matter indicates that appellant's notice of appeal was filed with this board and with the BOR, forty-three days after the mailing of the BOR's decision. Appellant's response 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

ADLER B. THOMAS, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-713
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - ADLER B. THOMAS
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

Entered Wednesday, April 1, 2020

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

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number R72 11210 0026, for tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

The subject property is improved with a single-family home, and the auditor initially assessed its total true value at $46,420. Appellant filed a complaint with the BOR seeking a reduction in value to $42,000. At the BOR hearing, appellant relied on a March 2018 sale of the property from Jason Evers to Rehab to Rent Inc., which then made some repairs and sold it to appellant in May 2018. at that time and the repairs that were made prior to the subsequent sale to

appellant. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. Neither appellant nor the county appellees submitted additional written argument or requested a hearing to present additional evidence.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). There is a well-established 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. 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, it is undisputed that Rehab to Rent purchased the property on March 28, 2018, fewer than three months after the tax lien date. As justification for its rejection of the sale, the BOR emphasized that the property had not been listed on the market at the time of the transaction. Though there is no evidence of this in the record, the mere fact that it was not listed on the open market "does not, per se, mandate the rejection of the sale." *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Mar. 23, 2010), BTA No. 2008-K-202, unreported, at 8. "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." *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*,

129 Ohio St.3d 172, 2011-Ohio-3092, ¶29. There is nothing about the circumstances of this sale that demonstrates the parties were related in a sense that they did not both act in their own best interest. See *Terraza*, supra, at ¶ 9, quoting *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412 (1964). Accordingly, we find that the sale was arm's-length and provides the best indication of 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, 2018, were as follows:

TRUE VALUE

$42,000

TAXABLE VALUE

$14,700

OHIO BOARD OF TAX APPEALS

TAYLOR ROBERT ELTON FULTZ, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-712 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TAYLOR ROBERT ELTON FULTZ
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

Entered Wednesday, April 1, 2020

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

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number R72 16003 0023, for tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

[2] The subject property is improved with a single-family home, and the auditor initially assessed its total true value at $58,870. Appellant filed a complaint with the BOR seeking a reduction in value to $32,100. At the BOR hearing, appellant relied on evidence regarding the subject's ownership history, including sale documents and testimony from Sandra Manzon, an

employee of the property management company. Appellant purchased the property from Bed & Breakfast Property Management Inc. on July 9, 2018, after Bed & Breakfast purchased the property for $32,100 on March 7, 2018 via a sheriff's auction. Manzon explained that she did not have personal knowledge regarding either transaction but described the condition of the property at that time of the March sale based on photographs taken before repairs were made. Appellant also submitted information detailing those repairs. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. Neither appellant nor the county appellees submitted additional written argument or requested a hearing to present additional evidence.

[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). There is a well-established 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. 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.

[4] The record shows that the February 2018 transaction was a sheriff's sale, which is presumed invalid for purposes of real property valuation. *Dublin Senior Community L.P. v.Franklin Cty. Bd. of Revision,* 80 Ohio St.3d 455, 458 (1997). A sale price from an auction or

forced sale is presumed to be unreliable evidence of value, albeit subject to rebuttal. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. Because appellant has not provided sufficient information to rebut the presumption that the sheriff sale was not reliable evidence of value, we look to the subsequent sale to appellant.

[5] Appellant purchased the property in July 2018, just six months after the tax lien date. The determination of whether a sale is sufficiently "recent" to a tax lien date includes the consideration of a number of factors, including changing conditions to the market generally or more specifically to the property itself. *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, ¶35. Here, there were several repairs made to the subject property between the tax lien date and appellant's purchase, but we find that appellant failed to show that these repairs changed the character of the property to such an extent that it was no longer a reliable basis to value the property on January 1, 2018. Accordingly, we find that appellant's July 2018 purchase of the subject property constitutes the best evidence of value as of the tax lien date.

[6] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$96,900

TAXABLE VALUE

$33,920

OHIO BOARD OF TAX APPEALS

SHEILA GRAHAM, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2348, 2019-2349, 2019-2394 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SHEILA GRAHAM
OWNER
5505 STEWART AVE.
CINCINNATI , OH 45227

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

Entered Thursday, April 2, 2020

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

[1] The appellant taxpayer appeals a decision of the board of revision ("BOR"), which denied her request for remission of real property tax late payment penalties for the first half of tax year 2018. This matter is now considered upon the notices of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and written argument submitted by the auditor.

[2] As the appellant, the taxpayer has the burden to show that her request was improperly denied by the BOR. See *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Appellant requests remission of the penalties, alleging that her failure to make timely payment was due to reasonable cause and not willful neglect. Specifically, appellant maintains that she was unable to timely pay based on a misunderstanding with her bank about the policy concerning overdraft forgiveness. Appellant claims that she

believed the check would be covered and has a history of paying on time or early. The county appellees contend that this does not constitute reasonable cause.

[3] Upon review, this board finds that appellant meets the requirements of R.C. 5715.39, which outlines the circumstances under which real property tax late payment penalties shall be remitted. 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." In this case, there is no indication that appellant has any history of late payments.

[4] Accordingly, the decision of the BOR to deny appellant's request for remission of the late payment penalty for the first half of tax year 2018 is hereby reversed.

OHIO BOARD OF TAX APPEALS

T&T CONSTRUCTION AND PROPERTY MANAGEMENT, LLC, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-1985
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - T&T CONSTRUCTION AND PROPERTY MANAGEMENT, LLC
Represented by:
TIMOTHY WILLIS
T&T CONSTRUCTION AND PROPERTY MANAGEMENT, LLC
8213 GOLDEN AVENUE
CLEVELAND, OH 44103

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, April 2, 2020

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 144-02-098, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is improved with a single-family home that was vacant on the tax lien date. The fiscal officer initially assessed the subject's total true value at $78,900. Appellant filed a complaint with the BOR seeking a reduction in value to $5,000 based on its condition. The board of education ("BOE") filed a countercomplaint in support of the fiscal officer's values.

At the BOR hearing, Timothy Willis appeared for the appellant, asserting that the value should be reduced based on its poor condition. Willis testified that appellant purchased the subject property in November 2017 for $5,000, at which time the property needed a total rehabilitation. Willis submitted photographs to depict its condition, indicating that although the work had begun, the property still was not occupied at the time of the hearing. Willis further testified that he did not believe that the property was listed for sale at the time of his purchase, explaining that he is an investor and works with a few different realtors that may approach him to purchase properties. Willis affirmed that he had no prior dealings with the seller and engaged in some negotiation, as he was not originally interested in purchasing the subject property.

The BOE was also present at the hearing, submitting a report that included a list of sales of properties in the area. The BOE and members of the BOR also observed that the sale information in the county's records did not corroborate the $5,000 purchase price described by Willis. Rather, the conveyance fee statement reflected $1,500 total cash consideration, but line 7(i) indicated that "If gift, in whole or in part, estimated value of real property" was $68,900, which reflected the assessed value of the property at the time. This number was then replicated on the county's records (stamp on the deed and property record card). Willis asserted that this number must be an error because that number far exceeded the sale price or anything he would be willing to pay for a property in the same condition as the subject.

The BOR left the record open to give appellant an opportunity to supplement the record with any additional sale documentation and a list of the repairs made thus far. Following the hearing, appellant provided a copy of the purchase agreement that listed a sale price of $7,000, along with a list of repairs to both the exterior (roof, vinyl siding, driveway, and landscaping) and interior (clean out and demolition) of the property. The BOR issued a decision maintaining the initially assessed valuation, which appellant appealed to this board.

This board convened a hearing, at which Willis again appeared to testify regarding the November 2017 sale and the condition of the property. Willis also submitted photographs to demonstrate the extent of the condition issues present in the home. The county appellees waived the opportunity to appear at the hearing, and the BOE did not participate in the appeal.

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 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. 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, it is undisputed that appellant purchased the subject property in an arm's-length transaction recent to the tax lien date. Rather, the question presented is amount of consideration paid for the property. The conveyance fee statement and resulting documents reflect a purchase price of $68,900, though this is clearly based on the fiscal officer's value at the time, which was listed as the estimated fair market value on line 7(i) of the conveyance fee statement. On the other hand, the purchase agreement was signed by both parties to the transaction contemporaneous with the sale. Under these circumstances, we find that the price listed on the purchase agreement is the most reliable indication of the sale price and is, therefore, the best

evidence of the value of the property. Finally, we note that the fiscal officer's value is based on "fair" condition for the property, when the photographs establish that it is more accurately described as being in poor condition.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$7,000

TAXABLE VALUE

$2,450

OHIO BOARD OF TAX APPEALS

LIMBADA YUSUF, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-714
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - LIMBADA YUSUF
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

Entered Thursday, April 2, 2020

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

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number R72 11409 0033, for tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

The subject property is improved with a single-family home, and the auditor initially assessed its total true value at $46,570. Appellant filed a complaint with the BOR seeking a reduction in value to $17,000. At the BOR hearing, appellant relied on a February 2018 sale of the property from the Federal Home Loan Mortgage Corporation to Rehab to Rent Inc., which then made some repairs and sold it to appellant in May 2018. The BOR issued a decision

maintaining the initially assessed valuation, which led to the present appeal. Neither appellant nor the county appellees submitted additional written argument or requested a hearing to present additional evidence.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). There is a well-established 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. 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, it is undisputed that Rehab to Rent purchased the property on February 27, 2018, just two months after the tax lien date. The BOR indicated that it did not find the sale reliable evidence of value because the listing indicated it was bank owned. While foreclosure sales are considered "forced" and presumptively invalid for purposes of real property valuation, the *subsequent* sale of the property by the lending institution which acquired it may provide a reliable indication of value. See, e.g., *Cattell v. Lake Cty. Bd. of Revision,* Lake App. No. 2009-L-161, 2010-Ohio-4426; *Kahoe v. Cuyahoga Cty. Bd. of Revision,* Cuyahoga App. No. 99188, 2013-Ohio-2097. Thus, the sale in the present appeal benefits from the presumption of validity and the county appellees have not provided sufficient evidence to rebut this presumption.

Accordingly, we find that the sale was arm's-length and provides the bet indication of 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, 2018, were as follows:

TRUE VALUE

$17,000

TAXABLE VALUE

$5,950

OHIO BOARD OF TAX APPEALS

BOHN JOHN F & BELLE J TRUSTEES, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-710 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BOHN JOHN F & BELLE J TRUSTEES
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

Entered Thursday, April 2, 2020

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

[1] Appellants appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number N64 01004 0060, for tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

[2] The subject property is improved with a single-family home, and the auditor initially assessed its total true value at $76,670. Appellant filed a complaint with the BOR seeking a reduction in value to $62,320. At the BOR hearing, appellant relied on evidence regarding the subject's ownership history, including sale documents and testimony from Sandra Manzon, an

employee of the property management company. Appellants purchased the property from Rehab to Rent Inc., which had purchased the property from Carrington Mortgage Services, LLC on April 16, 2018 for $62,320. Manzon explained that she did not have personal knowledge regarding Rehab to Rent's purchase but described the condition of the property at that time and the repairs that were made prior to the subsequent sale to appellants. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. Neither appellants nor the county appellees submitted additional written argument or requested a hearing to present additional evidence.

[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). There is a well-established 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. 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.

[4] In the present appeal, it is undisputed that Rehab to Rent purchased the property on April 16, 2018, just three months after the tax lien date. The BOR indicated that it did not rely on the sale referencing a preceding sale that was recorded on November 3, 2017 and the listing for the property submitted by appellants dated October 28, 2017, which indicated that the sale was

"REO/Auction" and had been listed on the market for 114 days at that time.

[5] According to the property record card, the November 2017 sale appears to be a sheriff's sale, which is presumed invalid for purposes of real property valuation. *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 455, 458 (1997). A sale price from an auction or forced sale is presumed to be unreliable evidence of value, albeit subject to rebuttal. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. However, the *subsequent* sale of the property by the lending institution which acquired it may provide a reliable indication of value. See, e.g., *Cattell v. Lake Cty. Bd. of Revision*, Lake App. No. 2009-L-161, 2010-Ohio-4426; *Kahoe v. Cuyahoga Cty. Bd. of Revision*, Cuyahoga App. No. 99188, 2013-Ohio-2097.

[6] We acknowledge that because she had no personal knowledge about the sale, Manzon could not confirm whether Rehab to Rent purchased it via an auction or describe the circumstances of its purchase. A review of the documents, however, shows that the listing referred to the prior sale of the property, i.e., the sale that was recorded on November 3, 2017 based on the number of days on market at that time. Thus, this sale is not reliable evidence of value. The county appellees have provided no specific reason to challenge the reliability of Rehab to Rent's April 2018 purchase. There is no indication that this sale took place via auction or was "forced" in some way, and the mere fact it occurred after a foreclosure sale is insufficient to rebut its utility. Accordingly, we find the $62,320 purchase price from the April 2018 sale provides the best evidence of the subject property's value as of the tax lien date.

[7] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$62,320

TAXABLE VALUE

$21,810

OHIO BOARD OF TAX APPEALS

MONZET SEAN, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-709
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - MONZET SEAN
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

Entered Thursday, April 2, 2020

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 H33301009 0077, for tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

The subject property is improved with a single-family home, and the auditor initially assessed its total true value at $38,330. Appellant filed a complaint with the BOR seeking a reduction in value to $19,200. At the BOR hearing, appellant relied on an April 2018 sale of the property from CR 2018 LLC to Rehab to Rent Inc., which then made some repairs and sold it to appellants in July 2018. The BOR issued a decision maintaining the initially assessed valuation,

which led to the present appeal. Neither appellant nor the county appellees submitted additional written argument or requested a hearing to present additional evidence.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). There is a well-established 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. 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, it is undisputed that Rehab to Rent purchased the property on April 16, 2018, fewer than four months after the tax lien date. The BOR acknowledged appellant's evidence, including an active February 2018 MLS listing for $19,900, but nevertheless rejected the sale and referenced another transfer of the property via quit-claim deed that took place one month prior to Rehab to Rent's purchase. While we acknowledge that the earlier sale could provide more reliable evidence of value, we have insufficient information to determine whether this transfer was as a facially qualifying sale. The BOR provided no additional basis to reject the April 2018 sale, and we find no reason it does not meet the criteria of an arm's-length transaction. We therefore find that the April 2018 sale is 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, 2018, were as follows:

TRUE VALUE

$19,200

TAXABLE VALUE

$6,720

OHIO BOARD OF TAX APPEALS

REHAB TO RENT INC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-708
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - REHAB TO RENT INC
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

Entered Thursday, April 2, 2020

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

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number R72 12507 0047, for tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

The subject property is improved with a single-family home, and the auditor initially assessed its total true value at $28,730. Appellant filed a complaint with the BOR seeking a reduction in value to $6,500. At the BOR hearing, appellant relied on evidence regarding its purchase of the property, including sale documents and testimony from its employee Sandra Manzon. Appellant purchased the property from Kaja Holdings on April 13, 2018 for $6,500.

Manzon explained that she did not have personal knowledge regarding the purchase, but described the condition of the property at that time and the repairs that were made after appellant's purchase. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. Neither appellant nor the county appellees submitted additional written argument or requested a hearing to present additional evidence.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). There is a well-established 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. 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, it is undisputed that appellant purchased the property on April 13, 2018, just three months after the tax lien date. Although the BOR indicated that it had "unanswered questions" because the property's listing reflected that it was a bank-owned property, the county appellees provided no affirmative challenge to the arm's-length nature or reliability of the sale. We note that a bank-owned property is still presumed to have transferred in an arm's-length transaction. See, e.g., *Cattell v. Lake Cty. Bd. of Revision*, Lake App. No. 2009-L-161, 2010-Ohio-4426. Accordingly, we find that the $6,500 sale price provides the best

evidence of the subject's true 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, 2018, were as follows:

TRUE VALUE	TAXABLE VALUE
$6,500	$2,280

OHIO BOARD OF TAX APPEALS

FOR OUR FUTURE LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-707
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - FOR OUR FUTURE LLC
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

Entered Thursday, April 2, 2020

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

Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number R72 06206 0051, for tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

The subject property is improved with a single-family home, and the auditor initially assessed its total true value at $28,210. Appellant filed a complaint with the BOR seeking a reduction in value to $16,900. At the BOR hearing, appellant relied on a May 2018 sale of the subject property from the Federal National Mortgage Association to Rehab to Rent Inc., which then made some repairs and sold it to appellant. The BOR issued a decision maintaining the

initially assessed valuation, which led to the present appeal. Neither appellant nor the county appellees submitted additional written argument or requested a hearing to present additional evidence.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). There is a well-established 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. 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, it is undisputed that Rehab to Rent purchased the property in May 2018, just four months after the tax lien date. Although the BOR acknowledged the sale and an MLS listing for the property, it noted the subsequent repairs, questioned the arm's-length nature of the transaction, and rejected the sale as evidence of value. Initially, we note that as the opponent of the sale, it was the county appellees' burden to rebut its reliability but failed to present any evidence to do so. Additionally, while foreclosure sales are considered "forced" and presumptively invalid for purposes of real property valuation, the *subsequent* sale of theproperty by the lending institution which acquired it may provide a reliable indication of value. See, e.g., *Cattell v. Lake Cty. Bd. of Revision*, Lake App. No. 2009-L-161, 2010-Ohio-4426; *Kahoe v.*

Cuyahoga Cty. Bd. of Revision, Cuyahoga App. No. 99188, 2013-Ohio-2097. Thus, this transaction is presumptively valid. Furthermore, although changes to the property between the sale and the tax lien date could render a sale "remote" for purposes of valuation, any repairs that were made took place after the sale and after the tax lien date. Accordingly, we find that the county appellees failed to rebut the utility of May 2018 sale, and we therefore find that the $16,900 sale price constitutes 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, 2018, were as follows:

TRUE VALUE

$16,900

TAXABLE VALUE

$5,920

OHIO BOARD OF TAX APPEALS

THOREN PAUL E & MARY TRUSTEES, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-706 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THOREN PAUL E & MARY TRUSTEES
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

Entered Thursday, April 2, 2020

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

Appellants appeal a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number R72 16010 0002, for tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

The subject property is improved with a single-family home, and the auditor initially assessed its total true value at $51,230. Appellant filed a complaint with the BOR seeking a reduction in value to $39,000. At the BOR hearing, appellants relied on a May 2018 sale of the property from Earnest Inc. to Rehab to Rent Inc., which then made some repairs and sold it to

appellants in October 2018. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeals. Neither appellants nor the county appellees submitted additional written argument or requested a hearing to present additional evidence.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). There is a well-established 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. 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, it is undisputed that Rehab to Rent purchased the property on May 9, 2018, just four months after the tax lien date. The BOR acknowledged appellants' evidence, including an active January 2018 MLS listing for $39,900, but nevertheless rejected the sale and noted that another sale of the property took place two weeks before Rehab to Rent's purchase. While we acknowledge that the earlier sale could provide more reliable evidence of value, we have insufficient information to determine whether this transfer was as a facially qualifying sale. The BOR provided no additional basis to reject the May 2018 sale, and we find no reason it does not meet the criteria of an arm's-length transaction. We therefore find that the May 2018 sale is 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, 2018, were as follows:

TRUE VALUE

$39,000

TAXABLE VALUE

$13,650

OHIO BOARD OF TAX APPEALS

ROGER ACREE, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-156
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROGER ACREE
Represented by:
ROGER ACREE
OWNER
4901 FOX RIDGE CT
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, April 2, 2020

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

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On January 30, 2020, the appellant filed an application for remission with this board. Appellant did not include a copy of a BOR decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County Board of Revision, 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* (1946), 147 Ohio St. 147, 150; *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68. Strict compliancewith R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

RUTH ANN BORRUD, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-676
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - RUTH ANN BORRUD
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

Entered Friday, April 3, 2020

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

The property owner appeals from a decision of the Montgomery County Board of Revision ("BOR"), retaining the auditor's value of the subject property for tax year 2018. No hearing was requested. We decide the case on the notice of appeal and the statutory transcript.

The auditor valued the subject property at $67,750 for tax year 2018, and appellant filed a decrease complaint with an opinion of value of $47,000 based on a June 2018 sale. The parcel card confirms the property sold for that amount and the deed was recorded in July 2018. At the BOR hearing, appellant presented the first page of the relevant settlement statement, which indicates a sale price of $47,000 on June 29, 2018. Appellants also presented market data and a

list of rehabilitation expenditures. The parcel card indicates there was a prior sheriff's sale that occurred earlier in 2018; however, no party advocated for that sale price to be adopted. The BOR retained the auditor's value, and appellants filed a notice of appeal with 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). To meet that burden, an 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. A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

The Ohio Supreme Court has explained that a taxpayer seeking to change the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm' s-length character of the sale.'" *Lunn* 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). A proponent may generally meet that initial burden with a complaint and purchase documents. See id. Corroborating testimony is unnecessary. *Lunn* at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." *Lunn* at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shifts to any opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

Here, appellant presented a facially qualifying sale through the complaint and settlement statement. We also note the parcel card corroborates the sale. Therefore, the sale creates a rebuttable presumption of value. However, no party has presented this board with any evidence disputing the sale. Therefore, we find the sale is the best, most persuasive evidence of value and order the property valued as follows for tax year 2018:

PARCEL NUMBER R72 11605 0029

TRUE VALUE

$47,000

TAXABLE VALUE

$16,450

OHIO BOARD OF TAX APPEALS

WILLIAM HOOPER COOK, JR. & ANNA CHAU COOK, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-675 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WILLIAM HOOPER COOK, JR. & ANNA CHAU COOK
Represented by:
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Entered Friday, April 3, 2020

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

[1] The property owner appeals from a decision of the Montgomery County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2018. No party requested a hearing with this board. Therefore, we decide the case on the notice of appeal and the statutory transcript.

[2] The auditor valued the subject property at $60,070 for tax year 2018, and the owner filed a complaint seeking a value of $38,000 per a June 2018 sale for that amount. At the BOR hearing, the property owner presented the first page of a settlement statement, market data, and an itemized list of expenses incurred in rehabilitating the property. The parcel card confirms the

property sold for $38,000 and the deed recorded in July 2018. The BOR retained the auditor's value, and the property owner appealed to this board.

[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). To meet that burden, an 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. We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported.

[4] A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8,L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring less than 24 months before the tax-lien date is presumed recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A sale that postdates the tax-lien date also creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612.

[5] The Ohio Supreme Court has explained that the proponent of a sale can satisfy their initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. A proponent may generally meet their initial burden with a complaint and purchase documents. See id. Corroborating testimony is unnecessary. Id. at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500,

503 (1997)). Once the proponent presents a facially valid sale, the burden of rebuttal shifts to any party opposing the sale.

[6] Here, the property owner presented evidence of a facially qualifying sale. See *Lunn*, supra. Accordingly, the burden shifts to any party disputing the sale to present rebuttal evidence. However, no party has presented this board with rebuttal evidence. Accordingly, we find the sale is the best, most persuasive evidence of value. We note the property record card reflects an earlier sale in June 2018 via sheriff's deed. However, such a sale is presumed not arm's-length and no party has presented information to rebut this presumption. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723.

[7] For these reasons, we order the property valued as follows for tax year 2018: PARCEL NUMBER R72 11606 0021

TRUE VALUE

$38,000

TAXABLE VALUE

$13,300

OHIO BOARD OF TAX APPEALS

DAT REVITALIZATION, LLC, (et. al.),	)	Appellee(s).)
Appellant(s),	)	
vs.	)	CASE NO(S). 2018-1830
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

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Entered Friday, April 3, 2020

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 871-01-010, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, record of this board's hearing, and written argument submitted by the parties.

The property owner filed an appeal with the BOR, which requested that the subject

property be revalued at $375,000 instead of its initially assessed value of $737,600. By way of the complaint, the property owner asserted that the subject property had been the subject of a $375,000 transfer in February 2018. The affected board of education ("BOE") filed a countercomplaint, which objected to the request.

At the BOR hearing on the matter, no one appeared on behalf of the property owner; however, the BOE appeared to submit argument and/or evidence into the record. The BOE argued that there was no evidence to demonstrate that the subject property had been the subject of a $375,000 sale on February 13, 2018 and speculated that delinquent taxes may have been a consideration for any of the subject property's previous transfers. Because the record was void of any evidence to support reducing the subject property's value, the BOE requested that the subject property's initially assessed value be retained. One of the BOR members noted that her contemporaneous research indicated transfers of the subject property in tax years 2017 and 2018. The BOR subsequently voted to deny the property owner's requested value and this appeal ensued.

Shortly before this board's hearing, in lieu of attending such hearing, the BOE submitted written argument to assert its position. It asserted that the property owner was barred from submitting evidence on appeal, based upon R.C. 5715.19(G), because the property owner should have first submitted its evidence to the BOR. As a result of this statutory preclusion, the BOE argued that the property could not satisfy its evidentiary burden.

At the hearing, only the property owner appeared. As the hearing commenced, the property owner was provided an opportunity to respond to the BOE's argument about R.C. 5715.19(G). In doing so, the property owner argued that there may have been a calendaring issue, which led to its absence from the BOR hearing. The attorney examiner deferred ruling and allowed the property owner's documents to be proffered into evidence. The property owner

argued that the subject property had been the subject of two sales, which could be considered "recent" to the tax lien date of January 1, 2017: a $350,000 transfer on November 8, 2017 and a $375,000 transfer in February 2018. According to the property owner, either of these sales demonstrated that the subject property had been overvalued. Subsequent to the hearing, the property owner submitted written argument, responsive to the BOE's written argument.

Before we consider the merits of this appeal, we must first dispose of preliminary issues. As noted above, the attorney examiner deferred ruling on the BOE's R.C. 5715.19(G) objection, which asserted that the property owner should be precluded from introducing evidence on appeal. The statute provides that "[a] complainant shall provide to the board of revision all information or evidence within the complainant's knowledge or possession that affects the real property that is the subject of the complaint. A complainant who fails to provide such information or evidence is precluded from introducing it on appeal to the board of tax appeals or the court of common pleas, except that the board of tax appeals or court may admit and consider the evidence if the complainant shows good cause for the complainant's failure to provide the information or evidence to the board of revision." The property owner conceded that there may have been a calendaring issue. We do not find this to be good cause as to those documents related to the property owner's purchase of the subject property in February 2018. See *Gaston v. Medina Cty. Bd. of Revision*, 133 Ohio St.3d 18, 2012-Ohio-3872. There can be no doubt that the property owner had knowledge and/or possession of these documents and, as a result, the property owner should have submitted these documents to the BOR. However, as to those documents related to the subject property's prior transfer in November 2017, we find that the property owner has demonstrated good cause for its failure to submit these documents to the BOR. There is no indication that the property owner had knowledge and/or possession of these documents given that it was not a party to the transfer.

Though the BOE waived the opportunity to submit evidence into the record at this board's hearing, it attached documents to its written argument. We glean that one document, a property tax bill for the second half of tax year 2018, was not previously submitted at the BOR hearing and, therefore, it will not be considered in our analysis. See, *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 16 (1996). However, we discern that the remainder of the documents were included in the property owner's evidentiary submission that was accepted into evidence consistent with 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. 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, ¶¶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 note that the property owner argued that the property owner's purchase of the subject property on February 13, 2018 should be relied upon to establish the subject property's value. However, this transfer is not reflected on the property record card and there was no evidence submitted to the BOR about such transfer. Compare, *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision*, 138 Ohio St.3d 153, 2014-Ohio-104, ¶¶42-44 ("The property record, together with the auditor's statement at the BOR hearing, evidence the date and price of the sale."). Therefore, we cannot conclude that such transfer was indicative of the subject property's value. We proceed, therefore, to consider the transfer of the subject property on November 8, 2017. See, *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-

Ohio-687.

The property owner's presentation of documents, memorializing the $350,000 transfer of the subject property from Deutsche Bank National Trust Company to Black Knights, LLC on November 8, 2017, created a rebuttable presumption that it 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 opponent(s) of such transfer to provide rebuttal evidence. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, at ¶¶32, 34. Here, neither the BOE nor the BOR submitted evidence to rebut the presumption accorded to the transfer. We find, therefore, that this transfer is indeed the best indication of the subject property's value as of January 1, 2017.

Accordingly, it is the order of the board that the subject property's value shall be assessed consistent with the following, as of the relevant tax lien date:

True Value: $350,000

Taxable Value: $122,500

OHIO BOARD OF TAX APPEALS

WESTERVILLE CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1367 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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FIREWATER LIMITED
Represented by:
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COLUMBUS, OH 43230

Entered Friday, April 3, 2020

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

[1] The appellant board of education ("BOE") appeals a decision, which determined the value of the subject property, parcel 110-000510-00, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and record of this board's hearing.

[2] On the tax lien date, the subject property was an 88.678-acre parcel of vacant land, which

was initially assessed at $836,800. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $48,000 to reflect the price at which it purportedly transferred in December 2017. The affected board of education ("BOE") filed a countercomplaint, which objected to the request.

[3] At the BOR hearing on the matter, both parties appeared through counsel to submit argument and/or evidence in support of their respective positions. In its presentation, the property owner presented the testimony of its manager, Mo Dioun, and a conveyance-fee statement, which demonstrated the $48,000 transfer of a sixteen-acre parcel to the property owner in December 2017. (It should be noted that the BOR placed a sticker over the portion of the conveyance-fee statement where the parcel number would be located; however, none of the parties have disputed its veracity or the property owner's assertion that it memorialized the transfer of the subject property.) Dioun testified about the facts and circumstances of the sale and landlocked nature of the sixteen acres, which he claimed made it unusable for anything more than green space. The BOE cross-examined Dioun to gain further insight into the $48,000 transfer of the sixteen-acre parcel to the property owner in December 2017. One of the BOR members, Kimbol Stroud, noted that the sixteen-acre parcel was split from the 88.678 parcel; however, there was no discussion about when the parcel split occurred. Based upon its presentation, the property owner requested that the subject property's value be decreased to reflect the sale price of the sixteen acres, $48,000. Counsel for the BOE noted that the terms of the $48,000 transfer of December 2017 were difficult to discern without a purchase agreement. The BOR subsequently voted to accept the $48,000 sale of the sixteen acres as the best indication of value for the entire 88.678-acre parcel, which existed on tax lien date. This appeal ensued.

[4] At this board's hearing, both parties appeared again through counsel to supplement the record with argument and/or evidence in support of their respective positions. In its presentation, the BOE argued that the property owner's $48,000 purchase occurred *after* the sixteen acres of

the larger 88.678 acres was split on January 30, 2017 and submitted a number of exhibits, including the county real-property, tax list and duplicate for tax year 2017 and notes from the county auditor's office related to the parcel split, as well as other documents. Based upon its presentation, the BOE requested that the subject property's initially assessed value be reinstated. In its presentation, the property owner submitted additional testimony from Dioun, which expanded upon his prior testimony, and resubmitted the conveyance-fee statement. Based upon its presentation, the property owner requested that we affirm the BOR's decision.

[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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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] As an initial matter, because the BOR reduced the value and because the BOE is the appellant, we must address the burden of proof under the "Bedford rule" and cases interpreting that rule. See *Cleveland Mun. Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 4, 2018), BTA No. 2017-2274, unreported. The Bedford rule applies when: 1) the property owner filed the complaint or counter complaint; 2) the board of revision ordered a reduction valuation based on competent evidence offered by the property owner; 3) the board of education appeals to this board; 4) the board of revision's determination is based on appraisal evidence rather than a

sale. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025. Because this case involves a dispute over a sale, we conclude that the Bedford rule does not apply.

[7] Upon review, we must conclude that the sale at the center of this dispute, the $48,000 transfer of a sixteen-acre parcel to the property owner in December 2017, is not the best indication of the subject property's value as of the tax lien date. Though the transfer took place eleven months after the tax lien date, and could be considered temporally "recent," recency "encompasses all factors that would, by changing with the passage of time, affect the value of property," including conditions specific to the property itself. *Cummins Property Services, L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶35. See also *Richman Properties, L.L.C. v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 549, 2014-Ohio-2439. Here, the record demonstrates that subject property comprised an 88.678-acre parcel of vacant land on the tax lien date. See Hearing Record ("H.R.") at Exhibit ("Ex.") A. The record also demonstrates that a sixteen-acre parcel (or eighteen percent) was split from the larger parcel on January 30, 2017. H.R. at Ex. B and Statutory Transcript at Property Record Card. Because the character of the subject property materially changed, we conclude that the property owner's $48,000 purchase of the sixteen-acre parcel is not the best indication of value for the subject property *as it existed on the tax lien date*, as an 88.678-acre parcel. See *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 151 Ohio St.3d 515, 2017-Ohio-8347.

[8] Accordingly, we find that the sale upon which the BOR relied was not a recent sale, indicative of real property value. Because the BOR erred in its decision to value the subject property at $48,000 based upon such sale, 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.

[9] It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of the relevant tax lien date:

True Value: $836,800

Taxable Value: $292,880

OHIO BOARD OF TAX APPEALS

FLOWERS ARTHUR AND ROCHELLE, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-677 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FLOWERS ARTHUR AND ROCHELLE
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For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
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DAYTON, OH 45422

Entered Friday, April 3, 2020

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

The property owners appeal from a decision of the Montgomery County Board of Revision ("BOR"), retaining the auditor's value of the subject property for tax year 2018. No hearing was requested. We decide the case on the notice of appeal and the statutory transcript.

The auditor valued the subject property at $60,700 for tax year 2018, and appellant filed a decrease complaint with an opinion of value of $35,000 based on a June 2018 sale. The parcel card confirms the property sold for that amount and the deed recorded in July 2018. At the BOR hearing, appellants presented the first page of the settlement statement, which indicates a sale price of $35,000 on June 22, 2018. Appellants also presented market data and a list of

rehabilitation expenditures. The parcel card indicates there was a prior sale that occurred earlier in 2018 for $27,000; however, no party advocated for that sale price to be adopted. The BOR retained the auditor's value, and appellants filed a notice of appeal with 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). To meet that burden, an 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. A recent arm' s-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

The Ohio Supreme Court has explained that a taxpayer seeking to change the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm' s-length character of the sale.'" *Lunn* 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). A proponent may generally meet that initial burden with a complaint and purchase documents, and corroborating testimony is unnecessary. *Lunn* at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shifts to any opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

Here, appellants presented a facially qualifying sale through the complaint and purchase documents. We also note the parcel card corroborates the sale. Therefore, the sale creates a rebuttable presumption of value. However, no party has presented this board with any evidence disputing the sale. Therefore, we find the sale is the best, most persuasive evidence of value and order the property valued as follows for tax year 2018:

PARCEL NUMBER R72 14609 0027

TRUE VALUE

$35,000

TAXABLE VALUE

$12,250

OHIO BOARD OF TAX APPEALS

SOUTH-WESTERN CITY SCHOOLS BOARD OF EDUCATION, (et. al.),

CASE NO(S). 2018-2034

Appellant(s),

REAL PROPERTY TAX) DECISION AND ORDER

vs.

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

Appellee(s).

APPEARANCES:

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Entered Friday, April 3, 2020

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

[1] The board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 140-007346-00, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and parties' written argument.

[2] The property owner filed a complaint with the BOR, which requested that the subject property's value be reduced from $550,000 to $450,000. The BOE filed a countercomplaint, which

objected to the request. At the BOR hearing, both parties appeared to submit argument and/or evidence in support of their respective positions. Steven Yee, a member of the property owner, appeared in support of the complaint. He testified as to the declining economic condition of the neighborhood in which the subject property was located, which has prevented the property owner from attempting to sell the subject property. Yee also noted that the restaurant sitused on the subject property had experienced a decline in in-restaurant dining but an increase in out-of-restaurant dining. The BOE cross-examined him. At the BOR decision hearing, the BOR noted its familiarity with the subject property and negative impact of nearby job losses and decline in retail stores had on the subject property's value. The BOR hearing worksheet has the following notation: "The west side submarket has not improved, in fact, due to job losses, etc, the area has likely declined in value. An increase in the 2017 valuation is unwarranted and not supported[.] (Loss of Odd Lots HQ + job loss) + other retail closed. = Econ. Obsolescence[.]" As a result of the BOR's conclusion that the subject property suffered from economic obsolescence, it also concluded that the subject property's initially assessed value was unsupported and voted to reduce the subject property's value to $450,000, its value for the prior triennial period (2014, 2015, and 2016). This appeal ensued.

[3] While this matter was pending, the BOE filed a motion to compel the property owner to respond to its discovery requests; this board granted such motion in *South-Western Schools Bd. of Education v. Franklin Cty. Bd. of Revision* (Interim Order, Mar. 26, 2019), BTA No. 2018-2034, unreported. After the property owner failed to comply with the order, the BOE filed a motion for sanctions; this board granted such motion in *South-Western Schools Bd. Of Education v. Franklin Cty. Bd. of Revision* (Interim Order, July 5, 2019), BTA No. 2018-2034, unreported. As a result, the property owner was precluded from submitting new evidence at the hearing before this board. At the BOE's request, the merit hearing was canceled, and a briefing schedule established. In its written argument, the BOE argued that the BOR committed legal error by carrying forward the subject property's value for the prior triennial period, $450,000, into tax year 2017, the year in which the county auditor was under a statutory duty to revalue real property in the county.

Conversely, the property owner argued that the BOE failed to submit evidence in support of its appeal and, therefore, it cannot prevail.

[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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. Of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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.

[5] Upon review, we must find that the property owner failed to satisfy its evidentiary burden before the BOR. The property owner primarily relied upon Yee's testimony about the subject property's defects, i.e., its location in a declining section of Franklin County and low profit margin derived from the restaurant. Unfortunately, the property owner failed to provide evidence to demonstrate how the cited defects specifically impacted the subject property's value. A party must do more than demonstrate the existence of negative factors; a party must also quantitatively show the impact such factors have on the property's value. See, *Germano v. Cuyahoga Cty. Bd. of Revision* (June 19, 2018), BTA No. 2017-1468, unreported. In the absence of an appraisal quantifying the effect of any adverse factors on the value of the property, we find the evidence insufficient to justify the requested reduction. 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." (Internal citations omitted.)

[6] To the extent that the property owner argued that the subject property had been overvalued because of its profit margin, i.e., income and expenses, we must also reject that argument. The property owner failed to provide any evidence about income and expenses of other restaurants, which would have allowed this board to determine whether its income and expenses conformed to the market. It is well settled that "an appraiser may employ actual income as reduced by actual expenses if both amounts conform to market." *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996). As a result, of this deficiency, we cannot say that the property owner satisfied its duty to provide evidence to support reducing the subject property's value.

[7] We must also reject the property owner's argument that the subject property's $450,000 value for the prior triennial period should carry forward into the year of the sexennial reappraisal. As previously noted, the county auditor was under a statutory duty to reassess real property values, in light of the existing market conditions, for tax year 2017. See, generally, R.C. 5713.01(B), 5715.33, and 5715.34. In carrying out such duty, the county auditor increased the subject property's value. The Supreme Court has previously held that each tax year stands alone, and the fact that a property may have been valued differently for another year is not competent and probative evidence that a different year's value should be changed. See, *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).

[8] We acknowledge that an owner is entitled to provide an opinion of value. See, *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987). However, for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern*

Indem. Co., 65 Ohio St.3d 621 (1992). While an owner might be an expert in the subject, an owner might not be an expert in valuation or the market. The Supreme Court has also held "there is no requirement that the finder of fact accept [the owner's value] as the true value of the property." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 32 (1996). Here, the property owner's opinion is unsupported by any tangible evidence.

[9] Having concluded that the property owner failed to submit sufficient evidence to support its opinion of value, we now turn to the propriety of the BOR's decision to reduce the subject property's value to $450,000. Though the BOR concluded that the subject property suffered from economic obsolescence, we cannot discern exactly how the BOR arrived at such conclusion and decided to value the subject property at $450,000. The record is void of any information that would allow this board to confirm that the subject property suffered from economic obsolescence and that an approximate 19% reduction in value was proper. See *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Oct. 2, 2013), BTA No. 2011-156, unreported at 5 ("Mr. Seckel indicated that *** he applied a 35% reduction for depreciation due to economic obsolescence. When questioned regarding this depreciation rate ***, Mr. Seckel acknowledged that he could not empirically measure or substantiate this rate. Accordingly, we find that this depreciation rate cannot be relied upon in our analysis."). See, also *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, at 21 ("[W]e find it immaterial that the [county 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 [county 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."). Though the BOR referred to the character of the neighborhood in which the subject property was located, and its negative

influence, the BOR failed to provide any information to support its conclusions. As such, we must conclude that the record does not support the BOR's decision and are required 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.

[10] We are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to satisfy the evidentiary burden before the BOR and that the BOE demonstrated that the BOR committed legal error when it voted to reduce the subject property's value. Accordingly, it is the order of this board that the subject property's true and taxable values are as follows as of January 1, 2017:

True Value: $550,000

Taxable Value: $192,500

OHIO BOARD OF TAX APPEALS

EVERT PAUL E & KATHLEEN A TRUSTEE, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-691 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EVERT PAUL E & KATHLEEN A TRUSTEE
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

Entered Monday, April 6, 2020

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

The property owner appeals from a decision of the Montgomery County Board of Revision ("BOR"), valuing the subject property for tax year 2018. No hearing was requested. We decide the case on the notice of appeal and the statutory transcript.

The auditor valued the subject property at $111,170 for tax year 2018, and appellant filed a decrease complaint with an opinion of value of $72,000 based on a May 2018 sale. The parcel card confirms the property sold for that amount and the relevant deed recorded in June 2018. At the BOR hearing, appellants presented the first page of the settlement statement, which indicates a sale price of $72,000 on May 18, 2018. Appellants also presented market data and a

list of rehabilitation expenditures. The parcel card indicates there was a prior sale that occurred earlier in 2018 for $52,000; however, no party advocated for that sale price to be adopted. The BOR reduced the value of the subject property to $102,410, and appellants filed a notice of appeal with 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). To meet that burden, an 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. A recent arm' s-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

The Ohio Supreme Court has explained that a taxpayer seeking to change the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm' s-length character of the sale.'" *Lunn* 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). A proponent may generally meet that initial burden with a complaint and purchase documents. See id. Corroborating testimony is unnecessary. Id. at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shifts to any opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

Here, appellants presented a facially qualifying sale through the complaint and purchase documents. We also note the parcel card corroborates the sale. Therefore, the sale creates a rebuttable presumption of value. However, no party has presented this board with any evidence disputing the sale. Therefore, we find the sale is the best, most persuasive evidence of value and order the property valued as follows for tax year 2018:

PARCEL NUMBER M60 03210 0136

TRUE VALUE

$72,000

TAXABLE VALUE

$25,200

OHIO BOARD OF TAX APPEALS

YONG SHANE & YIK PING LI, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-690 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - YONG SHANE & YIK PING LI
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
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MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Monday, April 6, 2020

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

The property owner appeals from a decision of the Montgomery County Board of Revision ("BOR"), retaining the auditor's value of the subject property for tax year 2018. No hearing was requested. We decide the case on the notice of appeal and the statutory transcript.

The auditor valued the subject property at $28,010 for tax year 2018, and appellant filed a decrease complaint with an opinion of value of $6,500 based on a May 2018 sale. The parcel card confirms the property sold for that amount and the relevant recorded in June 2018. At the BOR hearing, appellants presented the first page of the settlement statement, which indicates a sale price of $6,500 on May 18, 2018. Appellants also presented market data and a list of

rehabilitation expenditures. The parcel card indicates there was a prior transfer that occurred earlier in 2018 for $1,000; however, no party advocated for that sale price to be adopted. The BOR retained the auditor's value, and appellants filed a notice of appeal with 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). To meet that burden, an 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. A recent arm' s-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

The Ohio Supreme Court has explained that a taxpayer seeking to change the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm' s-length character of the sale.'" *Lunn* 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). A proponent may generally meet that initial burden with a complaint and purchase documents, and corroborating testimony is unnecessary. Id. at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shifts to any opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

Here, appellants presented a facially qualifying sale through the complaint and purchase documents. We also note the parcel card corroborates the sale. Therefore, the sale creates a rebuttable presumption of value. However, no party has presented this board with any evidence disputing the sale. Therefore, we find the sale is the best, most persuasive evidence of value and order the property valued as follows for tax year 2018:

PARCEL NUMBER R72 09705 0005

TRUE VALUE

$6,500

TAXABLE VALUE

$2,280

OHIO BOARD OF TAX APPEALS

AARON MENDES, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-689
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - AARON MENDES
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

Entered Monday, April 6, 2020

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

The property owner appeals from a decision of the Montgomery County Board of Revision ("BOR"), retaining the auditor's value of the subject property for tax year 2018. No hearing was requested. We decide the case on the notice of appeal and the statutory transcript.

The auditor valued the subject property at $30,120 for tax year 2018, and appellant filed a decrease complaint with an opinion of value of $10,000 based on a May 2018 sale. The parcel card confirms the property sold for that amount and the relevant recorded in June 2018. At the BOR hearing, appellant presented the first page of the settlement statement, which indicates a sale price of $10,000 on May 25, 2018. Appellant also presented market data and a list of

rehabilitation expenditures. The parcel card indicates there was a prior sheriff sale that occurred in December 2017; however, no party advocated for that sale price to be adopted. The BOR retained the auditor's value, and appellant filed a notice of appeal with 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). To meet that burden, an 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. A recent arm' s-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

The Ohio Supreme Court has explained that a taxpayer seeking to change the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm' s-length character of the sale.'" *Lunn* 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). A proponent may generally meet that initial burden with a complaint and purchase documents. See id. Corroborating testimony is unnecessary. Id. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shifts to any opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

Here, appellant presented a facially qualifying sale through the complaint and purchase documents. We also note the parcel card corroborates the sale. Therefore, the sale creates a rebuttable presumption of value. However, no party has presented this board with any evidence disputing the sale. Therefore, we find the sale is the best, most persuasive evidence of value and order the property valued as follows for tax year 2018:

PARCEL NUMBER R72 12301 0014

TRUE VALUE

$10,000

TAXABLE VALUE

$3,500

OHIO BOARD OF TAX APPEALS

KHOSRAVI ADIB, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-688
vs.	)	
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KHOSRAVI ADIB
Represented by:
JOSEPH MATEJKOVIC
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3189 PRINCETON RD. #298
FAIRFIELD TOWNSHIP, OH 45011-5338

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 Monday, April 6, 2020

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

The property owner appeals from a decision of the Montgomery County Board of Revision ("BOR"), retaining the auditor's value of the subject property for tax year 2018. No hearing was requested. We decide the case on the notice of appeal and the statutory transcript.

The auditor valued the subject property at $46,960 for tax year 2018, and appellant filed a decrease complaint with an opinion of value of $22,000 based on a June 2018 sale. The parcel card confirms the property sold for that amount and the relevant recorded in June 2018. At the BOR hearing, appellant presented the first page of the relevant settlement statement, which indicates a sale price of $22,000 and a settlement date of June 5, 2018. Appellant also presented

market data and a list of rehabilitation expenditures. The parcel card indicates there was a prior sale that occurred earlier in 2018; however, no party advocated for that sale price to be adopted. The BOR retained the auditor's value, and appellant filed a notice of appeal with 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). To meet that burden, an 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. A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

The Ohio Supreme Court has explained that a taxpayer seeking to change the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts the ***arm' s-length character of the sale.'" *Lunn* 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). A proponent may generally meet that initial burden with a complaint and purchase documents. See id. Corroborating testimony is unnecessary. Id.at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shifts to any opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

Here, appellant presented a facially qualifying sale through the complaint and purchase documents. We also note the parcel card corroborates the sale. Therefore, the sale creates a rebuttable presumption of value. However, no party has presented this board with any evidence disputing the sale. Moreover, no party has presented this board with most persuasive evidence of value, e.g., an appraisal. Therefore, we find the sale is the best, most persuasive evidence of value and order the property valued as follows for tax year 2018:

PARCEL NUMBER R72 11110 0023

TRUE VALUE

$22,000

TAXABLE VALUE

$7,700

OHIO BOARD OF TAX APPEALS

RICHARD A. AND SANDRA M. SAUTTER, (et. al.), Appellant(s), vs. MORROW COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-2058 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RICHARD A. AND SANDRA M. SAUTTER
Represented by:
RICHARD A AND SANDRA M SAUTTER
OWNERS
9216 COUNTY ROAD 40
GALION, OH 44833

For the Appellee(s) - MORROW COUNTY BOARD OF REVISION
Represented by:
CHARLES S. HOWLAND
PROSECUTING ATTORNEY
MORROW COUNTY
60 E. HIGH ST.
MOUNT GILEAD, OH 43338

Entered Monday, April 6, 2020

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

The property owners appeal a decision of the board of revision ("BOR"), which determined that the subject property, parcel Q40-001-00-272-02, was not entitled to participate in the Current Agricultural Use Value ("CAUV") program for tax year 2015. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, and record of this board's hearing.

Before we address the issues relevant to this appeal, we note that this matter was previously the subject of an appeal before this board. See *Sautter v. Morrow Cty. Bd. Of Revision* (Nov. 3, 2017), BTA No. 2016-1374, unreported. There, we noted that the property owners had filed a complaint that challenged the subject's "'full market value *and* [the subject's]

removal from CAUV[.]'" Id. at 2. (Emphasis added.) However, because the BOR only issued a *written decision* on the subject's value, we remanded the matter "to the BOR to issue a decision determining the subject's CAUV status for tax year 2015." Id. This matter emanates from the BOR's subsequent *written decision* in accordance with our decision. As a result, we will focus on those facts relevant to the subject's participation in the CAUV program. The subject is woodland property, consisting of approximately 27.44 acres, which previously participated in the CAUV program. When land is devoted "exclusively to agricultural use," and meets certain requirements, a property owner may submit an application to the county auditor requesting to participate in the CAUV program to avoid a real property tax assessment based on the true value. R.C. 5713.30, 5713.31. Based upon the application, the county auditor determines a property's participation eligibility and the auditor's determination of eligibility may be reviewed by the BOR. R.C. 5713.31, 5713.38, 5715.19. When land no longer is devoted exclusively to agricultural use, it is considered "converted" and subject to recoupment of the tax savings resulting from agricultural valuation for the prior three years. R.C. 5713.34; R.C. 5713.35.

On June 4, 2014, the auditor's office sent a letter to the property owners and stated, due to a parcel split and sale of contiguous tillable land, the subject property no longer qualified for participation in CAUV and a recoupment charge would be assessed for tax year 2014. On May 1, 2015, the auditor's office sent the property owners a letter and clarified that, due to the timing of the 2014 sale, a recoupment would be assessed in tax year 2015, not tax year 2014. On September 21, 2015, the county auditor sent a certified letter indicating the subject was ineligible for CAUV and a recoupment charge was assessed for tax year 2015. R.C. 5713.34. Thereafter, on March 31, 2016, the property owners filed a tax year 2015 complaint with the BOR challenging the subject's removal from CAUV program. See R.C. 5715.19.

Though the BOR had previously convened a hearing to allow the property owners to be heard on their complaint, because of this board's remand order, the BOR convened a new hearing on May 29, 2018. The property owners appeared at the hearing and testified to their efforts maintaining the subject property for a commercial, timber purpose. Mrs. Sautter acknowledged that they had last sold timber in 2006, however, she further testified that "we have maintained our wooded acres as good stewards of the land. Very important to remove invasive species of plants such as grapevines, poison ivy, and then, of course, we were all forced here in Ohio with the emerald ash borer. *** We are anticipating another growth of hardwood tree. I'm not talking ash trees. They are dead. I'm talking hardwood trees. They take 20 years to grow, that's what we are working on right now. Removing invasive species, keeping the land clear of that and doing the best we can as woodland management." Statutory Transcript at May 29, 2018 Hearing Record at 6, 29. They also testified that they had split off a portion of the subject property's tillable land and sold it in 2014, which left the remaining 27.44 acres of timberland that is the subject of this appeal. The BOR members asked a number of questions about the income derived from the commercial sale of timber from the subject property and about any forest management plans in place at the time. They noted that the subject property no longer qualified for CAUV status, as noncommercial timberland, because the property owners had sold the tillable land in 2014. The BOR issued a decision, which denied the property owner's request to reinstate the subject property's participation in the CAUV program and to prevent the recoupment of the prior three years of tax savings. This appeal ensued.

At this board's hearing, Mrs. Sautter and counsel for the county appellees appeared to supplement the record with argument and/or evidence. Mrs. Sautter explained that she and her husband had purchased the original +/-75-acre property in 2005 and, in 2006, they worked with a forester consultant, Bob Sabo, to determine the commercial viability of the timber of their property. She also expanded upon the testimony previously provided to the BOR, i.e., detailing their efforts

to maintain the subject property and keep it free from invasive species. The property owners' daughter testified in support of the property owners and confirmed that the subject property has been maintained in such a way to allow for future harvesting of timber, i.e., planting new trees and clearing the land of invasive species. The property owners submitted a number of documents into evidence, including letters from various county officials, photographs of the subject property, conservation application submitted in 2018, and various maps. Counsel for the county appellees argued that the subject property did not qualify for CAUV because the property owners could not demonstrate related commercial activity for 2011, 2012, and 2013.

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). We must "independently review the evidence" before us and "render a [] determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported.

As we review this matter, we note that there appears to be a dispute between the parties about the basis for the subject property's past participation in the CAUV program. The property owners seemingly contend that the 27.44 acres of timberland independently qualified for CAUV status, i.e., "[t]he tracts, lots, or parcels of land were devoted exclusively to *** the production for a commercial purpose of timber ***." R.C. 5713.30(A)(1)(a). However, the county contends that the 27.44 acres of timberland did not independently qualify for CAUV status, i.e., "[t]he tracts, lots, or parcels of land were devoted exclusively to *** the growth of timber for a noncommercial purpose, if the land on which the timber is grown is contiguous to or part of a parcel of land under common ownership that is otherwise devoted exclusively to agricultural use." Id.

Based upon the record, we find that the property owners have demonstrated that the subject property was "devoted exclusively to the production of commercial purpose of timber." R.C.

5713.30(A)(1)(a). In doing so, we find the Supreme Court's decision in *Fife v. Greene Cty. Bd. of Revision*, 120 Ohio St.3d 442, 2008-Ohio-6786, instructive in this matter. In *Fife*, the county appellees, like the county appellees in this matter, argued that the property owner's timberland was not entitled to participate in CAUV program because there was no evidence of recent harvesting. The court rejected the county appellees' argument that the (possible) 19-year gap between harvesting precluded the property's participation in the CAUV program. Instead, the court affirmed this board's holding that "'[t]he difficulty in determining whether the land in question is being used for commercial production of timber' because 'it may take decades for a timber crop to mature to a size and nature that can be commercially harvested.' *Fife [v. Greene Cty. Bd. of Revision* (Nov. 2, 2007)], BTA No. 2006-V-783, at 7. *** '[A] modicum of activity designed to further the growth of timber for commercial purposes' must be discernible. Id. at 10." Id. at ¶13. Compare *Chagrin River Hardwood Co. v. Ashtabula Cty. Bd. Of Revision*, 11th Dist. No. 2016-A-0042, 2017-Ohio-4122 (finding that the property owner had done nothing to maintain the property during the relevant time period and, therefore, had not demonstrated commercial purpose of timberland).

Here, the unrebutted testimony from the property owners demonstrate that they have maintained the subject property, keeping it free of invasive species that would destroy the timber, for commercial purposes. Like the property owners in *Fife*, the property owners, here, worked with a forester. We acknowledge that unlike the property owners in *Fife*, these property owners did not enter into a forestry management plan, however, to participate in the CAUV program, they were not required to do so. Moreover, like the situation in *Fife*, in this matter, there were nearly two decades between timber harvests. The intervening years between timber harvests does not defeat the property owners' claim, here. Furthermore, Mrs. Sautter testified that the property owners had maintained the timbered subject property in the same manner throughout their ownership, from its prior iteration as a +/-75-acre parcel up to the date of this board's hearing, i.e., keeping it clear of invasive species. As such, we find that they have shown "a [discernible] modicum of activity

designed to further the growth of timber for commercial purposes." *Fife* (Nov. 2, 2007), BTA No. 2006-V-783, at 10.

We are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). The board finds that the property owners satisfied their evidentiary burden and demonstrated a modicum of activity sufficient to conclude that the subject property is entitled to participate in the CAUV program, as land devoted exclusively to the production of commercial timber. Therefore, this board concludes that the BOR erred when it removed the subject property from the CAUV program.

OHIO BOARD OF TAX APPEALS

REHAB TO RENT INC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-679
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - REHAB TO RENT INC
Represented by:
JOSEPH MATEJKOVIC
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3189 PRINCETON RD. #298
FAIRFIELD TOWNSHIP, OH 45011-5338

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
LAURA G. MARIANI
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MONTGOMERY COUNTY
301 WEST THIRD STREET
P.O. BOX 972
DAYTON, OH 45422

Entered Monday, April 6, 2020

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

The property owner appeals from a decision of the Montgomery County Board of Revision ("BOR"), retaining the auditor's value of the subject property for tax year 2018. No hearing was requested. We decide the case on the notice of appeal and the statutory transcript.

The auditor valued the subject property at $19,430 for tax year 2018, and appellant filed a decrease complaint with an opinion of value of $12,000 based on a June 2018 sale. The parcel card confirms the property sold for that amount and the relevant deed was recorded in July 2018. At the BOR hearing, appellant presented the first page of the relevant settlement statement, which indicates a sale price of $12,000 and a settlement date of June 19, 2018.

Appellant also presented a list of rehabilitation expenditures. The BOR retained the auditor's value, and appellant filed a notice of appeal with 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). To meet that burden, an 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. A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

The Ohio Supreme Court has explained that a taxpayer seeking to change the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts 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). A proponent may generally meet that initial burden with a complaint and purchase documents. See id. Corroborating testimony is unnecessary. Id. at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shifts to any opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

Here, appellant presented a facially qualifying sale through the complaint and purchase

documents. We also note the parcel card corroborates the sale. Therefore, the sale creates a rebuttable presumption of value. However, no party has presented this board with any evidence disputing the sale. Moreover, no party has presented this board with most persuasive evidence of value, e.g., an appraisal. Therefore, we find the sale is the best, most persuasive evidence of value and order the property valued as follows for tax year 2018:

PARCEL NUMBER R72 07005 0046

TRUE VALUE

$12,000

TAXABLE VALUE

$4,200

OHIO BOARD OF TAX APPEALS

REHAB TO RENT INC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-680
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - REHAB TO RENT INC
Represented by:
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For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
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P.O. BOX 972
DAYTON, OH 45422

Entered Monday, April 6, 2020

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

The property owner appeals from a decision of the Montgomery County Board of Revision ("BOR"), retaining the auditor's value of the subject property for tax year 2018. No hearing was requested. We decide the case on the notice of appeal and the statutory transcript.

The auditor valued the subject property at $35,330 for tax year 2018, and appellant filed a decrease complaint with an opinion of value of $10,000 based on a June 2018 sale. The parcel card confirms the property sold for that amount and the relevant recorded in June 2018. At the BOR hearing, appellant presented the first page of the relevant settlement statement, which indicates a sale price of $10,000 and a settlement date of June 18, 2018. Appellant also

presented a list of rehabilitation expenditures. The BOR retained the auditor's value, and appellant filed a notice of appeal with 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). To meet that burden, an 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. A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

The Ohio Supreme Court has explained that a taxpayer seeking to change the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts 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). A proponent may generally meet that initial burden with a complaint and purchase documents, and corroborating testimony is unnecessary. Id. at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shifts to any opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

Here, appellant presented a facially qualifying sale through the complaint and purchase documents. We also note the parcel card corroborates the sale. Therefore, the sale creates a

rebuttable presumption of value. However, no party has presented this board with any evidence disputing the sale. Moreover, no party has presented this board with most persuasive evidence of value, e.g., an appraisal. Therefore, we find the sale is the best, most persuasive evidence of value and order the property valued as follows for tax year 2018:

PARCEL NUMBER R72 06108 0058

TRUE VALUE

$10,000

TAXABLE VALUE

$3,500

OHIO BOARD OF TAX APPEALS

REHAB TO RENT INC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-684
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - REHAB TO RENT INC
Represented by:
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For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
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P.O. BOX 972
DAYTON, OH 45422

Entered Monday, April 6, 2020

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

The property owner appeals from a decision of the Montgomery County Board of Revision ("BOR"), retaining the auditor's value of the subject property for tax year 2018. No hearing was requested. We decide the case on the notice of appeal and the statutory transcript.

The auditor valued the subject property at $23,890 for tax year 2018, and appellant filed a decrease complaint with an opinion of value of $9,900 based on a June 2018 sale. The property record card confirms the property sold for that amount and the relevant deed was recorded in June 2018. At the BOR hearing, appellant presented the first page of the relevant settlement statement, which indicates a sale price of $9,900 and a settlement date of June 11,

2018. Appellant also presented a list of rehabilitation expenditures. The property record card also reflects an earlier sheriff sale, but we presume that sale was not arm's-length. The BOR retained the auditor's value, and appellant filed a notice of appeal with 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). To meet that burden, an 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. A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

The Ohio Supreme Court has explained that a taxpayer seeking to change the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts 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). A proponent may generally meet that initial burden with a complaint and purchase documents, and corroborating testimony is unnecessary. Id.at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shifts to any opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

Here, appellant presented a facially qualifying sale through the complaint and purchase documents. We also note the property record card corroborates the sale. Therefore, the sale creates a rebuttable presumption of value. However, no party has presented this board with any evidence disputing the sale. Moreover, no party has presented this board with most persuasive evidence of value, e.g., an appraisal. Therefore, we find the sale is the best, most persuasive evidence of value and order the property valued as follows for tax year 2018:

PARCEL NUMBER R72 07009 0044

TRUE VALUE

$9,900

TAXABLE VALUE

$3,470

OHIO BOARD OF TAX APPEALS

REHAB TO RENT INC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-681
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - REHAB TO RENT INC
Represented by:
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FAIRFIELD TOWNSHIP, OH 45011-5338

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

Entered Monday, April 6, 2020

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

The property owner appeals from a decision of the Montgomery County Board of Revision ("BOR"), retaining the auditor's value of the subject property for tax year 2018. No hearing was requested. We decide the case on the notice of appeal and the statutory transcript.

The auditor valued the subject property at $39,670 for tax year 2018, and appellant filed a decrease complaint with an opinion of value of $19,000 based on a June 2018 sale. The parcel card confirms the property sold for that amount and the relevant deed was recorded in June 2018. At the BOR hearing, appellant presented the first page of the relevant settlement statement, which indicates a sale price of $19,000 and a settlement date of June 15, 2018. Appellant also presented a list of rehabilitation expenditures. The BOR retained the auditor's value, and appellant filed a

notice of appeal with 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). To meet that burden, an 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. A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

The Ohio Supreme Court has explained that a taxpayer seeking to change the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts 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). A proponent may generally meet that initial burden with a complaint and purchase documents, and corroborating testimony is unnecessary. Id. at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once theproponent presents a facially valid sale, the burden shifts to any opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

Here, appellant presented a facially qualifying sale through the complaint and purchase documents. We also note the parcel card corroborates the sale. Therefore, the sale creates a rebuttable presumption of value. However, no party has presented this board with any evidence disputing the sale. Moreover, no party has presented this board with most persuasive evidence of

value, e.g., an appraisal. Therefore, we find the sale is the best, most persuasive evidence of value and order the property valued as follows for tax year 2018:

PARCEL NUMBER R72 04106 0063

TRUE VALUE

$19,000

TAXABLE VALUE

$6,650

OHIO BOARD OF TAX APPEALS

LIMBADA YUSUF, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-686
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

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

Entered Monday, April 6, 2020

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

[1] The property owner appeals from a decision of the Montgomery County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2018. No party requested a hearing with this board. Therefore, we decide the case on the notice of appeal and the statutory transcript.

[2] The auditor valued the subject property at $39,680 for tax year 2018, and the owner filed a complaint seeking a value of $27,000 per a June 2018 sale for that amount. At the BOR hearing, the property owner presented the first page of a settlement statement, market data, and an itemized list of expenses incurred in rehabilitating the property. The parcel card confirms the

property sold for $27,000 and the deed recorded in July 2018. The BOR retained the auditor's value, and the property owner appealed to this board.

[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). To meet that burden, an 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. We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court "has repeatedly instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶ 7).

[4] A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring less than 24 months before the tax-lien date is presumed recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A sale that postdates the tax-lien date also creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612.

[5] The Ohio Supreme Court has explained that the proponent of a sale can satisfy their initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. The proponent bears a "relatively light

burden and need not 'definitive[ly] show***that no evidence controverts 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). A proponent may generally meet their initial burden with a complaint and purchase documents. See id. Corroborating testimony is unnecessary. Id. at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden of rebuttal shifts to any party opposing the sale.

[6] Here, the property owner has presented evidence of a facially qualifying sale. See *Lunn*, supra. Accordingly, the burden shifts to any party disputing the sale to present rebuttal evidence. However, no party has presented this board with rebuttal evidence. Accordingly, we find the sale is the best, most persuasive evidence of value. We note the parcel card reflects an earlier transfer for $18,000. However, no party has advocated for that sale, and no party has presented sale documents to substantiate the sale. See generally *Beechler v. Fayette Cty. Bd. of Revision* (May 6, 2019), BTA No. 2018-732, unreported.

[7] We order the property valued as follows for tax year

2018: PARCEL NUMBER E20 17002 0052

TRUE VALUE

$27,000

TAXABLE VALUE

$9,450

OHIO BOARD OF TAX APPEALS

THOMSON JOEL COURTLAND TR, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-685 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THOMSON JOEL COURTLAND TR
Represented by:
JOSEPH MATEJKOVIC
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FAIRFIELD TOWNSHIP, OH 45011-5338

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

Entered Monday, April 6, 2020

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

The property owner appeals from a decision of the Montgomery County Board of Revision ("BOR"), retaining the auditor's value of the subject property for tax year 2018. No hearing was requested. We decide the case on the notice of appeal and the statutory transcript.

The auditor valued the subject property at $33,130 for tax year 2018, and appellant filed a decrease complaint with an opinion of value of $17,000 based on a June 2018 sale. The parcel card confirms the property sold for that amount and the relevant recorded in June 2018. At the BOR hearing, appellant presented the first page of the relevant settlement statement, which indicates a sale price of $17,000 and a settlement date of June 8, 2018. Appellant also presented

market data and a list of rehabilitation expenditures. The BOR retained the auditor's value, and appellant filed a notice of appeal with 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). To meet that burden, an 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. A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

The Ohio Supreme Court has explained that a taxpayer seeking to change the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts 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). A proponent may generally meet that initial burden with a complaint and purchase documents. See id. Corroborating testimony is unnecessary. Id. at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shifts to any opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

Here, appellant presented a facially qualifying sale through the complaint and purchase documents. We also note the parcel card corroborates the sale. Therefore, the sale creates a

rebuttable presumption of value. However, no party has presented this board with any evidence disputing the sale. Moreover, no party has presented this board with most persuasive evidence of value, e.g., an appraisal. Therefore, we find the sale is the best, most persuasive evidence of value and order the property valued as follows for tax year 2018:

PARCEL NUMBER H33301015 0028

TRUE VALUE

$17,000

TAXABLE VALUE

$5,950

OHIO BOARD OF TAX APPEALS

COOK WILLIAM HOOPER JR & ANA CHAU TRUST, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-683 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COOK WILLIAM HOOPER JR & ANA CHAU TRUST
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

Entered Monday, April 6, 2020

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

The property owners appeal from a decision of the Montgomery County Board of Revision ("BOR"), retaining the auditor's value of the subject property for tax year 2018. No hearing was requested. We decide the case on the notice of appeal and the statutory transcript.

The auditor valued the subject property at $28,310 for tax year 2018, and appellant filed a decrease complaint with an opinion of value of $11,900 based on a June 2018 sale. The parcel card confirms the property sold for that amount and the relevant conveyance fee statement was recorded in June 2018. At the BOR hearing, appellant presented the first page of the relevant settlement statement, which indicates a sale price of $11,900 and a settlement date of June 11,

2018. Appellant also presented a list of rehabilitation expenditures. The property record card also reflects an earlier transfer via quit claim deed, but no party has advocated for that sale. The BOR retained the auditor's value, and appellant filed a notice of appeal with 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). To meet that burden, an 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. A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

The Ohio Supreme Court has explained that a taxpayer seeking to change the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts 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). A proponent may generally meet that initial burden with a complaint and purchase documents, and corroborating testimony is unnecessary. Id. at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shifts to any opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

Here, appellants presented a facially qualifying sale through the complaint and purchase documents. We also note the parcel card corroborates the sale. Therefore, the sale creates a rebuttable presumption of value. However, no party has presented this board with any evidence disputing the sale. Moreover, no party has presented this board with most persuasive evidence of value, e.g., an appraisal. Therefore, we find the sale is the best, most persuasive evidence of value and order the property valued as follows for tax year 2018:

PARCEL NUMBER R72 15810 0030

TRUE VALUE

$11,900

TAXABLE VALUE

$4,170

OHIO BOARD OF TAX APPEALS

COOK WILLIAM HOOPER JR & ANA CHAU TRUST, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-687 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COOK WILLIAM HOOPER JR & ANA CHAU TRUST
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

Entered Monday, April 6, 2020

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

The property owner appeals from a decision of the Montgomery County Board of Revision ("BOR"), retaining the auditor's value of the subject property for tax year 2018. No hearing was requested. We decide the case on the notice of appeal and the statutory transcript.

The auditor valued the subject property at $29,040 for tax year 2018, and appellant filed a decrease complaint with an opinion of value of $6,000 based on a June 2018 sale. The parcel card confirms the property sold for that amount and the relevant recorded in June 2018. At the BOR hearing, appellant presented the first page of the relevant settlement statement, which indicates a sale price of $6,000 and a settlement date of June 6, 2018. Appellant also presented

market data and a list of rehabilitation expenditures. The BOR retained the auditor's value, and appellant filed a notice of appeal with 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). To meet that burden, an 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. A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

The Ohio Supreme Court has explained that a taxpayer seeking to change the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts 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). A proponent may generally meet that initial burden with a complaint and purchase documents, and corroborating testimony is unnecessary. Id. at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shifts to any opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

Here, appellant presented a facially qualifying sale through the complaint and purchase documents. We also note the parcel card corroborates the sale. Therefore, the sale creates a

rebuttable presumption of value. However, no party has presented this board with any evidence disputing the sale. Moreover, no party has presented this board with most persuasive evidence of value, e.g., an appraisal. Therefore, we find the sale is the best, most persuasive evidence of value and order the property valued as follows for tax year 2018:

PARCEL NUMBER E20 17003 0121

TRUE VALUE

$6,000

TAXABLE VALUE

$2,100

OHIO BOARD OF TAX APPEALS

FUNG ROYCE & VIVIAN YEUNG, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-678 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FUNG ROYCE & VIVIAN YEUNG
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

Entered Monday, April 6, 2020

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

[1] The property owners appeal from a decision of the Montgomery County Board of Revision ("BOR"), retaining the auditor's value of the subject property for tax year 2018. No hearing was requested. We decide the case on the notice of appeal and the statutory transcript.

[2] The auditor valued the subject property at $111,040 for tax year 2018, and appellants filed a decrease complaint with an opinion of value of $99,500 based on a June 2018 sale from the Secretary of Housing and Urban Development ("HUD"). The property was improved and sold again in November 21, 2018, to appellants for $148,900. Per the parcel card, the property was the subject of two earlier transfers (a quitclaim deed from a prior owner to a loan servicer,

and then from the servicer to HUD), though neither appears to be arm's length and no party advocated for them as evidence of value.

[3] At the BOR hearing, appellants presented the first page of the settlement statement for the June sale, which indicates a sale price of $99,500 and a settlement date of June 20, 2018. Appellant also presented a list of rehabilitation expenditures and the first page of the settlement statement evidencing the subsequent transfer. The BOR retained the auditor's value, and appellant filed a notice of appeal with this board.

[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). To meet that burden, an 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. A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

[5] The Ohio Supreme Court has explained that a taxpayer seeking to change the value of a property based on a sale can satisfy his or her initial burden through the presentation of undisputed evidence of a sale. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Appellants bear a "relatively light burden and need not 'definitive[ly] show***that no evidence controverts 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). A proponent may generally meet that initial burden with a complaint and purchase documents. See id. Corroborating testimony is unnecessary. Id. at ¶ 14. The Ohio Supreme Court has been clear, "[h]ow a party seeking a change in valuation attempts to meet its

burden of proof before a board of revision is a matter for that party's judgment." Id. at ¶ 16 (quoting *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500, 503 (1997)). Once the proponent presents a facially valid sale, the burden shifts to any opposing parties, who may rebut the presumption by showing that it was not an arm's-length transaction. Id.

[6] Here, the property sold in two relevant sales. The first sale, the sale advocated by appellants, was a HUD sale, which we presume is not arm's-length. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 127 Ohio St.3d 63, 2010-Ohio-4907. Appellants presented no evidence to rebut that presumption. See *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. No party with knowledge appeared at the BOR hearing to testify to the circumstances around the sale. Therefore, we find that sale is not indicative of value. Therefore, we move on to the November 2018 sale, which is facially qualifying per *Lunn*. So, the sale creates a rebuttable presumption of value. However, no party has presented this board with any evidence rebutting that sale. Moreover, no party has presented this board with most persuasive evidence of value, e.g., an appraisal. Therefore, we find the sale is the best, most persuasive evidence of value and order the property valued as follows for tax year 2018:

PARCEL NUMBER N64 01913 0010

TRUE VALUE

$148,900

TAXABLE VALUE

$52,120

OHIO BOARD OF TAX APPEALS

JEFF JONES, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1202
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
ALLEN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JEFF JONES
314 PLUM CIRCLE
LIMA, OH 45805

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

Entered Monday, April 6, 2020

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

Property owner Jeff Jones appeals from a decision of the Allen County Board of Revision ("BOR") retaining the auditor's value of the subject property for tax year 2018. This board held a merit hearing on October 23, 2019, but the county appellees did not appear. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

After this board's hearing, the BOR's counsel entered an appearance and filed a brief. Appellant objects to the brief as untimely. Because the brief only addresses the legal issues before us and because appellant could, and did, respond, we overrule the objection and consider the brief to the extent we find it persuasive.

The subject property is a single-family residence, which the auditor valued at $305,900. Appellant filed a valuation complaint requesting a value of $268,100 citing the auditor's value

assigned to nearby properties. Appellant's fundamental argument was that the auditor had increased values in the appellant's neighborhood by approximately 20%, while values in nearby areas had risen between 4% and 12%. The BOR retained the auditor's value, and the appellant filed a notice of appeal with this board. At this board's hearing, appellant appeared with his spouse, and the two testified about the area.

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). To meet that burden, an 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. Neither the auditor nor the BOR bears the "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." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

Here, appellant argues that the auditor appraised his property differently than the auditor appraised other comparable properties. We are unable to find appellant has carried his burden because appellant has not supplied this board with probative evidence of value. While an owner is competent to provide an opinion of value, this board need not accept that opinion of value when the opinion is unsupported by probative evidence. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994). The mere fact the auditor valued the subject property at one value and other properties at different values does not mean the auditor valued them differently. The Ohio Supreme Court has been clear, "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different

manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). We note, as did the BOR at its hearing, that there are numerous differences between the subject property and the supplied comparables. For example, the properties vary in lot size, gross living area, condition, and age.

Accordingly, we find appellant has not carried his burden and, per *Jakobovitch*, find the true and taxable value of the subject property as of January 1, 2018, were as follows: PARCEL NUMBER 36-0709-03-019.000

TRUE VALUE

$305,900

TAXABLE VALUE

$107,070

OHIO BOARD OF TAX APPEALS

LORRAINE INVESTMENT HOLDINGS LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2540 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LORRAINE INVESTMENT HOLDINGS LLC
Represented by:
Riaz Syed
1142 Lander road
Mayfield Heights, OH 44124

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

Entered Monday, April 6, 2020

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

The appellees move to dismiss this matter on the basis it was not filed in compliance with R.C. 5717.01, which allows for an appeal to be taken to this board from a decision of a county board of revision provided such appeal is filed with this board *and* the board of revision *within thirty days after notice of the decision* of the county board of revision *is mailed*. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68, the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati*

School Dist. Bd. of Edn. v. Bd. of Revision of Hamilton Cty. (2000), 87 Ohio St.3d 363, 369 ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner."). The appellant 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 BOR. Accordingly, the motion is granted and this matter is dismissed.

OHIO BOARD OF TAX APPEALS

CRAIG JENNINGS, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2417
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CRAIG JENNINGS
PO BOX 391981
ANZA, CA 92539

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

Entered Monday, April 6, 2020

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 552-07-013, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, statutory transcript, and written argument submitted by the property owner.

The property owner filed a complaint with the BOR, which requested that the subject property be revalued from $154,700, the value assessed by the fiscal officer, to $100,000. By way of the complaint, the property owner asserted that the subject property had been the subject of a recent, arm's-length transfer for $100,000, which was the best indication of its value. Although the BOR scheduled the matter for a hearing, no one appeared on behalf of the property owner; however, he submitted pictures of the subject property in lieu of attendance. The BOR conducted its own research and discovered documents, which memorialized the $100,000

transfer of the subject property from Mario and Antonia Carnevale to the property owner in October 2018. In a split decision, majority of the BOR found that the property owner failed to satisfy the evidentiary burden and voted to retain the subject property's initially assessed value of $154,700. The property owner subsequently appealed to this board. Neither the property owner nor the appellees requested an opportunity to submit additional evidence into the record at a hearing before this board. However, the property owner submitted written argument to assert that the subject sale was the best indication of the subject property's value.

Before we consider the merits of this appeal, we must first dispose of a preliminary issue. While this matter was pending, the property owner submitted documents for this board's consideration. As noted above, the property owner did not request a hearing on appeal and, as a result, we cannot consider these documents. See *Neon Rave, LLC v. Franklin Cty. Bd. of Revision* (Apr. 19, 2016), BTA No. 2015-1298, unreported at 2 ("As noted, the appellant did not request a hearing before this board. However, it attached written argument and several 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."). We will base our decision on the record developed before the BOR.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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 consideration with the property owner's $100,000 purchase of the subject property. The sale documents and property record card, which contains information about the subject sale, created a rebuttable presumption that the subject sale was a recent, arm's-length sale indicative of the subject property's value. See, *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. As the opponent of the subject sale, the appellees had the duty to come forward with competent, credible, and probative evidence to rebut such sale. They have submitted no argument or evidence to demonstrate that the subject sale was not recent to the tax lien date of January 1, 2018 or that the subject sale occurred between parties who were *not* acting in their own best interests. Absent an affirmative demonstration such sale is not a qualifying sale for tax valuation purposes, we find the existing record demonstrates that the subject sale constitutes the best indication of the subject property's value as of tax lien date.

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of January 1, 2018:

True Value: $100,000

Taxable Value: $35,000

OHIO BOARD OF TAX APPEALS

BARBERTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1074 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BARBERTON 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

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
ARIANA ZIMCOSKY
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
650 DAN STREET
AKRON, OH 44310

NL VENTURES X FOUNDATION, LLC
4130 NORTH CENTRAL EXPRESSWAY SUITE 800
DALLAS, TX 75204

Entered Monday, April 6, 2020

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

[1] The Barberton City Schools Board of Education ("BOE") appeals from a decision of the Summit County Board of Revision ("BOR"), retaining the fiscal officer's value of the subject property for tax year 2018. This board held a hearing on the matter but only the BOE appeared. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

[2] The subject property is commercial property. The fiscal officer valued the property at $6,523,930 for tax year 2018. The BOE filed a valuation complaint seeking a value of $10,000,000

in accordance with a September 2017 sale. At the BOR hearing, the BOE's counsel supplied the BOR with the relevant conveyance fee statement, which states the property sold for $10,000,000 and no portion of that price was attributable to non-realty. The parcel card confirms that NL Ventures X Foundation, L.L.C. purchased the subject property from Daniel L. Pohl Family Limited Partnership on September 27, 2017 for $10,000,000. The BOR retained the auditor's value because the conveyance fee statement indicated the property sold in fee simple subject to an existing lease, i.e., a leased fee sale. The BOE appealed and argues the property should be valued in accordance with the sale.

[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). The best evidence of value is a recent arm's-length transaction. The disputed sale occurred approximately 3 months prior to the 2018 tax-lien date. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring less than 24 months before the tax-lien date is generally recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. The Ohio Supreme Court has also said the proponent of a sale can carry their initial burden by presenting undisputed evidence of the sale, e.g., through a conveyance fee statement. See *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075; *341 Castlewood LLC v. Montgomery Cty. Bd. of Revision* (Oct. 18, 2019), BTA No. 2018-987, unreported.

[4] Here, the BOE presented the sale using the conveyance fee statement, which was signed by the purchaser or its representative. We note the basic details of the sale are also confirmed on the parcel card. Therefore, the BOE presented a facially valid sale, shifting the burden to any party opposing the adoption of the sale price. Id. However, no person appeared for the property owner at this board's hearing or at the BOR hearing. Moreover, no party presented evidence to dispute the recency or arm's-length nature of the sale. Therefore, we find no party

has rebutted the presumption created by the sale. We likewise find the BOR erred in rejecting the sale simply because the property sold as a leased fee. A leased fee sale still creates a presumption of value unless, and until, an opponent shows the lease's terms or the creditworthiness of the tenant pushed the sale above (or below) what the market would otherwise pay for a property. See generally *Menlo Realty Income Props. 28, LLC v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 19AP-316, 2019-Ohio-4872, appeal pending, Sup. Ct. No. 2019-1799. [5] For these reasons, we order the property valued as follows for tax year 2018:

PARCEL NUMBER 01-16875

TRUE VALUE

$10,000,000

TAXABLE VALUE$3,500,000

OHIO BOARD OF TAX APPEALS

SUB ZERO HAMILTON PROPERTIES, (et. al.),	)	Appellee(s).)
Appellant(s),	)	
vs.	)	CASE NO(S). 2019-1011
LAKE COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SUB ZERO HAMILTON PROPERTIES
Represented by:
DAVID BOBECZKO
PRESIDENT
8010 BUTLER HILL DR.
CONCORD TWP., OH 44077

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

MENTOR EXEMPTED VILLAGE SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
ROBERT A. BRINDZA
BRINDZA MCINTYRE & SEED LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Monday, April 6, 2020

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

[1] Sub Zero Hamilton Properties appeals from a decision of the Lake County Board of Revision ("BOR") valuing the subject property for tax year 2018. No party appeared at this board's hearing. We decide the case on the notice of appeal and the statutory transcript.

[2] The auditor valued the subject property at $280,630 for tax year 2018. The Mentor Exempted Village School District ("BOE") filed a valuation complaint requesting a value

f$387,000, citing a December 2018 sale. At the BOR hearing, the BOE presented the relevant conveyance fee statement and deed. The conveyance fee statement indicates no portion of the purchase price was attributable to non-realty. The property owner's president appeared and testified the sale price included personal property and goodwill business value. He supplied the purchase agreement to substantiate that argument. The president also testified the sale occurred on the open market, the parties negotiated the sale price, and the parties had no preexisting relationship. The BOR adopted the full sale price, and the property owner appealed.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*,90 Ohio St.3d 564, 566 (2001). An arm's-length sale that postdates tax-lien date creates a rebuttable presumption of value in favor of the sale price. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. Once that presumption is established, any party opposing the sale value must show the sale is not indicative of value, e.g., through an appraisal or by showing the character of the property changed substantially between the tax-lien date and the sale date. See id.

[4] Here, the BOE presented a facially qualifying sale with the deed and conveyance fee statement. Those documents are sufficient to create a presumption of value in favor of the sale price. See *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932. Therefore, the burden of rebuttal shifted to any party opposing the sale price. See *Terraza 8*, supra.

[5] The property owner argues that the purchase price included non-realty. As the Ohio Supreme Court has held the party opposing the full sale price "bears the burden of demonstrating that the value reported on [the] [] conveyance fee-statement does not reflect the property's true value." *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664, ¶ 20. The Supreme Court has likewise held 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 "[1] "of the appropriate allocation. *St. Bernard Self-Storage, LLC v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249, ¶ 17. If the owner fails to prove allocation with sufficient evidence, the "full sale price constitutes the property['s] value." *Cincinnati Sch. Dist. Bd. Of Edn. v. Hamilton Cty. Bd. of Revision*, 151 Ohio St.3d 109, 2017-Ohio-7650, ¶ 11. It is generally insufficient to show the sale price included *some* non-realty; a party must show the value of that non-realty to prevail. See, e.g., *American Acquisitions Corp. v. Hancock Cty. Bd. of Revision* (May 1, 2019), BTA No. 2018-524, unreported.

[6] Here, the purchase agreement shows the transfer included non-realty. Page one of the purchase agreement states the sale included certain contracts, licenses, and permits as well as personal property such as shop chairs, tables, and office furniture. However, the agreement does not allocate the sale price between the realty and non-realty. Moreover, the property owner has not presented independent evidence about the value of the non-realty. Nor can we deduce the value of the non-realty by subtracting the value determined through an appraisal from the sale price because no such appraisal has been produced.

[7] Accordingly, we find the sale is the best, most pervasive evidence of value. We likewise find the property owner has not rebutted the sale by showing the sale included non-realty and by showing the specific value of that non-realty. See *American Acquisitions*, supra; see also *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 128 Ohio St.3d 565, 2011-Ohio-2258 (the proponent of goodwill allocation must show goodwill is a distinct and severable asset).

[8] For these reasons, we order the property valued as follows for tax year

2018: PARCEL NUMBER 16B061D000570

TRUE VALUE

$387,000

TAXABLE VALUE

$135,450

OHIO BOARD OF TAX APPEALS

THAKER HOLDINGS, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2578 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THAKER HOLDINGS, LLC
Represented by:
NITIN THAKER
PRESIDENT
22408 VALLEY BROOK LANE
STRONGSVILLE, OH 44149

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

BEREA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
JOHN P. DESIMONE
FRANTZ WARD LLP
200 PUBLIC SQUARE, SUITE 3000
CLEVELAND, OH 44114

Entered Monday, April 6, 2020

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

Appellant appeals decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 343-21-177, 343-21-178, 343-21-179, 343-21-180, and 343-21-181, for tax year 2018. 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 five adjacent parcels of vacant commercial land. The fiscal officer initially assessed the subject's total true value at $161,800. Appellant filed complaints with the BOR seeking a reduction to $35,000, and the appellee board of education ("BOE") filed countercomplaints in support of maintaining the fiscal officer's value. The BOR convened hearings, at which only the BOE appeared, arguing that the fiscal officer's values should be retained because appellant did not present any evidence or testimony to establish a reduced value. The BOR issued decisions maintaining the initially assessed valuations, which led to the present appeal. At the hearing convened before this board, the BOE again made the same argument after a last minute continuance request from appellant was denied for failure to state good cause and appellant waived its appearance, failing to submit any additional evidence or argument in support of the requested reduction.

When a property owner seeks to challenge the values initially determined by an auditor or fiscal officer, that owner must present sufficient evidence to establish that an alternative proposed value is the true value of the property and cannot merely challenge the accuracy of auditor's value. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 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.

In the present appeal, appellant presented no evidence by which to meet its burden. We acknowledge that it challenged the increase in value from over the prior five years despite a lack of changes or improvements to the parcel. This assertion alone, however, does not establish an alternative value is correct, as the prior year's valuation for one tax year is not competent and probative evidence for another tax year. See *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997) ("The essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time. *** The real estate market may rise, fall, or stay constant

between any two dates, and the assumption that a change in valuation between two given dates is constant and uniform, without proof, may properly be rejected by the finder of fact.").

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, 2018, were as follows:

PARCEL NUMBER 343-21-177

TRUE VALUE

$22,800

TAXABLE VALUE

$7,980

PARCEL NUMBER 343-21-178

TRUE VALUE

$36,000

TAXABLE VALUE

$12,600

PARCEL NUMBER 343-21-179

TRUE VALUE

$36,000

TAXABLE VALUE

$12,600

PARCEL NUMBER 343-21-180

TRUE VALUE

$36,000

TAXABLE VALUE

$12,600

PARCEL NUMBER 343-21-181

TRUE VALUE

$31,000

TAXABLE VALUE

$10,850

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1417 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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

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

727 E. JENKINS AVE., LLC (UPGRADE EQUITY, LLC, ET. AL. LISTED OWNER
Represented by:
ROBERT C.
WOOD
ATTORNEY
68 NORTH HIGH
STREET SUITE 202
NEW ALBANY, OH 43054

Entered Tuesday, April 14, 2020

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

[1] This matter is now considered upon the board of education's ("BOE") motion to remand with instructions to dismiss the complaint. Requests were made by 727 E. Jenkins Ave., LLC ("727 E. Jenkins") to extend response time to January 29, 2020, however, no such response was filed. Accordingly, this matter is now decided upon the motion, the transcript certified by the

board of revision ("BOR"), and the notice of appeal.

[2] The record reveals that the underlying tax year 2018 complaint filed by 727 E. Jenkins did not identify a "complainant if not owner," thereby signifying the complainant as the owner. The subject property of the complaint includes parcel numbers: 010-035633-00, 010-035635-00, 010-035636-00, 010-050688-00, 010-113409-00, 010-232936-00, 010-235706-00, 010-236033-00, 010-238865-00, 010-240949-00, 010-240950-00, 010-289598-00, and 010-292267-00. S.T. at Ex. A. During the BOR hearing the BOE moved to dismiss the complaint because 727 E. Jenkins lacked standing since it did not own the subject property or any other property in the county on the date it was filed, having sold the subject property in 2018. Ultimately, the BOR issued a decision making no change in the value of 12 parcels and decreasing the value of parcel number 010-113409. Subsequently the present appeal ensued.

[3] R. C. 5715.13 outlines who has standing to file a decrease complaint and provides that "[t]he county board of revision shall not decrease any valuation unless a party affected thereby or who is authorized to file a complaint under section 5715.19 of the Revised Code makes and files with the board a written application therefore, verified by oath, showing the facts upon which it is claimed such decrease should be made." R.C. 5715.19(A)(1) sets forth that a complainant must own taxable real property in the county at the time the complaint is filed. See, also, *Public Square Tower One v. Cuyahoga Cty. Bd. of Revision*, 34 Ohio App.3d 49 (1986). See, also, *City of Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (Jan. 22, 1999) BTA No. 1998-L-138, unreported.

[4] In the present appeal, there is no dispute that 727 E. Jenkins sold the subject property prior to the March 28, 2019, filing of the underlying complaint. To the extent the BOR considered that improper identification of the owner on the complaint was not a jurisdictional

issue in this matter, see, i.e., *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627; the requirement remains that a complainant must prove it has standing to file such complaint. "When a person files a complaint against the valuation of the property of another, the burden is on that person to prove that he or she has standing." *Soc. Natl. Bank v. Wood Cty. Bd. of Revision*, 81 Ohio St.3d 401 (1998). At the time the underlying complaint was filed, 727 E. Jenkins was not the owner of the subject property, nor has it shown itself to be a party affected. As such, 727 E. Jenkins was not authorized to file a valuation complaint.

[5] Based upon the foregoing, we must conclude that 727 E. Jenkins failed to demonstrate that it had standing to file the complaint in this matter, and that the BOR lacked jurisdiction to consider the value of the subject property. As such, the BOE's motion is hereby granted. Accordingly, this matter is remanded to the BOR with instructions to dismiss the underlying complaint, the practical effect being reinstatement of the auditor's initial value.

OHIO BOARD OF TAX APPEALS

CHRISTOPHER AND CASSANDRA WILLIAMS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))	CASE NO(S). 2020-349 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CHRISTOPHER AND CASSANDRA WILLIAMS
OWNER
15800 GLYNN RD
CLEVELAND, OH 44112

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, April 20, 2020

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 nor 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 in this matter indicates that a notice of the appeal was filed with this board thirty-four days after the mailing of the BOR's decision, and with the BOR thirty-five days after such mailing. 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

J&K AMERICAN ENTERPRISES, INC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1162 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - J&K AMERICAN ENTERPRISES, INC
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

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 Monday, April 20, 2020

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

J&K American Enterprises, Inc., appeals from a decision of the Cuyahoga County Board of Revision valuing parcel 115-26-076 at $34,200 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

The fiscal officer valued the property at $41,200 for tax year 2018. Appellant filed a complaint seeking a value of $10,000. At the BOR hearing, appellant presented the testimony of the owner who testified that the property has some negative characteristics and is generally in need of repair. Appellant also supplied documentary evidence to support its contention that the property suffers from defects, e.g., a building inspection report. The BOR modified the fiscal

officer's value. Its decision reads as follows:

> A member of the complainant appeared and supplied sales from the neighborhood, testimony regarding needed repairs and deferred maintenance. The complainant also provided income and expense data, The Board considered the testimony and evidence provided and find that a downward adjustment is supported.

Appellant appealed to this board. At this board's hearing, appellant's owner presented testimony and documentary evidence. The BOR objected to the evidence on the basis that it was not presented to the BOR and was not timely disclosed. Appellant did not present good cause as required by R.C. 5715.19(G). Accordingly, we find the BOR's motion well taken and will confine our review to the statutory transcript.

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). To meet that burden, an 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. We independently determine value, and we will not rely on a BOR's value if it is unsupported by the evidence. 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"). If a BOR's reduction is unsupported by actual evidence, we reinstate the fiscal officer's value. See id. Upon review, we find appellant has not carried its burden. Appellant argues the property suffered from some defects and various negative characteristics. The Supreme Court has been clear that, while negative characteristics can impact value, the party must present "adequate evidence of the specific impact that [] negative factors have on the" property. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (interpreting *Throckmorton v.*

Hamilton Cty. Bd. of Revision, 75 Ohio St.3d 227 (1996)). A party must do more than submit a "list of defects." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7. A party must go further to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides*). Here, the impact those characteristics could have on value is not self-evident. Accordingly, we cannot rely on evidence of the subject's negative characteristics to reduce the subject's value.

We are also required to independently review the BOR's value. However, we find nothing in the record that would support that specific value. The parcel card does not indicate the BOR made a condition classification change. There are no appraisals in the transcript that would support such a value. Because here, like in *Sapina*, we cannot replicate the BOR's value, we reinstate the fiscal officer's value as follows:

TRUE VALUE

$41,200

TAXABLE VALUE

$14,420

OHIO BOARD OF TAX APPEALS

REVERE LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1058 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - REVERE LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
JAMES M. PATRICK
200 PUBLIC SQUARE, SUITE 4000
CLEVELAND, OH 44114

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

RUMD, LLC
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AKRON, OH 44333

Entered Monday, April 20, 2020

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 04-07551, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is improved with a 1,576-square-foot, single-story building that operates as a veterinary clinic. The fiscal officer initially assessed the subject's total true value at $147,100. The BOE filed a complaint with the BOR seeking an increase in value to $350,000

based on a March 2017 sale for that amount. The appellee property owner, RUMD, LLC, filed a countercomplaint that acknowledged the sale but claimed that the value of the property was $200,000.

The BOR convened a hearing, at which the BOE presented a deed and conveyance fee statement as evidence of RUMD's purchase of the subject property from Christopher G. Adam on March 7, 2012 for $350,000. Richard Slenn, owner of RUMD and operator of the veterinary clinic, confirmed that he purchased the property for $350,000, but claimed that the recorded purchase price did not reflect the true value of the subject property because he overpaid. Slenn explained that he had been operating his practice out of the property since 2001 and had attempted to purchase the property from his landlord multiple times during his tenancy, as early as 2004. Over the course of the next several years, Slenn attempted to negotiate a sale, and they ultimately agreed to the $350,000 purchase price. This agreement, however, took place after Slenn had expended substantial resources improving the property, including a 424-square-foot addition in 2015.

As evidence that the sale price did not reflect the true value of the subject property, RUMD offered testimony and a written report from appraiser John W. Emig, MAI, who opined that the total true value for the subject was $220,000. Emig explained that he relied solely on the sales comparison approach, commenting that similar properties typically sell for owner occupancy. Emig did not utilize the sale of the subject property in his analysis, asserting that determined that RUMD's purchase price was not indicative of the subject's value based on the market. Emig included in his analysis comparable sale 6, which was the sale of property operated as a veterinary clinic to the tenant from the estate of the landlord. RUMD amended its requested value to $220,000, consistent with Emig's appraisal. The BOE cross-examined Emig and argued that the sale provides the best evidence of value as of the tax lien date.

The BOR issued a decision increasing the initially assessed valuation to $220,000 based on Emig's appraisal, though it provided no explanation as to why it disregarded the sale. From this decision, the BOE filed the present appeal. The BOE again appeared at a hearing before this board to argue in favor of the sale price as best evidence of value. The BOE further criticized Emig's appraisal for not adequately considering the sale of the subject property in his analysis. Neither RUMD nor the county appellees appeared to present additional evidence or argument in support of their positions.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). 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. 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 March 2017 sale was a recent, but RUMD claims that its relationship to the seller caused resulted in an above-market purchase price. This relationship alone, however, does not disqualify the sale, even when the tenant approached the landlord and the property was not listed on the open market. See, e.g., *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092,

¶¶32-34. The court held also that "[t]he case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers." Id. at ¶29. In this case, the evidence shows that the parties negotiated the transaction over the course of several years based on their subjective goals to reach a sale price acceptable to both. Therefore, we find that the sale in this case "qualifies" as the best evidence of the subject property's value, subject to rebuttal by RUMD.

In this case, RUMD relies on Emig's appraisal analysis to rebut the utility of its purchase price. Emig relied solely on the sales comparison approach but chose not to utilize the recent sale of the subject property in his analysis. Instead, he relied on the sales of eleven other properties, all of which required adjustments for physical differences in location, site size/utility, building size, building quality/age/condition/utility, and the presence of a basement or outbuilding. The gross adjustments ranged from 25% to 60%, with an average of 46%. The sale of the subject property, however, would require no such adjustments. Additionally, it appears that Emig would have made no adjustment for a change in market conditions during the time between the March 2017 sale and January 1, 2018 tax lien date, while the comparable sales required a market adjustment upwards of 15%. Furthermore, we find that Emig did not provide an adequate justification for his outright rejection of the sale of the subject property from his appraisal. Accordingly, we cannot find that Emig's analysis provides a better or more reliable indication of value than the sale.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$350,000

TAXABLE VALUE

$122,500

OHIO BOARD OF TAX APPEALS

AUDREY ANN ADLER, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2756
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AUDREY ANN ADLER
OWNER
22950 HADDEN RD
EUCLID , OH 44117

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, April 20, 2020

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

Audrey Ann Adler appeals from a decision of the Cuyahoga County Board of Revision ("BOR") valuing the subject property for tax year 2018. We decide the case on the notice of appeal and the statutory transcript.

The fiscal officer valued the property, a residence, at $80,100 for tax year 2018. Adler filed a complaint requesting a value of $80,100, which is the same value set by the fiscal officer. The complaint states that "the house has been damaged beyond reasonable repair – documentation included." At the BOR hearing, Adler amended her opinion of value to $52,200. Adler also supplied a website print-out, a structural inspection report, and assorted documents. The BOR adopted a value of $65,000. The decision narrative states as follows:

> The complainant appeared testified that an adjacent property owner removed a retaining [wall] causing severe damage to their structure. The complainant provided photos of foundation issues and damage to the exterior of the dwelling. The board reviewed the complainant's submission and find that downward adjustment is warranted.

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). To meet that burden, an 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.

Here, Adler relies on her own opinion of value. An owner is competent to provide an opinion of value, but this board need not adopt that value unless it is supported by probative evidence of value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994).

Adler's opinion of value is based on negative characteristics associated with the foundation. However, the Supreme Court has been clear that, while negative characteristics can impact value, a party must present "adequate evidence of the specific impact that [] negative factors have on" property. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). Therefore, we find she has not carried her burden.

We must also independently review the BOR's reduction below the fiscal officer's value. See *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶

35. We find the reduced value reflected in the BOR's written decision is supported by a change in condition adjustment. See generally *Dawson v. Cuyahoga Cty. Bd. of Revision* (Jan. 7, 2020), BTA No. 2019-651, unreported.

For these reasons, we order the property valued as follows for tax years 2018:

PARCEL NUMBER 650-15-037

TRUE VALUE

$65,000

TAXABLE VALUE

$22,750

OHIO BOARD OF TAX APPEALS

ELISSAR I, LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1171
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ELISSAR I, LLC
Represented by:
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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 Monday, April 20, 2020

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

[1] Elissar I LLC ("Elissar") appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's value of parcel 012-14-080 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, this board's hearing record, and any written argument.

[2] The fiscal officer valued the property at $48,200 for tax year 2018. Elissar filed a complaint requesting a value of $34,000. At the BOR hearing, Elissar appeared through counsel who offered documentary evidence related to a 2014 sale of the subject property as well as income and expense data. The BOR retained the auditor's value holding as follows:

> The complainant appeared through counsel and supplied documentary evidence of a sale that occurred in November of 2014. The complainant also supplied income and expense data. The board finds the sale in 2014 remote and not indicative of value for 1/1/2018. The board considered the income and expense data and finds it unreliable support for the requested value; the Board maintains the Fiscal Officer's value.

Elissar appealed to this board, requesting a value of $10,000.

[3] At this board's hearing, no witnesses appeared on behalf of Elissar. Counsel for Elissar made statements on the record; however, we will not consider those since statements of counsel are not evidence and there is no credible evidence that counsel had personal knowledge of the facts to which he testified. See *Garland Real Estate, LLC v. Tuscarawas Cty. Bd. of Revision* (Jan. 28, 2020), BTA No. 2018-1241, unreported.

[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). To meet that burden, an 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. A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring more than 24 months before the tax-lien date is generally not recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. However, a party may provide evidence showing the sale remains indicative of value despite the passage of time.

[5] Upon review, we find Elissar has not carried its burden. The sale occurred approximately four years before the relevant tax-lien date. Elissar has not presented evidence that the sale remains indicative of value despite the passage of time. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported. We likewise do not find the income and expense data to be probative evidence of value. While such data might be helpful for an appraiser using the income capitalization approach, the raw data alone is not probative evidence of value. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 97-A-175, unreported. We also note most of the documents related to the sale are either blank, marked "preliminary," or are unsigned. Because Elissar has presented no other evidence, and because statements of counsel are not evidence, we find Elissar has not carried its burden. *Garland*, supra.

[6] Therefore, we order the property valued as follows for tax year

2018: TRUE VALUE

$48,200

TAXABLE VALUE

$16,870

OHIO BOARD OF TAX APPEALS

ELISSAR I, LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1172
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ELISSAR I, LLC
Represented by:
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
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CLEVELAND, OH 44113

Entered Monday, April 20, 2020

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

Elissar I LLC ("Elissar") appeals from a decision of the Cuyahoga County Board of Revision ("BOR") valuing parcel 009-21-089 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, this board's hearing record, and any written argument.

The fiscal officer valued the property at $69,700 for tax year 2018. Elissar filed a complaint requesting a value of $50,000. At the BOR hearing, Elissar supplied an agency disclosure statement and a purchase agreement showing the property transferred in January

2018 for $50,000. Elissar also presented a settlement statement showing a sale price of $50,000 and a settlement date of January 5, 2018. The BOR adopted the sale price, and Elissar appealed to this board, requesting a value of $10,000.

At this board's hearing, no witnesses appeared on behalf of Elissar. Counsel for Elissar made statements on the record; however, we will not consider those since statements of counsel are not evidence and there is no credible evidence that counsel had personal knowledge of the facts to which he testified. See *Garland Real Estate, LLC v. Tuscarawas Cty. Bd. of Revision* (Jan. 28, 2020), BTA No. 2018-1241, unreported.

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). To meet that burden, an 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. A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that postdates tax-lien date creates a rebuttable presumption of value in favor of the sale price. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19.

Here, Elissar relied below on a facially qualifying sale presented with the settlement statement and the purchase agreement. The BOR adopted that value. On appeal, Elissar seeks a value of $10,000. However, it has failed to present this board with any competent or probative evidence of value. Again, statements of counsel are not evidence. See *Garland*, supra.

Therefore, we find Elissar has not carried its burden. We order the property valued as follows for tax year 2018:

TRUE VALUE

$50,000

TAXABLE VALUE

$17,500

OHIO BOARD OF TAX APPEALS

MARYSVILLE EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-1100
vs.	)	(REAL PROPERTY TAX)
UNION COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARYSVILLE EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION
Represented by:
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RUTH A. THOMAS
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Entered Monday, April 20, 2020

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

The Board of Education of the Marysville Exempted Village School District ("BOE") appeals from a decision of the Union County Board of Revision ("BOR") retaining the auditor's value of parcel 29-0030044.0000 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and any written argument.

The subject property is an unimproved lot. The auditor valued the property at $302,810

for tax year 2018, and the BOE filed a complaint requesting a value of $500,000 per a November 2018 sale. The property owner, Ruth Thomas, filed a counter-complaint seeking the auditor's value be retained.

At the BOR hearing, the BOE presented the relevant conveyance fee statement, which states the sale price was $500,000 and no portion of the sale price was attributable to non-realty. The BOE also presented a trustee's deed transferring the property from Timothy Todd Watson as trustee of the Roger L. Watson Trust to Thomas. Thomas argued the sale was too remote and that the sale was not arm's-length, meaning it was not indicative of value. Thomas called her son Troy Thomas. He testified he was a friend of the seller and the seller was looking to transfer the property quickly. Specifically, Troy testified the seller "wanted out." However, Troy also testified the price was arrived out based on a fair market price set by the seller. The BOR retained the auditor's value, and the BOE appealed 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). To meet that burden, an 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. A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that postdates tax-lien date creates a rebuttable presumption of value in favor of the sale price. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19.

Here, the BOE presented a facially qualifying sale with the deed and conveyance fee statement. Thomas argues the sale is not probative because it was too remote and because of the

conditions of the sale. However, we find no evidence to support disregarding the sale on those bases. Under the Ohio Supreme Court's decision in *Lone Star*, a sale that postdates tax-lien date creates a rebuttable presumption of value. It is the duty of any party opposing the sale to show it was not recent, e.g., through appraisal evidence showing the market changed or the character of the subject property changed. No appraisal evidence was submitted. Moreover, the subject property was unimproved on tax-lien date and unimproved when purchased, meaning there does not appear to have been a significant change in character. See *Wright v. Clermont Cty. Bd. of Revision* (Jan. 28, 2020), BTA No. 2019-902, unreported.

We likewise do not find the conditions of the sale mean the sale should be disregarded. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it *generally* takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25, 546, N.E.2d 932 (1989)(emphasis added). The Ohio Supreme Court has held a sale should not be categorically disregarded simply because it was not marketed openly to multiple potential buyers. *N. Royalton City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092. Additionally, a sale between personal friends can still be arm's-length. *Blackford v. Montgomery Cty. Bd. of Revision* (May 15, 2012), BTA No. 2010-Y-909, unreported.

Here, we find the sale has the markings of an arm's-length sale. A willing seller transferred the property to a willing seller. The price was based on a market price set by the seller. We do not find the fact the seller had a subjective motivation to sell the land changes the outcome. Every party to a sale has some subjective motivations for a particular transaction; however, such motivations do not demonstrate that a sale was not a voluntary, arm's-length transaction. *Akron City Schools Bd. of Edn. v. Summit Cty. Bd. of Revision* (Dec. 31, 2018), BTA No. 2017-1936, unreported.

For these reasons we find the sale is the best, most persuasive evidence of value. We likewise find the presumption created by the sale has not been rebutted. Therefore, we order the property valued as follows for tax year 2018:

TRUE VALUE	TAXABLE VALUE
$500,000	$175,000

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1563, 2018-1564, 2018-1565, 2018-1566 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
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THIRD STREET CONDOS, LLC
Represented by:
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Entered Monday, April 20, 2020

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

[1] The appellant board of education ("BOE") appeals decisions of the board of revision ("BOR"), which determined the value of the subject properties, parcels 010-286183-00, 010-286182-00, 010-286184-00, and 010-286185-00, for tax year 2017. We proceed to consider these matters based upon the notices of appeal, certified statutory transcripts, and written argument submitted by the parties.

[2] The subject properties, separately parceled condominium units (two units are located in one building for a total of two buildings) under common ownership, were initially assessed values consistent with the following: $326,700 for parcel 010-286183-00, $336,800 for parcel 010-286182-00, $327,900 for parcel 010-286184-00, and $333,100 for parcel 010-286185-00. The property owner filed separate complaints with the BOR, which requested that each parcel's value be reduced to $167,000. The BOE filed separate countercomplaints, which objected to the requests.

[3] At BOR hearing on the matters, 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 appraisal report and testimony of appraiser Robert J. Weiler, which opined the value of the subject properties to be $815,000 or $203,750 per parcel. Weiler was examined, and cross-examined, about the underlying data and methodologies used to derive his opinions of value. Based upon the evidence presented, the property owner amended its opinions of value to be consistent with Weiler's appraisal report and requested that the BOR revalue the subject properties accordingly. The BOR voted to accept Weiler's appraisal report as the best indication of value; however, it issued decisions that valued each of the subject properties at $203,800. These appeals ensued.

[4] While these matters were pending, the BOE filed an unopposed motion to consolidate these matters, which this board granted. In lieu of attending a hearing before this board, the BOE and property owner submitted written argument to fully articulate their respective positions. In its submission, the BOE argued that Weiler's appraisal report was premised upon legal error because it valued the subject properties as one-economic unit, which effectuated a "bulk discount," and failed to value the subject properties as separately parceled condominium units that could be sold. In its submission, the property owner argued that the BOE had failed to come

forward with any evidence to demonstrate the impropriety of the BOR's decisions.

[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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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] We begin our analysis with Weiler's appraisal report. He began his analysis with a highest a best use analysis and concluded the subject property's highest and best use, as vacant and as improved, would be as a multi-family residential use. He determined that the cost approach to value was inapplicable given the difficulty in determining the various types of depreciation; he proceeded to develop the income and sales-comparison approaches to valuing real property. Under the income approach to value, Weiler determined that the subject properties' rent, varying from $2,400 per month to $2,600 per month, "are considered to be at or near market and will be utilized as such in this analysis. It is your appraisers' opinion the subject rental rates are near the market rent levels." Statutory Transcript ("S.T.") at Weiler Appraisal Report at 46. In doing so, he determined net operating income to be $85,750, to reflect effective gross income of $109,750 less $24,000 for operating expenses and reserves for replacement, which he capitalized at 10.39% (including a tax additur), to conclude to an indicated value of $825,000 or $206,250 per parcel. Under the sales-comparison approach to value, Weiler compared the subject properties' features

to four comparable properties, i.e., two-story, two-unit apartment buildings. After adjusting the comparable properties for differences with the subject properties, he concluded to an indicated range in value of $760,000 to $800,000, or $190,000 to $200,000 per parcel. It appears that he placed the most weight on the income approach to value, $825,000, before he deducted $10,000 to account for furniture, fixtures, and equipment within the subject properties, and finally concluded the value of the subject properties to be $815,000, or $203,750 per parcel, as of January 1, 2017.

[7] As we review this matter, we find the Supreme Court's decision in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 700, 2016-Ohio-8375 ("*Metro Partners"*), directly on point for these matters. There, the court affirmed this board's decision that rejected an appraisal report, which valued separately parceled condominium units as an apartment complex. The court noted:

> [T]he assemblage of numbered parcels *** is prohibited in a case like the present.
>
> For guidance in this appeal, we look to *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 212, 2014-Ohio-1940, ***, ¶ 16-18. In that case, we held that valuing all the condominium units as a single economic unit because of their common ownership by the developer violated R.C. 5311.11, which states:
>
> Each unit of a condominium property and the undivided interest in the common elements appurtenant to it is deemed a separate parcel for all purposes of taxation and assessment of real property, and no other unit or other part of the condominium property shall be charged with the payment of these taxes and assessments.
>
> The approach taken by [the property owner's] appraisal treats the condominium parcels as an economic unit for tax-valuation purposes, thus creating an assemblage of recorded parcels, and that is precisely what the statute in plain terms precludes. *** [T]he law mandates separate treatment of condominium parcels, regardless of the appraiser's findings of a market change.

Metro Partners at ¶¶ 12-14.

[8] Here, Weiler's appraisal report suffers from the same defects as the appraisal report in

Metro Partners, i.e., he treated the four "condominium parcels as an economic unit for tax-valuation purposes, thus creating an assemblage" of the subject properties. Id. at ¶14. A review of Weiler's income and sales-comparison approaches demonstrate that he relied upon market information from the apartment market and the record is void of any information about the condominium market. Under cross-examination from the BOE, at the BOR hearing, Weiler conceded this very important fact. For example, a review of the income approach highlights information from "apartment managers," "comparable apartment complexes," and "overall [capitalization] rates for apartment buildings," and a review of the sales-comparison approach clearly highlights use of apartment buildings, as just a few examples of Weiler's reliance upon information from the apartment market. As a result, we conclude that Weiler's appraisal report is not competent, credible, and probative evidence of the subject properties' values as of the tax lien date.

[9] We now turn to the BOR's decisions to reduce the subject properties' values to be (somewhat) consistent with Weiler's appraisal report. Again, we look to *Metro Partners* to assist our review of the propriety of the BOR's decisions. There, the court explained that the ruled derived from *Bedford Rd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237, which provides that under certain circumstances:

> [A] board of revision's adoption of a new value based on the owner's evidence has the effect of shifting the burden of going forward with evidence to a board of education on appeal to the BTA. *Worthington City Schools* [*Bd. Of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 248, 2014-Ohio-3620,] at ¶ 41.
>
> The rule does not require adoption of the BOR's valuation here because there is legal error in the BOR's determination. *See also Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, *** ¶ 31. The economic-unit analysis of the property constitutes a legal error in the Miller appraisal and thereby takes this case out of the *Bedford* doctrine.

Metro Partners at ¶¶ 16-17. (Parallel citation omitted.) Similarly, we find that the BOR committed legal error when it accepted Weiler's appraisal report as the best indication of the subject

properties' values. Because the record is void of any competent, credible, and probative evidence of value, we are constrained to reinstate the subject properties' initially assessed values. *See Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 127 Ohio St.3d 63, 2010-Ohio-4907, ¶ 35 (reinstating county auditor's original valuation when "the record did not contain sufficient evidence for the BTA to perform an independent valuation of the property").

[10] It is, therefore, the order of this board that the subject properties shall be assessed as follows as of January 1, 2017:

Parcel Number: 010-286183-00

True Value: $326,700

Taxable Value: $114,350

Parcel Number: 010-286182-00

True Value: $336,800

Taxable Value: $117,880

Parcel Number: 010-286184-00

True Value: $327,900

Taxable Value: $114,770

Parcel Number: 010-286185-00

True Value: $333,100

Taxable Value: $116,590

OHIO BOARD OF TAX APPEALS

KMA CAPITAL, LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1301
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - KMA CAPITAL, 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:
TIMOTHY J. WALSH
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
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AKRON, OH 44308

AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
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CLEVELAND, OH 44114

Entered Monday, April 20, 2020

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

[1] KMA Capital, LLC ("KMA") appeals from a decision of the Summit County Board of Revision ("BOR") retaining the fiscal officer's value of parcel 67-46671 for tax year 2018. The parties waived their appearances at this board's hearing. We decide the case on the notice of appeal and the statutory transcript.

[2] The fiscal officer valued the subject property at $68,780 for tax year 2018. KMA filed a complaint requesting a value of $17,026 based on a sheriff's sale. The board of education filed a

countercomplaint asking the fiscal officer's value be retained. KMA did not appear at the BOR hearing. However, it appears it submitted the relevant sheriff's deed as well as unadjusted market data. The BOR retained the fiscal officer's value, and KMA appealed.

[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). Neither the auditor nor the BOR bears the "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." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23).

[4] After review, we find KMA has not carried its burden. A sheriff's sale is a forced sale, which we presume was not arm's-length. See *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. KMA has supplied no testimony or tangible evidence to show the sale was arm's-length. We likewise find KMA has not carried its burden with the unadjusted market data. Raw sales data is generally insufficient to warrant an adjustment since there are too many variables between the subject property and the comparables. See *1721 Radio LLC v. Montgomery Cty. Bd. of Revision* (Mar. 28, 2019), BTA No. 2018-586, unreported.

[5] For these reasons, we order the property valued as follows for tax year 2018:

TRUE VALUE

$68,780

TAXABLE VALUE
$24,070

OHIO BOARD OF TAX APPEALS

ELISSAR II, LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1170
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ELISSAR II, LLC
Represented by:
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ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

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

Entered Monday, April 27, 2020

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

[1] Elissar II, LLC, appeals from a decision the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's value of parcel 013-26-047 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record. On November 25, 2019, this board granted a request for sanctions barring appellant from presenting new evidence at this board's hearing.

[2] The fiscal officer valued the property at $57,500 for tax year 2018. Appellant filed a complaint seeking a value of $31,500. At the BOR hearing, appellant supplied documentation related to a December 2012 sale as well as income and expense data. The BOR retained the fiscal officer's value, and appellant filed a notice of appeal with this board.

[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). To meet that burden, an 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.

[4] Upon review, we find appellant has not carried its burden. The sale it presented to the BOR occurred approximately five years before the 2018 tax lien date. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶31.

[5] However, a presumption of recency does not apply where "a sale occurred more than 24 months before the lien date and***is reflected on the property card maintained by the county auditor***when a different value has been determined for that lien date as part of the six-year reappraisal." *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, ¶26. The sale in this case happened well before the tax-lien date. More importantly, appellant has presented no evidence to show the sale is indicative of value "despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No 2016-405, unreported.

[6] Additionally, while income and expense data would be probative to an income approach appraisal, additional information would be necessary, and a formal appraisal developed to make the data meaningful to the question of value. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 97-A-175, unreported. Accordingly, we find appellant has not carried its burden.

[7] We order the property valued as follows for tax year

2018: TRUE VALUE

$57,500

TAXABLE VALUE

$20,130

OHIO BOARD OF TAX APPEALS

ELISSAR II, LLC, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-1169
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ELISSAR II, LLC
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

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

Entered Monday, April 27, 2020

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

Elissar II, LLC, appeals from a decision the Cuyahoga County Board of Revision ("BOR") valuing parcel 343-31-078 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

The fiscal officer valued the property at $101,300 for tax year 2018. Appellant filed a complaint seeking a value of $80,000. At the BOR hearing, appellant supplied documentation related to an August 2018 sale for $95,000. Counsel provided the purchase agreement, which establishes a purchase price of $95,000. The parcel card confirms the sale date and purchase price. Counsel also presented unadjusted market data. The BOR adopted the sale value, and

appellant appealed to this board requesting a value of $80,000. Counsel appeared at this board's hearing and made the same general arguments made below.

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). To meet that burden, an 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.

A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶31. A sale that postdates tax-lien date is presumed recent and creates a rebuttable presumption of value in favor of the sale price. See generally *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612. Here, appellant presented a facially qualifying sale with the purchase agreement, which is corroborated by the data in the parcel card. Therefore, the sale creates a rebuttable presumption of value.

We do not find, however, that appellant has demonstrated the value should be decreased below the sale price. Statements of counsel are not evidence. Statements of counsel are not evidence. *East College Street L.L.C. v. Lorain Cty. Bd. of Revision* (Oct. 13, 2015), BTA No. 2014-4339, unreported. Moreover, raw sales data is generally insufficient to warrant an adjustment since there are too many variables between to the subject property and the comparables. See *1721 Radio LLC v. Montgomery Cty. Bd. of Revision* (Mar. 28, 2019), BTA No. 2018-586, unreported.

For these reasons, we find the sale is the best evidence of value and order the property valued as follows for tax year 2018:

TRUE VALUE

$95,000

TAXABLE VALUE

$33,250

OHIO BOARD OF TAX APPEALS

ELISSAR II LLC, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-1160
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ELISSAR II LLC
Represented by:
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333 BABBITT RD., SUITE 233
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, April 27, 2020

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

[1] Elissar II, LLC, appeals from a decision the Cuyahoga County Board of Revision ("BOR") retaining the auditor's value of parcel 014-09-082 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record. On November 25, 2019, this board granted a request for sanctions barring appellant from presenting new evidence at this board's hearing.

[2] The fiscal officer valued the property at $39,500 for tax year 2018. Appellant filed a complaint seeking a value of $30,000. At the BOR hearing, appellant supplied evidence related to a September 2013 sale as well as income and expense data. The BOR retained the fiscal

officer's value, and appellant filed a notice of appeal with this board.

[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). To meet that burden, an 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

[4] Upon review, we find appellant has not carried its burden. The sale it presented to the BOR occurred approximately four years before the 2018 tax lien date. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶31.

[5] However, a presumption of recency does not apply where "a sale occurred more than 24 months before the lien date and***is reflected on the property card maintained by the county auditor***when a different value has been determined for that lien date as part of the six-year reappraisal." *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, ¶26. The sale in this case happened well before the tax-lien date. More importantly, appellant has presented no evidence to show the sale is indicative of value "despite the passage of time." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No.2016-405, unreported.

[6] Additionally, while income and expense data would be probative to an income approach appraisal, additional information would be necessary and a formal appraisal developed to make the data meaningful to the question of value. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 97-A-175, unreported. Accordingly, we find appellant has not carried its burden.

[7] We order the property valued as follows for tax year

2018: TRUE VALUE

$39,500

TAXABLE VALUE

$13,830

OHIO BOARD OF TAX APPEALS

KALLER MCKAY, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S).
	)	2019-1167, 2019-1190
vs.	)	
	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KALLER MCKAY
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

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, April 27, 2020

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

Kaller McKay appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's value of parcel 648-21-013 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

The fiscal officer valued the property at $29,000 for tax year 2018. Appellant filed a complaint seeking a value of $5,000. At the BOR hearing, appellant presented the testimony of the owner who testified that the property has some negative characteristics. Appellant also presented income and expense data. The BOR retained the fiscal officer's value. Its opinion reads as follows:

> The complainant appeared with counsel and supplied photo's, income and expense data and testimony regarding needed repairs and deferred maintenance. The Board considered the complainant's testimony and evidence and find that the Fiscal Officer's value is supported: no revision.

Appellant appealed to this board.

At this board's hearing, appellant's owner presented testimony and documentary evidence. The BOR objected to the evidence on the basis that it was not presented to the BOR and was not timely disclosed. Appellant did not present good cause as required by R.C. 5715.19(G). Accordingly, we find the BOR's motion well taken.

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). To meet that burden, an 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.

Upon review, we find appellant has not carried her burden. Appellant argues the property suffered from some defects and various negative characteristics. The Supreme Court has been clear that, while negative characteristics can impact value, the party must present "adequate evidence of the specific impact that [] negative factors have on the" property. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (interpreting *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must do more than submit a "list of defects." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7. A party must go further to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No.2018-386, unreported

(quoting *Gides*). Here, the impact those characteristics could have on value is not self-evident. Accordingly, we cannot rely on evidence of the subject's negative characteristics to reduce the subject's value.

Additionally, while income and expense data would be probative to an income approach appraisal, additional information would be necessary, and a formal appraisal developed to make the data meaningful to the question of value. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 97-A-175, unreported.

Accordingly, we find appellant has not carried her burden. Therefore, we retain the fiscal officer's value as retained by the BOR as follows for tax year 2018:

TRUE VALUE

$29,000

TAXABLE VALUE

$10,150

OHIO BOARD OF TAX APPEALS

KALLER MCKAY, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S).
	)	2019-1165, 2019-1191
vs.	)	
	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KALLER MCKAY
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

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, April 27, 2020

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

Kaller McKay appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's value of parcel 644-16-031 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

The fiscal officer valued the property at $61,500 for tax year 2018. Appellant filed a complaint seeking a value of $40,000. At the BOR hearing, appellant presented the testimony of the owner who testified that the property has some negative characteristics. Appellant also presented income and expense data. The BOR retained the Fiscal Officer's value. Its opinion reads as follows:

> The complainant appeared with counsel and supplied photo's, income and expense data and testimony regarding needed repairs and deferred maintenance. The Board considered the complainant's testimony and evidence and find that the Fiscal Officer's value is supported: no revision.

Appellant appealed to this board.

At this board's hearing, appellant's owner presented testimony and documentary evidence. The BOR objected to the evidence on the basis that it was not presented to the BOR and was not timely disclosed. Appellant did not present good cause as required by R.C. 5715.19(G). Accordingly, we find the BOR's motion well taken.

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). To meet that burden, an 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.

Upon review, we find appellant has not carried her burden. Appellant argues the property suffered from some defects and various negative characteristics. The Supreme Court has been clear that, while negative characteristics can impact value, the party must present "adequate evidence of the specific impact that [] negative factors have on the" property. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (interpreting *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must do more than submit a "list of defects." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7. A party must go further to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No.2018-386, unreported

(quoting *Gides*). Here, the impact those characteristics could have on value is not self-evident. Accordingly, we cannot rely on evidence of the subject's negative characteristics to reduce the subject's value.

Additionally, while income and expense data would be probative to an income approach appraisal, additional information would be necessary, and a formal appraisal developed to make the data meaningful to the question of value. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 97-A-175, unreported.

Accordingly, we find appellant has not carried her burden. Therefore, we retain the fiscal officer's value as retained by the BOR as follows for tax year 2018:

TRUE VALUE

$61,500

TAXABLE VALUE

$21,530

OHIO BOARD OF TAX APPEALS

KALLER MCKAY, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1166
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KALLER MCKAY
Represented by:
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ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

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, April 27, 2020

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

Kaller McKay appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's value of parcel 128-12-080 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

The fiscal officer valued the property at $27,900 for tax year 2018. Appellant filed a complaint seeking a value of $14,000. At the BOR hearing, appellant presented the testimony of the owner who testified that the property has some negative characteristics. Appellant also presented income and expense data. The BOR retained the fiscal officer's value. Its opinion reads as follows:

The complainant appeared with counsel and supplied photo's, income and expense

data and testimony regarding needed repairs and deferred maintenance. The Board considered the complainant's testimony and evidence and find that the Fiscal Officer's value is supported: no revision.

Appellant appealed to this board.

At this board's hearing, appellant's owner presented testimony and documentary evidence. The BOR objected to the evidence on the basis that it was not presented to the BOR and was not timely disclosed. Appellant did not present good cause as required by R.C. 5715.19(G). Accordingly, we find the BOR's motion well taken.

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). To meet that burden, an 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.

Upon review, we find appellant has not carried her burden. Appellant argues the property suffered from some defects and various negative characteristics. The Supreme Court has been clear that, while negative characteristics can impact value, the party must present "adequate evidence of the specific impact that [] negative factors have on the" property. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (interpreting *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must do more than submit a "list of defects." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7. A party must go further to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables insearch of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides*). Here, the impact those characteristics could have on value is not self-evident.

Accordingly, we cannot rely on evidence of the subject's negative characteristics to reduce the subject's value.

Additionally, while income and expense data would be probative to an income approach appraisal, additional information would be necessary, and a formal appraisal developed to make the data meaningful to the question of value. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 97-A-175, unreported.

Accordingly, we find appellant has not carried her burden. Therefore, we retain the fiscal officer's value as retained by the BOR as follows for tax year 2018:

TRUE VALUE

$27,900

TAXABLE VALUE

$9,770

OHIO BOARD OF TAX APPEALS

MARY CORNELY, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2594
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARY CORNELY
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

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

Entered Friday, May 1, 2020

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.3d363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was filed with the BOR fifty-four 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

CECIL KING JR, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2645
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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Entered Monday, May 4, 2020

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. (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

JAMES EDWARD BARNHART, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2515 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JAMES EDWARD BARNHART
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Entered Monday, May 4, 2020

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

The taxpayer appeals a decision of the board of revision ("BOR"), which denied his request for remission of the penalty associated with late payment of the property tax bill for 240-00411-00 for the second half of tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and taxpayer's written argument.

The taxpayer filed an application for remission of the late payment penalty for the tax period cited above. By way of the application, the taxpayer asserted that he failed to timely pay the property tax bill because the county treasurer or auditor committed a mistake, which amounted to negligence, because he did not receive such bill (though he did not provide the date on which he attempted to obtain it), and because he recently satisfied the mortgage encumbering

the subject property and the mortgage company failed to alert county officials to send future property tax bills to the taxpayer. He claimed that the mortgage had been satisfied in 2018 and that the treasurer's website failed to provide with accurate information about when the property tax bills were due and the status of his account. Neither the county treasurer, county auditor, nor BOR concluded that remission of the late payment penalty was warranted based upon the allegations raised in the application. Because the taxpayer had previously requested and received remission of the late payment penalty, specifically for the property tax bill for the first half of tax year 2018, the BOR issued a written decision that denied the taxpayer's application in this matter. This appeal ensued.

None of the parties availed themselves of an opportunity to provide evidence at a hearing before this board. Instead, the property owner submitted written argument, which conceded that he untimely paid the property tax bills for both halves of tax year 2018 and that he received remission of the property tax bill for the first half of tax year 2018. However, he asserted that "when I received the first tax statement (including late fees), the taxes were already past due for both halves of 2018." Notice of Appeal at Attachment.

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).

Upon review, we are constrained to find that the taxpayer has failed to demonstrate that the facts and circumstances of this matter qualifies for remission of the late payment penalty pursuant to R.C. 5715.39, which provides the guidelines to determine when such penalty shall be remitted. The taxpayer raised three bases to claim that remission of the late payment penalty would be appropriate in this matter. First, he requested remission of the penalty based upon R.C. 5715.39(B)(1), which specifically provides that "[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." Upon review of the record, we discern no negligence or error on the part of the county auditor or treasurer. Assuming for the sake of argument that the taxpayer did not receive the property tax bill for the second half of tax year 2018, the record is void of any evidence to suggest that that failure was the result of some misdeed by the county auditor or treasurer. We conclude, therefore, that remission of the late payment penalty is not appropriate on this basis.

Second, the taxpayer requested remission of the late payment penalty under R.C. 5715.39(B)(2), which provides 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." There is no evidence to indicate that the taxpayer attempted, in good faith, to obtain a copy of the property tax bill for the second half of tax year 2018 within thirty days of its due date on June 20, 2019, i.e., on or before July 22, 2019 (because the thirtieth day fell on a Saturday). Furthermore, it should be noted that R.C. 323.13 specifically states that "[f]ailure to receive any bill *** does not excuse failure or delay to pay any taxes shown on such bill or, except as provided in division (B)(1) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay." We conclude, therefore, that remission of the late payment penalty is not appropriate on this basis.

Third, the taxpayer requested remission of the late payment penalty pursuant to R.C. 5715.39(B)(5), which provides that "[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." The taxpayer requested and received remission of the late payment penalty for the *first* payment due after he satisfied the mortgage, i.e., the property tax bill for the first half of tax year 2018. The property

tax bill for the second half of tax year 2018 was the *second* payment after satisfaction of the mortgage. We conclude, therefore, that remission of the late payment penalty is not appropriate on this basis.

Though the taxpayer did not specifically request consideration under R.C. 5715.39(C), we proceed to consider whether the taxpayer has demonstrated reasonable cause for failing to timely pay the property tax bill. R.C. 5715.39(C) provides discretion to grant remission of the late payment penalty if the taxpayer demonstrates that the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. It is undisputed that the taxpayer had at least one untimely payment of property tax bills, i.e., the property tax bill for the first half of tax year 2018. We conclude, therefore, that remission of the late payment penalty is not appropriate on this basis.

Based upon the foregoing, we must conclude that the taxpayer failed to satisfy the evidentiary burden on appeal. As a result, we find that he has not demonstrated that he is entitled to remission of the late payment penalty associated with property tax bill for the second half of tax year 2018.

OHIO BOARD OF TAX APPEALS

NEW DAY REALTY LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1260
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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Entered Monday, May 4, 2020

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

[1] New Day Realty LLC ("New Day") appeals from a decision of the Summit County Board of Revision ("BOR") retaining the fiscal officer's values for parcels 67-13878, 67-15189, and 67-42511 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and any written argument.

[2] The fiscal officer valued parcel 67-13878 at $53,860 for tax year 2018. New Day filed a complaint seeking a value of $42,128. The fiscal officer valued parcel 67-15189 at $79,220 for

tax year 2018. New Day filed a complaint seeking a value of $34,800. The fiscal officer valued parcel 67-42511 at $67,530 for tax year 2018. New Day filed a complaint seeking a value of $34,901. The board of education filed a counter-complaint asking the fiscal officer's values be retained. Only the board of education appeared for the BOR hearing. However, New Day did submit a settlement statement showing parcel 67-42511 transferred from KeyBank National Association to Zachary A. Zimmer for the purchase price of $34,901. The settlement date is October 14, 2016. New Day also submitted a settlement statement showing parcel 67-15189 transferred from an unknown seller to Zachary A. Zimmer and Kelly Zimmer for $34,800. The settlement date is July 6, 2018. New Day further submitted a settlement statement showing parcel 67-13878 transferred from the Secretary of Housing and Urban Development ("HUD") for $42,128. The settlement statement is dated October 25, 2016. The BOR retained the fiscal officer's values, and New Day appealed to this board.

[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). To meet that burden, an 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.

[4] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. There are three sales at issue in this case. With regard to parcel 67-13878, the record is clear the sale was a HUD sale. HUD sales are presumed forced sales, which do not create a presumption of value. See *Schwartz v. Cuyahoga Cty. Bd. of Revision*, 143 Ohio St.3d 496, 2015-Ohio-3431. Here, New Day has presented no evidence to overcome the presumption the sale was forced. See generally *N. Canton City Sch. Dist. Bd. of Edn. v. Stark Cty. Bd. of Revision*, 152 Ohio St.3d 292, 2018-Ohio-1. Accordingly, we do not find the sale indicative of value and retain the

fiscal officer's value as retained by the BOR. See *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818.

[5] Turning to parcel 67-15189, New Day presented a facially qualifying sale with the settlement statement. The basic facts of the sale, including the sale price, are reflected on the parcel card. Therefore, the sale creates a presumption of value because it postdates tax-lien date. *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612. However, no party has presented evidence to rebut the sale. Therefore, we find the sale is the best, most persuasive evidence of value.

[6] Turning to parcel 67-42511, New Day presented a facially qualifying sale with the settlement statement. The basic facts of the sale are contained on the parcel card, including the sale price. Because the sale occurred less than 24 months before the tax-lien date, we presume the sale is recent. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588; see also *Italian Greek Investments v. Montgomery Cty. Bd. of Revision* (July 31, 2018), BTA No. 2017-977, unreported ("To the extent the BOR rejected the sale because it was from a bank, we find no reason to disregard the sale on that ground"). Because no party has presented rebuttal evidence, we find that sale is the best evidence of value.

[7] For these reasons, we order the three parcels valued as follows for tax year

2018: PARCEL NUMBER 67-13878

TRUE VALUE

$53,860

TAXABLE VALUE

$18,850

PARCEL NUMBER 67-15189

TRUE VALUE

$34,800

TAXABLE VALUE

$12,180

PARCEL NUMBER 67-42511

TRUE VALUE

$34,900

TAXABLE VALUE

$12,220

OHIO BOARD OF TAX APPEALS

TITO COLON, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1218
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TITO COLON
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Entered Monday, May 4, 2020

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

Tito Colon appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's value of parcel 015-03-018 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

The fiscal officer valued the subject property at $174,200 for tax year 2018. Colon filed a complaint seeking a value of $95,000. The board of education filed a countercomplaint asking

the fiscal officer's value be retained. Colon appeared at the BOR hearing and was represented by counsel. Colon argued his property had been improperly classified as commercial when it was in fact residential. Colon testified he lived at the subject property. He also testified the fiscal officer had classified the property at residential for prior tax years. Colon presented a 2017 appraisal valuing the property at $95,000. He also presented evidence about sale efforts made in 2019 as well as market data.

The BOR retained the fiscal officer's value in holding:

> Owner appeared with counsel. The owner testified he purchased the property, a former funeral home, in 2014 for $170,000 and following discussions with the Cuyahoga County Appraisal Department they changed the applicable tax rate for the property from commercial to residential for TY 2014-2017. He also testified for that for 2018 the Appraisal Department had once again applied a commercial tax rate to the property. Counsel presented an appraisal by Pierre Martin who valued the property at $95,000 for tax year 2017. The appraiser did not appear to testify or authenticate his report. The Board had questions regarding the use of single family residential property as comparables, with minimal adjustments. Further the appraiser failed to conduct an independent analysis of the highest and best use of the property given its potential for commercial use. Without more support, the Board finds that the appraisal is unreliable. The owner testified that he did not get an appraisal of the property for market value purposes because the estimate, at $3,000 was not affordable. With no other evidence of value offered the Board finds that a downward adjustment is not warranted. Failure to meet burden of proof.

Colon appealed to this board. At this board's hearing, Colon relied on a stipulation of

value signed by the BOR and Colon. The board of education declined to sign the stipulation of value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To meet that burden, an 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.

There are two issues before us on appeal. The first is value. The second is the classification. With regard to value, we find Colon has not carried his burden. At the BOR, Colon primarily relied on the 2017 appraisal. We do not find the appraisal sufficient to warrant a change in value for two reasons. First, we generally reject an appraiser's opinion of value when the appraiser does not appear before either the BOR or this board. *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. As we explained in *Speca*, when the appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials, authenticate or identify the report, or describe the efforts undertaken to estimate value. Importantly, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed by this board. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. Secondly, the appraisal does not opine the value of the property as of the tax-lien date. The Ohio Supreme Court has been clear that "[t]he vintage of an appraisal matters because 'the essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time.'" Id. at ¶15. (quoting *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997)). The effective date of this appraisal is January 1, 2017, which is a year before the 2018 tax-lien date.

We recognize the Supreme Court has carved out an exception to the general rule that non-

tax-lien dated appraisals are generally unreliable. See *Copley-Fairlawn City Sch. Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 ("*Team Rentals*"). In *Team Rentals*, the Supreme Court held this board should have given weight to a non-tax-lien dated appraisal when the appraisal's proponent testified about why the appraisal was created and a party relied upon the appraisal in a business or financial transaction. Id. at ¶¶30-31. However, the appraisal at issue was created for tax valuation purposes, and we have no credible evidence the appraisal was ever used in a business or financial transaction.

Colon also argued the property suffered from some defects and various negative characteristics. The Supreme Court has been clear that, while negative characteristics can impact value, the party must present "adequate evidence of the specific impact that [] negative factors have on the" property. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (interpreting *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must do more than submit a "list of defects." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7. A party must go further to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides*). Here, the impact those characteristics could have on value is not self-evident. Accordingly, we cannot rely on evidence of the subject's negative characteristics to reduce the subject's value. We likewise find Colon has not carried his burden with the unadjusted market data. Raw sales data is generally insufficient to warrant an adjustment since there are too many variables between to the subject property and the comparables. See *1721 Radio LLC v. Montgomery Cty. Bd. of Revision* (Mar. 28, 2019), BTA No. 2018-586, unreported.

Finally, we do not find the stipulation of value to be probative evidence of value. A

settlement signed by two of three parties is not a settlement. *Caltucky LLC v. Franklin Cty. Bd. of Revision* (Interim Order, Jan. 14, 2020), BTA No. 2129, unreported, motion for reconsideration denied (Interim Order, Mar. 2, 2020). For all of these reasons, we find Colon has not carried his burden. As a consequence, we find the fiscal officer's value should be retained. See generally *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818.

Turning to the issue of classification, the BOR's decision is clear it did not determine whether the subject property was improperly classified. The BOR's decision notes that Colon made the argument, but the BOR's decision does not actually decide the issue either way. We encountered a similar scenario in *Rivera v. Montgomery Cty. Bd. of Revision* (Apr. 21, 2017), BTA No. 2016-2315, unreported. There, we found a remand was appropriate because "it would be improper for this board to issue a decision on the matter" without the BOR first ruling on the matter. See id. (citing *Ginter v. Auglaize Cty. Bd. of Revision*, 143 Ohio St.3d 340, 2015-Ohio-2571).

Therefore, we remand this case to the BOR to determine in the first instance if the subject property's classification should be amended to residential based on the guidelines set forth in Ohio Adm.Code 5703-25-10. We also order the property valued as follows for tax year 2018:

TRUE VALUE

$174,200

TAXABLE VALUE

$60,970

OHIO BOARD OF TAX APPEALS

KALLER MCKAY, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S).
	)	2019-1168, 2019-1189
vs.	)	
	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	
	)	DECISION AND ORDER

APPEARANCES:

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Entered Monday, May 4, 2020

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

Kaller McKay appeals from a decision of the Cuyahoga County Board of Revision ("BOR") valuing parcel 673-21-033 at $30,000 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

The fiscal officer valued the property at $43,300 for tax year 2018. Appellant filed a complaint seeking a value of $20,000, which she amended to $8,000. At the BOR hearing, appellant presented the testimony of the owner who testified that the property has some negative characteristics. Appellant also presented income and expense data. The BOR made a downward adjustment and appellant appealed to this board.

At this board's hearing, appellant's owner presented testimony and documentary evidence. The BOR objected to the evidence on the basis that it was not presented to the BOR and was not timely disclosed. Appellant did not present good cause as required by R.C. 5715.19(G). Accordingly, we find the BOR's motion well taken.

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). To meet that burden, an 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.

Upon review, we find appellant has not carried her burden. Appellant argues the property suffered from some defects and various negative characteristics. The Supreme Court has been clear that, while negative characteristics can impact value, the party must present "adequate evidence of the specific impact that [] negative factors have on the" property. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (interpreting *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must do more than submit a "list of defects." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7. A party must go further to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides*). Here, the impact those characteristics could have on value is not self-evident. Accordingly, we cannot rely on evidence of the subject's negative characteristics to reduce the subject's value.

Additionally, while income and expense data would be probative to an income approach appraisal, additional information would be necessary, and a formal appraisal developed to make the

data meaningful to the question of value. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 97-A-175, unreported. Accordingly, we find appellant has not carried her burden.

We are also required to independently review the BOR's value. However, we find nothing in the record that would support that specific value. The parcel card does not indicate the BOR made a classification change nor does the record show that the BOR decision was based on negative conditions the effect on value of which are clearly shown by sufficient evidence. Because here, like in *Sapina*, we cannot replicate the BOR's value, we reinstate the fiscal officer's value as follows:

TRUE VALUE

$43,300

TAXABLE VALUE

$15,160

OHIO BOARD OF TAX APPEALS

KALLER MCKAY, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1164
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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Entered Monday, May 4, 2020

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

Kaller McKay appeals from a decision of the Cuyahoga County Board of Revision valuing parcel 116-20-113 at $28,000 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

The fiscal officer valued the property at $33,200 for tax year 2018. Appellant filed a complaint seeking a value of $20,000. At the BOR hearing, appellant presented the testimony of the owner who testified that the property has some negative characteristics. Appellant also presented income and expense data. The BOR modified the fiscal officer's value. Appellant appealed to this board. At this board's hearing, appellant's owner presented testimony and documentary evidence. The BOR objected to the evidence on the basis that it was not presented

to the BOR and was not timely disclosed. Appellant did not present good cause as required by R.C. 5715.19(G). Accordingly, we find the BOR's motion well taken and will confine our review to the statutory transcript.

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). To meet that burden, an 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. We independently determine value, and we will not rely on a BOR's value if it is unsupported by the evidence. 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"). If a BOR's reduction is unsupported by actual evidence, we reinstate the fiscal officer's value. See id.

Upon review, we find appellant has not carried her burden. Appellant argues the property suffered from some defects and various negative characteristics. The Supreme Court has been clear that, while negative characteristics can impact value, the party must present "adequate evidence of the specific impact that [] negative factors have on the" property. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (interpreting *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must do more than submit a "list of defects." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7. A party must go further to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides*). Here, the impact those characteristics could have on value is not self-evident. Accordingly, we cannot rely on evidence of the subject's negative characteristics to reduce the

subject's value.

Additionally, while income and expense data would be probative to an income approach appraisal, additional information would be necessary, and a formal appraisal developed to make the data meaningful to the question of value. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 97-A-175, unreported. Accordingly, we find appellant has not carried her burden.

We are also required to independently review the BOR's value. However, we find nothing in the record that would support that specific value. The parcel card does not indicate the BOR made a classification change nor does the record contain sufficient evidence to demonstrate the effect on value of any of the alleged defects or negative conditions of the property. Because here, like in *Sapina*, we cannot replicate the BOR's value, we reinstate the fiscal officer's value as follows:

TRUE VALUE

$33,200

TAXABLE VALUE

$11,620

OHIO BOARD OF TAX APPEALS

AMERICAN DREAM HOLDINGS, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1163 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AMERICAN DREAM HOLDINGS, LLC
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

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

Entered Monday, May 4, 2020

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

American Dream Holdings, Inc., appeals from a decision of the Cuyahoga County Board of Revision (" BOR") retaining the fiscal officer's value of parcel 002-12-030 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

The fiscal officer valued the property at $125,600 for tax year 2018. Appellant filed a complaint seeking a value of $100,000, which it amended to $85,000. At the BOR hearing, appellant presented the testimony of the property manager who testified that the property has some negative characteristics. Appellant also supplied unadjusted market data. Appellant then

argued the fiscal officer valued other properties differently. The BOR retained the fiscal officer's value. Its decision reads as follows:

> The complainant appeared through counsel and property manager for the entity and provided unadjusted sales for the Board to consider. The property manager for the complainant testified to changes made to the property and management of the premises. The Board considered the complainant's submission and testimony from the property manager and find that the complainant has not met their burden of proof; no revision.

Appellant appealed to this board. At this board's hearing, appellant's owner presented testimony and documentary evidence. The BOR objected to the evidence on the basis that it was not presented to the BOR and was not timely disclosed. Appellant did not present good cause as required by R.C. 5715.19(G). Accordingly, we find the BOR's motion well taken and will confine our review to the statutory transcript.

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). To meet that burden, an 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. When a party fails to carry their burden, we retain the fiscal officer's value. See *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818.

Upon review, we find appellant has not carried its burden. Appellant argues the property suffered from some defects and various negative characteristics. The Supreme Court has been clear that, while negative characteristics can impact value, the party must present "adequate evidence of the specific impact that [] negative factors have on the" property. *Gallick v.*

Franklin Cty. Bd. of Revision (Oct. 30, 2017), BTA No. 2016-405, unreported (interpreting *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must do more than submit a "list of defects." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7. A party must go further to establish "how those defects might have impacted the property value" otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides*). Here, the impact those characteristics could have on value is not self-evident. Accordingly, we cannot rely on evidence of the subject's negative characteristics to reduce the subject's value.

We likewise find appellant has not carried its burden with the unadjusted market data. Raw sales data is generally insufficient to warrant an adjustment since there are too many variables between to the subject property and the comparables. See *1721 Radio LLC v. Montgomery Cty. Bd. of Revision* (Mar. 28, 2019), BTA No. 2018-586, unreported.

Appellant also argued the fiscal officer valued surrounding properties differently. However, that conclusory statement is insufficient to prove the subject is overvalued. Also, as the Ohio Supreme Court has held, "[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).

For these reasons, we order the fiscal officer's value be retained as follows:

TRUE VALUE

$125,600

TAXABLE VALUE

$43,960

OHIO BOARD OF TAX APPEALS

CHRISTI AND LOUIS CIRINO, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	Appellee(s). CASE NO(S). 2019-2787, 2019-2788 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CHRISTI AND LOUIS CIRINO
Represented by:
LOUIS CIRINO
19934 WESTWOOD DR.
STRONGSVILLE, OH 44149

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, May 5, 2020

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. Appellants 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 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 notices 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 matters. As such, hese matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

CECIL KING JR, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2644
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CECIL KING JR
Represented by:
CECIL KING JR.
13308 EUCLID AVE #105
CLEVELAND, OH 44112

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

Entered Tuesday, May 5, 2020

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. (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

KENNETH PUND, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2885
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KENNETH PUND
PO BOX 46562
BEDFORD, OH 44146

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, May 6, 2020

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. (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

JULIE LYNN KOHL, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-2711
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JULIE LYNN KOHL
Represented by:
JULIE KOHL
2416 DERBYSHIRE RD
CLEVELAND HTS, OH 44106

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 Wednesday, May 6, 2020

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. (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

SARA JAN KAMINSKY (TRUSTEE) AND DANIEL KAMINSKY, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-2648
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SARA JAN KAMINSKY (TRUSTEE) AND DANIEL KAMINSKY
Represented by:
SARA JAN AND DANIEL A KAMINSKY
792 HANOVER DRIVE
GATE MILLS , OH 44044

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

Entered Wednesday, May 6, 2020

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. (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 63, 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

3900 WOODLAND INC., (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-2529
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 3900 WOODLAND INC.
Represented by:
JAMES ALEXANDER, JR.
ATTORNEY AT LAW
2000 LEE RD., SUITE 14
CLEVELAND 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

CLEVELAND MUNICIPAL SCHOOL BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Wednesday, May 6, 2020

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. This matter is decided upon the motion, appellant's response, 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.").

Appellant requested additional time to respond to the motion, however, nearly two months has expired since that request. The record in this matter indicates that appellant's notice of appeal was filed the BOR thirty-nine days after the mailing of the BOR's decision, and with this board forty-two days after. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

NORTH CANTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-1107
vs.	)	(REAL PROPERTY TAX)
STARK COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NORTH 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

CHRISTOPHER J. AND FRANCESCA INDORF
247 SUMMIT STREET SW
NORTH CANTON, OH 44720

Entered Monday, May 11, 2020

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

[1] The North Canton City Schools Board of Education ("BOE") appeals from a decision of the Stark County Board of Revision ("BOR") valuing parcel 9208764 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and this board's hearing record.

[2] The subject property is improved with a multi-family rental building. The auditor valued the property at $545,100 for tax year 2018, and the property owner filed a complaint seeking a value of $362,185. The BOE filed a countercomplaint asking the auditor's value be retained.Before and during the BOR hearing, the property owner supplied a written statement

arguing the appraised value was too high. He also provided unadjusted market data and an income and expense statement. The BOR adopted a value of $370,000, and the BOE appealed. We note the BOR's decision recording does not state why the BOR adopted its value.

[3] At this board's hearing, the BOE was represented by counsel, and the property owner appeared to testify. They reiterated the same arguments made below. The BOE argued the burden was on the property owner because the *Bedford* rule does not apply because the owner did not present competent and probative appraisal evidence. The BOE's counsel argued this case is analogous to at least two other Stark County cases from this board, *Perry Local Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Sept. 27, 2017), BTA No. 2016-1927, unreported ("*Walters*"), and *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported.

[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). We independently determine value, and we will not rely on a BOR's value if it is unsupported by the evidence. 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"). An appealing party may generally carry that party's burden by showing 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, ¶9. A narrow exception to that general principle, however, is the *Bedford* rule announced in *Bedford Bd. Of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio S.3d 449, 2007-Ohio-5237.Under the *Bedford* rule, "when the BOR adopts a new value based on the owner's competent 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. When the *Bedford* rule applies, the school board must do more than rely on the auditor's valuation; the school board must "come forward with affirmative evidence of the subject property's value." *Orange City Schools Bd. Of Edn. v. Cuyahoga Cty. Bd. of Revision* (Sept. 6, 2018), BTA No. 2017-1707, unreported. The Bedford rule applies when: 1) the property owner filed the complaint or counter complaint; 2) the board of revision ordered a reduction valuation based on competent evidence offered by the property owner; 3) the board of education appeals to this board; 4) the board of revision's determination is based on appraisal evidence rather than a sale. *Gahanna-Jefferson City Sch.Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Sept. 10, 2018), BTA No. 2017-1178, unreported. The BOE argues the *Bedford* rule does not apply in this case because the property owner relied on unadjusted market data and an income and expense statement, which are not competent and probative evidence of value sufficient to trigger the *Bedford* rule. We agree.

[5] Here, the BOR reduced value, it appears, based on unadjusted evidence about the local market and evidence about the profitability of the subject property, i.e., the income and expense statement. However, raw sales data is generally insufficient to warrant an adjustment since there are too many variables between to the subject property and the comparables. See *1721 Radio LLC v. Montgomery Cty. Bd. of Revision* (Mar. 28, 2019), BTA No. 2018-586, unreported. Additionally, while income and expense data would be probative to an income approach appraisal, additional information would be necessary, and a formal appraisal developed to make the data meaningful to the question of value. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 97-A-175, unreported.

[6] We encountered similar facts in *Jackson Local Schools Bd. of Edn. v. Stark Cty. Bd. Of Revision* (Apr. 2, 2019), BTA No. 2018-1323, unreported. There, we found the *Bedford* rule

was inapplicable because the BOR adjusted the auditor's value based on unadjusted evidence about the local market and evidence about the profitability of the subject property. See id.

[7] We also find the cases cited by the BOE to be on point. In *Walters*, we declined to retain a BOR's reduction when the BOR did not explain why it chose the value it did. We found it relevant that "no representative for the auditor was present at the BOR hearing and did not participate in the decision process." Id. at 13-14. Therefore, we could not deduce, on that basis, the reason for the BOR's decision. The same occurred in this case. Likewise in *Gallick*, we reinstated the auditor's values when the BOR departed from the auditor's values based on unadjusted market data and evidence about profitability.

[8] Because we find the *Bedford* does not apply since the evidence presented below was not competent and probative evidence of value, we necessarily find the property owner did not carry his burden below or his burden here. We therefore order the property valued as follows for tax year 2018:

TRUE VALUE

$545,100

TAXABLE VALUE

$190,790

OHIO BOARD OF TAX APPEALS

EAST BUILDINGS LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-794
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EAST BUILDINGS LLC
Represented by:
PAUL VINCENT
ESQUIRE
VINCENT ESQUIRE LTD.
26600 DETROIT ROAD, SUITE 250
WESTLAKE, OH 44145

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Monday, May 11, 2020

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

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 687-11-091, for tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01, which includes the BOR hearing convened regarding the value of parcel number 687-08-022. We note that during the BOR hearing, one of the BOR members referred to a list of sales of other homes near the subject property and indicated that the BOR would look at the properties on the list in more detail after the hearing. No copy of this list was included in the transcript on appeal. This board issued an order attempting to obtain such evidence through interim order dated January 15, 2020. The BOR responded to the order, informing this board that the BOR viewed

the information on the overhead monitors with the taxpayer during the hearing, but no additional written evidence or information was provided to the taxpayer. As such, we are unable to consider this information in our determination.

[2] The subject property is improved with a single-family home and was initially assessed by the fiscal officer at a total true value at $115,600. Appellant filed a complaint with the BOR seeking a reduction in value to $82,000. At the BOR hearing, appellant presented testimony from its member, Paul Maron, along with an appraisal opining a value of $82,000 as of January 1, 2018, though the appraiser that performed the appraisal did not appear to respond to questions or explain his analysis. During the hearing, the board members raised several questions regarding the appraiser's choice of comparable sales, indicating that several properties had recently sold in much closer proximity to the subject property. One of the BOR members also noted that the appraiser discussed the subject property's condition, noting that it did not have any outstanding repairs, and no renovations or remodeling were required. The BOR issued a decision maintaining the initially assessed valuation, commenting in its notes that it found that the appraisal was not reliable because of the location of the comparable sales outside of the subject's neighborhood as defined by the appraiser, while there were a number of similar properties located on the subject's street and in the immediate area. From this decision, appellant filed the present appeal.

[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). To satisfy this burden, appellant must produce competent and probative evidence to establish the correct value of the subject property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so

and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964).

[4] In this case, appellant relies on an appraisal report, though it constitutes unreliable hearsay because they were presented without testimony from the respective appraiser. 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*"). When a party submits a written appraisal, the presentation of the appraiser as a witness allows the other parties and this board the opportunity to evaluate the credibility of the appraiser and the reliability of his or her analysis. 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; *Akron Natl. Bank & Trust Co. v. Freed & Co.* (Aug. 20, 1980), Medina App. No. 957, unreported; *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported.

[5] In some instances, even without testimony from the author, the information contained within the appraisal may furnish an independent basis for valuing the property. *Team Rentals*, supra, at ¶27. The reports in this case do not meet the standard necessary to do so. See *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058, ¶42 (distinguishing a *Team Rentals* from the circumstances where the record lacked direct testimony about both the preparation and use of an appraisal). We find Maron's explanations regarding the appraiser's choice of sales inadequate and note that the fiscal officer valued the property based on its average condition. Therefore, without testimony from the appraiser to answer questions and support his methodology, we find it does not constitute reliable evidence of value. See *Cannata v. Cuyahoga*

Cty. Bd. of Revision, 147 Ohio St.3d 129, 2016-Ohio-1094, ¶20 ("Here the reliable and probative character of the owner's appraisal was called into question by the fact that the BOR rejected it based upon a record that was not preserved and made available to the BTA. Moreover, the appraisal opinion of value, $330,000, reflected a reduction of 62 percent from the fiscal officer's original valuation, and the character of the property called for careful scrutiny of an appraisal that advocated so great a reduction. We therefore conclude that the BTA erred by adopting the appraisal valuation under these circumstances.").

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

[7] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$115,600

TAXABLE VALUE

$40,460

OHIO BOARD OF TAX APPEALS

NEW DAY REALTY LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1238
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NEW DAY REALTY LLC
Represented by:
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4376 BUCKINGHAM CIR.
UNIONTOWN, OH 44685

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
ARIANA ZIMCOSKY
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
650 DAN STREET
AKRON, OH 44310

AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
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CLEVELAND, OH 44114

Entered Wednesday, May 13, 2020

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

New Day Realty LLC ("New Day") appeals from a decision of the Summit County Board of Revision ("BOR") retaining the fiscal officer's values for parcels 68-01804 and 67-44380 for tax year 2018. We decide the case on the notice of appeal and the statutory transcript.

The fiscal officer valued parcel 68-01804 at $52,340 for tax year 2018. New Day filed a complaint requesting a value of $33,500 citing an open market sale. New Day supplied the

closing statement, which lists a sale price of $33,500 and a settlement date of June 29, 2017. The parcel card confirms the property transferred in 2017 for $33,500.

The fiscal officer valued parcel 67-44380 at $68,910 for tax year 2018. New Day filed a complaint requesting a value of $39,000 citing an open market sale. New Day supplied the relevant settlement statement, which states a sale price of $39,000 and a settlement date of May 3, 2017. The parcel card confirms the property transferred in 2017 for $39,000.

The BOR retained the fiscal officer's value of both properties, and New Day appealed. 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). A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that occurs less than 24 months before tax-lien date is presumed recent. See id. A facially qualifying sale creates a presumption of value in favor of the sale price. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. When a party presents a facially qualifying sale, the burden shifts to any party opposing the sale price to rebut the sale. Id.

Here, New Day presented two facially qualifying sales with the settlement statements. The parcel cards confirm the basic details of the sale. Therefore, the burden shifts to any party opposing the sale. However, no party has presented rebuttal evidence. Therefore, we order the properties valued as follows for tax year 2018:

PARCEL NUMBER 68-01804

TRUE VALUE

$33,500

TAXABLE VALUE

$11,730

PARCEL NUMBER 67-44380

TRUE VALUE

$39,000

TAXABLE VALUE

$13,650

OHIO BOARD OF TAX APPEALS

LORI A. BOYD, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-2751
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LORI A. BOYD
OWNER
4172 E. 178TH ST.
CLEVELAND, OH 44128

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

Entered Wednesday, May 13, 2020

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 139-13-047, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and written argument submitted by the parties.

The subject property was initially assessed at $77,400 and the property owner filed a complaint that requested that it be revalued at $21,380. By way of the complaint, she asserted that the subject property had been the subject of a $21,380 transfer in February 2019. At the BOR hearing on the matter, the property owner appeared to submit argument and evidence in support of her complaint. In doing so, she provided documents that memorialized the subject sale and testified as to the facts and circumstances of such sale and condition of the subject

property. She conceded that subject sale occurred under distressed circumstances, either bankruptcy or foreclosure proceedings; one of the BOR members confirmed that the subject sale occurred through foreclosure proceedings after the prior owners defaulted on a mortgage. The BOR concluded that the subject sale was not an arm's-length transaction and voted to retain the subject property's value. This appeal ensued.

Neither the property owner nor the county appellees elected to submit additional evidence at a hearing before this board. The county appellees submitted written argument, to assert that the subject sale was presumptively invalid, and that the property owner had failed to provide any evidence to rebut such presumption.

Before we consider the merits of this appeal, we must first dispose of a preliminary issue. As noted above, none of the parties elected to submit new evidence at a hearing before this board; however, the property owner attached documents to her notice of appeal that were *not* submitted at the BOR hearing. As a result, those documents cannot be considered 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."); *Bd. of Edn. of the Hilliard City School Dist. v. Franklin Cty. Bd. of Revision* (July 15, 2005), BTA No. 2003-R-1430, unreported (striking from consideration certified copies of documents attached to a post-hearing brief).

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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of*

Edn. v. Franklin Cty. Bd. of Revision, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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 are constrained to find that the subject sale, the basis for the property owner's complaint and appeal, is not the best indication of the subject property's value. In our review of this matter, we are mindful of the basic principle that "[t]he best evidence of the 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977), paragraph one of the syllabus. See also *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. We are also mindful that, where "the central issue is whether a sale price of the subject property establishes its value, the factors attending that issue must usually be determined de novo by the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11. See also *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, at ¶7 ("our case law has repeatedly instructed the BTA to eschew a presumption of validity of the BOR's value ***.").

While a recent, arm's-length sale is the best evidence of a property's value, a forced sale is not. R.C. 5713.04. Instead, the advocate of valuing a property in accordance with a forced sale must demonstrate that the sale occurred between typically motivated parties. 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." The Supreme Court has held that R.C. 5713.04 is not an absolute bar to establish a property's value. See *Olentangy Local Schools Bd.*

of Edn. v. Delaware Cty. Bd. of Revision, 141 Ohio St.3d 243, 2014-Ohio-4723. In *Olentangy*, 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."Id. at ¶40. In so doing, the court noted that:

> when the underlying transaction is an auction or forced sale, the proponent of the sale price bears a heavier burden. *** Accordingly, we likewise adjust the typical burdens of proof with regard to sale prices. Namely, the opponent of a sale price has a very light burden to establish that a transaction was on its face an auction or forced sale. Once that threshold has crossed, then the proponent of the sale price bears the burden to prove that the sale was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value.

Olentangy at ¶43.

Here, a review of the sale documents provided to the BOR confirm that the subject sale occurred through foreclosure proceedings. Therefore, as the advocate of using the subject sale, the property owner had the heavier burden to prove that the subject sale was an arm's-length transaction between typically motivated parties, which reflected the subject property's value. Although the record includes some testimony regarding the circumstances of the subject sale, we must conclude that such testimony falls far short of demonstrating that such sale was, indeed, an arm's-length sale.

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 are constrained to find that the property owner failed to satisfy the evidentiary burden on appeal. Therefore, we agree with the BOR's conclusion and similarly conclude that the subject sale is not the best indication of the subject property's value as of the tax lien date.

It is the order of this board that the subject property's true and taxable values are as follow as of January 1, 2018:

True Value: $77,400

Taxable Value: $27,090

OHIO BOARD OF TAX APPEALS

DIANE M. FRANCESCON AND MARK A. FRANCESCON, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	Appellee(s).) CASE NO(S). 2019-2653 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DIANE M. FRANCESCON AND MARK A. FRANCESCON
Represented by:
DIANE FRANCESCON
696 CAMDEN YARD COURT
COLUMBUS, OH 43235

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

Entered Monday, May 18, 2020

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

[1] The taxpayer appeals a decision of the board of revision ("BOR"), which denied a request for remission of the late-payment penalty associated with the property tax bill for parcel 010-140681-00 for the second half of tax year 2018. We proceed to consider this matter based upon the underlying application and statutory transcript certified pursuant to R.C. 5717.01.

[2] The taxpayer applied for remission of the late-payment penalty for the previously mentioned tax period. By way of the application, the taxpayer alleged that she misplaced the property tax bill, which resulted in her failure to timely pay the property tax bill, and that her untimely payment was based upon reasonable cause, not willful neglect. The county treasurer recommended denying the taxpayer's requests because of a history of untimely payments for

property tax bills, i.e., the untimely payment of the property tax bill for the first half of tax year 2015. After its subsequent review of the taxpayer's application, the BOR agreed with the county treasurer's recommendation and voted to deny the request based upon the taxpayer's delinquent property-tax payment history. This appeal ensued.

[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] Upon review, we are constrained to find that the taxpayer has failed to demonstrate that the facts and circumstances of this matter qualifies 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. The taxpayer specifically requested consideration under R.C. 5715.39(C), which provides that the late-payment penalty shall be remitted if the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. Here, it is undisputed that the taxpayer had a history of late payments of property tax bills, i.e., the untimely payment of the property tax bill for the first half of tax year 2015. As a result, we agree with the BOR that the taxpayer does not qualify for remission of the late-payment penalty under R.C. 5715.39(C).

[5] Based upon the foregoing, we find that the taxpayer failed to satisfy the evidentiary burden on appeal. As a result, we deny the request for remission of the late-payment penalty for the property tax bill for parcel 010-140681-00 for the second half of tax year 2018.

OHIO BOARD OF TAX APPEALS

COMMON WEALTH UPSCALE PROPERTIES LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2527 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COMMON WEALTH UPSCALE PROPERTIES LLC
Represented by:
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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

CLEVELAND MUNICIPAL SCHOOL BOARD OF EDUCATION
Represented by:
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CLEVELAND, OH 44114

Entered Friday, May 22, 2020

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

The board of education moves to dismiss this matter on the basis it was not timely filed with this board nor with the county board of revision. This matter is decided upon the motion, appellant's response, the statutory transcript certified by the county board of revision ("BOR"), and appellant's notice of appeal.

The record in this matter demonstrates that the BOR sent its decision on September 23, 2019, by regular U.S. mail and by electronic transmission to the complainant indicated on the

underlying complaint. The record further indicates that appellant's notice of appeal was filed with the BOR thirty-nine days after the mailing of the BOR's decision, and with this board forty-two days after such mailing. Although appellant's response argues it was not properly notified by certified mail of the BOR's decision, R.C. 5715.20 requires that the BOR certify its decision to the complainant when the complainant is not the person in whose name the property is listed. The same statute also allows for notification of the BOR by ordinary mail and electronic transmission decision to the associated person of record.

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.").

Based upon the foregoing, the board of education's motion is well taken. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ODE DEVELOPMENT LLC, (et. al.),	)	Appellee(s).)
Appellant(s),	)	
vs.	)	CASE NO(S). 2019-1428
LORAIN COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ODE DEVELOPMENT LLC
Represented by:
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ESQ.
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For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
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225 COURT STREET
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ELYRIA, OH 44035

COLUMBIA LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
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SOLON, OH 44139

Entered Friday, May 22, 2020

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. (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

13715 TERRACE BUILDS LLC, (et. al.),	)	Appellee(s).)
Appellant(s),	)	
vs.	)	CASE NO(S). 2019-2522, 2019-2523
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 13715 TERRACE BUILDS LLC
Represented by:
KIRK GRAHAM
OWNER
13715 TERRACE BUILDS LLC
1875 FOREST HILLS
EAST CLEVELAND, OH 44112

13715 TERRACE BUILDS LLC
Represented by:
DONALD H. DURRAH
APPRAISER
11309 WADE PARK AVE.
CLEVELAND, OH 44106

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

EAST CLEVELAND CITY SCHOOLS BOARD OF EDUCATION
Represented by:
JOHN P. DESIMONE
FRANTZ WARD LLP
200 PUBLIC SQUARE, SUITE 3000
CLEVELAND, OH 44114

Entered Tuesday, May 26, 2020

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 672-21-002 and 672-21-003, for tax year 2018. The county appellees filed a motion to remand the matter with instructions to dismiss the complaint because it was filed by someone other than a licensed attorney. 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 any written argument of the parties, including the jurisdictional motion. We note that appellant filed a request for a new date, to which the BOE objected as being untimely. At this time, we hereby deny the request for a new hearing.

The subject property consists of two parcels improved with apartment buildings that operate as a single economic unit. The fiscal officer initially assessed the subject's total true value at $1,717,400. The appellant property owner filed a complaint with the BOR seeking a reduction in value to $800,000, which it amended to $300,000 at the BOR hearing. The appellee board of education ("BOE") filed a countercomplaint in support of the fiscal officer's values. The BOR convened a hearing, at which appellant relied on information regarding its April 2017 purchase of the property for a purported total of $300,000. Appellant acquired the property through the purchase of tax certificates. Appellant also presented the testimony and written report from appraiser Donald H. Durrah, who opined that the value of the property was $300,000. Durrah acknowledged that he did not review any market data and his opinion of value was based entirely on the sale of the subject. The BOE first argued that appellant was estopped from relying upon the sale because it had been considered and rejected by the BOR for a prior year. The BOE also objected to an email contained in appellant's evidence as unreliable hearsay. The BOE asserted that appellant failed to meet its burden to establish an alternative value and the fiscal officer's value must be, therefore, retained. The BOR issued decisions maintaining the initially assessed valuation, which led to the present appeals.

This board convened a hearing, at which only the BOE appeared. The BOE argued that

the April 2017 transfer of the property was not reliable evidence of value, as appellant had failed to establish the purchase price and it was not a recent arm's-length transaction. The BOE indicated that it joined the county appellees' jurisdictional motion and again asserted that appellant failed to meet its burden.

Initially, we deny the appellees' jurisdictional motion. R.C. 5715.19(A)(1) permits the filing of a complaint by an appraiser. See *Menos v. Cuyahoga Cty. Bd. of Revision* (Apr. 11, 2013), BTA No. 2012-Q-5127, unreported. There is no dispute that Durrah is an appraiser and filed the complaint. Next, we consider the merits of the appeal. When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). 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). "An arm's-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision* , 47 Ohio St.3d 23 (1989), syllabus. Here, we need not reach the issue of collateral estoppel and agree with the BOE that the transfer relied upon by appellant in the present appeal fails to meet the standard of an arm's-length sale. It is clear that both parties were not willing participants in the transaction, as the seller was forced to transfer the property via forfeiture. While we acknowledge

that this characterization as a forced sale is not an absolute bar, the Appellant has provided no additional evidence to rebut the presumption that the transaction was not arm's-length. See *Olentangy Local School Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision* , 141 Ohio St.3d 243, 2014-Ohio-4723. Furthermore, we do not find Durrah's opinion of value based solely on the transfer is sufficient to overcome the presumption that it does not constitute reliable evidence of value. Accordingly, we cannot rely on the sale as competent evidence of value.

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, 2018, were as follows:

PARCEL NUMBER 672-21-002

TRUE VALUE

$864,300

TAXABLE VALUE

$302,510

PARCEL NUMBER 672-21-003

TRUE VALUE

$853,100

TAXABLE VALUE

$298,590

OHIO BOARD OF TAX APPEALS

LAURA ROSBOROUGH AND STACEY RAKES, (et. al.), Appellant(s), vs. LAKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1240 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LAURA ROSBOROUGH AND STACEY RAKES
Represented by:
LAURA ROSBOROUGH
OWNER
R & R CARPET, INC.
7625 MENTOR AVE.
MENTOR, OH 44060

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

MENTOR EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT A. BRINDZA
BRINDZA MCINTYRE & SEED LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Tuesday, May 26, 2020

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

Laura Rosborough and Stacey Rakes appeal from a decision of the Lake County Board of Revision ("BOR") valuing the subject property for tax year 2018. Rosborough is the owner of the property owner R&R Carpet LLC ("R&R"). It is unclear what Rakes' relationship is to the subject property or the property owner. It appears Rakes may have been a prior partial

owner because the parcel card lists Larry Rakes as a previous owner. No party appeared for this board's hearing. We decide the case on the notice of appeal and the statutory transcript. The BOR's motion for reconsideration is denied.

The auditor valued the subject property at $846,470 for tax year 2018. The Board of Education for the Mentor Exempted Village School District ("BOE") filed a valuation complaint seeking a value of $1,200,000, citing an August 2018 sale. The parcel card states the property transferred from Larry Rakes in August 2018 for $1,200,000.

At the BOR hearing, Rosborough presented a finance appraisal with an effective date of April 10, 2018. That appraiser concluded to a value of $1,100,000. Rosborough testified the parties negotiated the sale price. Rosborough also testified R&R purchased at least one business from Larry Rakes before the sale. The BOR adopted the sale price, and Rosborough appealed 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). An arm's-length sale that postdates tax-lien date creates a rebuttable presumption of value in favor of the sale price. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. Once that presumption is established, any party opposing the sale value must show the sale is not indicative of value, e.g., through an appraisal or by showing the character of the property changed substantially between the tax-lien date and the sale date. See id.

Here, the BOE presented a facially qualifying sale with the deed and conveyance fee statement. Those documents are sufficient to create a presumption of value in favor of the sale price. See *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*,124 Ohio St.3d

27, 2009-Ohio-5932. Therefore, the burden of rebuttal shifts to any party opposing the sale price. See *Terraza 8*, supra.

Rosborough argues the property should be valued in accordance with the appraisal. The general rule is that non-tax-lien dated appraisals are not indicative of value as of the tax-lien date. For example, in *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, the Ohio Supreme Court held that "[t]he vintage of an appraisal matters because 'the essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time.'" Id. at ¶ 15. (quoting *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997)). However, the Supreme Court has held that specific components of a non-tax-lien dated appraisal should be considered where the appraisal contains sufficient "indicia of reliability." *Copley-Fairlawn City Sch. Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485,¶23 ("*Team Rentals*"). In *Team Rentals*, the Supreme Court held this board should have given weight to the contents of a non-tax-lien dated appraisal when the appraisal's proponent testified about why the appraisal was created, and a party relied upon the appraisal in a business or financial transaction. Id. at ¶¶ 30-31. Here, Rosborough testified the appraisal was relied upon to obtain financing. Accordingly, we must consider the appraisal.

Upon review, however, we do not find the appraisal is more persuasive evidence of value for the following reasons. First, the effective date is approximately four months after the relevant tax-lien date. Even when analyzing a finance appraisal under *Team Rentals*, the vintage of an appraisal matters because "the essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12. Second, and relatedly, we are unable to determine there were no significant changes in the market in those six months, nor are we able to determine no significant changes were made to the subject property in that interim period. Third, the sales

comparison approach portion of the appraisal largely supports the sale price. The appraiser determined the market would pay $1,130,000 for the subject property, which is just short of the $1,200,000 sale price.

We also note we do not find the sale should be disregard simply because R&R had some kind of a preexisting business relationship with the seller. This board will not disregard a sale simply because a preexisting relationship exists absent evidence that relationship skewed the sale price. For example, this board has previously found a sale was arm's-length despite a preexisting relationship when the parties acted in their own best interest. See *Emig v. Medina Cty. Bd. of Revision* (Feb. 21, 2013), BTA No. 2010-Y-1225, unreported. Here, Rosborough testified the parties negotiated the price showing they each acted in their financial interests.

For these reasons, we order the property valued as follows for tax year 2018:

PARCEL NUMBER 16B031B000330

TRUE VALUE

$1,200,000

TAXABLE VALUE

$420,000

OHIO BOARD OF TAX APPEALS

EAST BUILDINGS LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-793
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EAST BUILDINGS LLC
Represented by:
PAUL VINCENT
ESQUIRE
VINCENT ESQUIRE LTD.
26600 DETROIT ROAD, SUITE 250
WESTLAKE, OH 44145

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, May 26, 2020

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 687-08-022, for tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01. We note that during the BOR hearing, one of the BOR members referred to a list of sales of other homes near the subject property and indicated that the BOR would look at the properties on the list in more detail after the hearing. No copy of this list was included in the transcript on appeal. This board issued an order attempting to obtain such evidence through interim order dated January 15, 2020. The BOR responded to the order, informing this board that the BOR viewed the information on the overhead monitors with the taxpayer during the

hearing, but no additional written evidence or information was provided to the taxpayer. As such, we are unable to consider this information in our determination.

The subject property is improved with a single-family home. The fiscal officer initially assessed the subject's total true value at $121,000. Appellant filed a complaint with the BOR seeking a reduction in value to $82,000. At the BOR hearing, appellant presented testimony from its member, Paul Maron, along with an appraisal opining a value of $82,000 as of January 1, 2018, though the appraiser that performed the appraisal did not appear to respond to questions or explain his analysis. During the hearing, the board members raised several questions regarding the appraiser's choice of comparable sales, indicating that several properties had recently sold in much closer proximity to the subject property. Maron stated that the subject property is in average condition and somewhat physically different than nearby houses. One of the BOR members also commented that the subject property's $950 per month rental income was at market rates. The BOR issued a decision maintaining the initially assessed valuation, commenting in its notes that it found that the appraisal was not reliable because of the location of the comparable sales outside of the subject's neighborhood as defined by the appraiser, while there were a number of similar properties located on the subject's street and in the immediate area. From this decision, appellant filed the present appeal.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To satisfy this burden, appellant must produce competent and probative evidence to establish the correct value of the subject property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. 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, appellant relies on an appraisal report, though it constitutes unreliable hearsay because they were presented without testimony from the respective appraiser. 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*"). When a party submits a written appraisal, the presentation of the appraiser as a witness allows the other parties and this board the opportunity to evaluate the credibility of the appraiser and the reliability of his or her analysis. 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; *Akron Natl. Bank & Trust Co. v. Freed & Co.* (Aug. 20, 1980), Medina App. No. 957, unreported; *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported.

In some instances, even without testimony from the author, the information contained within the appraisal may furnish an independent basis for valuing the property. *Team Rentals*, supra, at ¶27. The reports in this case do not meet the standard necessary to do so. See *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058, ¶42 (distinguishing a *Team Rentals* from the circumstances where the record lacked direct testimony about both the preparation and use of an appraisal). We find Maron's explanations regarding the appraiser's choice of sales inadequate and note that the fiscal officer valued the property based on its average condition. Therefore, without testimony from the appraiser to answer questions and support his methodology, we find it does not constitute reliable evidence of value. See *Cannata*

v. Cuyahoga Cty. Bd. of Revision, 147 Ohio St.3d 129, 2016-Ohio-1094, ¶20 ("Here the reliable and probative character of the owner's appraisal was called into question by the fact that the BOR rejected it based upon a record that was not preserved and made available to the BTA. Moreover, the appraisal opinion of value, $330,000, reflected a reduction of 62 percent from the fiscal officer's original valuation, and the character of the property called for careful scrutiny of an appraisal that advocated so great a reduction. We therefore conclude that the BTA erred by adopting the appraisal valuation under these circumstances.").

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, 2018, were as follows:

TRUE VALUE

$121,000

TAXABLE VALUE

$42,350

OHIO BOARD OF TAX APPEALS

FRANCIS R. AND VICKI J. SMITH, (et. al.), Appellant(s), vs. BELMONT COUNTY BOARD OF REVISION, (et. al.),	)	Appellee(s). CASE NO(S). 2018-1515, 2018-1516 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FRANCIS R.& VICKI J. SMITH
4701 MONROE AVENUE
SHADYSIDE, OH 43947

For the Appellee(s) - BELMONT COUNTY BOARD OF REVISION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

Entered Tuesday, May 26, 2020

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

Francis and Vicki Smith appeal from a decision of the Belmont County Board of Revision ("BOR") removing the three subject parcels from the current agricultural use value ("CAUV") program and ordering a three-year recoupment of tax savings pursuant to R.C. 5713.34. We decide the case on the notice of appeal, the statutory transcript, this board's hearing record ("H.R."), and the parties' briefs.

The subject property is composed of seven parcels totaling approximately 500 acres in Belmont County. While a portion of the property enjoyed CAUV status for earlier tax years, the auditor denied CAUV status of the entire property for tax year 2017. The auditor's denial was based on a field inspection conducted by the auditor's wildlife and forestry specialist. Her report states she contacted appellants and appellants indicated they had no livestock currently on the

property. Her report also states appellants indicated they grew trees but had no active forest management plan. The specialist also requested income and expense documents, but it does not appear appellants ever provided those documents were ever supplied. Appellants filed a complaint with the BOR, and the BOR held a hearing. At the BOR hearing, appellants testified they raise and sell livestock, hay, and timber. Appellants indicated the sales were all cash transactions. Appellants also called several neighbors and associates who testified to purchasing hay and other goods from appellants. The BOR affirmed the denial, and appellants filed a notice of appeal with this board.

At this board's hearing, appellants appeared to testify and were cross-examined by counsel for the BOR. Appellants reiterated the same arguments they made to the BOR. They emphasized that they only accept cash so sale transaction documentation is limited. The parties submitted post-hearing arguments. The BOR also subsequently amended the statutory transcript to include the tax returns appellants provided to the BOR during its hearing.

When cases are appealed from a board of revision to this board, an appellant bears the burden. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and render a decision. *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The CAUV program grants preferential tax treatment of "land devoted exclusively to agricultural use." R.C. 5713.31 as defined by R.C. 5713.30(A)(1). Our analysis requires us to determine if property is used "commercially" as understood by R.C. 5713.30(A). Commerciality is determined by actual use not intent. See *Mentor Exempted Vill. School Dist. Bd. of Edn. v. Lake Cty. Bd. of Revision*, 57 Ohio St.2d 62 (1979), Accord, *Stults v. Delaware Cty. Bd. of Revision* (Aug. 20, 2004), BTA No. 2003-P-287, unreported. In other words, to

qualify for CAUV, the property must be used "primarily for profit." *Chrisman v. Licking Cty. Bd. of Revision* (Sept. 19, 1986), BTA No. 1985-C-758, unreported.

Here, we do not find appellants have carried their burden. Appellants submitted tax returns for tax years 2016 and 2017, including their schedule F for both years. Appellants reported only a small amount of income relative to the size of the property and took a $37,000 loss for tax year 2016 and a $17,665 loss for tax year 2017. While two years of returns may not always be dispositive in determining profit motive, two years is all appellants have supplied. Based on the returns, the property does not appear to be used primarily in a for-profit agricultural operation, especially in light of the income reported compared to the size of the property, i.e., 500 acres.

We agree with the BOR's brief that at least some agricultural activities appear to occur on the property. However, we also agree with the BOR that appellants have not supplied tangible evidence about the extent of the activities. For these reasons, the decision of the BOR is affirmed.

OHIO BOARD OF TAX APPEALS

MARIYA FALBERG, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2486
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARIYA FALBERG
CUYAHOGA DEVELOPMENT GROUP LLC
2557 QUEENSTON RD.
CLEVELAND, OH 44118

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

Entered Tuesday, May 26, 2020

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

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 781-15-107, for tax year 2018. 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 fiscal officer initially assessed the subject's total true value at $63,600, and the property owner filed a complaint with the BOR seeking a reduction in value to $43,000. At the BOR hearing, the property owner relied on testimony from its sole member, Mariya Falberg, who is also a realtor. Falberg discussed an appraisal that was submitted to the BOR, which was prepared by an appraiser who was not present at the hearing. The appraiser opined that the value of the property was $43,000 as of January 1, 2018, after viewing only the exterior of the property.

Falberg also prepared a list of colonial-style properties that had sold near the subject property. Falberg testified that she purchased the property in 2015, and since that time had painted, changed the carpet, and replaced a few of the windows. Falberg stated that she had unsuccessfully attempted to sell the property for $45,000. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. Falberg again appeared before this board in support of the requested reduction, noting that the county appellees had settled with her company regarding the values of several other properties.

[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). To satisfy this burden, appellant must produce competent and probative evidence to establish the correct value of the subject property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. The court has long held that "[t]he best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. *** However, such information is not usually available, and thus an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964).

[4] In this case, appellant relies on an appraisal report, though it constitutes unreliable hearsay because it was presented without testimony from the appraiser. 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*"). When a party submits a written appraisal, the presentation of the appraiser as a witness allows the other parties and this board the opportunity to evaluate the credibility of the appraiser and the reliability of his or her analysis. 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; *Akron Natl. Bank & Trust Co. v. Freed & Co.* (Aug. 20, 1980), Medina App. No. 957, unreported; *Cyclops Corp. v.Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported.

[5] In some instances, even without testimony from the author, the information contained within the appraisal may furnish an independent basis for valuing the property. *Team Rentals*, supra, at ¶27. The reports in this case do not meet the standard necessary to do so. See *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058, ¶42 (distinguishing a *Team Rentals* from the circumstances where the record lacked direct testimony about both the preparation and use of an appraisal). Here, the appraiser did not view the interior of the property and the record does not contain sufficient explanation regarding the appraiser's methodology. Therefore, without testimony from the appraiser to answer questions and support his methodology, we find it does not constitute reliable evidence of value. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094, ¶20 ("Here the reliable and probative character of the owner's appraisal was called into question by the fact that the BOR rejected it based upon a record that was not preserved and made available to the BTA. Moreover, the appraisal opinion of value, $330,000, reflected a reduction of 62 percent from the fiscal officer's original valuation, and the character of the property called for careful scrutiny of an appraisal that advocated so great a reduction. We therefore conclude that the BTA erred by adopting the appraisal valuation under these circumstances.").

[6] We further find that Falberg's testimony and the list of sales does not support a reduction. 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*, supra, at ¶20. Evidence that the 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.

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

[8] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$63,600

TAXABLE VALUE

$22,260

OHIO BOARD OF TAX APPEALS

ROBERT F. SCOTT, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-2998
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROBERT F. SCOTT
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Tuesday, May 26, 2020

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

Appellant appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 117-27-007 and 117-33-019, for tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

The subject properties are both vacant residential lots that were initially valued by the fiscal officer at a total true value of $5,000 and $2,100, respectively. Appellant filed complaints with the BOR seeking reductions in value to $500 and $1,000, respectively, based on September 2018 transfers of the properties. No one appeared on behalf of appellant at the BOR hearings, and the BOR issued decisions maintaining the initially assessed values, noting that no evidence had been submitted regarding the purported sales of the properties. From these decisions,

appellant filed the present appeal and chose not to appear before this board to present additional evidence or argument.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). This board is charged with the responsibility of determining value based upon evidence properly contained within the record that must be found to be both competent and probative. *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 77 Ohio St.3d 402, 405 (1997); *Cardinal Fed. S. & L. Assn. v. Bd. of Revision*, 44 Ohio St.2d 13 (1975), paragraph two of the syllabus.

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). "An arm's-length sale is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23 (1989), syllabus. While the characterization as a forced sale is not an absolute bar, the proponent of the sale must provide additional evidence to rebut the presumption that the transaction was not arm's-length. See *Olentangy Local School Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723.

In this case, we find that appellant has failed to meet his burden. Initially, we note that he provided no information about the sales and we cannot confirm the sale prices alleged on his complaints. The property record cards reflect $0 transfers. Second, we find that appellant failed to establish that the forfeiture sales exhibited the characteristics of an arm's-length transaction or were otherwise reliable 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, 2018, were as follows:

PARCEL NUMBER 117-27-007

TRUE VALUE $5,000

TAXABLE VALUE $1,750

PARCEL NUMBER 117-33-019

TRUE VALUE $2,100

TAXABLE VALUE $740

OHIO BOARD OF TAX APPEALS

STILLWATER TWO LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2922, 2019-2923, 2019-2924, 2019-2925 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - STILLWATER TWO LLC
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Wednesday, May 27, 2020

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

[1] The property owner appeals decisions of the board of revision ("BOR"), which denied its requests for remission of the late-payment penalty associated with the untimely payments of property-tax bills for parcels 312-11-022, 312-11-025, 312-11-023, and 312-11-026 for the second half of tax year 2018. We proceed to consider these consolidated matters based upon the notices of appeal, statutory transcripts certified by the BOR, and county appellees' written argument.

[2] The property owner filed four separate applications for remission of the late-payment penalties for the parcels and tax period referenced above. By way of the applications, the property owner asserted that it mailed the property tax payments before the due date of July 15, 2019.

Though the applications requested evidence to support such assertion, the property owner did not provide any evidence. The property owner further noted that it mailed the check payment for the property-tax bills on July 3, 2019; however, such check was never presented to the bank for payment. As a result, the property owner asserted that it ordered a stop payment on the check and reissued payment at the direction of the county treasurer's office. The county treasurer recommended that the applications be denied because the property owner had a history of delinquent property-tax payments. The BOR agreed and determined that the property owner was not entitled to remission of the late-payment penalties. The property owner then appealed the BOR written decisions, which denied the property owner's requests, and this appeal ensued. Neither party availed itself of the opportunity to submit evidence at a hearing before this Board. The county appellees submitted written argument that asserted that the property owner had failed to demonstrate that it was entitled to remission of the late-payment penalties.

[3] Before we consider the merits of this appeal, we must first address some preliminary issues. A review of the notice of appeal, and the attached documents, indicates that an accountant, not an attorney, filed the notice of appeal. Though the filing of the notice of appeal by the accountant is considered the unauthorized practice of law, such filing does not divest this board of jurisdiction. See *NASCAR Holdings, Inc. v. Testa*, 152 Ohio St.3d 405, 2017-Ohio-9118; see also *Horizon Trust Company v. Cuyahoga County Board of Revision* (Interim Order, Feb. 26, 2019), BTA No. 2018-1883, unreported (finding that appraiser engaged in the unauthorized practice of law by filing the notice of appeal on behalf of the property owner). However, we will not consider the written argument, which included factual statements and newly presented documents, attached to the notice of appeal, for a number of reasons. First, the written argument was submitted by a non-attorney. Therefore, it appears that he has engaged in the unauthorized practice of law by attempting to represent the property owners in this matter, See,

Megaland GP, L.L.C. v. Franklin Cnty. Bd. of Revision, 145 Ohio St.3d 84, 2015-Ohio 4918, ¶19, fn. 2 ("We also note that Megaland's brief was submitted and signed by Normann Rafizadeh, who is not an attorney licensed to practice law in the state of Ohio. With certain exceptions not applicable here, a non-attorney who prepares legal papers to be filed in court on behalf of a corporate entity such as a limited-liability company engages in the unauthorized practice of law. *Disciplinary Counsel v. Kafele*, 108 Ohio St.3d 283, 2006-Ohio-904, *** ¶¶14-15. Accordingly, we sua sponte strike Megaland's brief from the record and admonish Mr. Rafizadeh to desist from any further unauthorized practice of law." (Parallel citation omitted.)); Ohio Adm. Code 5717-1-02(B) "Any non-attorney acting on behalf of a party may not make legal argument, examine witnesses, or undertake any other tasks that can be performed only by an attorney.").

[4] Second, with regards to the factual statements contained in the written argument and the newly presented documents attached to the notice of appeal, they amount to unreliable hearsay. See *Dellick v. Eaton Corp.*, Mahoning App. No. 03-MA-246, 2005-Ohio-566, ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). Generally, hearsay is inadmissible. Evid.R. 802."). Third, the newly presented documents, i.e., the bank statements, cannot be considered because they were not submitted at a hearing before this board. See *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 ofappeal. Because the documents were produced outside the hearing context and were clearly offered for their evidentiary value, we cannot consider them."). We will, therefore, base our decision on the record developed before the BOR.

[5] 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*

CitySchool Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision, 90 Ohio St.3d 564, 566 (2001). Upon review, we are constrained to find that the property owner has failed to demonstrate that the facts and circumstances of this matter qualifies for remission of the late payment penalty pursuant to R.C. 5715.39(B), which requires penalty remission for the following reasons:

> (1) The 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.
>
> (2) In cases other than those described in division (B)(1) of this section, and except as provided in division (B)(5) of this section, 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.
>
> (3) The 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.
>
> (4) The 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.

> (5) With 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.

Penalties must also be remitted if the "taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." R.C. 5715.39(C).

[6] The property owner alleged that their situation fit within the parameters of under R.C. 5715.39(B)(4), which requires a taxpayer to demonstrate timely mailing of the property-tax payment. As noted above, though the application indicates that an applicant must "submit evidence of timely mailing," the property owner failed to submit any such evidence. We are left, therefore, to conclude that the property owner has failed to prove that remission of the late-payment penalties would be appropriate under this provision.

[7] According to the statutory transcripts, the BOR considered whether remission of the late-payment penalties would be appropriate under other statutory bases. It determined that the property owner did not qualify for remission of the late-payment penalty under R.C. 5715.39(B)(1), i.e., because the county fiscal officer or treasurer acted negligently; under R.C. 5715.39(B)(2), i.e., because the property owner did not receive the property-tax bills and made a good faith effort to obtain them; and/or under R.C. 5715.39(C), i.e., because the property owner's failure constituted reasonable cause, not willful neglect. The record is void of any evidence to demonstrate that the property owner's failure to timely pay the property-tax bills were related to negligence by the county fiscal officer or treasurer. The property owner has not alleged, and the record does not demonstrate, that the property owner did not receive the property-tax bills. We must conclude that the property owner is not entitled to remission of the late-payment penalties under R.C. 5715.39(B)(1) and R.C. 5715.39(B)(2).

[8] We must also find that the property owner does not qualify for remission under R.C. 5715.39(C). Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. Here, it is undisputed that the property owner has at least four late payments of property-tax bills, i.e., the issues at the crux of these appeals.

[9] 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 foregoing, we find that the property owner has failed to provide sufficient evidence to demonstrate that it is entitled to remission of the late-payment penalties related to the untimely payment of property-tax bills for the second half of tax year 2018.

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1195 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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AAA EXPRESS, INC.
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Entered Wednesday, May 27, 2020

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 190-000537-00, for tax year 2018. 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 auditor initially assessed the subject's total true value at $90,000, and the BOE filed

a complaint seeking an increase in value to $150,000. At the BOR hearing, the BOE presented evidence that the appellee property owner, AAA Express, Inc., purchased the subject property for $150,000 on February 1, 2018. The owner of AAA Express, James Soller, acknowledged the sale, explaining that it was leasing nearby property to park its delivery trucks when it was notified it had to vacate. The subject property had a sign out front that outside storage was available for rent, and AAA Express began leasing that space. A few months later, after the owner of the space discontinued use of the building, he approached Soller to notify him that he wanted to sell the building so he was not sure how much longer the outdoor storage area would be available. The seller then asked if AAA Express would be interested in purchasing the property for $150,000, which Soller felt was a fair price for the property. Soller indicated that AAA Express primarily uses the property for parking the delivery trucks and making any necessary repairs. Soller also described some condition problems that he discovered after the sale, including water issues in the basement.

The BOR issued a decision maintaining the initially assessed valuation, indicating that it found the sale was not arm's-length because the property transferred to the tenant without exposure to the open market. From this decision, the BOE filed the present appeal, again relying on the sale in support of its requested increase. AAA Express again relied on testimony from its owner, who reiterated the statements made before the BOR.

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 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. 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 February 2018 sale was a recent, but the BOR found that AAA Express's relationship to the seller was not characteristic of an arm's-length transaction. This relationship alone, however, does not disqualify the sale, even when the landlord approached the tenant and the property was not listed on the open market. See, e.g., *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶¶32-34. The court held that "[t]he case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers." Id. at ¶29. In this case, the evidence shows that the parties were both acting in their own best interest and that the buyer considered $150,000 a "fair price." Therefore, we find that the sale in this case qualifies as the best evidence of the subject property's value.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$150,000

TAXABLE VALUE
$52,500

OHIO BOARD OF TAX APPEALS

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

vs.

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

CASE NO(S). 2019-534
REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
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Entered Wednesday, May 27, 2020

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

[1] The Board of Education of the Columbus City Schools ("BOE") appeals from a decision

of the Franklin County Board of Revision ("BOR") valuing parcels 010-103360-00 and 010-274713-00 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, this board's hearing record ("H.R."), and any written argument. The subject property is improved with an Extend-A-Suites hotel. The auditor valued the property at a combined value of $2,300,000 for tax year 2018. The property owner filed a valuation complaint seeking a total value of $1,800,000 based on a land installment contract executed on December 24, 2018. The BOE filed a counter-complaint asking the auditor's value be retained. At the BOR hearing, counsel and a representative appeared for the property owner. The BOE's counsel also appeared. The property owner's representative testified to and authenticated the land contract. He testified a broker had marketed the property. He also testified the subject property was subject to litigation in the Franklin County Environmental Court, which had placed restrictions on the property. Those restrictions included a bar on accepting cash payments, a requirement that patrons supply government identification to rent a room, and a restriction that rooms may not be rented to Franklin County residents. The BOE cross-examined the property owner's representative. The BOE also argued a land contract is not indicative of value unless and until all payments are made and a conveyance fee statement filed. The BOR adopted the land contract value stating this contract was not a "standard land contract." The BOR specifically noted the contract was negotiated using a broker. The BOE appealed to this board.

[2] At this board's hearing, the BOE argued the BOR errored in adopting the land contract value because the law is clear a land value contract price is not indicative of value unless and until all payments are made and they conveyance fee statement filed. The property owner argued the BOR's value should be retained because the land installment contract price is the best evidence of value.

[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). The Ohio Supreme Court "has repeatedly

instructed" this board "to eschew a presumption of validity of the BOR's value and instead to perform" our own "independent weighing of the record." *Taliki Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2017-1226, unreported (quoting *Columbus City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 458, 2017-Ohio-5823, ¶7). We will not rely on a BOR's value if it is unsupported by the evidence. 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").

[4] This board's cases have been clear that a land installment contract only establishes value when the "contract is completed and title transferred, provided such transfer is 'recent' to" the relevant tax-lien date. See *Cuyahoga Falls City Schools Bd. of Edn. v. Summit Cty. Bd. of Revision* (Dec. 18, 2018), BTA No. 2017-1563, unreported; see also *Akron City Schools Bd. of Edn. v. Summit Cty. Bd. of Revision* (June 16, 2016), BTA No, 2015-1498, unreported (both contract date and title transfer date must be recent to tax-lien date because "contract merely constitutes the commencement of an agreement to transfer property upon the satisfaction of terms and conditions set forth therein***.").

[5] Here, the terms of the contract are clear. At this board's hearing, the property owner supplied a timeline to clarify the facts of this case. See H.R., Ex. 1. Per the complaint, the property owner executed the land installment contract on December 24, 2018. That contract was recorded on January 9, 2019. See id. The agreement contemplates 24 monthly payments meaning title will transfer on January 9, 2021. Id. at 3. In accordance with our prior cases, we find the contract in this case is not indicative of value for tax year 2018 because the title will transfer, if at all, on January 9, 2021. Accordingly, we find the BOR errored in adopting the land contract price. We do not find this land contract is somehow different from prior land contracts this board has disregarded. It generally makes no difference for valuation purposes that a broker facilitates or

is involved in a land installment contract transaction. See, e.g., *Medina City Schools Bd. of Edn. v. Medina Cty. Bd. of Revision* (Feb. 1, 2016), BTA No. 2015-508, unreported. Additionally, the property owner cites no case from this board or a court finding an unfulfilled land contract is indicative of value merely because the subject property is subject to past (or even going) litigation.

[6] For these reasons, we find the BOR's reduction is unsupported by the evidence. We order the auditor's value be reinstated as follows:

PARCEL NUMBER 010-103360-00

TRUE VALUE

$2,294,100

TAXABLE VALUE

$802,940

PARCEL NUMBER 010-274713-00

TRUE VALUE

$5,900

TAXABLE VALUE

$2,070

OHIO BOARD OF TAX APPEALS

GAHANNA-JEFFERSON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-73
vs.	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, May 27, 2020

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

The affected board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 025-12679-00, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified by the BOR, and record of this board's hearing.

The BOE filed a complaint with the BOR, which requested that the subject property's

value be increased from its initially assessed value of $1,290,000 to $2,140,000. At the BOR hearing, only the BOE appeared to submit argument and/or evidence into the record. In doing so, the BOE submitted a general warranty deed that demonstrated the transfer of the subject property from Northland 3, LLC ("Northland") to 1050 Beecher, LLC ("1050 Beecher"), the property owner in this matter; an exempt conveyance fee statement with accompanying affidavit, which averred that the subject property transferred for no consideration as a capital contribution from Northland to 1050 Beecher; the mortgage purported to encumber the subject property, which was entered into contemporaneous to the transfer; and information from CoStar, which highlighted the $2,140,000 transfer of the subject property from Northland to 1050 Beecher in June 2017. Based upon its presentation, the BOE argued that 1050 Beecher effectuated the transfer of the subject property through an entity transfer for $2,140,000 and that the subject property should be valued consistent with the actual consideration paid for the entity. 1050 Beecher did not participate in the proceedings. The BOR subsequently issued a decision, which retained the subject property's initially assessed value, and this appeal ensued.

At this board's hearing, only the BOE appeared to supplement the record with argument and/or evidence. In doing so, the BOE submitted a financing appraisal report performed contemporaneous with the transfer, which included the underlying purchase agreement that memorialized the terms of the transfer of the subject property.

Before we address the merits of this appeal, we must discuss a preliminary issue. When the BOR initially filed the statutory transcript, it failed to provide a copy of the BOR decision hearing. At the board's informal request, the BOR supplemented the record with an audio purported to be the BOR decision hearing. Unfortunately, we were unable to review this audio because it was in a format that we were unable to play.

The appellant must prove the adjustment in value requested when appealing from a board of revision to this board. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. The Ohio Supreme Court has been clear "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." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶¶ 31-34 (quoting *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129). A transfer of the membership interest in a limited-liability company may be the best evidence of value when "the purchase and sale agreement indicates that the transfer of membership interest was done solely to transfer title to the subject property." *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 107199, 2019-Ohio-634, affirmed on appeal, Slip Opinion No. 2020-Ohio-710 (quoting *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 28, 2018), BTA No. 2017-127, unreported). In other words, this board can look to the economic reality of a transaction and adopt a membership transfer as a sale of real property. To succeed, the party arguing an entity transfer is actually the sale of real property for tax valuation purposes must present sufficient evidence for this board to determine the nature of the transaction.

We find the recent Supreme Court decision in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2020- Ohio-353 ("*Palmer House*"), to be instructive. There, the court affirmed this board's decision, which determined that the transfer of real property via a "Drop Down LLC," by which the seller would place the property in a limited-liability company and then transfer the limited-liability company to the buyer, reflected real property value. The court distinguished precedential cases of *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 82 Ohio St.3d 193 (1998); *Gahanna-Jefferson Pub. Schools*

Bd. of Edn. v. Franklin Cty. Bd. of Revision, 89 Ohio St.3d 450 (2000), finding that "[i]n both *Salem Med. Arts* and *Gahanna-Jefferson*, as in this case, the BTA grappled with whether evidence of the sale of an entity should be deemed to be functionally equivalent to a sale of the real estate owned by the entity, given that the real estate was the principal or only asset the entity owned." *Palmer House*, at ¶32. The court found that "one fact stands out as having overriding significance. In *Salem Med. Arts* and *Gahanna-Jefferson*, the purchase contracts provided for sales of corporate shares or partnership interests without explicit reference to an intent to sell and buy the real estate itself ***." Id. at ¶37. (Internal citations omitted.) Of particular importance to the facts of this matter, the court noted:

> In stark contrast, the BTA in this case confronted a document labeled by the parties as "Sale of Palmer House on the Boulevard 4121 Palmer Park Circle East New Albany, Ohio" and "Purchase and Sale Agreement." That is, the contract identifies itself as a purchase agreement for the real estate at issue. Beyond its cover page, the contract takes the classic form of a purchase agreement for commercial real estate by identifying as the subject matter of the transaction the specific real property along with categories of personal property appurtenant to the commercial operation of the real estate. Finally, this particular contract includes an explicit provision setting forth an optional method for consummating the deal as a transfer of corporate ownership rather than a conveyance of real estate from the seller to the buyer. We conclude that the documentation in this case made it reasonable for the BTA to find that this sale, unlike those in the earlier cases, reflected the parties' intent to sell and purchase income-producing real estate and

> supported the BTA's finding that the parties' transfer of corporate ownership constituted a contrivance for accomplishing the sale of commercial real estate.

Id. at ¶¶38-39. Accord *Orange City Schools*, supra.

Similarly, in this matter, the purchase agreement explicitly refers "to an intent to sell and buy the real estate itself." Id. Indeed, the purchase agreement is entitled "Real Estate Purchase Contract" and references that "[s]eller will create a new entity for the property and buyer will purchase new entity. Buyer will pay for costs associated with this." Hearing Record at Exhibit A at 58-59. Thus, on this record, we find that the BOE has successfully demonstrated that the parties to the entity transfer effectuated the sale of real property, which we find to be indicative of the subject property's value. Upon careful review of the record, we discern no evidence to rebut the presumption that the subject sale was recent, arm's-length, and voluntary.

It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of the relevant tax lien date:

True Value: $2,140,000

Taxable Value: $749,000

OHIO BOARD OF TAX APPEALS

RICHARD E. JENKINS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2791 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RICHARD E. JENKINS
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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Entered Wednesday, May 27, 2020

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 702-31-040, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

The subject property is improved with a single-family home. The fiscal officer initially assessed the subject's total true value at $135,000, and appellant filed a complaint with the BOR seeking a reduction in value to $65,000. At the BOR hearing, appellant explained that he purchased the property in 2009 for $65,000, and the value of the property had been consistent with the sale price since that time. Appellant maintained that no improvements had been made to the property since it was purchased. Appellant argued that the 108% increase was not consistent

with the changes in value experienced by other properties on the subject's street. The tenant residing in the property also appeared to testify regarding the condition of the property. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. This board convened a hearing, at which appellant and the tenant residing in the subject property again appeared to reiterate those arguments made before the BOR.

The fiscal officer has the duty to value and assess taxes against real property in the county, which includes the obligation to reappraise property values once every six years and perform an update at the three-year interim point. *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, ¶19; R.C. 5713.01(B), 5713.03, 5715.33, and 5715.24; Ohio Admin. Code 5703-25-16(B). When a property owner seeks to challenge the values resulting from the reappraisal process, the owner must present sufficient evidence to establish that an alternative proposed value is the true value of the property and cannot merely challenge the accuracy of the fiscal officer's value. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. As the owner of the subject property, appellant 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 appellant bases his opinion of value is not probative, his testimony is not sufficient to satisfy appellant's burden on appeal. *Johnson v. Clark Cty. Bd. of Revision*, 155 Ohio St.3d 264, 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

Initially, we must reject appellant's argument that the fiscal officer's value for the subject property from the earlier tax year or other properties reflects the correct assessed value for the year at issue. A property's valuation from one tax year is not competent and probative evidence of value for another tax year. See *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 29 (1997). Additionally, the values of other properties are not reliable evidence of value for the subject.

WJJK Investments, Inc. v. Licking Cty. Bd. of Revision, 76 Ohio St.3d 29, 31 (1996) ("Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner.").

Second, evidence of a lack of improvements or necessary repairs is not sufficient to support a reduction in value. In order to support this type of claim, appellant must have demonstrated not only that such factors are present, but also the impact on the value of the subject property. *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996). See, also, *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997). Thus, we find that appellant has failed to meet his burden to demonstrate a reduced value for the subject property.

Finally, although this was not directly argued by appellant, we must reiterate that the purchase price from appellant's 2009 sale is no longer reliable evidence of 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 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. In this case, the 2009 sale is too temporally distant from the tax lien date to benefit from the presumption of recency, and appellant failed to present evidence to demonstrate that it was nevertheless recent and reliable 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, 2018, were as follows:

TRUE VALUE

$135,000

TAXABLE VALUE

$47,250

OHIO BOARD OF TAX APPEALS

SRE ESA PROPCO AKRON COPLEY EAST, LLC, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1269 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SRE ESA PROPCO AKRON COPLEY EAST, LLC
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COPLEY-FAIRLAWN CITY SCHOOLS BOARD OF EDUCATION
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Entered Wednesday, May 27, 2020

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 15-04913, for tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

The subject property is improved with a 95-room extended stay hotel, initially assessed

by the fiscal officer at $1,699,160. Appellant filed a complaint with the BOR seeking a reduction in value to $1,250,000. The appellee board of education ("BOE") filed a countercomplaint in support of the fiscal officer's value. The BOR convened a hearing, at which appellant amended its requested value to $1,325,000 and presented information regarding a November 2018 sale of the subject property. Appellant explained that the subject property sold with 13 other extended stay hotels as part of a portfolio transaction, presenting documents from the transaction and testimony from Tucker Floyd, an employee of the buyer in the transaction.

Floyd testified that the allocation of the total purchase price to each was property was determined based on its individual characteristics. Floyd also stated that the $1,650,000 recorded sale price included consideration for furniture, fixtures, and equipment ("FF&E") that transferred with the subject real property. Appellant provided a document that allocated the total price for each property among land, building, and FF&E, and Floyd testified that this document was reported to the IRS. The BOE cross-examined Floyd, who acknowledged an appraisal was performed by the lender during the transaction but claimed he was unaware of value conclusion.

The BOR issued a decision maintaining the initially assessed valuation, though it did not make any findings as to the sale or why it was rejected. From this decision, appellant filed the present appeal, and the parties all waived the opportunity to present evidence or argument on appeal.

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 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. 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 SchoolsBd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present appeal, no one has disputed that the subject property transferred via a recent, arm's-length transaction. The only issue is whether the evidence establishes a sale price that reflects the true value of the subject real property. An owner who seeks to reduce the valuation of real property below the full sale price bears the burden of showing the propriety of allocating some portion of that reported price to other assets. *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921; see, also, *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249. In this case, we find that appellant met that burden.

Floyd's uncontested testimony that the purchase price for each hotel was negotiated by the parties is corroborated with the sale documents. Additionally, $1,650,000 sale price as recorded for the subject property included FF&E in addition to the real property. Furthermore, we find that allocation utilized by appellant and reported to the IRS reliably reflects the value of the real property for purposes of taxation.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE
$1,325,000

TAXABLE VALUE
$463,750

OHIO BOARD OF TAX APPEALS

WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2343 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION
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WEST OHIO ANNUAL CONFERENCE OF THE UNITED METHODIST CHURCH
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Entered Wednesday, May 27, 2020

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

This case is before us on a motion to vacate and remand filed by appellant Worthington City Schools Board of Education ("BOE") and a motion to affirm filed by the property owner, West Annual Conference of the United Methodist Church. We decide the case on the notice of appeal, the statutory transcript, and the parties' written argument.

We begin by reviewing the timeline in this case. On December 28, 2017, the United Methodist Children's Home West Ohio Conference of the United Methodist Church transferred the subject property to the appellee property owner for $2,380,000. On December 15, 2018, the auditor promulgated his tax list and duplicate. The auditor included the subject property, parcel 100-006773-00, on the tax list. He valued the property at $2,193,000. On March 11, 2019, the BOE filed an increase complaint based on the December 2017 sale. *After* the complaint was filed but *before* the board of revision ("BOR") held its hearing, the Tax Commissioner exempted the property as a house of public worship. The Tax Commissioner issued his decision on April 11, 2019. The BOR held its hearing on August 30, 2019, and the BOE presented the conveyance fee statement and deed to substantiate the December 2017 sale. The BOR dismissed the complaint finding it lacked jurisdiction to consider the complaint because the property was not on the tax list at the time of the BOR hearing. On appeal, the BOE argues the BOR erred because the property was on the tax list when promulgated and on tax-lien date, meaning the BOR had jurisdiction to consider the complaint. The property owner argues this board should affirm because the property was exempt when the BOR considered the case, meaning it had been removed from the tax list.

This board lacks summary judgment authority. *Brown v. Levin*, 119 Ohio St.3d 335, 2008-Ohio-4081, ¶11. However, this board can decide jurisdictional questions when the sole issue is whether a board of revision had jurisdiction to consider, or should have decided, a complaint filed under R.C. 5715.19. See *Bd. of Edn. of the Columbus City School District v. Franklin County Board of Revision* (Mar. 23, 2001), BTA No. 97-T-870, unreported ("*Budig*"). Here, the briefs make clear the only issue before this board is a jurisdictional one meaning we can decide the appeal on the motions. See id.

We now turn to the parties' specific arguments. The parties agree R.C. 5715.19 permits the filing of a complaint against the valuation of property "that appears on the tax list[.]" If a complaint

is properly filed, the BOR has a duty to decide the merits of the complaint. *Kuntz 2016 LLC v. Montgomery Cty. Auditor*, 2nd Dist. Montgomery, No. 28038, 2018-Ohio-4635. The BOE argues the BOR erred because the subject property was on the tax list when it was promulgated in December 2018 and on tax-lien date. The property owner argues that the list was stale because the Tax Commissioner exempted the property after the tax list was created and after tax-lien date. In response, the BOE argues the tax list is the tax list, and subsequent exemption does not divest the BOR of jurisdiction.

Our cases say the BOE is correct. See *Budig* at 5-11. In *Kuntz*, the Second District characterized (and accepted) our *Budig* decision as follows:

> Thereafter, in *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, BTA No. 97-T-870, 2001 Ohio Tax LEXIS 507 (Mar. 23, 2001), the BTA considered a case wherein a board of revision dismissed a board of education's complaint for an increase in valuation because the subject property was not on the tax list at the time it issued its decision. However, the subject property was on the tax list as of the tax lien date for which the complaint was filed. The BTA reversed the decision of the board of revision, holding that the board of education's complaint was jurisdictionally proper. Specifically, the BTA found jurisdiction is vested in a board of revision where a parcel is on the tax list for the then current year, as provided for in R.C. 319.28, and all other filing requirements are met by the complainant.***.

In *Kuntz*, the Second District held in favor of the school board based, in part, on our decision in *Budig*.

Because there is no question the subject property appeared on the tax list when the auditor promulgated the list and on tax-lien date, we reverse the decision of the BOR and remand the case for the BOR to consider the complaint in the first instance.

OHIO BOARD OF TAX APPEALS

J&K AMERICAN ENTERPRISES, INC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1161 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - J&K AMERICAN ENTERPRISES, INC
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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Entered Wednesday, May 27, 2020

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

J&K American Enterprises Inc. ("J&K") appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's value of parcel 115-31-008 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, this board's hearing record ("H.R."), and any written argument.

The fiscal officer valued the property at $21,000 for tax year 2018. J&K filed a complaint requesting a value of $10,000. At the BOR hearing, J&K presented income information, some photographs, and unadjusted market data. The BOR retained the fiscal officer's value holding as follows:

> A member of the complainant appeared with counsel and supplied photo's, income and expense data and testimony regarding needed repairs and deferred maintenance. The Board considered the complainant's testimony and evidence and find that the Fiscal Officer's value is supported, no revision.

J&K appealed requesting a value of $10,000. At this board's hearing, the property owner presented the same general evidence but also submitted an appraisal created in 2016. The BOE objected to the appraisal because it was not disclosed and because it was not presented to the BOR despite the fact it was created in 2016. See R.C. 5715.19(G). The attorney examiner reserved ruling. We will not consider the appraisal because it was available but not presented to the BOR and no good cause has been shown. H.R. at 14 (Counsel: "Just didn't get [the documents] together.")

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). To meet that burden, an 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.

Upon review, we find J&K has not carried its burden. We do not find the income and expense data to be probative evidence of value. While such data might be helpful for an appraiser using the income capitalization approach, the raw data alone is not probative evidence of value. *Worthington Hills Country Club, Inc. v. Franklin Cty. Bd. of Revision* (Jan. 22, 1999), BTA No. 97-A-175, unreported. We also do not find evidence of needed repairs to be probative evidence of value. As the Supreme Court stated in *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228 (1996), "[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." A party must do more

than just demonstrate the existence of negative factors; it must also quantitatively demonstrate the impact such factors have on the property's value. *Germano v. Cuyahoga Cty. Bd. of Revision* (June 19, 2018), BTA No. 2017-1468, unreported. Finally, we do not find the unadjusted market data is probative evidence of value. Raw sales data is generally insufficient to warrant an adjustment since there are too many variables between the subject property and the comparables. See *1721 Radio LLC v. Montgomery Cty. Bd. of Revision* (Mar. 28, 2019), BTA No. 2018-586, unreported.

For these reasons, we order the property valued as follows for tax year 2018:

TRUE VALUE

$21,200

TAXABLE VALUE

$7,420

OHIO BOARD OF TAX APPEALS

HANOVER PROPERTIES GROUP, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	))))))))	CASE NO(S). 2019-1698 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Thursday, May 28, 2020

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 232-25-058, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and written argument submitted by the appellee board of education ("BOE").

The fiscal officer initially assessed the subject's total true value at $652,000. The BOE filed a complaint with the BOR seeking an increase in value to $2,200,000, and appellant filed a

countercomplaint seeking a value of $1,000,000. At the BOR hearing, the BOE presented a deed and conveyance fee statement evidencing an August 2017 sale of the subject property for $2,200,000 and argued that the sale provided the best evidence of value for the subject property. Appellant did not dispute that the sale was a recent arm's-length transaction but claimed that approximately $1,200,000 of the sale price reflected the value of the lease in place. Appellant valued the lease based on the income generated during the first ten years pursuant to the terms of the lease. The parties also indicated that an appeal was pending with this board regarding the value of the property for the prior tax year based on the same sale. Following the hearing, the BOR issued a decision increasing the initially assessed valuation to $2,200,000 based on the sale, which led to the present appeal.

While the present appeal was pending, the board issued a decision regarding the tax year 2017 valuation. *Hanover Property Group, LLC v. Cuyahoga Cty. Bd. of Revision* (December 31, 2019), BTA No. 2019-86, unreported. In that decision, we did not address appellant's argument regarding the value of the lease because we found the sale did not reflect the property as it existed on the tax lien date because the building was only 25% complete on January 1, 2017. As such, we did not reach appellant's argument regarding the value of the lease.

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 a well-established 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. 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, appellant argues that the total purchase price reflected not only consideration for the real property but also the value of the lease in place. As such, the burden falls on appellant to demonstrate that the recorded purchase price does not reflect the subject's true value. *Terraza*, supra; *Spirit Master Funding IX, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 254, 2018-Ohio-4302. A number of factors may cause the sale of a leased property to be unreliable evidence of value, such as whether the actual rent was at market rates, creditworthiness of the tenant, and whether the lease was a net lease, under which the tenant defrays the expenses relating to the real estate. *GC Net Lease @ (3) (Westerville) Investors, L.L.C. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3856, ¶11. The appellant has presented no evidence, however, to prove that any of these factors were present in this case, much less any of these factors were reflected in the sale price.

We observe, as we have done many times before, that every transaction involves a buyer and seller with subjective motives. While appellant's owner claims that he was motivated by the lease, he failed to demonstrate that there was some aspect of the lease that did not reflect market conditions. Appellant did not provide any evidence regarding market rates, and instead discussed the rental income based on the actual lease. By claiming that the full amount of income received equates solely to the value of the lease, appellant essentially argues that the property should be valued as vacant. This argument has been rejected repeatedly, and we do so again here. See, e.g., *Lowe's Home Ctrs., L.L.C. v. Brooklyn City Schools Bd. of Edn.*, 10th Dist. Franklin No. 19AP-179, 2020-Ohio-464; *Rancho Cincinnati Rivers, L.L.C. v. Warren Cty. Bd. of Revision*, 12th Dist. Warren No. CA2019-07-075, 2020-Ohio-1319. Accordingly, we find that the sale price

is the best evidence of value and appellant has failed to meet its burden to show otherwise.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$2,200,000

TAXABLE VALUE

$770,000

OHIO BOARD OF TAX APPEALS

UMESHKUMAR GUPTA, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-905
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LUCAS COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	

APPEARANCES:
For the Appellant(s) - UMESHKUMAR GUPTA
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For the Appellee(s) - LUCAS COUNTY BOARD OF REVISION
Represented by:
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Entered Thursday, May 28, 2020

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 7974455, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, written argument submitted by the parties, and record of this board's hearing.

[2] The property owner filed a complaint with the BOR, which requested that the subject property's value be reduced from $528,300 to $425,000. By way of the complaint, the property owner asserted that comparable sales and assessed values of other nearby properties suggested that the subject property had been overvalued. The complaint also disclosed that the subject property had been the subject of a $546,000 transfer in March 2018. At the BOR hearing on the

matter, the property owner argued that it was unfair to value the subject property at approximately 97% of its $546,000 sale price when other properties were valued at approximately 75% of their sales prices. There was some discussion about the property owner's purchase of the subject property in March 2018 and the financing of the purchase.

[3] Prior to this board's hearing, both the property owner and county appellees submitted written argument. The property owner asserted that the subject sale should be disregarded because he was compelled to purchase the subject property. Instead, he argued, the subject property should be revalued to bring in line with sales and assessed values of other nearby properties. The county appellees asserted that the property owner failed to show that the subject sale was not a recent, arm's-length transaction and to provide legally sufficient evidence to support any deviation from the subject property's initially assessed value.

[4] At this board's hearing, only the property owner appeared to supplement the record with argument and evidence. In doing so, the property owner expanded upon the facts and circumstances of the subject sale and submitted a number of documents to support his position. Based upon the totality of the arguments and evidence, he amended his opinion of the subject property's value to $431,000.

[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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. Of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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] We begin our analysis with the subject sale. The record contains sale documents and notation on the property record card, which memorialize the $546,000 transfer of the subject property from Midland Agency of Northwest Ohio, Inc. to the property owner and Poonam Gupta on March 30, 2018. As a consequence, a rebuttable presumption was created 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 property owner to demonstrate why the subject sale should be rejected. He does not argue that the sale was too remote from the tax lien date, but he does argue that he was compelled to purchase the subject property because of pressing family obligations.

[7] To determine whether the subject sale was an arm's-length transaction, we look to *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23 (1989), by which 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. Because there was no evidence that the subject sale did not occur on the open market and that the parties failed to act in their own self-interest, we will focus on whether the property owner successfully demonstrated whether the subject sale was voluntary.

[8] Here, the property owner failed to demonstrate that the subject sale occurred under circumstances amounting to compulsion or duress. He primarily argued that pressing family obligations and difficulties with the builder of the home sitused on the subject property. While we sympathize with the property owner's desire to move into a permanent home for his family before the school year began, such desire does not require rejection of the subject sale. His motivations

reflected his objective for participating in the transaction and does not rise to the level of "duress" necessary to invalidate the subject sale for tax purposes. This board has repeatedly held that all buyers and sellers have subjective motives in any transaction and 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, at 11, unreported ("A negotiated purchase price is not invalidated merely because a purchaser later believes he made a bad deal.").

[9] Likewise, we find the property owner's issues with the builder to be equally unpersuasive. The property owner asserted that the $35,000 non-refundable deposit that he gave the builder made it impossible for him to walk away from the purchase agreement given the problems encountered during the construction process. The record is void of any evidence to prove that he was compelled to accept the builder's terms. The property owner could have walked away and continued his search for a home. Furthermore, a review of the email exchanges between the interested parties, submitted at this board's hearing, demonstrates that the property owner was a capable negotiator and willing to reject the builder's demands when he believed it was appropriate. Indeed, the record indicates that the purchase price was adjusted multiple times to meet the requirements of both parties to the transaction. Thus, there has been no indication that the property owner was a "hostage" to the subject sale such that it could bedeemed to have occurred under compulsion or duress. See *Lakeside Avenue Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 540 (1996).

[10] We acknowledge that the property owner provided a one-page excerpt from an appraisal report claimed to have been performed contemporaneous with the subject sale. We do not find it to be sufficient to rebut the presumptions accorded to the subject sale. Though this one-page excerpt provides some information about three comparable sales and the adjustments made to account for differences with the subject property, we cannot discern the appraiser's full

analyses from the excerpt. Further, because we do not have the entire appraisal report, we cannot discern the appraiser's scope of assignment and whether additional properties were considered in his analysis. Although the Supreme Court has held that this board may rely upon hearsay appraisal reports to determine whether a sale price reflects the market, see *Emerson v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 148, 2017-Ohio-865, or to demonstrate changing market conditions, see *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, we are limited in our ability to rely upon the one-page excerpt because it is not, itself, a complete and detailed analysis.

[11] Based upon the foregoing, we find that the property owner has failed to rebut the presumptions accorded to the subject sale. We proceed, however, to consider whether the balance of his arguments and evidence provide a better indication of the subject property's value than the subject sale.

[12] The property owner advanced two primary bases for reducing the subject property's value to approximately $431,000 for tax year 2018. He argued that a selected list of sales of properties, the subject property, and other properties, demonstrated that the county auditor overvalued the subject property. A review of the list highlights the varied natured of the homes sitused on those properties. The homes vary by age, date of sale, and square footage, and number of bedrooms, bathrooms, and floors. No adjustments were made to account for differences with the home sitused on the subject property. This board has repeatedly held that unadjusted comparable sales data are insufficient basis to determine real property value. 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 having found that the evidence was not probative).

[13] He also argued that other nearby properties had been assessed lower values, or at lower percentages of their sales prices, when compared to the subject property's assessed value. 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 nonconformity 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.").

[14] We acknowledge that an owner is competent to provide an opinion of value. *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987). However, for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. *See Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994). While an owner might be an expert in the subject property, an owner might not be an expert in valuation or the market. Here, we do not find the property owner's opinion of value of $431,000 to be supported by competent, credible, and probative evidence. We also acknowledge that the property owner provided an affidavit at this board's hearing. To the extent that the affidavit averred on topics or issues that were not discussed at the BOR hearing or this board's hearing, such statements are hearsay and will not be considered in our analysis. See *Dellick v. Eaton Corp.*, 7th Dist. Mahoning No. 03-MA-246, 2005-Ohio-566, at ¶25.

[15] We are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). Based upon our review of the record, we find that the property owner has not rebutted the presumptions accorded to the subject sale. Absent an affirmative demonstration that the subject sale was not an arm's-length transaction, we find that it is the best indication of the subject property's value.

[16] It is the order of this board that the subject property's true and taxable values are as follows as of the relevant tax lien date:

Parcel Number 7974455

True Value: $546,000

Taxable Value: $191,100

OHIO BOARD OF TAX APPEALS

MOLLIE ALBAN, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1633
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MOLLIE ALBAN
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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BOARDS OF EDUCATION OF THE COLUMBUS CITY AND GAHANNA-JEFFERSON CITY SCHOOL DISTRICT
Represented by:
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DUBLIN, OH 43017

Entered Monday, June 1, 2020

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

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 010-090275-00, 010-090776-00, and 520-168851-00, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

[2] The subject properties are each improved with a single-family home. The auditor

initially assessed the subjects' total true values at $101,800, $167,200, and $113,500, respectively. Appellant filed a complaint with the BOR seeking reductions in value to $35,900, $57,200, and $43,100, respectively. The appellee boards of education ("BOE") filed a countercomplaint in support of the auditor's values. The BOR convened a hearing, at which appellant appeared to testify and present evidence in support of the requested reductions. Appellant testified that the properties are occupied by tenants, but that the properties are in need of significant repairs, such as roof, gutters, basement concrete, and driveway. Appellant provided photographs as well as estimates. The BOE cross-examined appellant but presented no independent evidence of value.

[3] The BOR issued a decision maintaining the initially assessed valuations. During the decision hearing, the BOR only referenced one of the parcels though they all shared a common case number but described evidence that reflected all three parcels. The BOR members indicated that in addition to the evidence submitted at the hearing, they did additional sales and income analysis, both of which supported the auditor's values. From this decision, appellant filed the present appeal.

[4] On appeal, an appellant must come forward with evidence not only to show that the auditor'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,* 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. Where evidence of a qualifying sale is unavailable, appraisal evidence becomes necessary, which 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 its basis fails demonstrate the value requested. Id. at ¶20. See, also, *Johnson v. Clark Cty. Bd. of Revision,* 155 Ohio St.3d 264, 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its

probative weight.").

[5] In this case, appellant relied on testimony of negative conditions, specifically a list of necessary repairs and updates. While we acknowledge the existence of these conditions, it is unclear whether and to what extent they affect the subject's value. "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. In *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996), the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value. Additionally, as the court has observed, dollar-for-dollar costs do not necessarily directly correlate to value. See, e.g., *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997). Therefore, the presence of adverse factors alone does not provide a basis for a reduction.

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

[7] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

PARCEL NUMBER 010-090275-00

TRUE VALUE $101,800

TAXABLE VALUE $35,630

PARCEL NUMBER 010-090776-00

TRUE VALUE $167,200

TAXABLE VALUE $58,520

PARCEL NUMBER 520-168851-00

TRUE VALUE $113,500

TAXABLE VALUE $39,730

OHIO BOARD OF TAX APPEALS

LARRY & SUSAN MORAN, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2780, 2019-2781, 2019-2782, 2019-2783 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LARRY & SUSAN MORAN
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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Entered Monday, June 1, 2020

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. Appellants did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). These matters are decided upon the motions, the statutory transcripts 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 notices with the BOR. Upon consideration of the existing record, and for the reasons stated in the motions, we must conclude that this board does not have jurisdiction to consider the instant matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

STEPHEN & CAROLYN WARNER, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1345 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - STEPHEN & CAROLYN WARNER
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Represented by:
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CLEVELAND, OH 44113

Entered Tuesday, June 2, 2020

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. 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

ABED ABUHAMDEH, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S).
	)	2019-1343, 2019-1344
vs.	)	
	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ABED ABUHAMDEH
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Represented by:
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1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, June 2, 2020

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 motion. See Ohio Adm. Code 5717-1-13(B). These matters are 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. (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 notices with the BOR. Upon consideration of the existing record, and for the reasons stated in the motions, we must conclude that this board does not have jurisdiction to consider the instant matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

MABEL PROPERTY LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S).
	)	2019-1338, 2019-1340
vs.	)	
	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MABEL PROPERTY LLC
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, June 2, 2020

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 motion. See Ohio Adm. Code 5717-1-13(B). These matters are decided upon the motion, 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. (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 notices with the BOR. Upon consideration of the existing record, and for the reasons stated in the motions, we must conclude that this board does not have jurisdiction to consider the instant matters. As such, these matters must be, and hereby are, dismissed.

OHIO BOARD OF TAX APPEALS

JEAN SURDEL, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-3022
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JEAN SURDEL
Represented by:
THEODORE SURDEL
30871 PEPPER MILL CT.
NORTH OLMSTED, OH 44070

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, June 2, 2020

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. (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

VIVEK SHARMA, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1349
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - VIVEK SHARMA
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

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 Wednesday, June 3, 2020

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. (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

CONSTANCE HARTMAN, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1348
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CONSTANCE HARTMAN
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

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

Entered Wednesday, June 3, 2020

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. (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

L&M NAUMANN, LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1347
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - L&M NAUMANN, LLC
Represented by:
MICHAEL HELLER
ATTORNEY
MIKE HELLER LAW FIRM
333 BABBITT RD., SUITE 233
EUCLID, OH 44123

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

Entered Wednesday, June 3, 2020

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. (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

MURRAY HILL OF FLORENCE PROPERTIES, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-16 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MURRAY HILL OF FLORENCE PROPERTIES
Represented by:
LINDSAY DOSS SPILLMAN
VORYS, SATER, SEYMOUR, PEASE LLP
200 PUBLIC SQUARE
SUITE 1400
CLEVELAND, OH 44114

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Friday, June 5, 2020

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 in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was filed with the BOR fifty-six days after the mailing of the BOR's decision. 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

HOME REALTY, INC, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1000, 2019-1002, 2019-1003, 2019-1005 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HOME REALTY, INC
Represented by:
DAVID MEERDINK
2068 MCCLAREN LANE
BROADVIEW HEIGHTS, OH 44147

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Monday, June 8, 2020

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

The property owners, various entities affiliated with David Meerdink, appeal decisions of the board of revision ("BOR"), which determined the value of the subject properties, parcels 06-26-019-102-015, 06-26-002-102-019, 02-01-004-106-001, and 02-01-003-173-022, for tax year 2018. We proceed to consider these consolidated matters based upon the notices of appeal, certified statutory transcripts, and record of this board's hearing.

The subject properties are single-family and multifamily residential rental properties, which were initially assessed the following values: $52,150 for parcel 06-26-019-102-015, $52,170 for parcel 06-26-002-102-019, $73,360 for parcel 02-01-004-106-001, and $49,620 for parcel 02-01-003-173-022. The various property owners filed complaints for each of the subject

properties, which requested that their values be reduced because of depreciation and general decline in the neighborhoods in which the subject properties were located. The BOR held hearings on each of the complaints, at which the property owners appeared through counsel. Meerdink testified in support of the complaints. For parcels 06-26-002-102-019, 02-01-004-106-001, and 02-01-003-173-022, the property owners submitted the reports and testimony of appraiser Michael Neimeier, who opined the value of these properties as of the tax lien date. Neimeier was examined, and cross-examined, about the data and methodologies used to derive his conclusions of value. The property owners amended their opinions of value for parcels 06-26-002-102-019, 02-01-004-106-001, and 02-01-003-173-022, to be consistent with their respective appraisal reports, and requested that the BOR revalue them accordingly. At the BOR decision hearings, the BOR noted its disagreement with Neimeier's reconciliation of value, which placed 90% weight on the sales comparison approach and 10% weight on the income approach given that parcels 06-26-002-102-019, 02-01-004-106-001, and 02-01-003-173-022 were income producing properties. Instead, the BOR voted to accept the recommendations of the county auditor's appraisal department, which asserted that placing 50% weight on the sales comparison approach and 50% weight on the income approach led to better indications of the parcels' values. The BOR issued a decision for each parcel that partially reduced their values though not to the extent requested. The property owners subsequently appealed to this board.

As to parcel 06-26-019-102-015, Meerdink, noted that he was a realtor and testified as to his unsuccessful attempt to sell the parcel. He asserted that a comparative market analysis demonstrated that parcel 06-26-019-102-015 had been overvalued. Based upon his presentation, Meerdink amended the property owner's opinion of the subject property's value to $21,700. The BOR members examined Meerdink to gain additional insight into the topics on which he testified. The BOR voted to increase the subject property's value to $68,000 and the property

owner appealed to this board.

Both the property owner and county appellees appeared at this board's hearing to submit additional argument and/or evidence. Meerdink testified about the BOR proceedings and was cross-examined by the county appellees. The county appellees argued that the BOR decisions were well supported and requested that the BOR decisions be upheld.

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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property value. *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 appraisal reports for 06-26-002-102-019, 02-01-004-106-001, and 02-01-003-173-022. In each appraisal report, Nemeier developed the sales comparison and income approaches to value. Under the sales comparison approach, he compared the features of the parcel under review with the features of four or five other properties that sold, or were available for purchase, in 2017 or 2018 and adjusted for differences to derive an indication of value. Under the income approach to value, he applied each parcel's monthly rental rate to a gross rent multiplier to derive an indication of value. He reconciled the indicated values, placing most weight on the sales comparison approach, and concluded the value of parcel 06-26-002-102-019 to be $24,000, the value of parcel 02-01-004-106-001 to be $46,000, and the value of parcel 02-

01-003-173-022 to be $27,000 as of January 1, 2018.

In reviewing the appraisal evidence before us, this board may accept all, part, or none of an appraiser's opinion of value. *Witt Co. v. Hamilton Cty. Bd. of Revision*, 61 Ohio St.3d 155 (1991); *Fawn Lake Apts. v. Cuyahoga Cty. Bd. of Revision*, 85 Ohio St.3d 609 (1999). Further, we have often acknowledged that the appraisal of real property is not an exact science, but is instead an opinion, the reliability of which depends upon the basic competence, skill and ability demonstrated by the appraiser. *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA No. 1982-A-566, et seq., unreported.

Upon review, we find that the property owners provided competent, credible, and probative evidence of value through the Neimeier appraisal reports for parcels 06-26-002-102-019, 02-01-004-106-001, and 02-01-003-173-022. Though the county appellees argued that these parcels were income-producing properties and, therefore, should be valued with more consideration to the income approach, we reject that argument. *Huber Heights Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 154 Ohio St. 3d 332, 2018-Ohio-4284 (affirming this board's decision to accept an appraisal report that did not develop an income approach to value although the property was an income-producing property). It should be noted that the county appellees failed to provide this board with the analysis that it relied upon to reach its decision or any other market information that would have allowed us to conclude that Neimeier should have placed more weight on the income approach. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 29, 2008), BTA No. 2005-H-1436, unreported at 11, affirmed on appeal, 122 Ohio St. 3d 134, 2009-Ohio-2461("As we have previously stated, the appellees have elected not to provide us with any competing market information that could allow us to come to a different conclusion regarding the subject's value. Moreover, our review of the transcript certified to this board by the county auditor discloses no other probative evidence on which we may base an

opinion of value.").

However, as to parcel 06-26-019-102-015, we must find that the property owner failed to provide competent, credible, and probative evidence of value. The property owner relied upon comparable sales data. We have repeatedly held that unadjusted comparable sales data are 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 with parcel 06-26-019-102-015. See, generally, The Appraisal of Real Estate (14th Ed.2013). For example, a review of the comparative market analysis, submitted by the property owner at the BOR, highlights that all the properties differ by number of bathrooms and bedrooms, square footage of the improvements, and whether the properties have basements and garages. Thus, we must conclude that the unadjusted comparable sales data have little utility in our analysis. *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).

Likewise, we also find the BOR's decision to value parcel 06-26-019-102-015 at $68,000 to be equally unsupported. We will, therefore, reinstate the parcel's initially assessed value. *South-Western City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,*152 OhioSt. 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. *Sapina v. Cuyahoga Cty.Bd. of Revision*, 136

Ohio St.3d 188, 2013-Ohio-3028, ***, ¶35. Here, the BTA assigned avalue that *** could be achieved only through artifice." (Parallel citation omitted.)).

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 various property owners have satisfied the evidentiary burden on appeal for parcels 06-26-002-102-019, 02-01-004-106-001, and 02-01-003-173-022; however, the property owner of parcel 06-26-019-102-015 failed to satisfy such burden. It is, therefore, the order of this board that the subject properties shall be valued in accordance with the following values as of the relevant tax lien date:

Parcel Number: 06-26-019-102-015

True Value: $52,150

Taxable Value: $18,250

Parcel Number: 06-26-002-102-019

True Value: $24,000

Taxable Value: $8,400

Parcel Number: 02-01-004-106-001

True Value: $46,000

Taxable Value: $16,100

Parcel Number: 02-01-003-173-022

True Value: $27,000

Taxable Value: $9,450

COLTMAN OF FLORENCE PROPERTIES, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-9 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLTMAN OF FLORENCE PROPERTIES
Represented by:
LINDSAY DOSS SPILLMAN
VORYS, SATER, SEYMOUR, PEASE LLP
200 PUBLIC SQUARE
SUITE 1400
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

Entered Thursday, June 11, 2020

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. (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

SANDRA MOORE, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-245
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SANDRA MOORE
OWNER
13401 SOUTH WOODLAND ROAD
CLEVELAND, OH 44120

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
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SHAKER HEIGHTS CITY SCHOOLS BOARD OF EDUCATION

Represented by:
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Entered Friday, June 12, 2020

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. (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

NICOLETA BORTAN AND CRYSTAL BORTAN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-139, 2020-140
	)	
vs.	)	(REAL PROPERTY TAX)
	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - NICOLETA BORTAN AND CRYSTAL BORTAN
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Entered Friday, June 12, 2020

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, appellants' response, 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. Appellants responded to the motion and argued that the assistant county prosecutor was made aware of the appeal. To the extent appellants' argument suggests that the BOR was notified of their appeal via this board's docketing letter, this board notes that docketing letters sent by the Board of Tax Appeals do not satisfy the requirement of R.C. 5717.01 that an appealing party file a notice of appeal with a county board 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. Appellants' response did not provide documentation to demonstrate that the appeal was timely filed. Upon consideration of the existing record, this matter is determined to be jurisdictionally deficient and therefore is dismissed.

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2810 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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AEI NATIONAL INCOME PROPERTY FUND VIII LP
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Entered Friday, June 12, 2020

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

This matter is now considered upon the property owner's ("owner") motion to remand with instructions to dismiss the complaint. The owner asserts that the board of education's ("BOE") complaint against the valuation of real property was an improper second filing under R.C. 5717.19(A)(2). This matter is decided upon the motion, the responses thereto, the notice of appeal, and the statutory transcript ("S.T.") certified pursuant to R.C. 5717.01.

The record reveals that the BOE filed a tax-year 2018 complaint against the valuation of

real property. On line eleven of the complaint, the BOE indicated the property was sold on April 4, 2017 for $4,807,000. On line fifteen, the BOE acknowledged it had filed a prior complaint for the subject property and claimed the exception that the property was sold in an arm's length transaction. S.T. at Exhibit A. Prior to the BOR hearing, the owner requested dismissal of the 2018 complaint and argued that the BOE filed a tax-year 2017 complaint for the subject property by reason of the same April 4, 2017 sale.

At the BOR hearing the owner argued that the BOR had previously considered the April 4, 2017 sale, and as such, the BOE's 2018 complaint was an improper second filing within that triennial period. The BOE acknowledged their previous tax-year 2017 complaint and argued that the BOR did not consider the April 4, 2017 sale for the prior complaint, and as such, the present complaint was permissible. The BOE claimed that although the BOR had adopted an appraisal report for the prior year, an October 2016 sale was closer in time to the tax lien date. The BOR ultimately decided to retain the auditor's value and the present appeal ensued. The owner now moves this board to remand the appeal with instructions to dismiss the underlying complaint. In response, the BOE argues that as a matter of law the BOR could not consider the sale in the prior complaint. The BOE maintains that improvements to the subject property purportedly completed after January 1, 2017 but before the transaction also barred the BOR from considering said sale.

R.C. 5715.19(A)(2) limits the number of times one may file a complaint against the valuation of real property within an applicable three-year interim period. Multiple filings are permitted only upon the occurrence of certain circumstances. See *Soyko Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 2014-Ohio-4511. "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 (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 interim period relevant to this appeal involves tax years 2017, 2018, and 2019; with reappraisal update of values for Franklin County conducted in 2017. See, generally, R.C. 5713.01(B), 5715.33, and 5715.34. To meet the exception set forth in R.C. 5715.19(A)(2)(a), i.e., the arm's length transaction claimed by the BOE, the Supreme Court set forth three elements that must be met:

> (1) The 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) The sale must have occurred after the tax-lien date for the tax year for which the prior complaint was filed; and
>
> (3) The sale must not have been "taken into consideration with respect to the prior complaint."

Soyko Kulchystcky, supra, at ¶¶23-26.

Here, though the BOE met the first two requirements, the BOE failed to show that the BOR did not consider the April 4, 2017 sale in its decision regarding the tax-year 2017 complaint. We disagree with the BOE that it was barred as a matter of law from considering the sale, where the question of recency is a factual determination. While we agree that the presentation of evidence does not equate to the BOR's consideration thereof, the rejection of a sale as the best evidence of value does not mean that the BOR did not consider it as evidence of value. We find it relevant here that the owner relied on its argument regarding the lease in place at the time of the sale and its effect on the sale price, and the BOR adopted the appraisal value for both years. Thus, it appears that the BOR considered the sales and determined that the appraisal was better.

As such, we cannot find that the BOE met its burden to show that it was not considered. Compare *Glyptis v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 597, 2018-Ohio-1437 (concluding that although it was presented during the proceedings for the earlier year, the evidence regarding a casualty that took place after the earlier tax lien date was clearly not taken into consideration, thus permitting a filing for the second year).

Therefore, based on the existing record, this board finds the underlying complaint to be an impermissible second filing within the interim period, and therefore insufficient to invoke the jurisdiction of the BOR. Accordingly, the matter is remanded to the BOR with instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

RONNIE D. DERRWALDT, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2866 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RONNIE D. DERRWALDT
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Monday, June 15, 2020

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, appellant's response, 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 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 filed with the BOR fifty-nine days after the mailing of the BOR's decision. Appellant's response acknowledged the late filing. 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.

LORI D GOGOLIN, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1720
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LAKE COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - LORI D GOGOLIN
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Entered Monday, June 15, 2020

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 20A010G000130, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and record of this board's hearing.

[2] The property owner filed a complaint with the BOR, requesting a reduction to the subject property's value from $449,140 to $305,000 purportedly based upon the age and condition of the home situsued on the subject property. At the BOR hearing on the matter, the property owner and her husband appeared in support of the complaint. She submitted a comparative market analysis (entitled "Market Appraisal") compiled by a real estate agent, which averaged the sales

prices of nine comparables to suggest that the subject property should be valued between $295,000 and $305,000. Mr. Gogolin commented on an appraisal report performed by the county auditor's office, which he asserted was rife with inaccuracies about the subject property and unsupported adjustments, during settlement negotiations. The BOR provided him an opportunity to write down those inaccuracies to pass on to the county auditor's office. He also detailed the condition issues with their home and his ongoing efforts to remediate them. The BOR voted to reduce the subject property's value to $385,000 and this appeal ensued.

[3] At this board's hearing, Mr. Gogolin appeared on behalf of the property owner and supplemented the record with an appraisal report performed by Hayley Gondek, which opined the value of the subject property to be $312,000 as of November 7, 2019. Based upon the evidence presented, he requested that the subject property be revalued at $312,000.

[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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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.

[5] We begin our analysis with the property owner's appraisal evidence, i.e., the appraisal report performed by Gondek, which valued the subject property at $312,000 as of November 7, 2019. We do not find the appraisal report to be competent, credible, and/or probative evidence of the subject property's value. Gondek did not appear at this board's hearing. We generally reject

an appraisal report when the appraiser fails to appear before this board or the BOR. *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. As we explained in *Speca*, when the appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials or authenticate the report (including addenda). Importantly, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed by this board. *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. See also *Dellick v. Eaton Corp.*, Mahoning App. No. 03-MA-246, 2005-Ohio-566, ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). Generally, hearsay is inadmissible. Evid.R. 802."). Compare *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 (affirming this board's use of a hearsay appraisal report when there was testimony about the reliance that the bank and property owner placed upon it in making business decisions). For example, despite the differences in numbers of bedrooms (varies from three bedrooms to five bedrooms) and bathrooms (varies from one and one-half bathrooms to more than three bathrooms), Gondek failed to adjust the comparable properties for these differences with the subject property. There was no explanation in the appraisal report for this failure and, because Gondek did not testify at this board's hearing, we are left to speculate as to the effect of these important differences.

[6] Moreover, Gondek's opinion of value did not relate to the tax lien date of January 1, 2018. Instead, his opinion of value was effective as of November 7, 2019, more than twenty-two months after the tax lien date. *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30, (1997) ("[a]n expert's opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion."); *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 554-555 (1996) ("the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question.").

[7] Likewise, we do not find the comparative market analysis, compiled by a real estate

agent, to be persuasive. Real estate agents are not appraisers, individuals with the education, experience, and expertise to express opinions regarding the value of real property. See, generally, The Appraisal of Real Estate (13th Ed. 2008), at 8-10 (distinguishing appraisers from persons who may be involved in and familiar with various issues attendant to the real estate market, e.g., buyers, sellers, real estate agents, real estate brokers, loan officers, title companies, etc.). The comparative market analysis amounts to nothing more than unadjusted data. 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). See also *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 having found that the evidence was not probative).

[8] The property owner asserted that the condition of the subject property, particularly the non-updated nature of the home, necessitated a reduction to the subject property's value. We must also reject that argument. She failed to provide evidence to quantify the specific diminution in value that resulted from the defect. Even Gondek's appraisal report failed to quantify the impact of the cited defect. *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." (Internal citations omitted.)

[9] In sum, we find the property owner's evidence failed to satisfy the evidentiary burden to support reducing the subject property's value consistent with her request.

[10] We now turn to the propriety of the BOR's decision to reduce the subject property's value to $385,000. We note that "case law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. It is clear that the BOR's decision is based upon corrections to the county auditor's records, i.e., removal of certain improvements from the subject property and correcting the sketch of the home. As such, we find the BOR's decision to be supported. *Bernadelli v. Lake Cty. Bd. of Revision* (June 22, 2018), BTA No. 2018-989, unreported.

[11] 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 do not find the property owner's evidence to be competent, credible, and/or probative evidence of the subject property's value. See, *Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018), BTA No. 2018-414, unreported at 2 (though an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested."). It is, therefore, the order of this board that the subject property shall be assessed the following values as of the tax lien date:

True Value: $385,000

Taxable Value: $134,750

OHIO BOARD OF TAX APPEALS

KRUSHNA SS LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1332
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
PORTAGE COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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Entered Monday, June 15, 2020

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

The appellant property owner, Krushna SS LLC ("Krushna"), appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 35-043-00-00-003-002, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the parties' written argument.

The subject property is improved with a 68-room limited service hotel operating as a

Holiday Inn Express. The auditor initially assessed the subject's total true value at $3,309,500. Krushna filed a complaint with the BOR seeking a reduction in value to $2,500,000. The appellee board of education ("BOE") filed a countercomplaint seeking an increase to $3,575,000. At the BOR hearing, Krushna relied on the testimony and written report from appraiser Charles G. Snyder, RM, MAI, who opined that the true property of the subject real property was $2,800,000. Snyder performed both the income approach and sales comparison approaches to value, utilizing a November 2016 transfer of the subject property in his analysis. Snyder first considered the value of the going concern, reconciling the two approaches at $3,500,000. Snyder then allocated this value among various components, including furniture, fixtures, and equipment ("FF&E"), franchise value, "intangibles," and the real estate. Snyder accorded a value of $2,000 per room, or $136,000 total, to the FF&E for rooms and common area. Snyder then concluded that the value of the overall going concern attributable to real property was 80%, or $2,800,000, based on comparison of hotels to apartments. Based on this allocation, Snyder concluded that the remaining value was attributable to franchise value or intangibles. Snyder explained to the BOR that the intangible value was the "blue sky" value of the business.

The BOE cross-examined Snyder, who acknowledged that although he had spoken with someone to verify the sale of the subject property, he had not seen a purchase agreement or other documentation regarding the allocation of a purchase price among the parties. The BOE further pointed to the conveyance fee statement filed with the auditor, which did not allocate any of the purchase price as consideration for personal property. The BOE maintained that Snyder's report failed to rebut the sale, and at best supported the auditor's value because the intangible and franchise values were not severable from the value of the real estate. The BOR issued a decision maintaining the initially assessed valuation, which Krushna appealed to his board.

The parties waived the opportunity to present new evidence, relying instead on written

argument. Krushna argues that the BOR failed to give appropriate weight to Snyder's appraisal, which provides evidence of the value of the real property by deducting goodwill, FF&E, and hotel franchise value from the value of the going concern. Krushna further argues that the appraisal establishes a more reliable value than the November 2016 sale because Snyder's analysis demonstrated that the transfer was not sufficiently recent. The BOE argues that Krushna failed to meet its burden of proof to establish a new value for the property or to rebut the sale. The BOE further maintains that the allocations to FF&E, franchise value, and intangibles were not proper.

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 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. 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 sold via an arm's-length transaction in November 2016. While Krushna challenges the recency of the sale, we find no merit in this argument. Despite its argument to the contrary, Snyder's appraisal supports a finding of recency. Most notably, in his analysis for the sales comparison approach, Snyder made no time or market adjustment to the sale in order to reflect value as of the tax lien date. Accordingly, we

find that the sale was a recent, arm's-length transaction.

An owner who seeks to reduce the valuation of real property below the full sale price bears the burden of showing the propriety of allocating some portion of that reported price to other assets. *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921; see, also, *St. Bernard Self-Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249. Nevertheless, as noted above, this board must perform a de novo review of the issues surrounding a sale. Therefore, we must independently weigh all evidence in the record to determine value, giving due weigh to both the recorded sale price and Snyder's appraisal.

The BOE maintains that Krushna failed to establish that any items other than real property were included in the $3,575,000 sale price. We agree. The court has discussed this board's role in allocating a purchase price to items other than real property when a contemporaneous allocation was not submitted. See *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611. In *Arbors E.*, the court explained that this board must first determine whether the record contained adequate support to establish that a portion of the sale price included consideration for assets other than real estate, and if so, then this board must determine the proper allocation of the total purchase price. Id. In that case, the court discussed that 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 where no contemporaneous allocation was made. Id. at ¶23, citing *Buckeye Terminals, L.L.C. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 86, 2017-Ohio-7664, ¶35. Thus, if we find that the recorded sale price did not accurately reflect the consideration of each component that transferred, then this board may rely on the appraisal evidence.

In this case, however, Krushna failed to present any evidence to show that the purchase price as recorded included the value of personal property. Such evidence could include, for

example, a purchase agreement or other documentation that shows personal property was included in the sale price and did not transfer separately through a bill of sale or some other means. Thus, while the sale price *could have* included personal property, it was Krushna's burden to show that it *did* include personal property. Krushna failed to do so. Therefore, we find that no deduction of the purchase price to account for such items is appropriate.

Nevertheless, because the best evidence of value rule is a rebuttable presumption, we must determine whether the opponent of the sale price has provided evidence that constitutes a more accurate value of the subject property. See *Westerville City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 154 Ohio St.3d 308, 2018-Ohio-3855, ¶14. Rebuttal evidence may include an appraisal to demonstrate that the sale was not reflective of market value or to provide affirmative evidence of value. *Spirit Master Funding IX, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 254, 2018-Ohio-4302, ¶9, citing *Westerville City School Dist.*, supra. As such, we must look at Snyder's appraisal for its own evidentiary value as well. Upon review, we find that Snyder's appraisal provides additional support for the reliability of the sale, and improperly deducts the value of intangible assets.

Snyder backed into his value for the real property based on his conclusion that 80% of the going concern was for real property and 20% was for the rest of the business. Initially, we find that Snyder failed to provide adequate support for this methodology, making it unreliable. Furthermore, we reject his underlying premise because the "blue sky" intangible value in this case is not severable from the real property, as the business operating in the property comes from the ability to occupy the space rather than the services it provides. *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 128 Ohio St.3d 565, 2011-Ohio-2258 (affirming this board's determination that any goodwill involved in the transaction was attributable to real property and not an intangible business value). In *Arbors E.*, the court explained that the

goodwill was not separable from the real property in sales of properties such as a hotel or storage facility because they "involved businesses that derived profit by permitting others to use real estate." Id. at ¶21, discussing *Hilliard City Schools* and *St. Bernard Self-Storage*. Similarly, the present appeal involves the sale of a limited service hotel that derives profit from permitting others to use the real property. Therefore, an allocation to intangible business value was not proper.

Likewise, we find it was improper to separately value the franchise in such a transaction, without proof that the cost or value of the franchise was included in the sale price of the comparable properties. In *Hilliard City Schools*, the buyer in the transaction purchased the rights to the trade name from the franchisor, not the seller in the transaction. Therefore, the right to operate as a franchise under a given trade name did not constitute the transfer of a separate intangible right. Id. at ¶30. See also, *Huber Hts. City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision* (Feb. 12, 2020), BTA No. 2018-2185, unreported. Consequently, without demonstration that the franchise value was included in a sale price and therefore required a separate allocation, we find it was not appropriate.

Snyder also deducted a value of $2,000 per unit from the $3,500,000 going concern value to account for FF&E, which resulted in an indicated value of $3,364,000. At only $211,000 below the sale price, we find that provides additional support for the sale but does not constitute more reliable evidence of value. Accordingly, we find that the November 2016 sale as reported on the conveyance fee statement without deduction for any items other than real property constitutes 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, 2018, were as follows:

TRUE VALUE

$3,575,000

TAXABLE VALUE

$1,251,250

OHIO BOARD OF TAX APPEALS

ROCKY RIVER CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-572 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROCKY RIVER CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CUYAHOGA COUNTY
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CLEVELAND, OH 44113

SRK PERRYSBURG ASSOC LLC
Represented by:
RYAN J. GIBBS
THE GIBBS FIRM, LPA
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CINCINNATI, OH 45219

Entered Monday, June 15, 2020

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

The appellee property owner moves to dismiss this matter on the basis that it filed an earlier appeal from the same decision with the Cuyahoga County Court of Common Pleas. Appellant did not respond to the motion. See Ohio Adm. Code 5717-1-13(B). This matter is now decided upon the motion and appellant's notice of appeal.

On March 23, 2020, the appellant board of education filed an appeal with 303-21-004-2018. The owner's motion argues that it filed an appeal from the same decision with

the Cuyahoga County Court of Common Pleas on February 21, 2020. Attached to the owner's motion to dismiss is documentation of such filing.

R.C. 5717.05 provides that "an appeal from the decision of a county board of revision may be taken directly to the court of common pleas of the county by the person in whose name the property is listed or sought to be listed for taxation." It further requires that "[w]hen the appeal has been perfected by the filing of notice of appeal as required by this section, and an appeal from the same decision of the county board of revision is filed under section 5717.01 of the Revised Code with the board of tax appeals, the forum in which the first notice of appeal is filed shall have exclusive jurisdiction over the appeal."

Upon review of the existing record, the owner's motion is well taken. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

TERESA FLOYD, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2984
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - TERESA FLOYD
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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Entered Wednesday, June 17, 2020

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. (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

WILLIAM J. NAVRATIL, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-2650
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WILLIAM J. NAVRATIL
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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CLEVELAND, OH 44113

Entered Monday, June 22, 2020

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

[1] Appellant appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 583-07-007, for tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01. We note that appellant attached a number of documents to his notice of appeal. To the extent that any of these were not already submitted to the BOR, we cannot consider them in our analysis. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

[2] The subject property is improved with a single-family home and was initially valued by the fiscal officer at $378,500. Appellant filed a complaint with the BOR seeking a reduction in value to $310,000. At the BOR hearing, appellant testified regarding negative conditions at the

subject property, including a need for repairs to plumbing, flooring, driveway, and landscaping/tree removal, Appellant submitted estimates to demonstrate the cost of such repairs. Appellant explained that the subject has an irregular lot with a large side yard rather than a backyard. Appellant also discussed a nearby property that had been listed for sale, in addition to the values of other properties in the neighborhood and compared them to the subject property. Appellant also submitted an unadjusted list of sales, which the BOR members discussed and asked questions about those properties and his search criteria. The BOR discussed a list of sales of other properties in the neighborhood that were of similar size and age, noting that the lowest sale price was $375,000. Appellant claimed that the properties were dissimilar and not reliable evidence of the value of the subject property.

[3] Following the hearing, the BOR issued a decision reducing the initially assessed valuation to $359,600. From this decision, appellant filed the present appeal seeking a further reduction. Appellant did not request a hearing to present additional evidence or argument, but attached the information he submitted to the BOR. Through his notice of appeal, appellant again criticized the BOR's list of sales and reiterated those arguments made to the BOR. [4] The burden in the present appeal is on appellant 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, an appellant must produce competent and probative evidence to establish the correct value of the subject property. Id. at ¶9. Appellant seeks to meet this burden through his testimony and the presentation of evidence regarding condition issues with the subject property and a list of unadjusted sales, all while challenging the list of sales provided by the BOR. As the owner of the subject property, appellant 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 appellant bases his opinion of value is not probative, his testimony is not sufficient to satisfy his burden on appeal. *Johnson v. Clark Cty. Bd. of Revision*, 155 Ohio St.3d 264, 2018-Ohio-4390, ¶21 ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

[5] Appellant relied on testimony regarding negative conditions at the subject property and cost estimates to make some necessary repairs. In *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996), the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value. Additionally, as the court has pointed, dollar-for-dollar costs do not necessarily directly correlate to value. See, e.g., *Gupta v.Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997). This board explained:

> Simply stated, 'cost and value are not necessarily synonymous.' The Appraisal of Real Estate [(13th Ed. 2008)], at 319. While adjustments made in the cost approach are based on cost indicators, including depreciation, adjustments made when relying upon sale prices of comparable properties should take into account the contributory value of each property's components. 'The principle of contribution states that the value of a particular component is measured in terms of its contribution to the value of the whole property or as the amount that its absence would detract from the value of the whole. The cost of an item does not necessarily equal its value.' The Appraisal of Real Estate, at 40. The contribution to value may be higher or lower than the original cost: "'Buyers are clearly conscious of the cost of repairs, additions, or conversions as seen in the application of the cost approach ***, but the cost of an improvement does not always result in a one-to-one increase in value for the property as a whole. For example, adding a swimming pool to a residential property at a cost of $50,000 may only add $25,000 to the sale price of the property if swimming pools are not a desirable amenity in that market.' Id. at 319. Ultimately, a property's value must be measured in terms of its overall benefit or utility in the market. Id. at 41.

Bratslavsky v. Warren Cty. Bd. of Revision (Feb. 3, 2009), BTA No. 2007-T-1415, unreported, 6-7.

[6] Additionally, we find that the comparable sales information submitted to the BOR and by the BOR does not establish the reduced value sought by appellant. While comparable sales

data is frequently utilized by appraisers to determine the value of a given property, the unadjusted lists of sales are not probative evidence of value because appellant has not demonstrated knowledge about the circumstances of those sales or adjusted them for differences among the properties. *Moskowitz*, supra.

[7] Accordingly, based upon our review of the record, we find that appellant has failed to establish a reduced value for the subject property. Furthermore, we find that the BOR's decision relying on this evidence was not supported and we find no competent and probative evidence in the record that would allow us to independently determine value for the subject properties, other than that first determined by the fiscal officer. The BOR did not offer any explanation or basis for decision. Under these circumstances, this board may properly reinstate the fiscal officer's values. See *S.-W. City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 14AP-729, 2015-Ohio-1780, ¶32; *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶35 ("The BTA correctly ruled out using the BOR's reduced value, because it could not replicate it. This court has emphatically held that the BTA's independent duty to weigh evidence precludes a presumption of validity of the BOR's valuation."); *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 147 Ohio St.3d 409, 2016-Ohio-7381,¶20 (where the record does not contain sufficient evidence to perform an independent valuation of the property, the auditor's value may ordinarily be reinstated, even if the auditor's valuation has been negated). Thus, based upon our independent review of the evidence in the record, we find that the true value of the subject properties is best reflected by the value initially determined by the fiscal officer.

[8] It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

TRUE VALUE

$378,500

TAXABLE VALUE

$132,480

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-501 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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CAROL FOX
Represented by:
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Entered Monday, June 22, 2020

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

The affected board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject properties, parcels 010-253247 and 010-253258, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and record of this board's hearing.

The property owner filed a single complaint with the BOR, which requested that each of

the parcel's values be reduced from $225,000 to $190,000 based upon sales of other nearby properties. The BOE filed a countercomplaint, which objected to the requests. The BOR held a hearing on the matter. Robert Peck appeared on behalf of the property owner and testified as to his knowledge of the subject properties including the property owner's attempt to sell them, along with another, similar property located in the same condominium office development. Although the property owner successfully sold the other, similar property for $190,000, she was unsuccessful in her attempts to sell the subject properties. As a result, the property owner believed that the subject properties should be valued at $190,000 each. Counsel for the BOE cross examined Peck and argued that comparable sales data were insufficient to justify reducing the subject properties' values. At the BOR decision hearing, the BOR members noted that they conducted their own research and found comparable sales that appeared to be consistent with the comparable sales data supplied by the property owner. As a result, the BOR issued a written decision that reduced each of the subject properties' values to $190,000, as the property owner requested, and this appeal ensued.

At this board's hearing, the BOE appeared through counsel to submit additional argument into the record. Peck appeared on behalf of the property owner. As the hearing commenced, the BOE objected to Peck's participation in the hearing because he was not an attorney licensed to practice law in Ohio; the attorney examiner sustained the objection and limited his participation to providing testimony. Because Peck was not an attorney, the BOE later argued that the documents he submitted to the BOR be stricken from the record. The BOE also objected to his testimony based upon the property owner's failure to disclose evidence consistent with the board's rules, see Ohio Adm. Code 5717-1-07(A)(2)(e), and based upon R.C. 5715.19(G), which requires evidence within the possession and knowledge of a party to be first submitted to the BOR. The attorney examiner deferred ruling and allowed Peck's testimony to

be proffered into evidence. As to the merits of the appeal, the BOE argued that the BOR committed legal error when it decided to reduce the subject properties' values based upon unadjusted comparable sales and the property owner's unsuccessful attempts to sell them. The BOE also noted that the BOR hearing record noted that the BOR conducted its own research; however, that research was not contained within the statutory transcript. As a result, the BOE asserted that the subject properties' initially assessed values should be reinstated. Peck was examined by the attorney examiner and BOE and essentially reiterated the testimony he provided to the BOR.

Before we consider the merits of this appeal, we must first dispose of the deferred objections raised at our hearing. Given the repetitive nature of Peck's testimony, we overrule the BOE's disclosure and R.C. 5715.19(G) objection. Furthermore, we also deny the BOE's request to strike the documents presented 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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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 owner's evidence was insufficient to establish the subject properties' values. Here, the property owner primarily argued that the subject properties should be valued consistent with the sale of a similar property in the same office development. In *Gahanna-Jefferson*

Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision (Sept. 10, 2018), BTA No. 2017-1178, unreported, we confronted a similar fact pattern, i.e., a property owner relied upon a single sale of a neighboring office condominium to value the property at issue, which the BOR accepted. There, we noted:

> This board has repeatedly held that unadjusted comparable sales data is not competent, credible, and probative evidence of value. *** 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."

Id. at 3. (Internal citations omitted.) See also *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. Moreover, we have previously rejected a property owner's argument "that one comparable nearby sale should establish [value] for the subject property."*Mollinet v. Cuyahoga Cty. Bd. of Revision* (June 11, 2018), BTA No. 2017-1098, unreported at 2. 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 $ 190,000 sale of the neighboring property to reach its decision to value each of the subject properties at $190,000. There was no indication that the BOR made any effort to discern the

differences and similarities between the subject properties and the comparable sale especially when Peck testified that the interior of the units had different layouts. 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 of the BOR's independent research, which it claimed supported its decision.

We are mindful of our duty to independently determine the subject properties' values. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to satisfy the evidentiary burden before the BOR and that the BOR's decision is unsupported by reliable and probative evidence. We are constrained, therefore, to reinstate the subject properties' initially assessed values.

It is therefore the order of this board that the subject properties' values are as follows as of the relevant tax lien date:

Parcel Number 010-253247
True Value: $225,000

Taxable Value: $78,750

Parcel Number 010-253258

True Value: $225,000

Taxable Value: $78,750

OHIO BOARD OF TAX APPEALS

KDL PROPERTIES, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-97
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - KDL PROPERTIES
Represented by:
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PRESIDENT
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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, June 23, 2020

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

The appellant taxpayer appeals several decisions of the board of revision ("BOR"), which denied its requests for remission of real property tax late payment penalties for the second half of tax year 2018. This matter is now considered upon the notice of appeal and the transcript certified by the BOR pursuant to R.C. 5717.01.

As the appellant, the taxpayer has the burden to show that its 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). Appellant requests remission of the penalties, alleging that its failure to make timely payment was due to reasonable cause and not willful neglect.

Specifically, appellant maintains that they were paid late due to a clerical error caused by an employee who was out on medical leave. The BOR denied the requests, noting that appellant had a prior late payment for the first half of 2018. On appeal, appellant claims that the prior late payment was because it was waiting for an abatement in 2018 that was granted in 2019.

Upon review, this board finds that appellant failed to show that it qualifies for remission under R.C. 5715.39, which outlines the circumstances under which real property tax late payment penalties shall be remitted. 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." A taxpayer's habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late filing occurred. See, e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported; *Patel v. Testa* (Apr. 29, 2014), BTA No. 2014-261, unreported. In this case, while appellant may have an explanation for its late payments, we find that it does not meet the standard necessary to demonstrate reasonable cause.

Accordingly, the decision of the BOR to deny appellant's request for remission of the late payment penalties for the second half of tax year 2018 is hereby affirmed.

OHIO BOARD OF TAX APPEALS

CHARLES SHALKHAUSER, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	Appellee(s). CASE NO(S). 2019-2174 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CHARLES SHALKHAUSER
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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Entered Tuesday, June 23, 2020

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 362-08-007, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, record of this board's hearing, and the property owner's written argument.

[2] The property owner filed a complaint with the BOR, requesting a reduction to the subject property's value from $97,100 to $20,000. At the BOR hearing on the matter, the property owner submitted photographs to demonstrate that the home sitused on the subject property had not changed since his purchase of it in 2010. He argued that an enumerated list of defects to the home highlighted its poor condition, which he estimated would cost at least $50,000 to remediate, and that such condition necessitated reduction to the subject property's value. He explained that

he planned to fix up the subject property but explained that his plans changed, and he only used the subject property for storage. The property owner discussed his unsuccessful attempts to sell the subject property. During the course of the hearing, the BOR provided the property owner with a list of comparable sales. The BOR voted to reduce the subject property's value to $77,600. However, because the reduction was not to the extent requested, the property owner appealed to this board.

[3] At this board's hearing, the property owner appeared to supplement the record with additional argument and evidence. In doing so, he expanded upon his previously provided testimony and submitted an appraisal report performed by R.R. Monyak Sr., which valued the subject property at $28,000 as of September 26, 2019. Subsequent to the hearing, the property owner submitted written argument in support of his appeal.

[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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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.

[5] We begin our analysis with the property owner's appraisal evidence, i.e., the appraisal report performed by Monyak, which valued the subject property at $28,000 as of September 26, 2019. We do not find the appraisal report to be competent, credible, and/or probative evidence of the subject property's value. Monyak did not appear at this board's hearing. We generally reject

an appraisal report when the appraiser fails to appear before this board or the BOR. *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. As we explained in *Speca*, when the appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials or authenticate the report (including addenda). Importantly, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed by this board. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. See also *Dellick v. Eaton Corp.*, Mahoning App. No. 03-MA-246, 2005-Ohio-566, ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). Generally, hearsay is inadmissible. Evid.R. 802."). Compare *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 (affirming this board's use of a hearsay appraisal report when there was testimony about the reliance that the bank and property owner placed upon it in making business decisions).

[6] Moreover, Monyak's opinion of value did not relate to the tax lien date of January 1, 2018. Instead, his opinion of value was effective as of September 26, 2019, nearly twenty-months after the tax lien date. See, *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30, (1997) ("[a]n expert's opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion."); *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 554-555 (1996) ("the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question."). His testimony was particularly important because he concluded that "[m]arket values have historically risen," which would indicate that the market on the tax lien date would have been different than on the effective date of his appraisal report. Hearing Record at Exhibit A.

[7] The property owner asserted that the condition of the subject property, particularly the uninhabitable nature of the home sitused on the subject property, necessitated a reduction to the

subject property's value. We must also reject that argument. 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.") (Internal citations omitted.)

[8] The property owner also argued that the subject property's value should be reduced commensurate with the costs of remediating the cited condition issues. This board has repeatedly held that "dollar-for-dollar costs do not necessarily correlate to value." *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996).

[9] In sum, we do not find the property owner's evidence sufficient to support any reduction to the subject property's value.

[10] We now turn to the propriety of the BOR's decision to reduce the subject property's value to $77,600. We note that "case law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. According the BOR journal worksheet, the BOR based its decision on "the identified condition issues and area sales." Unfortunately, we cannot affirm the BOR's decision. As noted above, the property owner failed to quantify the impact of the cited condition issues. Our review of the comparable sales, pulled by the BOR, fails to support the decision to value the subject property at $77,600. The comparable sales were not adjusted to account for differences with the subject property. As for an example, the home situsued on the subject property has two bedrooms; however, the comparable sales all had three or four bedrooms. No effort was made to equalize the comparable sales with the subject property. We are left to speculate whether the comparable sales were truly

comparable to the subject property.

[11] 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 sum, we do not find the property owner's evidence to be competent, credible, and/or probative evidence of the subject property's value. See, *Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018), BTA No. 2018-414, unreported at 2 (though an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested."). 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*. 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. *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, 992 N.E.2d 1117, ***, ¶35. Here, the BTA assigned a value that *** could be achieved only through artifice." (Parallel citation omitted.)

[12] It is, therefore, the order of this board that the subject property shall be assessed the following values as of the relevant tax lien date:

True Value: $97,100

Taxable Value: $33,990

OHIO BOARD OF TAX APPEALS

CUYAHOGA FALLS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-1981
vs.	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CUYAHOGA FALLS CITY SCHOOLS BOARD OF EDUCATION
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Entered Tuesday, June 23, 2020

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

The Cuyahoga Falls City Schools Board of Education ("BOE") appeals from a decision of the Summit County Board of Revision ("BOR") retaining the fiscal officer's value of parcel 02-12842 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and any written argument.

The subject property is improved with retail space. The fiscal officer valued the property at $359,930 for tax year 2018. The BOE filed a complaint seeking a value of $500,000 based on

an August 2018 sale. In support, the BOE supplied the conveyance fee statement, which indicates the property transferred from SSN Property Associates, LLC to appellee Falls River Phase II, LLC in August 2018 for $500,000. The settlement statement states no portion of the transfer price was attributable to non-realty. The BOE also supplied the deed transferring the property. The sale is also listed on the parcel card.

At the BOR hearing, the BOE appeared through counsel and argued the property should be valued in accordance with the sale. A representative appeared and argued the sale should be disregarded because the property owner negotiated the price based in part on favorable financing including a forgivable loan agreement. The representative testified the city is able to use a portion of the property. The representative also argued the property had changed substantially in character because a building had been removed. The representative further testified the property had been marketed for several years, and he indicated the price was negotiated. He then stated the seller and buyer had no preexisting business relationship. The BOR retained the fiscal officer's value, and the BOE appealed.

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). A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

There is no dispute the property transferred between unrelated parties, in an open market transaction in August 2018. Therefore, the sale created a presumption of value because it postdates tax lien date. *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612. Accordingly, the burden shifted to any parting opposing the sale.

Here, the representative argued the sale should be disregarded because of the financing structure and because the property changed in character. We find the evidence presented to be insufficient to disregard the sale. Favorable financing is generally "insufficient to show that a sale price does not reflect a property's value." *Perkins v. Cuyahoga Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2017-2267, unreported. Here, what effect the financing structure had on the sale price is unclear, especially in light of the fact the property was marketed openly, the price was negotiated, and there is nothing in the record to suggest the buyer was under any economic duress to purchase the property. We likewise find the uncorroborated statements about the change in character to be insufficient to warrant an adjustment for two reasons. One, we have no tangible evidence about how the property changed and when. Second, because the property transferred in August 2018, the changes were necessarily after the tax-lien date.

For these reasons, we order the property valued in accordance with the sale, as follows:

TRUE VALUE

$500,000

TAXABLE VALUE

$175,000

OHIO BOARD OF TAX APPEALS

SUTAK WILLIAM A & JOYCE A TRUSTEES, (et. al.), Appellant(s), vs. BELMONT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1852 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SUTAK WILLIAM A & JOYCE A TRUSTEES
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Entered Tuesday, June 23, 2020

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 24-01220.000, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and record of this board's hearing.

For tax year 2018, the subject property's assessed true value was $186,180. The property owner filed a complaint with the BOR, requesting that the subject property's value be reduced to $168,838. The BOR held a hearing on the matter at which trustees of the property owner appeared. The trustees argued that the subject property had been overvalued when compared to the assessed values of nearby properties that had better features, i.e., all brick exterior and homes with larger square footage and decks. Upon questioning, they conceded the

dissimilarity between the subject property and nearby properties. The BOR issued a very detailed written decision, noting further dissimilarities between the subject property and nearby properties to which the trustees cited. The BOR noted that the home situsedon the subject property was built in 2011, however, the specified nearby homes were built in the late 1970s (though noting one home had been updated in 2001). Based upon the information, the BOR voted to retain the subject property's initially assessed value. This appeal ensued.

At this board's hearing, the property owner, through its trustees, and county appellees appeared to supplement the record with additional argument and/or evidence. As the hearing commenced, the county appellees objected to the property owner's exhibits because they were not disclosed consistent with the board's case management schedule; the attorney examiner deferred ruling and allowed the exhibits to be proffered. Trustee Joyce Sutak expanded upon the testimony provided to the BOR. Her brother-in-law, Andrew Sutak, also briefly testified. In support of the testimony, the property owner submitted property record cards and aerial photographs for the subject property and other, nearby properties; an appraisal report performed by Jody Hill for purposes of securing a loan for a boat, which valued the subject property at $176,500 as of December 22, 2018; notice from the county auditor of the subject property's preliminary assessed value for tax year 2018, the year of the sexennial reappraisal; and an aerial photograph of the neighborhood in which the subject property was located. Based upon the evidence, the property owner asserted that the subject property should be valued between$163,090, the value they claim that a county appraiser stated that the subject property would be valued at during an informal meeting, and $176,600, the value opined to in the Hill appraisal report. The county appellees cross examined Trustee Joyce Sutak and argued that the property owner had failed to provide legally sufficient evidence to support any reduction to the subject property's value.

Before we consider the merits of this appeal, we must first dispose of the objection raised at this board's hearing. As noted above, the attorney examiner deferred ruling on the

objection raised by the county appellees, asserting that this board should not consider the property owner's exhibits because the property owner failed to disclose them consistent with the case management schedule. Ohio Adm. Code 5717-1-07(2)(d). To be sure, the property owner failed to disclose its evidence according to our rules; however, given the evidentiary weight of the evidence, we overrule the county appellees' objection.

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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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 property owner advanced a number of arguments to assert that the subject property had been overvalued. The property owner argued that the subject property should be valued consistent with the alleged value awarded during the county auditor's informal process to discuss the subject property's preliminary value, $163,090. The property owner asserted that this value should be the lower limit of the subject property's value. There is no competent, credible, and/or probative evidence to support this argument. Beyond a handwritten notation on the notification of the subject property's preliminary value for tax year 2018, which officially preliminarily valued the subject property at $216,620, there is no indication that the county auditor ever formally assessed the subject property at $163,090. In the course of carrying out his statutory obligation to reappraise real property values once every six years, the county auditor officially assessed the subject property's value at $186,180, not $163,090 (or $216,620). *AERC*

Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision, 127 Ohio St.3d 44, 2010-Ohio-4468, ¶19; R.C. 5713.01(B), 5713.03, 5715.33, and 5715.24; Ohio Admin. Code 5703-25-16(B). Furthermore, estoppel does not apply against the state. See *Reynolds Ave. Transfer Station v. Franklin Cty. Bd. of Revision* (Nov. 30, 2001), BTA No. 2001-S-217, unreported; *Psathas v. Cuyahoga Cty. Bd. of Revision* (Jan. 12, 2001), BTA No. 2000-M-1471, unreported; *Salama v. Cuyahoga Cty. Bd. of Revision* (Nov. 9, 2007), BTA No. 2007-V-450, unreported.

The property owner also argued that the appraisal report performed by Hill, which opined the value of the subject property to be $176,500, presented the upper limit for the subject property's value. We generally reject an appraisal report when the appraiser fails to appear before this board or the BOR. *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. We do not find the appraisal report to be competent, credible, and/or probative evidence of the subject property's value. Hill did not appear at this board's hearing to authenticate the appraisal report, to testify regarding professional credentials and the underlying data and methodologies used in deriving the value conclusion, or to be questioned by this board's attorney examiner. *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. 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. Compare *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 (affirming this board's use of a hearsay appraisal report when there was testimony about the reliance that the bank and property owner placed upon it in making business decisions). For example, Hill relied upon comparable properties with homes that were at least three times older (twenty-one or twenty-four years old) than the home situsued on the subject property (seven years old). There was no explanation in the appraisal report for this failure and, because Hill did not testify at this board's hearing, we are left to speculate as to the effect of this important difference. As for another example, Hill performed an exterior only

inspection of the subject property and we question how she was able to make any conclusions about the subject property's value or how she could judge its comparability to other properties if she did not conduct interior inspections of the subject property or comparable properties. Without having Hill appear before this board, there is no way to resolve these issues, and, therefore, we must question the reliability of Hill's conclusions.

Moreover, Hill's opinion of value did not relate to the tax lien date of January 1, 2018. Instead, the opinion of value was effective as of December 22, 2018, nearly twelve months after the tax lien date. *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30, (1997) ("[a]n expert's opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion."); *Olmsted Falls Village Assn. v Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 554-555 (1996) ("the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in question.").

The property owner primarily argued that neighboring properties were assessed lower values than the subject property and, as a result, the subject property's value should be decreased to equalize the properties. We must acknowledge the fallacy of reliance upon other properties' assessed values, since the fundamental basis of this challenge is the erroneous nature of the subject property's value. Further, many factors could affect how a specific property's value might increase or decrease over time, including a recent, arm's-length sale of the property, changing market conditions, and changes in the condition of the property itself. Indeed, the Ohio Supreme Court has likewise held that "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). See also *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.").

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 submit competent, credible, and/or probative evidence of the subject property's value. See, *Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018), BTA No. 2018-414, unreported at 2 (though an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested."). It is, therefore, the order of this board that the subject property shall be assessed the following values as of the relevant tax lien date:

True Value: $186,180

Taxable Value: $65,160

OHIO BOARD OF TAX APPEALS

DAN GUARDO CONSTRUCTION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-718 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DAN GUARDO CONSTRUCTION
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For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
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Entered Tuesday, June 23, 2020

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") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county BOR, and appellant's notice of appeal.

The appellant filed a notice of appeal with this board, however the documentation attached to appellant's notice of appeal does not constitute a BOR decision. The county appellees attached to their motion, certification that there is no record of a decision issued for the subject

property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliancewith R.C. 5717.01 is essential to vest jurisdiction with this board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the 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

LIGHTNING HOLDINGS, LLC, (et. al.), Appellant(s), vs. STARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2410 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LIGHTNING HOLDINGS, LLC
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For the Appellee(s) - STARK COUNTY BOARD OF REVISION
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Entered Tuesday, June 23, 2020

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 9203903, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the parties' written argument.

The subject property is improved with a 1,440 square foot commercial building. The

auditor initially assessed the subject's total true value at $127,500. Appellant filed a complaint with the BOR seeking a reduction in value to $60,000 based on a "recent bank appraisal," which was attached to the complaint. The appellee board of education ("BOE") filed a countercomplaint in support of the auditor's value. The BOR convened a hearing at which appellant relied on the appraisal and testimony from its owner, Eric Tack. Tack described the property and indicated that he obtained an appraisal when he was attempting to secure a loan. Tack stated that he felt the appraisal provided a fair valuation. Tack testified regarding the current tenant and rental income. Tack could not confirm whether the appraiser viewed the building. The BOE cross-examined Tack and objected to the appraisal because its author was not present at the hearing and it was unsigned. In response to the objection, Tack testified regarding the sales contained in the report. The BOR considered the appraisal evidence and Tack's testimony, concluded that appellant failed to submit sufficient evidence to support a reduction, and issued a decision maintaining the initially assessed valuation. From this decision, appellant filed the present appeal.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). To satisfy this burden, appellant must produce competent and probative evidence to establish the correct value of the subject property. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶9. 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, appellant relies on an appraisal report, though it constitutes unreliable hearsay because it was presented without testimony from the appraiser. 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*"). When a party submits a written appraisal, the presentation of the appraiser as a witness allows the other parties and this board the opportunity to evaluate the credibility of the appraiser and the reliability of his or her analysis. 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; *Akron Natl. Bank & Trust Co. v. Freed & Co.*(Aug. 20, 1980), Medina App. No. 957, unreported; *Cyclops Corp. v.Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported.

In some instances, even without testimony from the author, the information contained within the appraisal may furnish an independent basis for valuing the property. *Team Rentals*, supra, at ¶27. Despite Tack's testimony regarding the purpose of the appraisal, we find that the report in this case does not meet the standard necessary to do so. See *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058, ¶42 (distinguishing a *Team Rentals* from the circumstances where the record lacked direct testimony about both the preparation and use of an appraisal). Here, the appraiser did not view the interior of the property and the record does not contain sufficient explanation regarding the appraiser's methodology. Therefore, without testimony from the appraiser to answer questions and support his methodology, we find it does not constitute reliable evidence of value. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094, ¶20 ("Here the reliable and probative character of the owner's appraisal was called into question by the fact that the BOR rejected it based upon a record that was not preserved and made available to the BTA. Moreover, the appraisal opinion of value, $330,000, reflected a reduction of 62 percent from the fiscal officer's original valuation, and the character of the property called for careful scrutiny of an appraisal that advocated so great a reduction. We therefore conclude that the BTA erred by adopting the appraisal valuation under these circumstances.").

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, 2018, were as follows:

TRUE VALUE

$127,500

TAXABLE VALUE

$44,630

OHIO BOARD OF TAX APPEALS

AL GAMMARINO, TR, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2068
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AL GAMMARINO, TR
Represented by:
AL GAMMARINO, TR.
3020 GLENFARM COURT
CINCINNATI, OH 45236

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
TIMOTHY J. WALSH
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVENUE, 7TH FLOOR
AKRON, OH 44308

Entered Tuesday, June 23, 2020

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 23-02855, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, record of this board's hearing, and county appellees' written argument.

The property owner filed a complaint with the BOR, requesting that the subject property's value be reduced from $145,110 to $79,690. (It should be noted that the complaint identified the owner as "Al Gammarino, Trustee" but also disclosed that the subject property was not actually held in a trust.) The BOR held a hearing on the matter, at which the property owner appeared. He testified that he purchased the subject property for $75,000 in tax year 2015 and had done minimal work on it during the ensuing tax years. He submitted a copy of the Supreme Court decision, *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio

St.3d 92, 2014-Ohio-1588; conveyance fee statement, which memorialized the $75,000 transfer of the subject property in August 2015; and photographs of the subject property. One of the BOR members challenged the property owner, noting that the BOR previously valued the subject property at the $75,000 sale price even though the property owner had testified that quite a bit of work had been performed on the subject property. Another BOR member noted that the subject property's neighborhood had experienced an increase in value as demonstrated by recent sales prices. At the BOR decision hearing, those BOR members made the same observations before all the BOR members voted to retain the subject property's initially assessed value. This appeal ensued.

At this board's hearing, the property owner appeared to supplement the record with additional argument and/or evidence. The property owner argued that the county auditor improperly increased the subject property's value for tax year 2018, the second year of the triennial period. Instead, he asserted, the subject property should be valued consistent with the subject sale because there had been no substantial changes to the subject property in the intervening tax years. In support of his arguments, the property owner submitted photographs of the subject property; subject property's property record cards for tax years 2017, 2018, and 2019; and sale documents that memorialized the subject sale. Based upon the presentation, the property owner amended his opinion of value to $75,000 and requested that the subject property be revalued accordingly. In lieu of attending the hearing, the county appellees submitted written argument that asserted that the property owner had failed to provide legally sufficient evidence to support a reduction to the subject property's value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board

must review the record to independently determine real property 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 subject sale, i.e., the property owner's $75,000 purchase of the subject property in August 2015, which is the apparent basis of the property owner's claim. We agree with the property owner that the *Akron City*, supra, is instructive in this matter. There, 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. Instead, the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property has not changed between the sale date and the lien date." Id. at ¶26. Here, the subject sale is presumed not to be recent because it occurred more than 24 months before the tax lien date of January 1, 2018. Here, the property owner has not demonstrated that market conditions remained the same between the sale and tax lien dates. The record is void of any market information and, as a consequence, we cannot conclude that market conditions remained the same. See, *Financial Wealth Assoc. LLC v. Cuyahoga Cty. Bd. of Revision* (Oct. 19, 2017), BTA No. 2016-2151, unreported at 3 ("The property owner could have provided an appraisal report with a paired sales analysis to demonstrate [] market conditions. See e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (May 1, 2014), BTA No. 2011-2227, unreported, *aff'd* 2016-Ohio-757."). Furthermore, the property owner has not demonstrated that the condition of the subject property remained the same between the sale and the lien dates. We acknowledge that the property owner provided photographs of the subject property purported to be recent to the tax lien date; however, the record is void of any evidence to demonstrate the subject property's condition at the time of

the subject sale and during the period between the sale and tax lien dates. As such, we cannot confirm that the subject property did not experience any condition changes between the sales and tax lien dates.

The property owner also argued that it was improper for the county auditor to change the subject property's value to $145,110 for tax year 2018 when the county auditor had previously valued the subject property at $79,690 for the prior year, tax year 2017, the year for which the county auditor had a statutory duty to update real property values. The triennial period for Summit County included tax years 2017, 2018, and 2019. The court has described the county auditor's duties to value and assess taxes against real property in the county, including the obligation to reappraise property values once every six years and perform an update at the three-year interim point. *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468, ¶19; R.C. 5713.01(B), 5713.03, 5715.33, and 5715.24; Ohio Admin. Code 5703-25-16(B). R.C. 5713.01(B) also directs a county 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 affirmed that "[t]ypically, the auditor does carry over the value from the first year of a triennium to the next year, unless some event that triggers a need to change the valuation." Id. at ¶32.

Here, when we compare the subject property's official property record card for tax year 2018, contained in the statutory transcript, with the subject property's property record cards for prior tax years, submitted at this board's hearing, we discern that the county auditor updated the sketch of the home sitused on the subject property. We have previously held that boards of revision properly revalue properties when improvements are resketched or updated in county records. See *Burkhard v. Henry Cty. Bd. of Revision*(Nov. 8, 2018), BTA No. 2017-784, unreported; *Bernadelli v. Lake Cty. Bd. of Revision* (June 22, 2018), BTA No. 2017-989,

unreported. Thus, it is axiomatic that the county auditor acted properly when the subject property's value was adjusted based upon updating county records with an updated sketch of the home. We find, therefore, that the property owner failed to show that the county auditor acted improperly by increasing the subject property's value in the middle of the triennial period.

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 submit competent, credible, and/or probative evidence of the subject property's value. See, *Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018), BTA No. 2018-414, unreported at 2 (though an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested."). It is, therefore, the order of this board that the subject property shall be assessed the following values as of the relevant tax lien date:

True Value: $145,110

Taxable Value: $50,790

OHIO BOARD OF TAX APPEALS

MICHAEL ISREAL, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2854
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MICHAEL ISREAL
1428 FAIR AVE.
COLUMBUS, OH 43205

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

Entered Monday, June 29, 2020

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

Michael Isreal appeals from a final determination of the Franklin County Board of Revision ("BOR") dismissing Isreal's 2018 valuation complaint for parcel 010-056297-00. We decide the case on the notice of appeal and the statutory transcript.

The auditor valued the subject property at $163,400 for tax year 2018. Isreal filed a complaint seeking a value of $60,000 citing needed repairs. The complaint also states the property lost value due to a casualty. Isreal did not appear at the BOR hearing. A BOR member noted Isreal filed a 2017 complaint, which is included in the statutory transcript. The BOR then dismissed the complaint citing an improper second filing prohibited by R.C. 5715.19(D). Isreal appealed to this board. The notice of appeal is unclear whether Isreal is seeking a value of $60,000 or $80,000. Isreal also attached several documents with his own annotations. He also included several printouts from the auditor's website showing the auditor's values of nearby properties. Isreal requested a

hearing before this Board. He filed a motion to continue the hearing outside the time permitted by this Board's rules but he alleged no good cause for such continuance. Therefore, because no new evidence was submitted, we confine our review to the statutory transcript and will not consider the documents attached to Isreal's notice of appeal. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996); *KB Sales LLC McClain* (Jan. 29, 2020), BTA No. 2019-83, unreported.

When cases are appealed from a board of revision to this Board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). The appellant must establish that a BOR has jurisdiction to consider a complaint filed under R.C. 5715.19. That statute provides only one complaint may be filed per complainant in a three-year interim period. R.C. 5715.19(A)(2)(a) lists the following exceptions:

(a) The property was sold in an arm's-length transaction, as described by section 5713.03 of the Revised Code;

(b) The property lost value due to some casualty;

(c) Substantial improvement was added to the property;

(d) An increase or decrease of at least fifteen per cent in the property's occupancy has had a substantial economic impact on the property.

The exceptions only apply if the change, improvement, or occurrence, occurs after tax-lien date for the year in which the valuation change is sought. R.C. 5715.19(A)(2). *Developers Diversified Ltd. v.Cuyahoga Cty. Bd. of Revision*, 84 Ohio St.3d 32, 35 (1998).

Here, Isreal neither presented the BOR nor this Board with credible evidence an R.C. 5715.19 exception applies in this case. Therefore, we find the BOR correctly dismissed the complaint and affirm the dismissal.

OHIO BOARD OF TAX APPEALS

ZAHER HELMI, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1297
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ZAHER HELMI
OWNER
1101 E. DAVID RD
DAYTON , OH 45429

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, June 29, 2020

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 N64 04207 0009, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and record of this board's hearing.

The county auditor initially assessed the subject property at $401,460 and the property owner filed a complaint with the BOR, which requested that its valued be reduced to $300,000. By way of the complaint, the property owner asserted that there had been unsuccessful attempts to sell the subject property for $325,000, which had been stymied by a poor real-estate market. At the hearing on the matter, the property owner appeared through counsel to submit argument

and/or evidence in support of the complaint. Counsel was sworn as a witness though it was unclear whether he had firsthand knowledge of the topics on which he spoke or whether he was repeating information conveyed to him by others. Nevertheless, he detailed the property owner's failed efforts to sell the subject property. He submitted a broker price opinion, which opined the value of the subject property to be between $300,000 and $325,000, and a packet of documents, which included written argument that asserted that the subject property had been overvalued, and comparable sales data. The BOR voted to retain the subject property's value and this appeal ensued.

This board held a hearing; however, the property owner could not attend. Instead, Ziad Zamara, an associate of the property owner and manager of the subject property, attended the hearing. Zamara testified about the difficulties that he had trying to sell the subject property.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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 property owner advanced several arguments to argue that the subject property's value should be reduced. We deny each argument in turn.

First, the property owner argued that unsuccessful attempts to sell the subject property

demonstrated that the subject property had been overvalued. We have repeatedly held that unsuccessful attempts to sell a property are not good indicators of value. E.g., *Fletcher, Trustee v. Montgomery Cty. Bd. of Revision* (Sept. 14, 2018), BTA No. 2017-1536, unreported. In *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, the Supreme Court determined that a property owner had failed to prove that his property should be revalued at $40,000 based upon his testimony that he received no offers when he unsuccessfully attempted to sell his property for approximately $70,000. Id. at ¶15. The Court noted that it was not enough to demonstrate that the property may not have been worth the asking price but that a property owner must provide evidence of a *specific* value. Although we acknowledge that a property owner is entitled to provide an opinion of the subject property's worth, *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987), in order for such opinion to be considered probative, it must be supported with tangible evidence of a property's value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572 (1994); *Tokles & Son, Inc. v. Midwestern Indem. Co.*, 65 Ohio St.3d 621 (1992). Accord *Schutz*.

Similarly, we do not find the broker price opinion, from Denise Swick, to be competent, credible, and/or probative evidence of the subject property's value. Swick acted in a broker capacity, not as an appraiser, and, therefore, is not qualified as an expert who could opine real property value. We recognize that a variety of professionals may provide valuation services and that brokers may "have training in their field but may or may not have extensive appraisal experience. They are generally familiar with properties in a given locale and have access to market information. They frequently use sales and other market information for property comparison purposes in pricing. Some may develop appraisal expertise. As a group, real estate salespeople evaluate specific properties, but they typically do not consider all the factors that professional appraisers do." The Appraisal of Real Estate (13th Ed. 2008), 8-9. Furthermore, Swick's written statement is considered hearsay. See *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.").

Also, the property owner argued that other nearby properties had been assessed lower values, and therefore had lower property tax bills, when compared with the subject property's assessed value and resultant property tax bill. 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 nonconformity 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.").

Finally, the property owner argued comparable sales supported the claim that the subject property's value should be reduced. No effort was made to equalize the salient features of the comparable properties with the features of the subject property. This board has repeatedly held that unadjusted comparable sales data are insufficient basis to determine real property value. 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 having found that the evidence was not probative).

To the extent that the property owner requests this board decrease the subject property's value based upon a sense of fairness, we must also reject that argument. The Ohio Supreme Court has long held this board is a creature of statute and has no power to act unless specifically authorized by statute. *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229 (1988); *Toledo v. McAndrew* (Sept. 1,2009), BTA No. 2004-B-183, unreported. As such, we lack equitable jurisdiction and cannot consider grant the property owner the relief that he seeks out of a sense of fairness or justice. *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564 (1953).

We are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to provide competent, credible, and/or probative evidence of the subject property's value. It is, therefore, the order of this board that the subject property shall be valued as follows as of the relevant tax lien date:

True Value: $401,460

Taxable Value: $140,510

OHIO BOARD OF TAX APPEALS

MR STEPHEN BARTOLO, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-1226, 2019-1228
vs.	)	
HIGHLAND COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MR STEPHEN BARTOLO
Represented by:
STEPHEN BARTOLO
13686 EUBANKS
HILLSBORO, OH 45133

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

Entered Monday, June 29, 2020

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

The property appeals a decision of the county board of revision ("BOR"), which determined the value of the subject properties, parcels 01-17-000-102.00, 01-17-000-102.01, 01-22-000-264.00, 01-22-000-269.00, 03-22-000-291.02, 01-22-000-303.00, 03-22-000-304.03, 01-22-000-301.05, and 03-06-934-999.99, for tax year 2018. We proceed to consider these consolidated matters based upon the notices of appeal and certified statutory transcript.

The subject properties were initially assessed consistent with the following: $119,300 for parcel 01-17-000-102.00, $8,500 for parcel 01-17-000-102.01, $80,200 for parcel 01-22-000-264.00, $72,600 for parcel 01-22-000-269.00, $13,500 for parcel 03-22-000-291.02, $97,900 for parcel 01-22-000-303.00, $49,500 for parcel 03-22-000-304.03, $22,900 for parcel 01-22-000-301-05, and $13,900 for parcel 03-06-934-999.99. The property owner filed several complaints

with the BOR, which requested that the subject properties be revalued for various reasons, i.e., because of a recent sale or because the tax year 2018 values were too high in light of the prior tax years' values. The BOR held a consolidated hearing on the complaints, at which the property owner appeared to testify in support of his requested values. He testified as to the facts and circumstances of his $100,100 purchase of 01-17-000-102.00 and 01-17-000-102.01 in February 2018; however, he asserted that these parcels should be valued lower than his purchase price. For the remaining parcels, the property owner argued that they should be valued approximately four (4) to five (5) percent above their prior triennial (tax years 2015, 2016, and 2017) values. (It should be noted that there was some discussion about whether the parcels participated in the current agricultural use valuation ("CAUV") program; however, it appears that this issue is not the subject of these appeals.) The property owner noted that parcels 03-22-000-304.03 and 03-06-934-999.99 were mobile homes and argued that mobile home values go down, not up. See R.C. 4503.06 (manufactured or mobile home tax). The BOR subsequently issued a decision, which reduced the values of parcels 01-17-000-102.00, 01-17-000-102.01, 01-22-000-269.00, 01-22-000-303.00, 03-22-000-304.03 but not to the extent requested by the property owner, and retained the values of parcels 03-22-000-291.02, 01-22-000-264.00, 01-22-000-301-05, and 01-22-000-301-05. The property owner filed these appeals, which challenge the BOR value decisions for all parcels.

On appeal, this board sua sponte consolidated these appeals as duplicative. Neither the property owner nor the county appellees elected to submit written argument to articulate their respective positions and/or to appear at a hearing to submit additional evidence.

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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin*

Cty. Bd. of Revision, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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 owner not only failed to satisfy the evidentiary burden before the BOR but also the evidentiary burden before this board. The property owner primarily argued that the subject properties' assessed values had increased too much over their prior years' values. As noted above, the property owner's opinions of value reflect an approximate four (4) to five (5) percent increase in the subject properties' prior triennial values. However, he failed to come forward with any evidence to support his opinions of value. Moreover, this board has consistently rejected the notion that real property values must necessarily rise or fall commensurate with some preconceived notion of "historical trending" or inflationary/deflationary rates. See e.g., *Quinn v. Montgomery Cty. Bd. of Revision* (Sept. 12, 2016), BTA No. 2015-2258, unreported. Indeed, the Supreme Court has previously held that each tax year stands alone, and a property's prior triennial value is not evidence that the property's value should be changed in a subsequent triennial period. See, *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 sum, we find that the record is void of any competent, credible, and probative evidence to support the property owner's assertion that the subject properties should be valued consistent with his opinions of value.

We now turn to the propriety of the BOR's decision to reduce the value of some of the parcels. As an initial matter, we acknowledge that the BOR lowered the total value of parcels 01-17-000-102.00 and 01-17-000-102.01 to $100,400, close to their $100,100 purchase price in

February 2018. Though the BOR properly determined that these parcels were the subject of a recent, arm's-length sale, which was determinative of their value, the BOR improperly valued these parcels at $100,400. See, *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. We can discern no basis for the BOR's decision to deviate from the purchase price. We find, therefore, that parcels 01-17-000-102.00 and 01-17-000-102.01 shall be valued at a total of $100,100.

As to the remaining parcels, 01-22-000-269.00, 01-22-000-303.00, and 03-22-000-304.03, we find the record supports the BOR's decisions to reduce their values. Review of the property record cards demonstrate that the BOR corrected information in its records about the character of these parcels, which resulted in reductions to their values. *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002, at ¶10.

It is, therefore, the order of this board that the subject properties' true and taxable values are as follows as of January 1, 2018:

Parcel 01-17-000-102.00

True Value: $93,440

Taxable Value: $32,700

Parcel 01-17-000-102.01

True Value: $6,660

Taxable Value: $2,330

Parcel 01-22-000-264.00

True Value: $80,200

Taxable Value: $28,070

Parcel 01-22-000-269.00

True Value: $68,000

Taxable Value: $23,800

Parcel 03-22-000-291.02

True Value: $13,500

Taxable Value: $4,730

Parcel 01-22-000-303.00

True Value: $94,900

Taxable Value: $33,220

Parcel 03-22-000-304.03

True Value: $46,400

Taxable Value: $16,240

Parcel 01-22-000-301.05

True Value: $22,900

Taxable Value: $8,020

Parcel 03-06-934-999.99

True Value: $13,900

Taxable Value: $4,870

OHIO BOARD OF TAX APPEALS

ANTHONY L. AND DONIA F. SPRENGER, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-29 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, June 29, 2020

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 301-21-026, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, statutory transcript, and jurisdictional motion and associated responses filed by the parties.

Before we reach the merits of this appeal, we must first determine whether this board has jurisdiction to do so. By way of the motion to dismiss, the county appellees assert that the property owner failed to file a copy of the notice of appeal consistent with statutory

requirements. In its memorandum in opposition, the property owners advanced a number of arguments in opposition to the motion to dismiss; however, we will focus on the argument that has the most merit. See e.g., *Grandview Heights Holdings, LLC v. Franklin Cty. Bd. Of Revision* (June 20, 2019), BTA No. 2018-1945, unreported at 3 ("[T]he subject matter jurisdiction of this board may be raised at any time during the pendency of the appeal."); *Kinat v. Lake Cty. Bd. of Revision* (Oct. 2, 2012), BTA No. 2010-Y-1213, unreported at 3 ("[A]lthough a county prosecutor acts as counsel for the BOR, the prosecuting attorney is not authorized to accept a notice of appeal in lieu of filing such notice with the BOR."). The property owners argued that the BOR failed to properly send notice of its decision to the property owners by certified mail, an issue with which the county appellees disagreed in its reply brief. There, the county appellees argued that the statutory transcript demonstrated that the BOR sent its decision to the property owners by certified mail and to their counsel by ordinary mail. By way of a sur-reply, the property owners asserted that instead of the BOR sending its decision by certified mail to the property owners' current address, the BOR sent its decision to the property owners' prior address in Amherst, Ohio, where they had not lived for several years.

R.C. 5717.01 provides that "[a]n appeal from a decision of a county board of revision 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." R.C. 5715.20(A) provides:

> Whenever a county board of revision renders a decision on a complaint filed under section 5715.19 of the Revised Code ***, it shall give notice of its action to the person in whose name the property is listed or sought to be listed and, if the complainant or applicant is not the person in whose name the property is listed or sought to be listed, to

> the complainant or applicant. The notice shall be given either by certified mail or, if the board has record of an internet identifier of record associated with a person [i.e., an email address], by ordinary mail and by that internet identifier of record as defined in section 9.312 of the Revised Code. A person's time to file an appeal under section 5717.01 of the Revised Code commences with the mailing of notice of the decision to that person as provided in this section.

The Ohio Supreme Court has acknowledged that the statutory provisions directing the BOR to provide notice to the owner do not specify what address ought to be used. The court has held that, "[u]nder such circumstances, *** the constitutional due process principle supplies the rule: the owner may be served at an address that is reasonably calculated to give notice to the owner." *Knickerbocker Properties v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192, ¶17. The court has further stated that "where a taxpayer supplies officials with an address, it may be fairly presumed that the taxpayer can be reached at such an address. "*Groveport Madison Local School Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 149 Ohio St.3d 706, 2017-Ohio-1428, ¶20, quoting *In re Foreclosure of Liens for Delinquent Taxes*, 62 OhioSt.2d 333, 337-338 (1980).

In this matter, we initially note that there has been no allegation that the BOR served its decision on the property owners by internet identifier of record *and* ordinary mail, thus we will focus on whether the BOR properly served its decision by way of certified mail. The property owners' complaint demonstrates that they supplied an address in Lorain, Ohio as their point of contact; however, the countercomplaint filed by the affected board of education ("BOE") noted the Amherst, Ohio address, referenced above, as the property owners' point of contact. A review of the BOR decision demonstrates that the BOR purportedly sent its decision to the property owners at the address in Amherst, Ohio, not the address in Lorain, Ohio. Given that the Amherst, Ohio address

was *not* supplied by the property owners at any point in the BOR proceedings, we cannot conclude that the BOR properly served its decision at an address reasonably calculated to reach the property owners. As a consequence, we find that it was the BOR that failed to satisfy its statutory duty that has precluded this board from considering the merits of this appeal. Furthermore, we find that because the BOR failed to properly serve its decision by certified mail, we conclude that this appeal is premature.

As strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this board, it is clear that this board does not have jurisdiction to consider this appeal. See *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Accordingly, based upon the foregoing, it is the order of the Board of Tax Appeals that the above-captioned appeal be dismissed as premature and the matter remanded to the BOR for certification of its action in accordance with R.C. 5715.20.

OHIO BOARD OF TAX APPEALS

WANG BROTHERS INVESTMENTS LLC, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1197 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, June 29, 2020

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

Appellant appeals a decision of the board of revision ("BOR"), which dismissed the complaint filed regarding the value of the subject real property, parcel numbers 599-0043-0005 and 599-0043-0006. 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 board of revision transcript from the proceedings from the prior year.

Appellant filed a complaint against the value of the subject property for tax year 2017, the year for which the auditor performed a countywide reappraisal and first year of the relevant triennial period. This case was decided by the BOR and appealed to this board, ultimately resulting in a stipulation of value among the parties. Appellant again filed a complaint for tax year 2018, alleging on line 15 that the second complaint within the interim period was permitted because an occupancy change of at least 15% had a substantial impact on the property. The appellee board of education ("BOE") filed a countercomplaint in support of the auditor's values. The BOR convened a hearing to determine whether the 2018 complaint properly invoked its jurisdiction. Appellant claimed that its sole tenant vacated the property between January 1, 2017 and January 1, 2018, which had a substantial impact on the property's value. The BOE asserted that the change in occupancy could not establish jurisdiction for 2018 because it was considered by the BOR during the prior year's proceedings. The BOR issued a decision dismissing the complaint, which appellant appealed to this board. On appeal, this board allowed the parties to supplement the record with the 2017 BOR proceedings and convened a hearing to allow the parties to present additional evidence and argument. The property owner submitted the 2017 stipulation of value, which included an agreement of the parties that the stipulation applied only to the value as of January 1, 2017 and that parties could challenge subsequent years pursuant to exceptions in R.C. 5715.19(A)(2).

"Under R.C. 5715.19(A)(2), a party dissatisfied with the valuation of property may file only one complaint in the [interim period]," based on the "schedule in which a reappraisal is conducted by a county every six years, with an update of valuation performed in the third year[,]" unless an exception applies. *Soyko Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 2014-Ohio-4511, ¶20. "The apparent purpose of the modification of R.C. 5715.19(A) was to reduce the number of filings, while still allowing new tax valuations in interim

years in certain limited circumstances." *Dublin City School Dist. v. Franklin Cty. Bd. of Revision* (1992), 79 Ohio App.3d 781, 784. 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* (1998), 84 Ohio St.3d 32, 35.

Appellant relies on the exception set forth in R.C. 5715.19(A)(2)(d): "An increase or decrease of at least fifteen per cent in the property's occupancy [that] has had a substantial economic impact on the property." To qualify for this exception, the change in occupancy must have occurred "after the tax lien date for the tax year for which the prior complaint was filed," and those circumstances must not have been taken into consideration with respect to the prior complaint. R.C. 5715.19(A)(2); *Akron Centre Plaza L.L.C. v. Summit Cty. Bd. of Revision*, 128 Ohio St.3d 145, 2010-Ohio-5035.

In the present appeal, we find that appellant has failed to establish that the property qualifies for this exception. While the parties focus on whether the occupancy change was taken into consideration during the prior year's valuation, we find that appellant has failed to demonstrate that the tenant's departure substantially changed the value of the property. While the loss of the property's sole tenant *could* substantially impact its value, we find that its departure does not necessarily mean that it *must* have substantially impacted its value. Here, appellant failed to provide evidence to show that the change in occupancy had such an effect.

Accordingly, based on the existing record, the board finds that the BOR properly dismissed the underlying complaint as a multiple filing within the interim period. Therefore, the decision of the BOR is hereby affirmed.

OHIO BOARD OF TAX APPEALS

CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-497
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

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Entered Monday, June 29, 2020

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

The affected board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcels 118-15-009 and 118-16-042, for tax year 2017. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

The BOE filed a complaint with the BOR, which requested that the subject property's value be increased from $1,568,300 to $2,800,000 purportedly based upon the price at which the subject property transferred in February 2018. The property owner did not file a countercomplaint. The BOR held a hearing on the matter, at which both the BOE and property owner appeared through counsel. In its presentation, the BOE argued that the subject property transferred via an entity transfer and, because there was no indication that personal property transferred as well, the subject property should be valued at $2,800,000. In support of the arguments, the BOE submitted a number of documents: a list of recently sold properties from Sequoia Realty; a limited warranty deed that demonstrated the transfer of the subject property from Fritz Bros. Properties, LLC to the property owner in February 2018, which bore a stamp from the fiscal officer that noted that it was an exempt transfer; information about the transfer from real-estate site Co-Star; and a $2,100,000 mortgage, encumbering the subject property, granted by the property owner. In its presentation, the property owner argued that the issue of valuing real property consistent with entity transfers was currently before various Ohio courts; however, he asserted that current case law precluded the use of such transfers to determine real-property value. The property owner also argued that case law also precluded the use of mortgages to value real property. In support of the arguments, the property owner submitted: various appellate court filings emanating from *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (July 25, 2018), BTA No. 2016-2365, unreported; an excerpt from the purchase agreement that provided a list of items involved in the transfer; and this board's decision in *Canton City Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Dec. 17, 2018), BTA No. 2017-1026, unreported. Because the parties indicated that they were attempting to settle the matter, the BOR provided a deadline to submit a settlement agreement. When no settlement agreement was provided to the BOR, it proceeded to determine that the BOE had failed to satisfy the

evidentiary burden. The BOR subsequently issued a decision that retained the subject property's initially assessed value and this appeal ensued.

Though the BOE originally requested a merit hearing, it waived its appearance of such hearing. None of the parties submitted written argument. Therefore, we will base our decision upon the arguments and evidence presented 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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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.

As we review this matter, we are mindful that "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." *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶¶ 31-34 (quoting *Conalco v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977)). A transfer of the membership interest in a limited-liability company may be the best evidence of value when "the purchase and sale agreement indicates that the transfer of membership interest was done solely to transfer title to the subject property." *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 107199, 2019-Ohio-634 (quoting *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Apr. 28, 2018), BTA No. 2017-127, unreported ("*30050 Chagrin*")). In other words, this board can look to the economic reality of a transaction and adopt a membership transfer as a sale of real property. To succeed, the party arguing an entity transfer is actually the sale of real property for tax valuation purposes must present sufficient evidence for

this board to determine the nature of the transaction.

We find the recent Supreme Court decision in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2020-Ohio-353 ("*Palmer House*"), to be instructive. There, the court affirmed this board's decision, which determined that the transfer of real property via a "Drop Down LLC," by which the seller would place the property in a limited-liability company and then transfer the limited-liability company to the buyer, reflected real property value. The court distinguished precedential cases of *Salem Med. Arts & Dev. Corp. v. Columbiana Cty. Bd. of Revision*, 82 Ohio St.3d 193 (1998); *Gahanna-Jefferson Pub. Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 89 Ohio St.3d 450 (2000), finding that "[i]n both *Salem Med. Arts* and *Gahanna-Jefferson*, as in this case, the BTA grappled with whether evidence of the sale of an entity should be deemed to be functionally equivalent to a sale of the real estate owned by the entity, given that the real estate was the principal or only asset the entity owned." *Palmer House*, at ¶32. The court found that "one fact stands out as having overriding significance. In *Salem Med. Arts* and *Gahanna-Jefferson*, the purchase contracts provided for sales of corporate shares or partnership interests without explicit reference to an intent to sell and buy the real estate itself ***." Id. at ¶37. (Internal citations omitted.) Of particular importance to the facts of this matter, the court noted:

> In stark contrast, the BTA in this case confronted a document labeled by the parties as "Sale of Palmer House on the Boulevard 4121 Palmer Park Circle East New Albany, Ohio" and "Purchase and Sale Agreement." That is, the contract identifies itself as a purchase agreement for the real estate at issue. Beyond its cover page, the contract takes the classic form of a purchase agreement for commercial real estate by identifying as the subject matter of the transaction the specific real property along with categories of personal property appurtenant to the commercial operation of the real estate. Finally, this particular contract includes an explicit provision setting forth an optional method for consummating the deal as a transfer of corporate ownership

> rather than a conveyance of real estate from the seller to the buyer. We conclude that the documentation in this case made it reasonable for the BTA to find that this sale, unlike those in the earlier cases, reflected the parties' intent to sell and purchase income-producing real estate and supported the BTA's finding that the parties' transfer of corporate ownership constituted a contrivance for accomplishing the sale of commercial real estate.

Id. at ¶¶38-39. Accord *Orange City Schools*, supra.

Indeed, in cases where this board has found a transfer of interest in the ownership entity was actually a sale of real property, this board has relied on purchase agreements and other contracts of the parties. If those documents make clear no other going concern value or assets were owned by the newly formed entity, this board has been willing to recognize that transfer as a sale for real property valuation purposes. See *Akron City Schools. Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision* (Mar. 6, 2015), BTA No. 2014-4328, unreported; see also *30050 Chagrin*, supra. However, this board has not considered the sale of membership interest to be a real property sale when the record lacks specific evidence of the transaction, which make clear the newly formed entity's sole purpose was to facilitate the transfer of real property only. See *Beachwood City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Oct. 15, 2018), BTA No. 2017-871, unreported. Importantly, a party must present evidence that the entity transfer was not a transfer of non-realty. See id.

Upon review, we find that the BOE failed to satisfy its burden. Though the BOE submitted a number of documents to support its arguments, it failed to provide any evidence that demonstrated that the entity transfer was done for the sole purpose of transferring the subject property, *and only the subject property*, to the current property owner. Such information would be particularly important in this case because the record included an excerpt from the purchase agreement that non-realty items were part of the transfer. Thus, even if we were to accept the

BOE's argument, we would be unable to determine which portion of the purchase price should be allocated to the subject property and to the non-realty items.

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 BOE failed to submit sufficient evidence that would allow this board to determine that the transfer of the entity, i.e., the property owner, amounted to the transfer of the subject property. It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of the relevant tax lien date:

Parcel 118-15-009

True Value: $1,534,000

Taxable Value: $536,900

Parcel 118-16-042

True Value: $34,300

Taxable Value: $12,010

OHIO BOARD OF TAX APPEALS

PRIMUS HOMES LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-308
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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Entered Monday, June 29, 2020

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 as required by R.C. 5717.01. This matter is decided upon the motion, appellant's notice of appeal, and the statutory transcript certified by the county board of revision ("BOR").

Before we address the merits of the motion to dismiss, we must first dispose of a preliminary issue. David Umphrey, a member of the property owner, filed a written response in opposition of the motion to dismiss. There was no indication that Umphrey was an attorney licensed to practice law in the state of Ohio. As a result, the filing must be stricken from the record and will not be considered. See *Megaland GP, LLC v. Franklin Cty. Bd. of Revision*, 145 Ohio St.3d 84, 2015-Ohio-4918, ¶19, fn.2 (striking a brief filed by a non-attorney on behalf of a limited

liability company and indicating such filing constituted the unauthorized practice of law).

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county 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.").

Here, the property owner participated in this board's small claims hearing. Under examination by this board's attorney examiner, Umphrey detailed the process he undertook to file a copy of the notice of appeal, i.e., he mailed the notice of appeal by ordinary mail within the statutory time frame to do so. He speculated that staffing levels, related to COVID-19 pandemic restrictions, may have led the BOR to process his notice of appeal in an irregular manner. Unfortunately, no documentation was provided to demonstrate that the property owner timely filed a copy of the notice of appeal and/or that the BOR mishandled the notice of appeal.

Based upon the foregoing, we must conclude that this board lacks jurisdiction to consider the merits of this matter. As such, we grant the county appellees' motion and dismiss this appeal.

OHIO BOARD OF TAX APPEALS

DANIEL AND BONNIE KOSSIN, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2390 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DANIEL AND BONNIE KOSSIN
Represented by:
BONNIE KOSSIN
6700 DUNHAM RD.
WALTON HILLS, OH 44146

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

Entered Monday, June 29, 2020

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 793-06-007, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and record of this board's hearing.

The fiscal officer initially assessed the subject property at $172,700 and the property owner filed a complaint, requesting the subject property's value be reduced to $115,000. The BOR held a hearing at which the property owners appeared to submit argument and/or evidence. In doing so, they argued that the condition of the subject property necessitated a reduction to its value, especially when compared to assessed values and sales of nearby properties. To support their arguments, they submitted photographs that highlighted the cited condition issues and documents

related to other properties' assessed values and their recent transfers. The BOR concluded that the property owners' evidence was unpersuasive and issued a decision that retained the subject property's initially assessed value. This appeal ensued.

At this board's hearing, only the property owners appeared to submit additional argument and/or evidence into the record. They presented an appraisal report performed by Richard G. Marlowe, which opined the value to be $101,000 as of January 1, 2018. Based upon the evidence presented, the property owners requested that the subject property be revalued accordingly.

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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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 owners' appraisal report performed by Marlowe. He solely developed the sales comparison approach, by which he compared the subject property's features to the features of three nearby comparable properties that sold in 2016 and 2017. After quantitatively adjusting the comparable properties for differences with the subject property, he concluded the subject property's value to be $101,000 as of the tax lien date.

As we review this matter, we note that the appraisal report constitutes hearsay because it was presented without testimony from the appraiser, and the value conclusions should not be given any weight in our analysis. See *Dellick v. Eaton Corp.*, Mahoning App. No. 03-MA-246, 2005-

Ohio-566, ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). Generally, hearsay is inadmissible. Evid.R. 802."). Compare *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*"). When a party submits a written appraisal report, the presentation of the appraiser as a witness allows the other parties and this board the opportunity to evaluate the credibility of the appraiser and the reliability of his or her analysis. This is necessary because 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; *Akron Natl. Bank & Trust Co. v. Freed & Co.*, 9th Dist. Medina No. 957 (Aug. 20, 1980), unreported; *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported.

Even without testimony from the author, however, where an appraisal report contains adequate indicia is of reliability, the information contained therein may furnish an independent basis for valuing the property. *Team Rentals*, supra, at ¶27. In this case, the record lacks direct testimony about the preparation of the appraisal report, and unlike the appraisal report in *Team Rentals*, there is no evidence that any individual or entity has relied on the appraisal report to establish the subject property'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 ecord lacked direct testimony about both the preparation and use of an appraisal report).

The lack of testimony or evidence regarding another party's reliance on the appraisal report is particularly relevant where we have questions about the appraiser's analysis. We find the size of the gross adjustments Marlowe made striking, i.e., 56.2% gross adjustment to comparable sale 1, 54% gross adjust to comparable sale 2, and 43.0% gross adjustment to comparable sale 3. The greater the magnitude of the adjustments, the less reliable the appraisal report will be. In *RDSOR v. Knox Cty. Bd. of Revision* (Nov. 17, 2006), BTA No. 2003-B-1743, 2006 unreported, this board

commented:

> Usually the magnitude of net adjustments is a less reliable indicator of accuracy. The net adjustment is calculated by totaling the positive and negative adjustments and subtracting the smaller amount from the larger amount. A net adjustment figure may be misleading because one cannot assume that any inaccuracies in the positive and negative adjustments will cancel each other out. For example, if a comparable property is 20% superior to the subject in some characteristics and 20% inferior in others, the net adjustment is zero, but the gross adjustment is 40%. Another comparable may require several adjustments, all positive or all negative, resulting in a net adjustment of 6%. This property may well be a more accurate indicator of the subject's value than the comparable with the 0% net adjustment with large positive and negative adjustments. Several adjustments that are all positive or all negative may be more correct and produce a smaller total gross adjustment than a combination of positive and negative adjustments. The Appraisal of Real Estate, at 447.

We have also held that "when adjustments made to the comparables are significant [they] underscore the vast differences between the subject and the comparables in the report. *Westley v. Lorain Cty. Bd. of Revision* (Nov. 24, 2009), BTA No. 2007-V-675, unreported. The adjustments require us to find the appraisal report is not credible.

We also find the argument and evidence submitted at the BOR hearing to be equally unavailing. 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.");*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); *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."). (Internal citations omitted.)

We are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). Based upon our review of the record, we find that the property owners failed to satisfy the evidentiary burden before the BOR and before this board. As a result, the subject property shall remain as initially assessed as of the relevant tax lien date:

True Value: $172,700

Taxable Value: $60,450

OHIO BOARD OF TAX APPEALS

PERRY LOCAL SCHOOLS BOARD OF EDUCATION (STARK), (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-2053
vs.	)	(REAL PROPERTY TAX)
STARK COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PERRY LOCAL SCHOOLS BOARD OF EDUCATION (STARK)
Represented by:
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For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
STARK COUNTY
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TRASON ROCHESTER, LLC
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Entered Monday, June 29, 2020

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 4318867, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property is improved with a multitenant commercial building, which includes a Sheetz gas station and convenience store. The auditor initially assessed the subject's total true value at $1,142,900. The BOE filed a complaint with the BOR seeking an increase in

value to $2,787,640, while the appellee property owner, Trason Rochester LLC, filed a countercomplaint in support of the auditor's value.

At the BOR hearing, the BOE provided evidence that Trason Rochester purchased the subject property from BTKD, LLC on May 24, 2018 for $2,787,640. The BOE asserted that the value of the subject property should increase to the sale price. Trason Rochester did not dispute the basic details of the sale or allege it was not a recent, arm's-length transaction. Instead, Trason Rochester claimed that, in hindsight, it had overpaid because it has been unable to fill two units that were vacant at the time of the sale. Trason Rochester alleged that the sale price was based on 100% occupancy, but the property had experienced only 59.35% occupancy since the sale. Trason Rochester further argued the requested increase was inconsistent with the assessed values of other properties in the area. The BOR issued a decision maintaining the initially assessed valuation. Though the record contains a recommendation from an appraiser within the auditor's office that the BOR should increase the value of the property to the sale price, the BOR retained the auditor's value because to do so would make it "an anomaly" in the area. From this decision, the BOE filed the present appeal, arguing that Trason Rochester failed to rebut the sale.

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 a well-established 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. 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 SchoolsBd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶11.

In the present appeal, the burden falls on the appellees to demonstrate that the purchase price does not reflect the subject's true value. *Terraza*, supra; *Spirit Master Funding IX, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 254, 2018-Ohio-4302. A number of factors may cause the sale of a leased property to be unreliable evidence of value, such as whether the actual rent was at market rates, the creditworthiness of the tenant, and whether the lease was a net lease, under which the tenant defrays the expenses relating to the real estate. *GC Net Lease @ (3) (Westerville) Investors, L.L.C. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3856, ¶11. Trason Rochester has presented no evidence to prove that any of these factors were present in this case, much less any of these factors were reflected in the sale price.

Trason Rochester focused on the subject's actual occupancy falling short of its expectations, but it failed to establish a market rate vacancy rate and what effect, if any, it would have had on the sale price. Furthermore, this board has consistently held that "[a] negotiated purchase price is not invalidated merely because a purchaser later believes he made a bad deal." *Beatley v. Franklin Cty. Bd. of Revision* (June 18, 1999), BTA Nos. 1997-M-262, 263, unreported, at 11. In this case, we again reject the argument that we should ignore the purchase price based on a misperception of the subject's income potential, and we find that no party has rebutted the presumption that the sale price is the best evidence of value.

Finally, we consider the BOR's justification for rejecting the sale. The BOR determined that the sale would result in a value for the subject property disparate from those surrounding it. It is well established that the values of other properties are not reliable evidence of value for the subject. *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996)

("Merely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner."). Accordingly, we find that the sale price 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, 2018, were as follows:

TRUE VALUE

$2,787,640

TAXABLE VALUE

$ 975,670

OHIO BOARD OF TAX APPEALS

OUSSAMA LAMA, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2020-289
vs.	)	
LUCAS COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - OUSSAMA LAMA
Represented by:
SAM LAMA
OWNER
7917 HONEYSUCKLE LANE
MAUMEE, OH 43537

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

Entered Tuesday, June 30, 2020

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. (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 BOR Director of the Lucas County Auditor's Office, asserting that appellant's notice of appeal was not filed with the Lucas 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 M. MIRALDI, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2020-268
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - MARY M. MIRALDI
OWNER
2392 RAVEN HOLLOW ROAD
STATE COLLEGE, PA 16801

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

Entered Tuesday, June 30, 2020

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 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

EUCLID BEACH LP, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2856
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EUCLID BEACH LP
Represented by:
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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:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
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1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
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CLEVELAND, OH 44114

Entered Tuesday, June 30, 2020

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

This matter is now considered upon a motion to dismiss filed by the appellee board of education ("BOE"), which asserts that the underlying complaint was not filed by a proper agent and, therefore, failed to invoke the jurisdiction of the Board of Revision ("BOR"). We construe the request as a motion to remand this matter with instructions to dismiss the underlying complaint. Appellant did not respond to the motion. Accordingly, we now consider the matter upon the motion, the transcript certified by the BOR, and the notice of appeal.

The record reflects that appellant Euclid Beach L.P. is the owner of the subject property and is listed on line 1 of the complaint. The complaint does not indicate that it was filed by someone other than the owner, nor does it identify an agent on line three. On line four, the complaint's contact information includes an email address for Joan Alvares. The complaint contained in the statutory transcript does not reveal the signatory agent. The BOR convened a hearing, at which appellant was represented by counsel and the identity of the individual that filed the complaint was not discussed. Following the hearing, the BOR issued a decision maintaining the fiscal officer's value. From this value decision, appellant filed the present appeal.

R.C. 5715.19(A) provides that when a complaint is filed by a "firm, company, association, partnership, limited liability company, or corporation, an officer, a salaried employee, a partner, or member" is then authorized to file a complaint on behalf of the entity. 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.

Here, the identification of the complaint's filing agent is unclear, and there is no indication that the individual is an attorney or one who is identified by R.C. 5715.19(A). The BOE's motion indicates that the complaint was filed by Joan Alvares, as the property manager for Euclid Beach, L.P. To the extent the BOE's assertion is correct, even with contractual authorization, such a relationship does not allow Ms. Alvares to properly file a complaint on behalf of the property owner. *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 230, 2018-Ohio-4244 ("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 that the complaint was filed by one authorized to file on behalf of the owner, we find the underlying complaint failed to properly invoke the BOR's jurisdiction. *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.'"). Accordingly, the BOE's 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

CHRISTOPHER SMITH, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-310
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CHRISTOPHER SMITH
18519 HIGH PARKWAY
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 Monday, July 6, 2020

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 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

RONALD MARTHALLER, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2220
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RONALD MARTHALLER
Represented by:
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10100 EDGEWATER DRIVE
CLEVELAND, OH 44102

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

Entered Monday, July 13, 2020

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 001-06-023, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, property owner's prehearing statement, and record of this board's hearing.

The county fiscal officer initially assessed the subject property at $555,700 and the property owner filed a complaint with the BOR, requesting its value be reduced to $122,510. The BOR held a hearing on the matter, at which the property owner appeared to submit argument and/or evidence. The property owner and his son, Richard Marthaller, testified in support of the complaint. As the hearing commenced, the property owner amended his opinion of value to $350,000, which he stated reflected the subject property's assessed value for the prior triennial

period. He provided repair estimates, and a photograph, to demonstrate the condition issues with the subject property, and comparable sales data. The BOR subsequently voted to retain the subject property's initially assessed value. This appeal ensued.

While this matter was pending, the property owner submitted a prehearing statement to argue that he was entitled to a reduction in the subject property's value for various reasons.

This board held a consolidated hearing, which included the instant appeal and an appeal filed by Richard Marthaller, i.e., BTA No. 2019-2215, given the similarities in the arguments and/or presented. (A separate decision will be issued for BTA No. 2019-2215.) The property owner argued that the subject property's assessed value increased by approximately 59% without any justification or any consideration and that it would cost about $17,505 to repair certain defects.

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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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 must conclude that the property owner failed to provide competent credible, and/or probative evidence of the subject property's value. The property owner advanced several arguments to support his position. First, the property owner argued that the subject

property's prior triennial value, $350,000, should be reinstated. The county fiscal officer was under a statutory duty to reassess real property values, in light of existing market conditions, for tax year 2018. Sec, generally, R.C. 5713.01(B), 5715.33, and 5715.34. In carrying out such duty, the county fiscal officer increased the subject property's value. The Supreme Court has previously held that each tax year stands alone, and the fact that a property may have been valued differently for another year is not competent and probative evidence that a different year's value should be changed. See, *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).

Second, the property owner argued that defects of the subject property, i.e., unusable bathroom and outdated slate roof, necessitated a reduction to its value. The Supreme Court has been clear that, while negative characteristics can impact value, the party must present "adequate evidence of the specific impact that [] negative factors have on the" property. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (interpreting *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). A party must do more than submit a "list of defects." *Gides v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 102649, 2015-Ohio-4385, ¶7. A party must go further to establish "how those defects might have impacted the property value otherwise the "defects are simply variables in search of an equation." *Rozzi v. Lorain Cty. Bd. of Revision* (Nov. 14, 2018), BTA No. 2018-386, unreported (quoting *Gides*). Here, the impact those characteristics could have on value is not self-evident. Similarly, the repair estimates are equally unpersuasive. The Supreme Court has repeatedly rejected the notion that dollar-for-dollar costs directly correlate to value. See, e.g., *Throckmorton v. Hamilton Cty. Bd.*, 75 Ohio St.3d 227 (1996); *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588. Thus, just because it would cost approximately $17,505 to repair the cited defects does not mean that the subject property's value would decrease or increase by approximately $17,505 by failing to make those repairs or making those repairs. It is also

unclear how $17,505 in repair estimates would support reducing the subject property's value to $350,000.

Third, the property owner argued that comparable sales data, submitted at the BOR hearing, demonstrated that the subject property had been overvalued. Raw sales data alone is generally insufficient to warrant a reduction in value because that data is not tailored to the subject property. See *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported. With nothing more than a list of raw sales data, a trier of fact is left to speculate as to how common differences may affect a valuation determination. As a result, we cannot discern from the information presented whether and what amount of adjustments would be necessary to render the properties comparable to the subject property for purposes of determining its real property value. See *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002.

To the extent that the property owner requests that we reduce the subject property's value out of a sense of fairness given the issues he raised about Cuyahoga County, we must deny such request. The Ohio Supreme Court has long held this board is a creature of statute and has no power to act unless specifically authorized by statute. *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229 (1988); *Toledo v. McAndrew*(Sept. 1, 2009), BTA No. 2004-B-183, unreported. As such, we lack equitable jurisdiction and cannot grant the property owner the relief that he seeks out of a sense of fairness or justice. *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564 (1953).

We are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to provide competent, credible, and/or probative evidence of the subject property's value. A property owner is competent to provide an opinion of value, but this board need not adopt that value unless it is supported by legally sufficient evidence of value. See *Amsdell v. Cuyahoga Cty. Bd. of Revision* , 69 Ohio St.3d

572 (1994). It is, therefore, the order of this board that the subject property shall be valued as follows as of the relevant tax lien date:

True Value: $555,700

Taxable Value: $194,500

LINAS MACIKENAS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-170, 2020-171, 2020-172, 2020-173 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, July 13, 2020

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

The property owner appeals decisions of the board of revision ("BOR"), which determined the value of the subject properties, parcels 641-09-016, 641-12-123, 642-13-014, and 644-18-056, for tax year 2018. We proceed to consider these matters based upon the notices of appeal and certified statutory transcripts.

The property owner filed separate complaints, requesting that the value of parcel 641-09-016 be reduced from $60,000 to $40,000, the value of parcel 641-12-123 be reduced from $45,000 to $40,000, the value of parcel 642-13-014 be reduced from $84,800 to $60,000, and the value of parcel 644-18-056 be reduced from $50,000 to $40,000. Though the BOR scheduled hearings on the complaints, the property owner did not appear. However, he submitted evidence, appraisal reports, in lieu of attending the hearings. The BOR determined

that the appraisal reports were insufficient bases to reduce the subject properties' values and voted to retain their initially assessed values. These appeals ensued. On appeal, this board sua sponte consolidated these matters given the commonalities in the appeals.

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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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 these matters, the property owner submitted appraisal reports, which valued the subject properties as of January 1, 2019, to support his requested valuations. The author of the appraisal reports failed to testify before either the BOR or this board. This board generally rejects an appraiser's opinion of value when the appraiser does not appear before either the BOR or this board. See *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. As we explained in *Speca*, when the appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials, authenticate or identify the appraisal report, or describe the efforts undertaken to estimate value. Importantly, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed by this board. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 01-V-770, unreported. Also, the appraisal reports in these cases do not opine value as of the relevant tax-lien

date, January 1, 2018. We have also generally rejected such appraisal reports in the past, and the Ohio Supreme Court has affirmed us. See *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St. 3d 187, 2017-Ohio-8818, at ¶12. The court has been clear "[t]he vintage of an appraisal matters because 'the essence of an assessment is that it fixes the value based upon facts as they exist at a certain point in time.'" Id. at ¶15 (quoting *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997)).

There is an exception to those two general principles when appraisal reports are at issue. See *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 ("*Team Rentals*"). In *Team Rentals*, the Supreme Court held this board should have given weight to a non-tax-lien dated appraisal when the appraisal report's proponent testified about why the appraisal report was created and a party relied upon the appraisal report in a business or financial transaction. Id. at ¶¶30-31. However, the Supreme Court clarified *Team Rentals* in *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058. In *Musto*, the court held this board need not credit appraisal that had been relied upon in a financial or business transaction "in the absence of direct testimony about the preparation and actual use of" the appraisal. Id. at ¶42; *Ciccotti v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2018-352, unreported. Here, the property owner failed to provide "direct testimony about the preparation and actual use of" the appraisal report. See *Musto*, supra.

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 submit competent, credible, and/or probative evidence of the subject properties' values. It is therefore the order of this board that the

subject properties shall be assessed as follows as of the relevant tax lien date:

Parcel 641-09-016

True Value: $60,000

Taxable Value: $21,000

Parcel 641-12-123

True Value: $45,000

Taxable Value: $15,750

Parcel 642-13-014

True Value: $84,800

Taxable Value: $29,680

Parcel 644-18-056

True Value: $50,000

Taxable Value: $17,500

OHIO BOARD OF TAX APPEALS

TALAWANDA CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2072 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, July 13, 2020

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 H4100-015-000-097 and H4100-019-000-014, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The auditor initially assessed the subject's total true value at $273,490. The BOE filed a

complaint with the BOR seeking an increase in value to $600,000. At the BOR hearing, the BOE presented evidence to demonstrate that the subject property transferred from Gail J. Willis and Douglas A. Day, Co-Successor Trustees of the Ray Day Revocable Trust Agreement dated 6/28/05 to FSZ One LLC for $600,000 on April 2, 2018. The BOE argued that the value of the subject property should be increased to the sale price. The appellee property owner did not appear before the BOR or submit any information to challenge the reliability of the sale. Nevertheless, the BOR concluded that the BOE had failed to meet its burden and issued a decision maintaining the initially assessed valuation. From this decision, the BOE filed the present appeal, again arguing that the sale provides the best evidence of the subject's value. Neither the appellee property owner nor the county appellees submitted written argument to this board.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). 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. 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 sold via an arm's-length transaction on April 2, 2018, and the sale is reflected on the property record card. While BOR

rejected the sale, we find no basis for that decision. There has been no express challenge to the sale, as the BOR found that the BOE failed to meet its burden because it could not determine from the face of the conveyance fee statement whether it was the transfer of an unencumbered fee simple interest between willing participants after reasonable exposure. Nothing in the record reflects that any of the factors that may invalidate a sale were present, and it falls on the opponent of the sale to present evidence if any such factors exist. Here, the appellees have failed to do so. Accordingly, we find that the sale was a recent, arm's-length transaction and constitutes the best evidence of 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, 2018, were as follows:

PARCEL NUMBER H4100-015-000-097

TRUE VALUE

$458,650

TAXABLE VALUE

$160,530

PARCEL NUMBER H4100-019-000-014

TRUE VALUE

$141,350

TAXABLE VALUE

$49,470

OHIO BOARD OF TAX APPEALS

DAMIEN H. BAISDEN, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2020-240
vs.	)	
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

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Entered Monday, July 13, 2020

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

The taxpayer appeals decisions of the board of revision ("BOR"), which denied requests for remission of the late payment penalty associated with the property tax bills for parcel 010-027521-00 for the second half of tax year 2017 and for both tax periods of tax year 2018. We proceed to consider this matter based upon the underlying applications, statutory transcripts certified pursuant to R.C. 5717.01, and taxpayer's written argument.

The taxpayer filed applications for the remission of late payment penalty associated with the previously mentioned tax periods. By way of the applications, the taxpayer alleged that every possible provision for remission of the late payment penalty applied to the facts and circumstances of his situation. The taxpayer asserted that he had been paying on delinquent

property taxes for a number of years, some of which were accrued before he owned the property; however, he stated that family financial responsibilities and the climbing balance of the property tax delinquency made payments difficult. He requested that county officials consider his active-duty military service when examining his applications. Based upon the assertions made in the applications, the taxpayer not only requested remission of the late payment penalty for each of the above-mentioned tax periods but for all prior tax periods for which penalties had been assessed.

The county treasurer first considered the applications and recommended granting them. Though it was required to provide the basis for granting the applications, the county treasurer failed to do so. When the applications were subsequently forwarded to the county auditor to consider the applications, the county auditor recommended denying the applications and forwarded them to the BOR to determine whether the taxpayer had demonstrated reasonable cause for his failure to timely pay the property tax bills. The BOR determined that he had not made such demonstration and noted that it granted the taxpayer penalty remission for the first half of tax year 2017. The BOR issued decisions, which denied the taxpayer's request for remission of the late payment penalties, and this appeal ensued.

The taxpayer opted not to avail himself of an opportunity to submit evidence at a hearing before this board. Instead, he submitted a written statement in support of this appeal, which argued that the Servicemembers Civil Relief Act ("SCRA"), 50 U.S.C. 3901 et seq., precluded the assessment of any late payment penalty on his untimely property tax payments. See 50 U.S.C. 3991.

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).

Before we consider the merits of this appeal, we must first dispose of a preliminary issue. As noted above, the taxpayer did not request a hearing before this board to provide evidence, including testimony, about the facts relevant to this matter. However, by way of the written statement submitted with his notice of appeal, the taxpayer makes a number of factual assertions that are not properly before us and are considered hearsay. See *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."). Factual assertions rendered outside the circumscribed rules of evidence are excluded based upon a time-tested practice designed to ensure truth in the fact-finding process. Here, we offered a merit hearing for the purpose of providing the parties an opportunity to present testimony and other evidence in support of their respective positions. At our merit hearings witnesses are placed under oath and subjected to the rigors of cross-examination. Only then is testimonial evidence deemed admissible. If tribunals were to rely upon factual assertions rendered outside this tried-and-true process, our truth-seeking function could be subverted. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. Of Revision*, 76 Ohio St.3d 13, 16 (1996). Accordingly, we will accord no weight to the factual assertions contained in the taxpayer's written statement.

We begin our analysis by determining whether SCRA applies to this matter. The purposes of the SCRA are two-fold:

> (1) [T]o provide for, strengthen, and expedite the national defense through protection * * * to servicemembers of the United States to enable such persons to devote their entire energy to the defense

needs of the Nation; and

(2) [T]o provide for the temporary suspension of judicial and administrative proceedings and transactions that may adversely affect the civil rights of servicemembers during their military service.

50 U.S.C. 3902. "[W]e must also acknowledge that courts must 'liberally construe' the SCRA in its application. See *Boone v. Lightner*, 319 U.S. 561, 575 * * * (1943). This liberal construction is to 'protect those who have been obliged to drop their own affairs to take up the burdens of the nation.' Id." *Fifth Third Bank v. Schoessler's Supply Room*, 12th Dist. No. CA2009-11-153, 2010-Ohio-4074, ¶17.

Upon review, we find that the taxpayer failed to demonstrate that the SCRA applies to this matter. As an initial matter, beyond the taxpayer's bare assertions, there is no evidence that he was a "servicemember" "as that term is defined in section 101(a)(5) of title 10[,]" see 50 U.S.C. 3911(1), or that provides information about his "period of military service," see 50 U.S.C. 3911(2). As a result, we are unable to conclude that the taxpayer is entitled to the protections offered by the SCRA. However, for the sake of argument, we will accept his assertions about his status as "servicemember" as true in order to complete our analysis of this matter.

Section 3991 of the SCRA specifically provides, in relevant part, that:

(a) Application This section applies in any case in which a tax or assessment, whether general or special (other than a tax on personal income), falls due and remains unpaid before or during a period of military service with respect to a servicemember's—

(1) personal property (including motor vehicles); or

(2) real property occupied for dwelling, professional, business, or agricultural purposes by a servicemember or the servicemember's dependents or employees—

(A) before the servicemember's entry into military service; and

(B) during the time the tax or assessment remains unpaid.

* * *

(d) Interest on tax or assessment

Whenever a servicemember does not pay a tax or assessment on property described in subsection (a) when due, the amount of the tax or assessment due and unpaid shall bear interest until paid at the rate of 6 percent per year. An additional penalty or interest shall not be incurred by reason of nonpayment. A lien for such unpaid tax or assessment may include interest under this subsection.

Based upon the facts alleged in the taxpayer's written statement, we find that 50 U.S.C. 3991(2) does not preclude the assessment of the late payment penalty for the tax periods at issue. The provisions of subsection (a)(2) are conjunctive, meaning that the taxpayer must satisfy *both* prongs of subsection (a)(2) in order to qualify for relief. Specifically, the taxpayer

has not demonstrated that the subject real property was used as a dwelling by the taxpayer-servicemember or his dependents "before the servicemember's entry into military service[.]" 50 U.S.C. 3991(a)(2)(A). From our reading of the taxpayer's written statement, which we accept as true for the sake of argument, he was in military service when he returned from Afghanistan in 2012 and he subsequently entered into a land installment contract by which he later gained ownership of the underlying real property. (We also note that the taxpayer has not demonstrated that his mother and siblings were "dependents" as defined by 50 U.S.C. 3911(4).) Thus, the record suggests that the taxpayer is not entitled to relief because he did not use the subject real property as a dwelling *before* his entry into military service, but *after* his entry into military service. Because the taxpayer did not satisfy the first prong of 50 U.S.C. 3991(a)(2), subsection (A), it is unnecessary for us to consider whether he satisfied the second prong of 50 U.S.C. 3991(a)(2), subsection (B). Based upon the foregoing, we find that the SCRA does not apply to this matter.

We now proceed to consider whether the taxpayer is entitled to remission of the late payment penalty pursuant to Ohio law. R.C. 5715.39 provides the guidelines to determine when real property tax, late payment penalties shall be remitted. R.C. 5715.39(B) requires penalty remission for the following reasons:

> (1) The 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.
>
> (2) In cases other than those described in division (B)(1) of this section, and except as provided in division (B)(5) of this section,

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.

(3) The 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.

(4) The 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.

(5) With 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.

Penalties must also be remitted if the "taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." R.C. 5715.39(C).

Upon review, we find that the taxpayer is not entitled to remission of the late payment penalty under any provision of R.C. 5715.39. The taxpayer alleged that every basis for remission applied to this matter. Unfortunately, the record is void any evidence to highlight the

taxpayer's failure to timely pay the property tax bills were based upon the "negligence or error of the county auditor or county treasurer" pursuant to R.C. 5715.39(B)(1); the taxpayer's failure to receive the property tax bills and his good faith efforts to obtain them within thirty days of their due dates pursuant to R.C. 5715.39(B)(2); the taxpayer's failure to timely pay the property tax bills were based upon his serious injury pursuant to R.C. 5715.39(B)(3); the taxpayer timely paid the property tax bills by depositing them in the mail and has postmark proof of such mailing pursuant to R.C. 5715.39(B)(4); and the taxpayer satisfied the mortgage encumbering the subject real property and the mortgagor failed to notify the treasurer of such satisfaction so that future tax bills could be mailed to the taxpayer. We find, therefore, that the taxpayer is not entitled to remission of the penalty on these bases.

The taxpayer also alleged that the facts and circumstances of these matters fit within the parameters of R.C. 5715.39(C). Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g. *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. Here, it is undisputed that there has been at least one instance of untimely payment of property tax bills, i.e., first half of tax year 2017, which established a pattern of neglect. We find, therefore, that the taxpayer is not entitled to remission of the penalty on this basis.

Though we sympathize with the taxpayer, and appreciate his military service, this board lacks the authority to grant the requested relief out of a sense of "fairness" or "justice." See *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229 (1988). We find, therefore, that the taxpayer is not entitled to remission of the penalty on this basis.

Based upon the foregoing, we find that the taxpayer failed to satisfy the evidentiary

burden on appeal. As a result, we find that the taxpayer is not entitled to remission of the late payment penalty associated with the untimely payment of property tax bills for the second half of tax year 2017 and both tax periods of tax year 2018.

OHIO BOARD OF TAX APPEALS

RITA OKTAVEC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-373
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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Entered Monday, July 13, 2020

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

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellant did not file an initial application for remission with the county treasurer and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county BOR, and appellant's notice of appeal.

On February 27, 2020, the appellant filed an application for remission with this board. Appellant did not include a copy of a BOR decision. The statutory transcript demonstrates 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

TALAWANDA CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2081 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TALAWANDA CITY SCHOOLS BOARD OF EDUCATION
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For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
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P. O. BOX 515
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RODBRO AND MYERS INVESTMENTS, LLC
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Entered Monday, July 13, 2020

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 H4100-004-000-083 and H4100-004-000-084, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The auditor initially assessed the subject's total true value at $211,680. The BOE filed a complaint with the BOR seeking an increase in value to $395,000. At the BOR hearing, the BOE

presented evidence to demonstrate that the subject property transferred from First Merchants Bank to Rodbro and Myers Investments, LLC, for $395,000 on October 30, 2018. The BOE argued that the value of the subject property should be increased to the sale price. The appellee property owner did not appear before the BOR or submit any information to challenge the reliability of the sale. Nevertheless, the BOR concluded that the BOE had failed to meet its burden and issued a decision maintaining the initially assessed valuation. From this decision, the BOE filed the present appeal, again arguing that the sale provides the best evidence of the subject's value. Neither the appellee property owner nor the county appellees submitted written argument to this board.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). 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. 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 sold via an arm's-length transaction on October 30, 2018, and the sale is reflected on the property record card. While BOR rejected the sale, we find no basis for this conclusion. There has been no express challenge to the

sale, as the BOR found that the BOE failed to meet its burden because it could not determine from the face of the conveyance fee statement whether it was the transfer of an unencumbered fee simple interest between willing participants after reasonable exposure. Nothing in the record reflects that any of the factors that would invalidate the sale were present, and it falls on the opponent of the sale to present evidence if any such factors exist. Here, the appellees have failed to do so. Accordingly, we find that the sale was a recent, arm's-length transaction and constitutes the best evidence of 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, 2018, were as follows:

PARCEL NUMBER H4100-004-000-083

TRUE VALUE

$395,000

TAXABLE VALUE

$138,250

PARCEL NUMBER H4100-004-000-084

TRUE VALUE

$0

TAXABLE VALUE

$0

OHIO BOARD OF TAX APPEALS

AINJIL INVESTMENTS LLC, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1814, 2019-1815, 2019-1816, 2019-1817, 2019-1818, 2019-1819, 2019-1820 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AINJIL INVESTMENTS LLC
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Entered Monday, July 13, 2020

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

The taxpayer appeals decisions of the board of revision ("BOR"), which denied its requests for remission of the late-payment penalties associated with property-tax bills for parcel 010-022757-00 for all tax periods from the second half of tax year 2015 to the second half of tax year 2018. We proceed to consider these consolidated matters based upon the notices of appeal, statutory transcripts, and record of this board's hearing.

The taxpayer filed separate applications, requesting remission of the late-payment penalties for the tax periods noted above. In doing so, the taxpayer, through its member Bryan Savage, explained its motives for purchasing the subject property in 2015 and efforts to change

the subject property's classification from commercial to residential. As a result, the taxpayer asserted that its failure to timely pay the property-tax bills were based upon negligence of the county auditor or county treasurer and that such failures constituted reasonable cause, not willful neglect. Neither the county treasurer, county auditor, nor BOR believed that the taxpayer demonstrated its entitlement to remission of the late-payment penalties. In reaching its decisions to deny the taxpayer's requests, the BOR noted that it had granted the taxpayer remission of the late-payment penalty for the first half of tax year 2015 in August 2016. After the BOR issued written decisions, denying the taxpayer's requests, the taxpayer appealed to this board.

At this board's hearing, the taxpayer appeared, through Savage, to submit testimony in support of the notices of appeal. Savage testified consistent with the written statement submitted with the underlying applications and was questioned by this board's attorney examiner. In addition to remission of the late-payment penalties for the above-referenced tax periods, he clarified that the taxpayer also sought to reopen the record on a prior case before this board, *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (June 21, 2017), BTA No. 2016-845, unreported, which he claimed involved the subject property and its land-use classification, "other retail structures," and to adjust past property-tax bills based upon that change. According to Savage, because of this board's decision, the taxpayer had been unable to correct or to change the subject property's classification to residential, R510, until fall 2018, which has led to very large property-tax bills for the tax periods at issue. He explained that the taxpayer had paid its property-tax bills over the years by tendering the amount of payment that it thought was appropriate, which left a balance due every tax period. As a result, for ensuing tax periods, when the taxpayer tendered a property-tax payment, the monies were first applied to penalties for the unpaid past balances.

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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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.

Before we reach the merits of this appeal, we must clarify the issues that are properly before us, over which this board may exercise its authority. The taxpayer filed applications for remission of the late-payment penalties, which specifically *only* relate to the issue of penalty remission, not land-use classification. Furthermore, there is no indication that the taxpayer filed a complaint with the BOR, which challenged the subject property's land-use classification and received a decision on such complaint. This board, therefore, does not have authority to change the subject property's land-use classification. R.C. 5715.19(A)(1)(d). Similarly, this board does not have the authority to adjust past, current, or future property-tax bills or to reopen the record in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (June 21, 2017), BTA No. 2016-845, unreported, which became final upon all parties on July 21, 2017. (It should be noted that after reviewing the complaint in that case, there was no indication that the property

owner properly raised the issue of the subject property's land-use classification in tax year 2016.) Thus, the only issue before us is whether the taxpayer is entitled to remission of the late-payment penalties for the above-mentioned tax periods.

Upon review, we are constrained to find that the taxpayer has failed to demonstrate that the facts and circumstances of these matters qualify for remission of the late-payment penalty pursuant to R.C. 5715.39, which provides the guidelines to determine when such penalty shall be remitted. The taxpayer raised two bases to claim that remission of the late-payment penalties would be appropriate in this matter. First, it requested remission of the penalty based upon R.C. 5715.39(B)(1), which specifically provides that "[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." Upon review of the record, we discern no negligence or error on the part of the county auditor or treasurer in "the levy or collection of" property taxes for the tax periods noted above. Though the taxpayer raised the issue of the subject property's land-use classification and how it led to higher property-tax bills, there is no indication that proper procedures were followed to change the subject property's land-use classification, prior to fall 2018, and that the county auditor and/or county treasurer continued to assess the subject property at a commercial-tax rate instead of residential-tax rate, prior to fall 2018. It should also be noted that the record includes testimony various businesses used portions of the subject property for office space over the years and, as a consequence, that may have led to the subject property's continued designation as a commercial property instead of a residential property. We conclude, therefore, that remission of the late-payment penalties is not appropriate on this basis.

Second, the taxpayer requested remission of the penalty based upon R.C. 5715.39(C), which provides discretion to grant remission of the late payment penalty if the taxpayer

demonstrates that the "failure to make timely payment of the tax is due to reasonable cause and not willful neglect." Habitual lateness in meeting tax obligations may constitute willful neglect, and not reasonable cause, even when only one prior incidence of late payment occurred. See e.g., *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported; *Frey v. Testa* (July 26, 2016), BTA No. 2015-1877, unreported. It is undisputed that the taxpayer had multiple instances of unpaid balances for property-tax bills. We conclude, therefore, that remission of the late-payment penalties is not appropriate on this basis.

Based upon the foregoing, we find that the taxpayer has failed to demonstrate that it is entitled to remission of the late-payment penalties associated with property-tax bills for parcel 010-022757-00 for all tax periods from the second half of tax year 2015 to the second half of tax year 2018.

OHIO BOARD OF TAX APPEALS

1520 WOOSTER AVENUE ASSOCIATES, LLC, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1755 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 1520 WOOSTER AVENUE ASSOCIATES, LLC
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For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
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AKRON CITY SCHOOLS BOARD OF EDUCATION
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Entered Monday, July 13, 2020

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 68-54373, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and record of this board's hearing.

The property owner filed a complaint with the BOR, requesting a reduction to the

subject property's value from $818,370 to $400,000. The affected board of education ("BOE") filed a countercomplaint, objecting to the request. At the BOR hearing on the matter, both parties appeared through counsel. The property owner submitted a packet of documents, which included written argument, salient information about the subject property from county records, and comparable sales data. Based upon the evidence, the property owner requested that the subject property's value be reduced. The BOE submitted an appraisal report that valued an adjacent parcel as of January 1, 2014, to which the property owner objected based on hearsay and relevancy grounds. The BOE further objected to the request to reduce value and argued that the property owner had failed to provide legally sufficient evidence of the subject property's value as of the tax lien date of January 1, 2017. The BOR issued a decision retaining the subject property's initially assessed value. This appeal ensued.

At this board's hearing, the property owner submitted the appraisal report and testimony of appraiser Richard G. Racek, Jr., which opined the subject property's value to be $500,000 as of January 1, 2017. Racek testified about the underlying data and methodologies used to develop his opinion of value. Neither the BOE nor county appellees participated in 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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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 Racek's appraisal report, which solely developed the sales comparison approach to valuing real property. He determined that the cost approach was inapplicable given the difficulty in determining the various types of depreciation. He also determined that the income approach was inapplicable because the subject property lacked basic utilities and the improvements were uninhabitable. Under the sales comparison approach, he compared the features of the two improvements (characterized as "main building" and "freestanding building") situsedon the subject property to the features of eleven other properties located throughout northeast Ohio. After adjusting the comparable properties based upon differences with each of the structures, he preliminarily concluded the value of the "main building" to be $241,168 and the value of the "freestanding building" to be $253,470. Racek rounded up the total to finally conclude the subject property's value to be $500,000 as of January 1, 2017.

Upon review, we can glean no legal error in Racek's analysis and note that there have been no specific challenges to any aspect of his appraisal report. As such, we find the appraisal report to be competent, credible, and probative evidence of the subject property's value. Accordingly, it is the decision of this board that the true and taxable values of the subject property are as follows as of the relevant tax lien date:

True Value: $500,000

Taxable Value: $175,000

OHIO BOARD OF TAX APPEALS

TALAWANDA CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2074 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TALAWANDA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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Entered Monday, July 20, 2020

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 H4100-030-000-004 and H4100-030-000-005, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The auditor initially assessed the subject's total true value at $45,990. The BOE filed a

complaint with the BOR seeking an increase in value to $225,000. At the BOR hearing, the BOE presented evidence to demonstrate that the subject property transferred from Martha P. Meyer to Oxford Auto Body, Inc., for $225,000 on November 9, 2018. The BOE argued that the value of the subject property should be increased to the sale price. The appellee property owner did not appear before the BOR or submit any information to challenge the reliability of the sale. Nevertheless, the BOR concluded that the BOE had failed to meet its burden and issued a decision maintaining the initially assessed valuation. From this decision, the BOE filed the present appeal, again arguing that the sale provides the best evidence of the subject's value. Neither the appellee property owner nor the county appellees submitted written argument to this board.

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

arm's-length transaction on November 9, 2018, and the sale is reflected on the property record card. While BOR rejected the sale, we find no basis for that decision. There has been no express challenge to the sale, as the BOR found that the BOE failed to meet its burden because it could not determine from the face of the conveyance fee statement whether it was the transfer of an unencumbered fee simple interest between willing participants after reasonable exposure. Nothing in the record reflects that any of the factors that would invalidate the sale were present, and it falls on the opponent of the sale to present evidence if any such factors exist. Here, the appellees have failed to do so. Accordingly, we find that the sale was a recent, arm's-length transaction and constitutes the best evidence of 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, 2018, were as follows:

PARCEL NUMBER H4100-030-000-004

TRUE VALUE

$158,070

TAXABLE VALUE

$55,320

PARCEL NUMBER H4100-030-000-005

TRUE VALUE

$66,930

TAXABLE VALUE

$23,430

OHIO BOARD OF TAX APPEALS

SHEILA ALRIDGE, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1420
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SHEILA ALRIDGE
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Monday, July 20, 2020

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 120-21-016, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and record of this board's hearing.

[2] The property owner filed a complaint with the BOR, requesting a reduction to the subject property's value from $150,200 to $61,000. At the BOR hearing on the matter, the property owner appeared in support of the complaint. She detailed the condition issues with the subject property, a duplex, and her ongoing efforts to remediate those issues. One of the BOR members provided the property owner with a list of comparable sales. Because the property owner forgot an appraisal report that she intended to submit into evidence, the BOR paused the

hearing to allow her to retrieve it. One of the BOR members critiqued the appraiser's selection of comparable properties, upon which he relied to conclude the subject property's value to be $44,000 as of August 2018. The BOR voted to retain the subject property's initially assessed value and this appeal ensued.

[3] At this board's hearing, only the property owner appeared to supplement the record with additional evidence. In doing so, she expanded upon or reiterated the testimony that she previously provided to the BOR. She resubmitted the appraisal report and submitted a document related to the subject property's preliminary value for tax year 2018.

[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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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.

[5] We begin our analysis with the property owner's appraisal evidence, i.e., the appraisal report performed by Grancha, which valued the subject property at $44,000 as of August 21, 2018. We do not find the appraisal report to be competent, credible, and/or probative evidence of the subject property's value. Grancha did not appear at the BOR hearing or this board's hearing. We generally reject an appraisal report when the appraiser fails to appear before this board or the BOR.*Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-

K-2144, unreported. As we explained in *Speca*, when the appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials or authenticate the report (including addenda). Importantly, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed by this board. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. See also *Dellick v. Eaton Corp.*, Mahoning App. No. 03-MA-246, 2005-Ohio-566, ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). Generally, hearsay is inadmissible. Evid.R. 802."). Compare *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 (affirming this board's use of a hearsay appraisal report when there was testimony about the reliance that the bank and property owner placed upon it in making business decisions). For example, the BOR took issue with comparable sale one, a three-family property, dissimilar than the subject property, a duplex. Not only did Grancha fail to explain why he selected this dissimilar property, but he failed to adjust comparable sale one for this difference. Further review of the comparable sales demonstrate that he failed to adjust the comparable sales for several important differences with the subject property. It should also be noted that we previously rejected an exterior-only appraisal report like Grancha's, determining that the analysis was incomplete. *Collins v. Hamilton Cty. Bd. of Revision* (May 29, 2012), BTA No. 2009-Y-1156, unreported.

[6] Moreover, Grancha's opinion of value did not relate to the tax lien date of January 1, 2018. See, *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30, (1997) ("[a]n expert's opinion of value in a tax valuation case is of little help to the trier of fact if the expert

does not explain the basis for the opinion."); *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 554-555 (1996) ("the BTA must base its decision on an opinion of true value that expresses a value for the property as of the tax lien date of the year in uestion.").

[7] The property owner asserted that the condition of the subject property, particularly the home, necessitated a reduction to the subject property's value. She failed, however, to provide evidence to quantify the specific diminution in value that resulted from the defects. Even Grancha's appraisal report failed to quantify the impact of the cited defects. 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."). (Internal citations omitted.)

[8] To the extent that the property owner requested that this board reduce the subject property's value based upon her personal circumstances, unfortunately, we are unable to do so. This board does not have equitable jurisdiction and, therefore, cannot grant the property owner the relief that she seeks out of a sense of fairness or considering her personal challenges. *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564, 569 (1953).

[9] 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 sum, we do not find the property owner's evidence to be competent, credible, and/or probative evidence of the subject property's value. See, *Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018), BTA No. 2018-414, unreported at 2 (though an owner is

free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested."). It is, therefore, the order of this board that the subject property shall be assessed the following values as of the tax lien date:

True Value: $150,200

Taxable Value: $52,570

OHIO BOARD OF TAX APPEALS

ERNEST SANDISH, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-659
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MEDINA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - ERNEST SANDISH
Represented by:
LINDA SANDISH
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AUSTIN, TX 78726

For the Appellee(s) - MEDINA COUNTY BOARD OF REVISION
Represented by:
HEIDI CARROLL
ASSISTANT PROSECUTING ATTORNEY
MEDINA COUNTY
60 PUBLIC SQUARE
MEDINA, OH 44256

Entered Wednesday, July 22, 2020

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, appellant's response, 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 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 filed with the BOR fifty-one days after the mailing of the BOR's decision. Appellant responded to the motion and argued that this board's docketing letter was "reasonably certain to inform those affected." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 315 (1950). 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, this matter is determined to be jurisdictionally deficient and therefore is dismissed.

OHIO BOARD OF TAX APPEALS

PRINCETON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2060 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PRINCETON CITY SCHOOLS BOARD OF EDUCATION
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For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
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BUTLER COUNTY
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HAMILTON, OH 45012-0515

MARK ENTERPRISES LLC
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WEST CHESTER, OH 45069

Entered Monday, July 27, 2020

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 M5820-366-000-013 and M5820-366-000-013T, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The auditor initially assessed the subject's total true value at $2,970,000. The BOE filed

a complaint with the BOR seeking an increase in value to $3,265,750. At the BOR hearing, the BOE presented evidence to demonstrate that the subject property transferred from World Park 9 Title Holder, LLC to Mark Enterprises LLC, for $3,265,750 on July 13, 2018. The BOE argued that the value of the subject property should be increased to the sale price. The appellee property owner did not appear before the BOR or submit any information to challenge the reliability of the sale. Nevertheless, the BOR concluded that the BOE had failed to meet its burden and issued a decision maintaining the initially assessed valuation. From this decision, the BOE filed the present appeal, again arguing that the sale provides the best evidence of the subject's value. Neither the appellee property owner nor the county appellees submitted written argument to this board.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision,* 50 Ohio St.2d 129 (1977). 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. 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 sold via an arm's-length transaction on July 13, 2018, and the sale is reflected on the property record card. While BOR rejected the sale, we find no basis for this conclusion. There has been no express challenge to the

sale, as the BOR found that the BOE failed to meet its burden because it could not determine from the face of the conveyance fee statement whether it was the transfer of an unencumbered fee simple interest between willing participants after reasonable exposure. Nothing in the record reflects that any of the factors that would invalidate the sale were present, and it falls on the opponent of the sale to present evidence if any such factors exist. Here, the appellees have failed to do so. Accordingly, we find that the sale was a recent, arm's-length transaction and constitutes the best evidence of the value of the subject property. Accordingly, we find that the subject's total true value, as of January 1, 2018, was $3,265,750. Because the property appears to be subject to a TIF for tax year 2018, however, we hereby remand this matter to the Butler County Board of Revision with instructions to allocate value among the parcels per the TIF agreement.

OHIO BOARD OF TAX APPEALS

CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-499
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION
Represented by:
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CLEVELAND, OH 44114

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

CLEVELAND REAL ESTATE INVESTMENTS 1020 BOLIVAR LLC
1325 CARNEGIE AVENUE
CLEVELAND, OH 44115

Entered Monday, August 3, 2020

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 101-38-302, 101-38-303, and 101-38-304, for tax year 2017. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The BOE filed a complaint with the BOR, requesting an increase from the subject

property's initially assessed value of $2,642,800 to $2,702,360. According to the complaint, the BOE's requested value was purportedly based upon the price at which the subject property sold in September 2017. The property owner did not file a countercomplaint. The BOR held a hearing on the matter, at which time the BOE and property owner appeared through counsel. In its presentation, the BOE submitted a packet of documents, which included a conveyance fee statement and limited warranty deed that memorialized a $2,702,360 (rounded) transfer of the subject property to the current property owner in September 2017, as well as other documents. Based upon the documents, the BOE requested that the subject property's value be increased to the sale price. In its presentation, the property owner argued that the sale price reflected on the conveyance fee statement, $2,702,360 (rounded), was in error because it included additional costs unassociated with the subject property. Instead, the property owner asserted, the sale price was $2,662,940 (rounded) as indicated by a packet of documents, which included the underlying lease agreement that included an option to purchase, settlement statement, and limited warranty deed. (Other documents were also included in the property owner's packet of documents.) Though no witnesses were presented and sworn, the BOR questioned the attorneys about the relationship between the parties and prior foreclosure proceedings. The BOR members noted their concern that the subject sale, regardless of the sale price, was not conducted at arm's-length because of the parties' previous landlord-tenant relationship. The BOR voted to retain the subject property's initially assessed value and subsequently issued a written decision to that effect. The BOE appealed to this board.

[3] Though the BOE initially requested an opportunity to submit additional evidence at a hearing before this board, all parties waived their appearance of such hearing. None of the parties 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. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. Of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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.

[4] We begin our analysis with the subject sale. The sale documents created a rebuttable presumption that the subject sale was a recent, arm's-length sale indicative of the subject property's value. See, *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932; *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402. The property owner does not dispute that the subject sale took place and conceded that the subject sale was the best indication of the subject property's value; however, it disputed the sale price provided on the conveyance fee statement. The BOR determined that the subject sale was not an arm's-length transaction because of the landlord-tenant relationship between the seller and the current property owner.

[5] We first consider whether the property owner demonstrated that the subject sale price was $2,662,940 (rounded) not $2,702,260 (rounded). As the appellant, the BOE bears the burden to prove its right to the value asserted. *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. Of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6. The record, including the sale documents submitted by both parties at the BOR hearing, confirm the BOE's contention that the total purchase price

was, indeed, $2,702,260 (rounded). This board must, therefore, determine whether the option payment fee, and costs associated with the fee, are properly included in the sale price for the subject property based on corroborating indicia of such allocation. *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St. 3d 325, 2017-Ohio-8817; *St. Bernard Self Storage, L.L.C. v. Hamilton Cty. Bd. of Revision*, 115 Ohio St.3d 365, 2007-Ohio-5249; *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028. See, also *Cleveland Municipal Schools Bd. of Edn. v. Cuyahoga Cty. Bd. Of Revision* (Mar. 6, 2018), BTA No. 2017-476, unreported.

[6] The lease agreement highlights that the landlord and tenant, also the seller and buyer, respectively, contemplated the transfer of the subject property and provided specific terms in the event that such transfer took place. The settlement statement further highlights that the total purchase price included $2,662,937.01 contract sales price, $6,509.40 pro-rated option payment, $29,657.04 option administrative and legal fees, and $3,254.72 in interest on the option payment. Upon review of the record before us, we find sufficient corroborating indicia of the allocation of only $2,662,940 (rounded) to the purchase of the subject property in September 2017.

[7] We note that the BOR concluded that the subject sale was not an arm's-length transaction because of the landlord-tenant relationship between the buyer and seller. This relationship alone, however, does not disqualify the sale, even when the landlord approached the tenant and the property was not listed on the open market. See, e.g., *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶¶32-34. The court held that "[t]he case law does not condition character of a sale as an arm's-length transaction on whether the property was advertised for sale or was exposed to a broad range of potential buyers." Id. at ¶29.

[8] 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 subject property shall be valued consistent with its allocated sale price. It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of the relevant tax lien date:

Parcel Number: 101-38-302

True Value: $1,128,530

Taxable Value: $394,990

Parcel Number: 101-38-303

True Value: $1,122,490

Taxable Value: $ 392,870

Parcel Number: 101-38-304

True Value: $411,920

Taxable Value: $144,170

OHIO BOARD OF TAX APPEALS

JOSEPH R. FECKANIN, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2983 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOSEPH R. FECKANIN
Represented by:
JOSEPH FECKANIN
10901 MC CRACKEN ROAD
GARFIELD HEIGHTS, OH 44125

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

Entered Monday, August 3, 2020

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

[1] The property owner appeals a decision of the board of revision ("BOR"), which determines the value of the subject property, parcel 541-17-108, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified by the BOR, and parties' written argument.

[2] The property owner filed a complaint with the BOR, which requested that the subject property's value be reduced from $58,000 to $33,000. He attached a written explanation for his claim, comparable sales, and photographs to the complaint. No one appeared on his behalf at

the BOR hearing; however, the BOR reviewed the documents attached to the complaint and subsequently issued a decision that retained the subject property's initially assessed value. This appeal ensued.

[3] Neither the property owner nor the county appellees availed themselves of the opportunity to submit additional evidence into the record at a hearing before this board. Instead, they submitted written argument to fully articulate their respective positions. The property owner argued that the comparable sales data and photographs of the subject property sufficiently supported his requested value. By way of their submission, the county appellees conversely argued that the property owner's evidence fell woefully short of demonstrating that the subject property's value should be reduced.

[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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. Of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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.

[5] Upon review of the record, the property owner has failed to satisfy his evidentiary burden. He advanced three primary arguments to assert that the subject property's value should be decreased. First, he argued that comparable sales data demonstrated that the subject property had 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 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 subject property was comprised of a two-story colonial style home, with three bedrooms, one bathroom, and unfinished basement. However, many of the alleged comparable properties vary by number of bedrooms, bathrooms, and square footage and, as a consequence, there is no way for this board to determine whether these properties were truly comparable to the subject property.

[6] Second, he asserted that the condition of the home, and the costs to make necessary repairs and/or updates, necessitated reduction to the subject property's value. Unfortunately, the property owner failed to provide evidence to quantify the specific diminution in value that resulted from the cited defects. Thus we are unable to calculate any reduction in value based upon the alleged defects because the property owner failed to provide competent, probative evidence to demonstrate the effect of such 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."). (Internal citations omitted.) This board has repeatedly rejected the argument that defects, not quantified by a proper appraisal, are sufficient evidence to reduce real property value. See e.g., *Bardshar Apts., Inc. v. Erie Cty. Bd.of Revision* (Mar. 15, 2016), BTA No. 2015-1451, unreported. To the extent the property owner argued that the subject property's value should be reduced based upon the costs to repair the cited defects, dollar-for-dollar costs do

not necessarily directly correlate to value. See, e.g., *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997).

[7] Third, the property owner asserted that the subject property's value for the prior triennial period, $33,000, should carry forward into tax year 2018. The Supreme Court has previously held that each tax year stands alone, and the fact that value may have been different in another year is not competent, credible, and probative evidence that a subsequent year's value should be changed. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134; *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26 (1997). See also *AERC Saw Mill Village, Inc. v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468. 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 provide competent, credible, and probative evidence to demonstrate that the subject property be revalued at $33,000 or any other value. We are constrained to conclude that the subject property's value should remain as initially assessed.

[8] It is, therefore, the order of this board that the subject property's true and taxable values are as follows as of the relevant tax lien date:

True Value: $58,000

Taxable Value: $20,300

NICOLAS FORD, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-309
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NICOLAS FORD
Represented by:
NICK FORD
1076 BRAINARD ROAD
HIGHLAND HEIGHTS, OH 44143

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, August 3, 2020

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 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, appellant filed a notice of the appeal with the BOR fifty days after the BOR mailed its 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

RONEE GISSENTANER, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-524
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RONEE GISSENTANER
3744 LUDGATE ROAD
SHAKER HEIGHTS, OH 44120

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, August 6, 2020

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 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

BLUE BRIDGE VIEW LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	Appellee(s). CASE NO(S). 2020-423 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BLUE BRIDGE VIEW LLC
Represented by:
KEN GROSSI
PRESIDENT
2222 DETROIT AVE #1110
CLEVELAND, OH 44113

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, August 10, 2020

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 BOR provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the

provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

The record in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was filed late with the BOR. Appellant responded and provided documentation to demonstrate that the appeal was filed with the BOR forty-three days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MICHAEL WAGER AND PEGGY GRIES WAGER, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-298 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MICHAEL WAGER AND PEGGY GRIES WAGER
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Represented by:
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ORANGE CITY SCHOOLS BOARD OF EDUCATION
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Entered Monday, August 10, 2020

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

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

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

KENNETH ANTONELLI, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1722
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KENNETH ANTONELLI
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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Entered Monday, August 10, 2020

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

The property owners appeal decisions of the board of revision ("BOR"), which determined the value of the subject properties, parcels 702-08-012, 631-15-026, and 582-31-037, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified by the BOR, record of this board's hearing, and county appellees' motion to remand with instructions to dismiss and associated response.

Because the issue of jurisdiction has been raised, we begin our analysis there. By way of the motion to remand with instructions to dismiss, the county appellees assert that the complainant, Ken Antonelli ("Mr. Antonelli"), did not have standing to file the complaint as to parcel 702-08-012. (The complaints for the remaining parcels are not at issue.) According to the motion, line one of that complaint identified the property owner as "Antonelli Trust" and line

three of that complainant identified the complainant as "Ken Antonelli." However, the county appellees assert that Mr. Antonelli did not have the authority to file the complaint for parcel 702-08-012 and, as a result, the BOR was precluded from considering the merits of the complaint. The county appellees request we remand this matter to the BOR with instructions to dismiss the complaint for parcel 702-08-012. By way of the response, Mr. Antonelli asserted that he was, indeed, a trustee of the property owner, and submitted evidence to support that assertion.

We are mindful that the burden is on a complainant to demonstrate standing to file a complaint. See, generally R.C. 5715.13 and 5715.19. See also *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision,* 86 Ohio St.3d 181 (1999). To have standing, a complainant must be identified by R.C. 5715.19(A) as one who may file a complaint. See *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 137 Ohio St.3d 266, 2013-Ohio-4627; *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 134 Ohio St.3d 529, 2012-Ohio-5680. R.C. 57157.19(A), the basis for the county appellees' motion, currently provides that "if the person[, i.e., property owner]is a trust, a trustee of the trust" may file the complaint. Here, Mr. Antonelli submitted the first page of an amendment to the trust agreement, which names him as a co-trustee. As such, we find that he has successfully demonstrated that he was, indeed, authorized to file the complaint for parcel 702-08-012 and deny the county appellees' motion to remand with instructions to dismiss. To the extent that the county appellees also requested that the matter be remanded with instructions to dismiss because the complaint for parcel 702-08-012 did not accurately identify the property owner, we deny the motion on this additional basis as well. See *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 137 Ohio St.3d 266, 2013-Ohio-4627, at ¶14 ("The board

of revision's jurisdiction *** does not hinge on complete, technical compliance with the complaint form, and errors in completing the complaint form do not necessarily bar the board of revision from exercising jurisdiction.").

Now that we have denied the county appellees' motion to remand with instructions to dismiss, as to parcel 702-08-012, and determined that we have authority to determine value for all of the parcels identified on the notice of appeal, we turn to the merits of this appeal.

Mr. Antonelli filed three separate complaints with the BOR, which requested that parcel 702-08-012 be revalued from $83,100 to $35,000, parcel 631-15-026 be revalued from $347,300 to $151,500, and parcel 582-31-037 be revalued from $184,200 to $120,000. The BOR held separate hearings on the matter. As to parcel 702-08-012, Mr. Antonelli testified that the property was on the market and received no offers above $40,000 and was in the middle of rehabilitation in tax years 2017 and 2018, respectively. As to parcel 631-15-026, Mr. Antonelli testified about his purchase of the property and condition of the property. As to parcel 582-31-037, Mr. Antonelli testified about the tax year 2017 proceedings by which the BOR reduced the parcel's value consistent with his $120,000 purchase of it. At each hearing, the BOR members asked a number of questions and subsequently determined that Mr. Antonelli had failed to satisfy the evidentiary burden. This appeal ensued.

At this board's hearing, Mr. Antonelli appeared and submitted appraisal reports for each parcel; however, the appraiser did not appear at the hearing. He argued that parcel 702-08-012 should be valued consistent with the appraisal report. He testified as to the facts and circumstances of his purchases of parcels 631-15-026 and 582-31-037 in tax year 2017 and

requested that they be valued consistent with the price at which he purchased each parcel. Mr. Antonelli alternatively argued that, to the extent that the board rejects the sales of these two parcels, they should be valued consistent with their respective appraisal reports.

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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. "[E]vidence of a sale contained on a property record card, if undisputed, may serve as a sufficient basis upon which to rely in determining the value of a property." *Bd. of Edn. of the Westerville City Schools v. Delaware Cty. Bd. of Revision* (June 13, 2013), BTA No. 2011-A-155, unreported at 6. See also *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075; *1192 Group Partnership LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 18, 2013), BTA No. 2010-Y-651, unreported; *Bd. of Edn. of the Cleveland Mun. School Dist. v. Cuyahoga Cty. Bd. of Revision* (May 10, 2013), BTA No. 2009-Y-1596, unreported.

In this matter, the property record cards indicate that parcels 631-15-026 and 582-31-037 were the subject of sales that could be considered recent to the tax lien date of January 1, 2018. The property record cards indicate that parcel 631-15-026 transferred from Deutsche Bank National Trust to Mr. Antonelli for $151,500 on or about January 25, 2017, and that parcel 582-31-037 transferred from Alan P. and Gary L. Humpal to Mr. Antonelli for $120,000 on or about February 28, 2017. For both parcels, Mr. Antonelli testified that their character had not changed between the sale and tax lien dates. Though the BOR hearing notes note that the BOR had information that disputed Mr. Antonelli's contention as to parcel

582-31-037, the BOR did not supply that information to this board. As a result, we find that the BOR did not rebut the presumptions accorded to the sales of these two parcels. See *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision,* 150 Ohio St.3d 527, 2017-Ohio-4415.

We proceed, however, to consider whether the appraisal reports, submitted by Mr. Antonelli at this board's hearing, rebut the presumptions accorded to the sales of the two parcels.

Before we review the appraisal reports, we note that when a party submits a written appraisal report, the presentation of the appraiser as a witness allows the other parties and this board the opportunity to evaluate the credibility of the appraiser and the reliability of his or her analysis. 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; *Akron Natl. Bank & Trust Co. v. Freed & Co.* (Aug. 20, 1980), Medina App. No. 957, unreported; *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq.,unreported.

In some instances, even without testimony from the author, the information contained within the appraisal report may furnish an independent basis for valuing the property. *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 ("*Team Rentals*") at ¶27. The reports in this case do not meet the standard necessary to do so. 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 the appraisal report for parcel 631-15-026, the appraiser solely developed the sales

comparison approach to valuing real property, by which he compared the features of the subject parcel to the features of five properties (including parcel 631-15-026) that sold in tax years 2016 and 2017. After adjusting the comparable sales for differences with the parcel 631-15-026, the appraiser concluded its value to be $175,000 as of January 1, 2018. Upon review, we do not find anything in the appraisal report rebuts the presumption that $151,500 sale of parcel 631-15-026 in January 2017 was the best indication of value. We question the accuracy of the information contained in the appraisal report because the appraiser inaccurately reflected the price at which the subject parcel transferred, i.e., the appraisal report notes that it sold for $155,000, though the other documents in the record demonstrate that the parcel sold for $151,500. We further note that the appraiser failed to adjust the comparable properties for differences in age (comparable sales two through five) and made very large adjustments to some of the comparable properties (comparable sales one and five), which suggests that the comparable properties were not really comparable to the subject property. Therefore, without testimony from the appraiser to answer questions and support his methodology, we find the appraisal report does not constitute reliable evidence of value. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094. As a result, we conclude that the appraisal report does not rebut the presumptions accorded to the sale of parcel 631-15-026. See e.g., *Bronx Park S. III Lancaster, L.L.C. v. Fairfield Cty. Bd. of Revision*, 153 Ohio St.3d 550, 2018-Ohio-1589. Compare *Team Rentals*.

In the appraisal report for parcel 582-31-037, the appraiser solely developed the sales comparison approach to valuing real property, by which he compared the features of the subject parcel to the features of three properties that sold in tax year 2017. After adjusting the comparable sales for differences with the parcel 582-31-037, the appraiser concluded its value

to be $128,000 as of January 1, 2018. We note that the appraiser did not utilize the property owner's own $120,000 purchase of the parcel in February 2017 as a comparable sale and cannot discern why he failed to do so, particularly when such sale was within the range of the selected comparable sales, $100,000 to $147,500. We further note that the appraiser failed to adjust the comparable properties for differences in age (comparable sales two and three) and made large adjustments (comparable sale three) that suggest that the comparable property really was not comparable to the subject property. We find, therefore, for the same reasons stated above, the appraisal report does not rebut the presumptions accorded to the sale of parcel 582-31-037.

In the appraisal report for parcel 702-08-012, the appraiser solely developed the sales comparison approach to valuing real property, by which he compared the features of the subject parcel to the features of three properties that sold in tax year 2017. After adjusting the comparable sales for differences with parcel 702-08-012, the appraiser concluded its value to be $53,000 as of January 1, 2018. We note that the appraiser failed to adjust the comparable properties for differences in age (comparable sales two and three) and made large adjustments (comparable sale two) that suggest that the comparable property really was not comparable to the subject property. In addition, there was no testimony about the reliance placed upon the appraisal report by an independent institution similar to *Musto*, supra, instead of *Team Rentals*. We find, therefore, that the appraisal report for parcel 702-08-012 is not competent, credible, or probative evidence of its value.

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 Mr. Antonelli successfully demonstrated that the sales of parcels 631-15-026 and 582-31-037 were recent, arm's-length transactions, which were indicative of real property value. However, as to parcel 702-08-012, we are constrained to find that he failed

to provide competent, credible, and probative evidence of its value.

It is, therefore, the order of this board that the subject properties values are as follows as of the relevant tax lien date:

Parcel 702-08-012

True Value: $83,100

Taxable Value: $29,090

Parcel 631-15-026

True Value: $151,500

Taxable Value: $53,030

Parcel 582-31-037

True Value: $120,000

Taxable Value: $42,000

OHIO BOARD OF TAX APPEALS

ANTHONY KIDD, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-709
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ANTHONY KIDD
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Entered Tuesday, August 11, 2020

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") and thus no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county BOR, 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* (1946), 147 Ohio St. 147, 150; *Hope v. Highland Cty. Bd. of Revision* (1990), 56 Ohio St.3d 68. Strict compliancewith R.C. 5717.01 is essential to vest jurisdiction with this board.

The appellant filed a notice of appeal with this board, however the documentation attached to appellant's notice of appeal does not constitute a BOR decision. The record does not show that a decision has been issued for the subject property. 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

THONG LUU AND HOLLY YEH, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-665 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THONG LUU AND HOLLY YEH
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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CLEVELAND, OH 44113

Entered Tuesday, August 11, 2020

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. 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

HETA RE. L.P, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1927
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HETA RE. L.P
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Entered Tuesday, August 18, 2020

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

HETA RE L.P. ("HETA"), appeals from a decision of the Cuyahoga County Board of Revision ("BOR") valuing parcel 862-05-002 for tax year 2018. We decide the case on the notice of appeal and the statutory transcript.

The subject property is improved with a hotel, which the fiscal officer valued at $3,675,900 for tax year 2018. The Mayfield City Schools Board of Education ("BOE") filed a

complaint seeking a value of $4,300,000 based on a July 2018 sale for that amount. HETA filed a counter-complaint seeking a value of $1,500,000. At the BOR hearing, the BOE presented the relevant conveyance fee statement, which indicated the subject property transferred from Le Reve Hospitality, LLC, to HETA on July 23, 2018 for $4,300,000. The conveyance fee statement says no portion of the transfer was attributable to non-realty. The BOE also presented the deed transferring the property to HETA. HETA waived its appearance at the BOR hearing. The BOR adopted the sale price, and HETA appealed 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). An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶31. A sale that post-dates tax-lien date creates a rebuttable presumption of value in favor of the sale price. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶19. The proponent of a sale price bears "a relatively light burden and need not 'definitive[ly] show***that no evidence controvert[s] the ***arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, 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). A proponent may generally meet their initial burden with sale documents that contain basic facts about the sale, e.g., sale price, parties, and sale date. See *Lunn* at ¶15 (no additional testimony is usually necessary). The opposing party must then, to succeed, rebut the presumption created by the sale.

Here, the BOE presented a facially qualifying sale with the conveyance fee statement and deed. Thus, the burden shifted to HETA to rebut the presumption. However, HETA

presented no evidence to the BOR or to this board; so, we find HETA has not carried its burden.

It is the decision and order of this board that the subject property be valued as follows for tax year 2018:

PARCEL NUMBER 862-05-002

TRUE VALUE

$4,300,000

TAXABLE VALUE

$1,505,000

OHIO BOARD OF TAX APPEALS

LOWE'S HOME CENTERS, LLC, (et. al.), Appellant(s), vs. WOOD COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2017-1429, 2018-1580 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LOWE'S HOME CENTERS, LLC
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ROSSFORD EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION
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Entered Tuesday, August 18, 2020

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

Appellant Lowe's Home Centers, LLC ("Lowe's") appeals two decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel number P57-400-026105002500, for tax years 2016 and 2017. 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 hearings before this board, and any written argument submitted by the parties.

The subject property consists of 15.25 acres of land improved with a 138,381 square-foot "big box" retail property. The auditor initially assessed the subject's total true value at $7,500,000 for tax year 2016. Lowe's filed a complaint with the BOR seeking a reduction in value to $4,845,000, and the appellee board of education ("BOE") filed a countercomplaint in support of the auditor's value. At the BOR hearing, Lowe's relied on testimony and written report from appraiser Richard G. Racek, Jr., MAI, and amended its opinion of value to $6,100,000 based on the appraisal.

Racek determined that the highest and best use of the property was to continue as a single-user retail facility. To perform his sales comparison analysis, Racek considered the sales of nine single-tenant big box retail stores throughout Ohio. The nine transactions included three that were vacant at the time of the sale and six that sold with a lease in place. Racek adjusted the sales of leased properties to remove what he considered to have been a premium paid for the property rights conveyed. After adjusting for any differences among the properties, Racek concluded to a value of $45.00 per square foot, or $6,230,000 (rounded), based on the sales comparison approach.

Racek then performed an income analysis, utilizing a market rent of $4.00 per square foot and 5.0% vacancy/credit loss, calculating a $525,848 effective gross income ("EGI"). Racek deducted $84,966 for expenses, which included management and reserves for replacement. Racek applied a 7.5% capitalization rate to the $440,882 net operating income ("NOI"), for a total value of $5,880,000 (rounded). Racek gave weight to both approaches and concluded that the value of the subject property was $6,100,000 as of January 1, 2016.

The BOE cross-examined Racek but objected to the presentation of the report because it was not submitted to the BOR ahead of the hearing consistent with the BOR's rules. The BOR

considered the report but issued a decision retaining the auditor's value. During the BOR's decision hearing, a board member noted that its appraiser analyzed the data and excluded properties that he considered dissimilar from the subject property, which resulted in an outcome that supported the auditor's value. Lowe's appealed the decision to this board.

For tax year 2017, the auditor performed his countywide reappraisal and assessed the subject property's total true value at $7,362,000. Lowe's filed a complaint seeking a decrease to $6,100,000. At the BOR hearing, Lowe's and the BOE appeared and indicated that they had come to an agreement for tax years 2016 and 2017 as part of the BTA proceedings on the earlier case, but the county appellees did not agree with the stipulated values. Neither submitted new evidence to the BOR, though Lowe's referenced Racek's tax year 2016 appraisal, which the BOR indicated was already in its file. Following the hearing, the BOR reviewed not only Racek's tax year 2016 appraisal, but also an appraisal that was performed for the BOE on appeal, which opined to a value higher than the auditor's assessed value. The BOR issued a decision retaining the auditor's value, which Lowe's appealed to this board.

This board convened separate hearings on the matters. Following the hearing for tax year 2017, the cases were formally consolidated, and the parties submitted written argument in support of their respective positions.

During the tax year 2016 BTA proceedings, Lowe's relied on the record below to support its requested reduction. For tax year 2017, Lowe's again retained Racek to appraise the subject property. For his sales comparison analysis, Racek did not consider the sales of any properties that were leased at the time of the transaction and concluded to a value of $40.00 per square foot, or $5,540,000 (rounded) total value. For his income approach, his opinion of market rent increased to $4.50 per square foot, vacancy/credit loss remained at 5.0%, and

expenses increased to $86,938. Racek then capitalized the NOI ($504,641) at 9.0%, for a resulting value of $5,600,000. Giving weight to both the sales comparison and income approaches to value, Racek concluded to a value of $5,540,000 as of January 1, 2017.

The county appellees presented testimony and a written report from appraiser Karen L. Blosser, MAI, for both tax years. Blosser indicated that she was initially retained by the BOE for the 2016 proceedings, but was appearing on behalf of the county appellees who had taken over the prosecution of the case after declining to consent to the settlement agreed upon by Lowe's and the BOE. Blosser determined that the highest and best use for the subject property was to continue as a first-generation user.

Blosser performed a sales comparison analysis, starting with 47 sales of big box properties, which she narrowed down to the 10 most comparable, which included 2 that were vacant at the time of the sale and 8 that sold with an existing lease in place. Blosser indicated that she removed any value attributable to a favorable lease by adjusting the sales to account for terms of the lease to reflect market rental rates and vacancy. After adjusting for differences, Blosser concluded that the value of the property was $70.00 per square foot, or $9,690,000 (rounded), as of January 1, 2016.

Blosser also performed the income approach to value, utilizing a market rental rate of $6.00 per square foot, vacancy/credit loss of 5.0%, and expenses at $51,547 to account for management, reserves for replacement, and any additional expenses that would be incurred during vacancy. Blosser capitalized the resulting $737,225 NOI at 7.75% plus 0.1646% vacancy-weighted tax additur, which calculated to a value of $9,310,000 (rounded), or $67.28 per square foot. Blosser also performed the cost approach, though she gave it little weight. Blosser determined that the value of the land was $150,000 per acre, or $2,290,000 (rounded). Blosser calculated that the replacement cost new for the improvements would be $10,865,249, to which she added a 5.0% entrepreneurial incentive and decreased by a 35% for straight-line depreciation. Adding the cost of the

improvements to the land indicated a value of $9,900,000 for the subject property based on this approach. Blosser gave most weight to the sales comparison and income approaches in her reconciliation and concluded that the value of the property was $9,500,000 as of January 1, 2016.

For tax year 2017, the county appellees again relied on appraisal evidence prepared by Blosser, who opined a value of $9,900,000 as of January 1, 2017. Blosser's sales comparison analysis indicated a value of $72.00 per square foot or $9,960,000 (rounded). Blosser's income approach utilized a market rental rate of $6.15 per square foot, 5.0% vacancy/credit loss, and $0.38 per square foot ($52,040 total) in expenses. Blosser capitalized the $756,451 NOI at 7.66416% (7.50% plus 0.1642% vacancy weighted tax additur), resulting in a value of $71.32 per square foot, or $9,870,000 (rounded). Blosser's cost approach again utilized straight-line depreciation and added the depreciated value of improvements ($7,469,590) to a land value of $2,670,000. Blosser concluded to a total value of $10,140,000, though she again did not give the cost approach much weight.

Lowe's argues that this board must adopt Racek's appraisal for each tax year because it is the only evidence in the record that conforms to Ohio law. Lowe's asserts that in order to comply with R.C. 5713.03, the Ohio Constitution, and Supreme Court case law, an appraiser must value the subject property assuming a hypothetical transfer on January 1 of the tax year with no lease in place at the time of the sale. Lowe's claims that Blosser's approach fails to value the property as unencumbered by a lease and violates Ohio law, while Racek valued the unencumbered fee simple estate. The county appellees maintain that the board should value the property consistent with Blosser's appraisals because her analysis is consistent with Ohio law.

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. 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 to "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*, 155 Ohio St.3d 247, 2018-Ohio-4286, ¶¶10-11.

Initially, we note that while the appraisers came to different values based on different underlying assumptions, neither performed a *legally* improper analysis. We again reject the argument set forth by Lowe's that the appraisal of a property in "fee simple unencumbered" must assume a property is vacant and available to be occupied at the time of the sale. See, e.g., *Lowe's Home Centers, LLC v. Cuyahoga Cty. Bd. of Revision* (Feb. 26, 2019), BTA No. 2017-39, unreported, affirmed *Lowe's Home Ctrs., L.L.C. v. Brooklyn City Schools Bd. of Edn.*, 10th Dist. No. 19AP-179, 2020-Ohio-464, citing to *Harrah's Ohio Acquisition Co., L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 154 Ohio St.3d 340, 2018-Ohio-4370. In *Harrah's*, the court recognized that an appraiser may value "'the fee simple estate, as if unencumbered,' so long as the appraisal assumes a lease that reflects the relevant real-estate market." Id., at ¶27. Consequently, while an appraiser *may* value a property as though it is vacant on the date of valuation (as Racek does), an appraiser is certainly not *required* to do so. Moreover, the present use of a property may be considered among the relevant factors without an appraiser adopting a "value in use" for the property. See, *Johnston Coca-Cola Bottling Co., Inc. v. Hamilton Cty. Bd.of Revision*, 149 Ohio St.3d 155, 2017-Ohio-870, ¶¶14-15. See, also, *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 268, 2018-Ohio-4282.

Next, we look to the appraisals and observe that both appraisers have performed a credible

and supported analysis of the property. Nevertheless, we find that Blosser better captured the market in which the subject is located and the properties with which it would compete for a potential buyer on the tax lien date and provided better support for her conclusions. In the valuation of real property for purposes of taxation, equalization requires that "all facts and circumstances relating to the value of the property, its availability for the purposes for which it is constructed or being used, its obsolete character, if any, the income capacity of the property, if any, and any other factor that tends to prove its true value shall be used." R.C. 5715.01(A)(1). In this case, both appraisers concluded that its highest and best use would be continued retail. They diverge, however, based on their opinion regarding their most likely competitors in the market.

Racek valued the property as though it competed with "second generation" properties, or those from which the original occupant has vacated, particularly in his tax year 2017 analysis where he relied exclusively on such data. It appears that Racek made this conclusion not based on the actual age and condition of the property or analysis of the market in which it operates, but rather his underlying presumption regarding the legal interest being appraised. Blosser, on the other hand, testified that the subject was located in a dense commercial area with many other big box retailers, including a Kroger that had expanded into a larger space in 2014. Blosser included data about the market in which the subject is located, including rental and occupancy rates. We find that this data supports Blosser's market conclusions.

Furthermore, we find that Blosser's appraisal is not a "value in use" because she provided adequate market data to support her conclusions. Blosser made adjustments to her sales to bring all of the comparable market data in line with market rates and removed any excessive value that would be attributable to a favorable lease. Additionally, Blosser explained that any reliance on other properties operating as a Lowe's was because the properties were physically similar to the subject property. In short, we conclude that the record shows that the subject property is in a

location that continues to support its current use and Blosser's appraisals provide the best estimation of its value. By concluding without sufficient support that the property must be valued as though the current occupant vacated the property and it must be valued at 0% occupancy rather than a market rate, Racek undervalued the property.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2016 and January 1, 2017, were as follows:

TAX YEAR 2016

TRUE VALUE

$9,500,000

TAXABLE VALUE

$3,325,000

TAX YEAR 2017

TRUE VALUE

$9,900,000

TAXABLE VALUE

$3,465,000

OHIO BOARD OF TAX APPEALS

KEVIN AND TAMARA RADER, (et. al.), Appellant(s), vs. MAHONING COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-482 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KEVIN AND TAMARA RADER
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Entered Monday, August 31, 2020

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

This matter is now considered upon the county appellees' motion to dismiss the present appeal. Appellants did not respond to the motion. This matter is now decided upon the motion and appellants' notice of appeal.

On October 23, 2019, appellants filed an appeal with this board from a decision of the board of revision ("BOR") denying remission of a real property tax late payment penalty for tax year 2018. Due to their failure to properly file the appeal, it was dismissed by this board for lackof jurisdiction on February 20, 2020. *Rader v. Mahoning County Bd. of Revision* (Feb. 20, 2020), BTA No. 2019-2415, unreported. Appellants then filed a motion for reconsideration, which was denied. *Rader v. Mahoning Cty. Bd. of Revision* (March 19, 2020), BTA No.

2019-2415, unreported.

On March 16, 2020, appellants filed the present appeal, which indicates that it was being made from a BOR decision mailed on March 14, 2020, for tax year 2018. Appellants attached a statement that explained the appeal was being made from a "recent decision made by the board of appeals," in which appellants sought relief from late fees, and acknowledged failure to properly notify the BOR for an appeal filed in October. Appellants did not attach a copy of the BOR's decision to their notice of appeal.

The county appellees argue that this board does not have jurisdiction to consider the present appeal, as this matter was previously dismissed by this board for lack of jurisdiction. Attached to the motion is documentation of these decisions, as well as other documents filed by appellants in the afore-mentioned BTA case number 2019-2415. Further, the county appellees argue that appellants have not appealed from a recent decision issued by the BOR, nor did they properly notify the BOR of the present appeal.

R.C. 5717.01 provides that an appeal may be taken from a decision of a county board of revision to this board within thirty days after the BOR's decision is mailed, providing that "[s]uch appeal shall be taken by the *filing of a notice of appeal*, in person or by certified mail, express mail, facsimile transmission, electronic transmission, or by authorized delivery service, with the board of tax appeals and with the county board of revision." Emphasis added. In *Hopev. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory." See also *Cincinnati School Dist. Bd. of*

Edn. v. Hamilton Cty. Bd. of Revision, 87 Ohio St.3d 363, 369 (2000) (the BTA "can review [BOR] decisions only where the appeals have been filed in a timely manner."). Thus, in order to invoke the jurisdiction of this board, the owner must timely file a notice of appeal with the BOR and with this board.

We agree with the county appellees that this board lacks jurisdiction to consider the instant appeal because the owner again failed to file a notice of appeal with the BOR. Moreover, it appears that the instant appeal was not timely filed with this board, as the most recent BOR decision was apparently issued in September 2019, well over 30 days before the present appeal was 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, the county appellees' motion is well taken; this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

EMMA WARNER STEELE DBA GRADE A BUILDERS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-419 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Monday, August 31, 2020

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

The appellant property owner appeals a decision of the board of revision ("BOR"), which determined the value of the subject properties, parcels 681-08-019 and 682-17-094, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

The property owner filed a single complaint, which requested the value of parcel 681-08-019 be reduced from $68,800 to $42,000, and the value of parcel 682-17-094 be reduced from $65,300 to $40,000. It should be noted that the complaint also included another parcel, but it is not the subject of this appeal. The BOR held a hearing on the complaint at which

the property owner appeared to submit argument and evidence. In doing so, she testified as to the condition, rental status, and use of the subject properties. According to her, parcel 681-08-019 was in poor condition, but parcel 682-17-094 was in average condition but lacked updates. To support the requested reductions, the property owner submitted appraisal reports that valued each of the parcels at issue in this appeal. She argued that the appraiser mistakenly valued the subject properties "as of" January 20, 2020 instead of the tax lien date of January 1, 2018. The BOR did not accept the appraisal reports as the best indication of value for the subject properties because the appraiser did not appear at the hearing to testify about the underlying data and methodologies used to support his opinions of value and about his educational and professional qualifications. The BOR decided to retain the initially assessed value for parcel 682-17-094; however, the BOR decided to partially reduce the value of parcel 681-08-019, but not the extent requested by the property owner. The property owner subsequently appealed to this board.

Neither the property owner nor the county appellees availed themselves of the opportunity to submit additional evidence at a hearing before this board or to submit 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. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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 ("*Team Rentals*"), *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 appraisal reports submitted by the property owner at the BOR hearing, which are the apparent basis for this appeal. In the appraisal report for parcel 681-08-019, appraiser David Harmon conducted an exterior-only appraisal by which he compared the features of the parcel to the features of four nearby comparable properties that sold in 2018 and 2019. After adjusting the comparable properties for differences with the parcel, Harmon concluded the value of parcel 681-08-019 to be $45,000 as of January 20, 2020.

In the appraisal report for parcel 682-17-094, Harmon also conducted an exterior-only appraisal by which he compared the features of the parcel to the features of four nearby comparable properties that sold in 2017 and 2018. After adjusting the comparable properties for differences with the parcel, Harmon concluded the value of parcel 682-17-094 to be $48,000 as of January 20, 2020.

In this case, the property owner relies on appraisal reports, which constitute unreliable hearsay because they were presented without testimony from the appraiser. See *Team Rentals,* supra, at ¶21. When a party submits a written appraisal, the presentation of the appraiser as a witness allows the other parties and this board the opportunity to evaluate the credibility of the appraiser and the reliability of his or her analysis. 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; *Akron Natl. Bank & Trust Co. v. Freed & Co.* (Aug. 20, 1980), Medina App. No. 957, unreported; *Cyclops Corp. v. Richland Cty. Bd. of Revision* (May 30, 1985), BTA Nos. 1982-A-566, et seq., unreported.

In some instances, even without testimony from the author, the information contained within the appraisal report may furnish an independent basis for valuing the property. *Team Rentals*, supra, at ¶27. The reports in this case do not meet the standard necessary to do so. See *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058, ¶42 (distinguishing a *Team Rentals* from the circumstances where the record lacked direct testimony about both the preparation and use of an appraisal report). Here, the appraiser did not view the interior of the subject properties and did not value them as of the tax lien date. We acknowledge the property owner's assertion that the appraiser intended to value the subject properties as of the tax lien date; unfortunately, there is no evidence to support such assertion. In addition, the record does not demonstrate that the appraisal reports formed the basis for any business decisions, such as for refinancing a loan. We find, therefore, that the appraisal reports do not constitute reliable evidence of value. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094, ¶20, ("Here the reliable and probative character of the owner's appraisal was called into question by the fact that the BOR rejected it based upon a record that was not preserved and made available to the BTA.").

Having concluded that the property owner's evidence was insufficient, we now turn to the BOR's decision to reduce the value of parcel 681-08-019 from $68,800 to $55,000. The BOR only explained its decision by stating "the value is as found." Statutory Transcript at BOR Hearing Worksheet. Given the BOR's appropriate rejection of the appraisal reports, we can discern no basis for the BOR's decision to reduce the value of parcel 681-08-019. See *Team Rentals*. As a consequence, we must reinstate the parcel's initially assessed value because the record does not support the BOR's decision. See *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921.

We are mindful of our duty to independently determine the subject property's value.

Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to provide competent, credible, and probative evidence of the subject properties' values. It is, therefore, the order of this board that the subject properties' true and taxable values are as follows as of January 1, 2018:

Parcel 681-08-019

True Value: $68,800

Taxable Value: $24,080

Parcel 682-17-094

True Value: $65,300

Taxable Value: $22,860

OHIO BOARD OF TAX APPEALS

ELISSAR 1 LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2593
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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Entered Monday, August 31, 2020

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

Elissar I, LLC ("Elissar"), appeals from a decision of the Cuyahoga County Board of Revision ("BOE") retaining the fiscal officer's value of three parcels for tax year 2018. We decide the case on the notice of appeal and the statutory transcript. This is a companion case to *Elissar I, LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 20, 2020), BTA No. 2019-1171, unreported, and *Elissar I, LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 20, 2020), BTA No. 19-1172, unreported.

There are three single-family residences involved in this appeal. The fiscal officer valued parcel 011-23-152 at $78,900 for tax year 2018; Elissar filed a complaint seeking a value

of $43,700. The fiscal officer valued parcel 012-14-099 at $68,700 for tax year 2018; Elissar filed a complaint seeking a value of $46,600. The fiscal officer valued parcel 012-27-047 at $52,000 for tax year 2018; Elissar filed a complaint seeking a value of $35,500. Elissar appeared at the BOR hearing through counsel, but Elissar presented no evidence or testimony to support its proposed values. Counsel simply argued that the values adopted during the 2018 reappraisal were arbitrary. The BOR retained the fiscal officer's values, stating:

> Counsel appeared on behalf of the property owner at the scheduled hearing before this board, seeking a decease in value. No evidence was submitted in support of the requested reduction. And statements of counsel are not evidence.***Accordingly, the board finds that the complaint has failed to carry its burden to come forward and demonstrate that the value it advocates is a correct value.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). Neither the fiscal officer nor the BOR bears the "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." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶23).

After review, we find Elissar has not carried its burden for any of the parcels for two reasons. First, Elissar presented no competent and probative evidence or testimony to either the BOR or this board. Statements of counsel are not evidence, nor did counsel assert he had personal knowledge of any of the properties. See generally *Garland Real Estate, LLC v.*

Tuscarawas Cty. Bd. of Revision (Jan. 28, 2020), BTA No, 2018-1241, unreported. Second, we are unpersuaded by Elissar's unsupported argument that the fiscal officer arbitrarily valued the property. The fiscal officer reappraised the three parcels for tax year 2018 according to statute. The Ohio Supreme Court and this board have held it is the fiscal officer's duty to value and assess taxes against real property. See *AERC Saw Mill Village v. Franklin Cty. Bd. of Revision*, 127 Ohio St.3d 44, 2010-Ohio-4468; *Marlington Loc. Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Aug. 14, 2019), BTA No. 2018-913, unreported. More importantly, that reappraisal is entitled to a presumption of regularity. See id. Elissar has confused the burden. It was Elissar's burden to prove different values were appropriate. It was not the fiscal officer's responsibility to prove his values were correct. Here, Elissar presented no evidence that the properties should have been valued otherwise. We further note there were no recent, arm's-length sales listed on any of the parcel cards.

For these reasons, we find Elissar has not carried its burden. We order the property valued as follows for tax year 2018:

PARCEL NUMBER 011-23-152

TRUE VALUE

$78,900

TAXABLE VALUE

$27,620

PARCEL NUMBER 012-14-099

TRUE VALUE

$68,700

TAXABLE VALUE

$24,050

PARCEL NUMBER 012-27-047

TRUE VALUE

$52,000

TAXABLE VALUE

$18,200

OHIO BOARD OF TAX APPEALS

CLARK-SHAWNEE LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	) CASE NO(S). 2019-1416
Appellant(s),	)
vs.	)
CLARK COUNTY BOARD OF REVISION, (et. al.),	)
Appellee(s).	REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, August 31, 2020

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

[1] The Clark-Shawnee Local Schools Board of Education ("BOE") appeals from a decision of the Clark County Board of Revision ("BOR") valuing parcel 330-06-00006-300-012 for tax year 2018. On April 20, 2020, this board issued an order barring the property owner, CRDayton VII, LLC ("CR") from presenting new evidence because of its failure to comply with this board's discovery rules. We now decide the case on the notice of appeal, the statutory transcript, and any written argument.

[2] The auditor valued the subject property at $1,096,820 for tax year 2018. CR filed a valuation complaint seeking a value of $500,000. According to the complaint, the subject property is improved with a commercial strip mall. The BOE filed a countercomplaint requesting the auditor's value be retained. At the BOR hearing, CR appeared through its member. He argued the subject property's value should be reduced based on the auditor's value of other similar properties. He also noted that two of those properties had recorded sales, and he argued the sale prices justified a reduction. The member testified he neither verified the sales, nor did he have personal knowledge of the sales. The BOE argued no competent and probative evidence of value justified a reduction. The BOR ultimately reduced the value to $750,000 citing "vacancy/occupancy rates" and "open remodel permit." The BOE appealed to this board asking the auditor's value be reinstated.

[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). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. We will not rely on a BOR's adjusted value if it is unsupported by the evidence. 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").

[4] Because the BOE is the appellant, we must first determine if our review is modified by the *Bedford* rule, which is based on the court's decision in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237. Under the *Bedford* rule, "when the BOR adopts a new value based on the owner's competent 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. When the *Bedford* rule applies, the school board must do more than rely on the auditor's valuation; the school board must "come forward with affirmative evidence of the subject property's value." *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Sept. 6, 2018), BTA No. 2017-1707, unreported. The *Bedford* rule applies when: 1) the property owner filed the complaint or countercomplaint; 2) the board of revision ordered a reduction valuation based on competent evidence offered by the property owner; 3) the board of education appeals to this board; 4) the board of revision's determination is based on appraisal evidence rather than a sale. *Gahanna-Jefferson City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Sept. 10, 2018), BTA No. 2017-1178, unreported.

[5] Here, we find the *Bedford* rule does not apply because the BOR's decision was not based on competent evidence offered by the property owner. The owner relied on evidence about the auditor's valuation of other properties as well as unadjusted sales. The Ohio Supreme Court has been clear that neither of those is competent evidence of value. With regard to the auditor's other values, the court has held, "[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). This board has long held the auditor's valuation of other properties provides little insight into the actual value of a subject property. For example, in *Meir Benit v. Delaware Cty. Bd. of Revision* (Mar. 18, 1994), BTA No, 93-B-722, unreported, we held:

> However, appellant's presentation of evidence fails to carry the burden of proof as to what the property is actually worth. The appellant has submitted a comparative analysis of the tax valuation of certain neighboring land. However, we have often stated that such information is not particularly helpful. "Tax valuations are not sales, and a comparative analysis thereof is always subject to the objection that the tax valuations of the compared properties are not themselves market value." *Henry W. Haydu v. Portage Cty. Bd. of Revision* (June 18, 1993), [BTA No.] 92-H-576, unreported. *Paul L. and M. Courtney Caron v. Hamilton Cty. Bd. of Revision* (August 27, 1993), [BTA No.] 92-B-879, unreported.

[6] With regard to the sales data, we find that evidence was not competent evidence of value for at least two reasons. First, this board has long held raw, unevaluated sales data is

generally insufficient to justify a reduction. See *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported. 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). Each comparable varies significantly from one another and from the subject. Additional evidence is needed to control for those variables. See *Grenny* at 7-9. Second, the owner lacked personal knowledge about the comparable sales. That means, as the Ohio Supreme Court has held, the sales data constitutes unreliable hearsay. The Ohio Supreme Court has been clear that "the owner qualifies primarily as a fact witness giving information about his or her property; usually the owner may not testify about comparable properties, because that would be hearsay." *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 140 Ohio St.3d 248, 2014-Ohio-3620, ¶19.

[7] For these reasons, we find the *Bedford* rule does not apply. Relatedly, we are also mindful of our duty to independently review the BOR's decision to deviate from the auditor's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996); *Cleveland Muni. Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Sept. 20, 2016), BTA No. 2015-2211, unreported. Because we find no support for the BOR's adopted value, we reinstate the auditor's value. The BOR's minutes indicate the BOR adjusted the auditor's value based, in part, on occupancy. CR's occupancy argument was tied to the CR's argument about the auditor's value of other properties, which we have already found was insufficient to justify the BOR's reduction. See BOR, Ex. A.; see also *Bd. of Edn. of the South-Western City Schools v. Franklin Cty. Bd. of Revision* (Sept. 19, 2012), BTA No. 2009-W-2928, unreported (vacancy rates alone are not indicative of value unless a party presents appraisal evidence tying the vacancy rate to value).

With regard to the "open remodel permit," statement in the BOR's minutes. We are unable to determine how that permit, assuming it was issued, would lend itself to a decrease in value. We also note there are no open permits listed on the parcel card.

[18] Therefore, it is the decision and order of this board that the true and taxable values of the subject property as of January 1, 2018, were as follows:

PARCEL NUMBER 330-06-00006-300-012

TRUE VALUE

$1,096,820

TAXABLE VALUE

$383,890

OHIO BOARD OF TAX APPEALS

VICTORIA LOEWENGART, (et. al.), Appellant(s), vs. DELAWARE COUNTY BOARD OF REVISION, (et. al.),	)	Appellee(s). CASE NO(S). 2019-1312 (REAL PROPERTY TAX) DECISION AND ORDER

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Entered Monday, August 31, 2020

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 600-330-03-023-000, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and record of this board's hearing.

[2] The property owner filed a complaint with the BOR, requesting that the subject property's value be reduced from $675,000 to $655,000. By way of the complaint, the property owner asserted that nearby homes were selling for less than the price at which she purchased the subject property one year ago. She attached comparable sales data to the complaint. At the BOR hearing on the matter, the property owner's spouse, Steven Lowengart, appeared to submit argument and evidence in support of the complaint. He argued that his wife overpaid for the subject property and that nearby homes, with more square footage, were assessed at lower values, which he asserted that demonstrated that the subject property's value was too high. Mr. Loewengart submitted documents related to other properties, specifically nothing the square footage of the homes and their annual property-tax due. The chairperson of the BOR noted that those properties were dissimilar from the subject property because they were two-story homes as compared to the one-story ranch home sitused on the subject property. Upon questioning, Mr. Lowengart confirmed that the property owner paid $740,000 for the subject property in tax year 2017. The chairperson noted that the county auditor tried to value recently sold properties between 90 percent and 100 percent of their sales prices and noted that the subject property was currently valued at 93% of its sale price. He proposed reducing the subject property's value to $665,000, with which the two other board members agreed. The BOR subsequently issued a written decision consistent with its oral vote and this appeal ensued.

[3] At this board's hearing, the property owner and county appellees appeared to supplement the record with additional argument and evidence. In doing so, Mr. Loewengart provided additional testimony about the facts and circumstances of the subject sale. Real estate agent Lorene Heatheringon also testified about her involvement in the subject sale and recent comparable sales data that she compiled in support of the property owner's request to reduce the subject property's value. The county appellees cross examined both Mr. Loewengart and Ms.

Heatherington. Based upon the evidence presented, Mr. Loewengart amended the property owner's opinion of the subject property's value to $630,000. The county appellees submitted the conveyance fee statement that memorialized the subject sale but did not argue that it demonstrated the best evidence of the subject property's value. Instead, they requested that this board affirm the BOR's decision to reduce the subject property's value to $665,000.

[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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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.

[5] We begin our analysis with the subject sale. The record contains sale documents and notation on the property record card, which memorialize the $740,000 transfer of the subject property from Richard S. and Diane M. Myers to the property owner in October 2017. As a consequence, a rebuttable presumption was created 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 opponent of the subject sale, the property owner in this case, 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 ("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. *** The February 2013 sale price, which Terraza does not dispute, is the best evidence of the property's true value, subject to rebuttal." (Citation omitted.) The property owner does not argue that the subject sale was too remote from the tax lien date, but she does seemingly argue that the subject sale was not an arm's-length transaction because personal circumstances required her to overpay for the subject property.

[6] To determine whether the subject sale was an arm's-length transaction, we look to *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23 (1989), by which 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. Because there was no evidence that the subject sale did not occur on the open market and that the parties failed to act in their own self-interest, we will focus on whether the property owner successfully demonstrated whether the subject sale was voluntary.

[7] Here, the property owner failed to demonstrate that the subject sale occurred under circumstances amounting to compulsion or duress. She primarily argued that health concerns required her to purchase a large, one-story home. While we sympathize with the property owner's desire to have a home that met her family's health needs, such desire does not require rejection of the subject sale. Her motivations reflected 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. This board has repeatedly held that all buyers and sellers have subjective motives in any transaction, and we 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, at 11, unreported ("A negotiated purchase price is not

invalidated merely because a purchaser later believes he made a bad deal."). Indeed, it should also be noted that Mr. Loewengart and Ms. Heatherington acknowledged that the parties to the sale negotiated the sale price down from $779,900 to $740,000, which suggests that the property owner attempted to get the best deal possible before deciding to fully consummate the subject sale. Thus, there has been no indication that the property owner was a "hostage" to the subject sale such that it could be deemed to have occurred under compulsion or duress. See *Lakeside Avenue Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 540 (1996).

[8] Based upon the foregoing, we find that the property owner has failed to rebut the presumptions accorded to the subject sale. We proceed, however, to consider whether the balance of her arguments and evidence provide a better indication of the subject property's value than the subject sale.

[9] The property owner advanced two primary bases for reducing the subject property's value to approximately $630,000 for tax year 2018. She argued that selected sales of other properties that sold in tax years 2018 and 2019, submitted to the BOR and to this board, demonstrated that the county auditor overvalued the subject property. A review of the comparable sales highlights the varied natured of the homes situsted on those properties. For example, a review of the comparable sales submitted at this board's hearing demonstrate that those homes vary by age (ranging from eight years old to forty years old), date of sale (occurring throughout tax year 2019 though the tax lien date was January 1, 2018), and square footage (ranging from 2,653 square feet to 4,990 square feet), and number of bedrooms and bathrooms (ranging from three bedrooms/three bathrooms to four bedrooms/four bathrooms). The comparable properties' site sizes (ranging from 0.28 acres to 0.74 acres) also vary. No adjustments were made to account for differences with the subject property. This board has repeatedly held that unadjusted comparable sales data are insufficient basis to determine real property value. 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 having found that the evidence was not probative).

[10] Likewise, we find Ms. Heatherington's testimony about the comparable sales or the real-estate market to be equally unpersuasive. As noted above, she was a real estate agent, not an appraiser, an individual with the education, experience, and expertise to express an opinion regarding the value of real property. See, generally, The Appraisal of Real Estate (13th Ed. 2008), at 8-10 (distinguishing appraisers from persons who may be involved in and familiar with various issues attendant to the real estate market, e.g., buyers, sellers, real estate agents, real estate brokers, loan officers, title companies, etc.). We acknowledge that Ms. Heatherington may be a qualified real estate agent, but we do not find her testimony, based upon such experience, qualified her to offer a competent, credible, and probative opinion on the subject property's value for tax valuation purposes. For example, at this board's hearing, Ms. Heatherington noted her unfamiliarity with the term "tax lien date," and its importance in this matter. See R.C. 323.11 ("The lien of the state for taxes levied for all purposes *** attach to all real property subject to such taxes on the first day of January *** ."); R.C. 5715.19(D) ("The determination of any such complaint shall relate back to the date when the lien for taxes *** for the current year attached *** ."). Thus, we conclude that her testimony was unpersuasive and failed to satisfy the evidentiary bar for expert testimony.

[11] The property owner also argued that other nearby properties had been assessed

lower values, and therefore had lower property-tax bills, when compared with the subject property's assessed value and resultant property-tax bill. 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 nonconformity 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.").

[12] In sum, we do not find the property owner's evidence to be competent, credible, or probative evidence of the subject property's value. See, *Barker v. Hamilton Cty. Bd. of Revision*

(Nov. 30, 2018), BTA No. 2018-414, unreported at 2 (though an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested."). We also find that the property owner failed to rebut the presumptions accorded to the subject sale.

[13] We now turn to the propriety of the BOR's decision. We note that "case law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. Because we have already concluded that the documentary and testimonial evidence submitted to the BOR were insufficient, we can discern no basis for the BOR's decision to reduce the subject property's value by $10,000. Indeed, a complete review of the arguments and evidence submitted at the BOR fails to reveal any basis for the BOR's decision to reject the subject sale. As a consequence, we cannot affirm 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 ¶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.") (Parallel citations omitted.)

[14] We are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). Based upon our review of the record, we find that the property owner has not rebutted the presumptions accorded to the subject sale. Absent an affirmative demonstration that the subject sale was not a recent, arm's-length transaction, we find that it is the best indication of the subject property's value.

[14] It is the order of this board that the subject property's true and taxable values are as

follows as of the relevant tax lien date:

True Value: $740,000

Taxable Value: $259,000

OHIO BOARD OF TAX APPEALS

CITY OF CINCINNATI, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-765 (REAL PROPERTY TAX) DECISION AND ORDER

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Entered Monday, August 31, 2020

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

The City of Cincinnati appeals from a decision of the Hamilton County Board of Revision ("BOR") dismissing the City's valuation complaint for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, this board's hearing record, and the parties' stipulations.

The facts of a prior case inform the facts of this case. 2017 was a reappraisal year for Hamilton County. The subject property is an airport hangar owned by the City and leased to BBA Aviation DBA Encore FBO, LLC AKA BBA Aviation DBA Jason III Aviation, Inc. ("BBA"). The auditor valued the property at $4,799,540 for tax year 2017, and BBA filed a valuation complaint through counsel. At the BOR hearing, the issue of standing was raised. The BOR ultimately retained the auditor's value, and the City appealed to this board. See *City of Cincinnati v. Hamilton Cty. Bd. of Revision* (Mar. 25, 2019), BTA No. 2018-1629, unreported. On appeal, the school board and the BOR asked this board to dismiss for want of standing arguing BBA did not have express authority from the City to file the complaint. We agreed and remanded the matter to the BOR with instructions to vacate its decisions and dismiss the underlying complaint. We specifically held the following:

> Appellant argues in response to the motion that the same counsel who filed the original complaint was authorized by the owner (the City of Cincinnati) to file the present appeal, and attached the professional services agreement between counsel and the City as evidence of such authorization. However, such agreement is dated February 2019, well after the complaint was filed in April 2018. We do not find the agreement evidences any authorization from the City to the tenant to file the complaint.

Id. at 2. The City appealed to the First District Court of Appeals. That appeal was dismissed for failure to comply with R.C. 5717.04.

While that case was proceeding, the City, through BBA's counsel, filed a valuation complaint for tax year 2018. The BOR held a "standing hearing," during which the BOR and the parties discussed whether the complaint constituted a second filing within the triennium,

which is prohibited by R.C. 5715.19(A)(2). The BOR ultimately dismissed the case for lack of jurisdiction. The City again appealed to this board.

Here, the parties entered into stipulations, and this board certified those stipulations. Per those stipulations, the parties agree the only issue before this board is whether the BOR improperly dismissed for want of jurisdiction. The parties agree that if this board finds standing is not an issue for the 2018 complaint and the BOR otherwise had jurisdiction to consider the complaint, the case should be remanded to the BOR.

After the stipulations were filed, this board convened a hearing on January 7, 2020. There, counsel for BBA appeared and presented a professional services agreement between the City and counsel for BBA. The agreement was executed on February 15, 2019, which is approximately six weeks before the 2018 valuation complaint was filed.

We now turn to the parties' legal arguments. The City, again now represented by BBA's counsel, argues that 1) standing is no longer an issue because of the service agreement, and 2) the 2018 complaint is not a prohibited second filing. Neither appellee appeared at this board's hearing nor filed written argument.

Upon review, with agree with the City. In light of the contract between the City and counsel for BBA, the complaint was filed on behalf of the owner, and it is clear standing is no longer an issue. See R.C. 5715.19(A)(1). We also find the 2018 complaint does not run afoul of R.C. 5715.19(A)(2) because the 2017 complaint was filed by a different complainant, i.e., BBA. See *Pavilonis v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 18, 2018-Ohio-1480. The City filed the 2018 complaint.

For these reasons, the 2018 decision of the BOR is reversed and this case is remanded to the BOR to hear the merits in the first instance.

OHIO BOARD OF TAX APPEALS

MEDINA CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. MEDINA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-665 (REAL PROPERTY TAX) DECISION AND ORDER

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Entered Monday, August 31, 2020

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

The board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 026-06D-34-141, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, statutory transcript certified pursuant to R.C. 5717.01, record of this board's hearing, and written argument, if any, submitted by the parties.

The property owner filed a complaint with the BOR, which requested that the subject property be revalued from its initially assessed value of $5,405,300 to $3,000,000. The BOE filed a countercomplaint, which objected to the request. At the BOR hearing, 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 its member, Aashish Patel, who testified about the facts and circumstances related to the construction of the newly built, 76-room hotel sitused on the subject property, and the disparity between the subject property's assessed values and the assessed values of other, nearby hotel properties. Counsel for the property owner argued that the subject property's value should be reduced to $3,000,000, rounded up from $2,997,821.02 to reflect the cost to construct the hotel according to the property owner, to bring its value in line with other properties. Counsel for the BOE cross-examined Patel about the $397,000 purchase of the subject property, in its prior iteration as vacant land, in December 2013, about the various aspects of construction costs, i.e., soft costs and entrepreneurial profit. Because Patel was unable to provide complete responses about the construction costs, the BOR provided the property owner an opportunity to supplement the record with additional information. Based upon evidence submitted at this board's hearing, it appears that the property owner supplemented the record with additional cost information, amounting to approximately $325,600, via email. The BOR voted to reduce the subject property's value to $3,720,260, purportedly based upon the vacant land sale in December 2013 plus costs to construct the hotel, and this appeal ensued.

While this matter was pending, the property owner filed a motion in limine to preclude the BOE from submitting the appraisal report and testimony of appraiser David Sangree, because he did not value the subject property as of the tax lien date, at this board's hearing. As

this board's hearing commenced, all parties were provided an opportunity to be heard on the motion. In addition to the relevancy issue cited in the motion, counsel for the property owner also argued that R.C. 5715.19(G) required the BOE to first submit the information contained in Sangree's appraisal report to the BOR. As a result, counsel for the property owner argued, the BOE should be precluded from submitting Sangree's appraisal report and testimony. The BOE counterargued that Supreme Court case law allows an appraiser to rehabilitate an appraisal report that does not reflect upon the tax lien date at issue and that R.C. 5715.19(G) did not apply to Sangree's appraisal report and testimony because it did not exist at the time of the BOR hearing. The attorney examiner deferred ruling on the motion in limine and proceeded to the merits of the appeal.

In its presentation, the BOE submitted the appraisal report and testimony of Sangree, which opined the value of the subject property to be $5,000,000 as of January 1, 2018. However, upon examination by the BOE's counsel, he testified that market information about hotel properties supported his conclusion that the subject property should also be valued at $5,000,000 as of January 1, 2017. Sangree was examined, and cross-examined, about the underlying data and methodologies used in his analysis. In its presentation, the property owner submitted additional testimony from Patel and resubmitted the documents previously provided to the BOR.

After the hearing, the BOE and property owner submitted written argument to more fully assert their respective positions. In its written submission, the BOE argued that Sangree had successfully demonstrated that his analysis of the subject property's value was relevant to January 1, 2017 despite his initial analysis, which valued the subject property as of January 1, 2018. However, the BOE argued that the subject property should be valued consistent with

Sangree's opinion of value under the cost approach, $6,659,000, as the hotel sitused on the subject property was less than three months old on the tax lien date. In its submissions, the property owner argued that the BOR's decision to reduce the subject property's value to $3,720,260 had become its default value and that the BOE had failed to provide evidence to rebut that value. To the extent that this board considered Sangree's appraisal report and testimony, the property owner asserted that it had little evidentiary weight because he failed to opine value as of the relevant tax lien date.

Before we consider the merits of this appeal, we must first dispose of two preliminary issues. First, based upon the property owner's evidence submitted at this board's hearing, we discern that the BOR failed to provide this board with email communications related to additional construction costs incurred by the property owner, which the BOR considered to reach its value conclusion of $3,720,260. As a result, it is clear that the BOR failed to satisfy its statutory duty to provide this board with all of the evidence related to the property owner's complaint, BOE's countercomplaint, and BOR's decision. We would like 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 sic.) *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision,* 130 Ohio St.3d 291, 2011-Ohio-5078, ¶27, fn. 4. Fortunately, the property owner corrected the BOR's error on appeal.

Second, as noted above, the property owner moved to preclude the BOE from submitting the appraisal report and testimony of Sangree, asserting that such information was not relevant to the tax lien date at issue and that the contents of the appraisal report should have first been submitted into evidence at the BOR hearing. The motion is denied. See, *Plain Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 130 Ohio St.3d 230, 2011-Ohio-3362, ¶2 ("With regard to the

second issue, *AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 343, 2008-Ohio-2565, *** , is dispositive. In that case, an appraisal report was offered that certified an opinion of value, but not as of the tax-lien date. Although the BTA could not rely on the certified opinion of value, we held that the appraisal did furnish evidence relevant to determining the value on the tax-lien date and that the 'BTA properly conceived and carried out its duty' to determine the value of the property from the evidence before it. Id., ¶16."); *RNG Properties, Ltd v. Summit Cty. Bd of Revision*, 140 Ohio St.3d 455, 2014-Ohio-4036, ¶11 (an objection under R.C. 5715.19(G) does not apply where "the evidence[, i.e., Sangree's appraisal report in total,] presented at the BTA did not exist at the time of 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. 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 are tasked with evaluating the property owner's evidence, i.e., testimony from the property owner's representative, who was familiar with the construction of the hotel and its operations on tax lien date, and purported construction costs, against the BOE's evidence, i.e., the appraisal report and testimony of Sangree. We do not find the property owner's uncorroborated construction costs to be competent, credible, or probative evidence of value. The property owner failed to provide information that would allow this board to confirm that the lists of costs provided by the property owner included all relevant direct and indirect costs associated with constructing the hotel property. For example, there is no information about the cost of building permits, equipment (and depreciation of such equipment) and/or carrying costs. Generally, a cost approach

should include these costs. The Appraisal of Real Estate, 563-579 (14th Ed. 2013). Indeed, Sangree noted that the construction costs provided by the property owner did not reflect all aspects of analyzing the subject property's value, *for property tax purposes*, under a cost approach. Given that Sangree, not Patel, is an expert qualified to opine upon real property value, we give more weight to his analysis on this issue. Furthermore, though the property owner has seemingly disavowed the $4,832,454 construction costs reflected on its balance sheet, submitted by its accountant and provided to the BOE in the course of this litigation, we find such information actually undercuts the property owner's assertion that its construction costs amounted to $3,000,000. It also raises concerns as to the accuracy of the figures provided to the BOR and this board.

We also find the unadjusted comparable sales and/or comparative analysis of assessed values of other hotel properties to be unpersuasive. We have repeatedly held that unadjusted comparable sales data is an insufficient basis to determine real property value because such information 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, supra. Should the comparable sales have been adjusted for age, condition, and size differences with the subject property? See, also *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002 (affirming this board's rejection of unadjusted comparable sales and testimony regarding negative conditions as not probative). Furthermore, we have repeatedly rejected comparisons of assessed values to determine real property value for property tax purposes. There is a fallacy of reliance upon other properties' assessed values since the fundamental basis of this challenge is the erroneous nature of the subject property's assessed value. Moreover, many factors could affect

how a specific property's value might increase or decrease over time, including a recent, arm's-length sale of the property, changing market conditions, and changes in the condition of the property itself. Indeed, the Ohio Supreme Court has likewise held that "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Invests., Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996).

We now turn to the sufficiency of Sangree's appraisal report. He developed the income, sales comparison, and cost approaches to valuing real property. However, as an initial matter, we agree with the property owner and conclude that Sangree's cost approach to be incomplete, which he conceded at this board's hearing. As a result, we do not find it to be a competent, credible, and probative analysis and will not consider it. Compare *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Aug. 29, 2019), BTA No. 2017-1454, unreported (accepting an appraisal report that opined value based upon a modified cost approach). We will, therefore, focus our attention on the income and sales comparison approaches. Under the income approach, Sangree surveyed the subject property's hotel competitors and considered the financial requirements of its franchise agreement with Fairfield Inn/Marriott International. In doing so, he concluded to effective gross income of $1,823,000 from which he deducted $1,174,000 for various operating expenses, to conclude to net operating income of $649,000. He capitalized the net operating income at 11.07% (inclusive of 2.07% tax additur), to preliminarily conclude to an indicated value of $5,860,978. From that number, he deducted $900,000 to account for the furniture, fixtures, and equipment, to finally conclude the subject property's (rounded) value to be $5,000,000.

Under the sales comparison approach, Sangree compared the subject property's features to the features of six hotel properties located throughout the Cleveland Metropolitan Area, which

sold between February 2015 and September 2016. After adjusting the comparable properties for differences with the subject property, he arrived at an adjusted, price-per-room range in value between $51,797 and $104,599. He finally concluded the subject property's value to be $77,000 price-per room or (rounded) $5,900,000. He reconciled the indicated values, placing all weight on the income approach, in part, because it allocated $900,000 to the furniture fixtures and equipment, to finally conclude the subject property's value to be $5,000,000.

The property owner advanced two primary arguments as a basis to reject Sangree's appraisal report; we reject each argument in turn. It is undisputed that Sangree's appraisal report opined value as of January 1, 2018 instead of the tax lien date of January 1, 2017. However, we find that the BOE successfully rehabilitated Sangree's opinion of value to reflect upon the tax lien date at issue. Sangree testified that he examined market information relevant to January 1, 2017 and concluded that his $5,000,000 opinion of value would be reflective of value as of that date. On page C-6 of his appraisal report, he noted that "[o]verall demand showed an increase in 2017, although the supply of available rooms increased at a slightly higher rate." Hearing Record at Exhibit A. Indeed, Sangree demonstrated that total room demand experienced a modest increase from 2017 to 2018, which adds some support for his conclusion that the hotel market remained relatively stable or the same between January 1, 2017 and January 1, 2018. Moreover, under the sales comparison approach, it should be noted that Sangree did not adjust the comparable sales that occurred in 2016, comparable sales two, three, and six, which occurred closest to the tax lien date of January 1, 2017. We note that the property owner relied upon its cross-examination of Sangree to raise questions about his opinion that the subject property should be valued at $5,000,000 as of January 1, 2017; however, the property owner did not submit any evidence to demonstrate market conditions. As a result, we find sufficient information in the appraisal report to conclude that the subject property should be valued at $5,000,000 as of

January 1, 2017.

Though the property owner argued that the subject property should not be valued consistent with market driven data under the income approach, we find no merit to that argument. For property tax purposes, real property should be valued consistent with stabilized, market income and expenses not actual income and expenses unless such information conforms to the market. See *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996).

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 BOE satisfied the evidentiary burden on appeal by submitting Sangree's appraisal report and testimony. As the above discussion demonstrates, we find that Sangree rehabilitated his value conclusion to be relevant to the tax lien date at issue. We also agree with Sangree that the income approach to value is the best estimate of value because the subject property is an income-producing property but note that the sales comparison approach supports the income approach if we consider the $900,000 allocation to furniture, fixtures, and equipment. We also find that the property owner failed to submit competent, credible, and probative evidence to rebut the BOE's evidence. 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: $5,000,000

Taxable Value: $1,750,000

OHIO BOARD OF TAX APPEALS

DKNIPPER, LLC, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2020-817
vs.	)	
CLERMONT COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DKNIPPER, LLC
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Entered Thursday, September 10, 2020

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 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 deputy auditor, asserting that appellant's notice of appeal was not filed with the Clermont 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

SHPEND BRAHAXHIA, (et. al.), CASE NO(S). 2019-2413, 2019-2414, 2019-2950

ppellant(s), vs.

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

Appellee(s). REAL PROPERTY TAX

DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, September 15, 2020

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

[1] The property owner appeals decisions of the board of revision ("BOR"), which determined the value of the subject properties, parcels 321-05-006, 321-05-007, 314-20-036, 315-03-050, 315-23-079, 021-22-119, 028-03-123, and 019-06-042, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and record of

this board's hearing.The fiscal officer initially assessed the subject properties consistent with the following: parcel 321-05-006 at $106,400, parcel 321-05-007 at $250,500, parcel 314-20-036 at $107,000, parcel 315-03-050 at $91,400, parcel 315-23-079 at $135,900, parcel 021-22-119 at $50,400, parcel 028-03-123 at $56,800, and parcel 019-06-042 at $50,000. The property owner filed several complaints, requesting reductions to the subject properties' values. In response to the complaint filed for parcels 321-05-006 and 321-05-007, the affected board of education ("BOE") filed a countercomplaint, objecting to the requests.

[2] The BOR held hearings on the matter, at which the property owner, and BOE if applicable, appeared to submit argument and/or evidence. At each of the hearings, the property owner detailed the various defects of the subject properties and his attempts to remediate those issues. At some of the hearings, the property owner submitted photographs that highlighted some of the cited condition issues. The BOR members, and the BOE at the hearing for parcels 321-05-006 and 321-05-007, examined him to gain additional insight into the subject properties' characteristics and use as of the tax lien date. The BOR voted to retain the value of parcels 321-05-006 and 321-05-007; however, it voted to reduce the value of the remaining parcels though not to the extent requested. The property owner then appealed to this board. At this board's hearing, only the property owner appeared to supplement the record. In doing so, he expanded upon the testimony provided before the BOR.

[3] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. Of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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.

[4] Upon review, we must find that the property owner failed to provide competent, credible, and/or probative evidence of the subject properties' values. The property owner primarily argued that the condition of the subject properties necessitated reductions to their values. Unfortunately, the property owner failed to provide evidence to quantify the specific diminution in value that resulted from the cited defects. 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."). (Internal citations omitted.) This board has repeatedly rejected the argument that defects, not quantified by a proper appraisal, are sufficient evidence to reduce real property value. See e.g., *Bardshar Apts., Inc. v. Erie Cty. Bd. of Revision* (Mar. 15, 2016), BTA No. 2015-1451, unreported. To the extent the property owner argued that the subject property's value should be reduced based upon the costs to repair the cited defects, dollar-for-dollar costs do not necessarily directly correlate to value. See, e.g., *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997).

[5] In sum, we do not find the property owner's evidence to be sufficient to support the requested decreases to the subject properties' values. See, *Barker v. Hamilton Cty. Bd. Of Revision* (Nov. 30, 2018), BTA No. 2018-414, unreported at 2 (though an owner is free toexpress an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested.").

[6] We now turn to the propriety of the BOR's decisions to reduce the value of parcels 314-20-036, 315-03-050, 315-23-079, 021-22-119, 028-03-123, and 019-06-042. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. As noted above, the property owner failed to demonstrate the diminution in value that resulted from the cited defects, therefore, we can discern no basis for the BOR's decisions to reduce the value of these parcels by 5% or 10%. We are constrained to reinstate these parcels' initially assessed values. See *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. *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.") (Parallel citations omitted.) Compare *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237.

[7] 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 satisfy the evidentiary burden before the BOR and before this board. Because the BOR's decisions to reduce the value of parcels 314-20-036, 315-03-050, 315-23-079, 021-22-119, 028-03-123, and 019-06-042 were unsupported by the record, we must conclude that the BOR committed legal error and we must reinstate those parcels' initially assessed values.

[8] It is, therefore, the order of this board that the subject properties' true and taxable values are as follows as of the relevant tax lien date:

Parcel 321-05-006

True Value: $106,400

Taxable Value: $37,240

Parcel 321-05-007

True Value: $250,500

Taxable Value: $87,680

Parcel 314-20-036

True Value: $107,000

Taxable Value: $37,450

Parcel 315-03-050

True Value: $91,400

Taxable Value: $31,990

Parcel 315-23-079

True Value: $135,900

Taxable Value: $47,570

Parcel 021-22-119

True Value: $50,400

Taxable Value: $17,640

Parcel 028-03-123

True Value: $56,800

Taxable Value: $19,880

Parcel 019-06-042

True Value: $50,000

Taxable Value: $17,500

OHIO BOARD OF TAX APPEALS

SMARTLANDERS19, LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2420
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, September 15, 2020

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

[1] Smartlanders19, LLC, appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's value of parcel 644-16-137 for tax year 2018. No party requested a hearing, and no party filed written argument. We decide the case on the notice of appeal and the statutory transcript.

[2] The subject property is improved with a single-family residence. The fiscal officer valued the property at $95,000 for tax year 2018, and appellant filed a complaint seeking a value of $27,500 citing a March 2018 sheriff's sale for that amount. Only counsel appeared for appellant at the BOR hearing. The BOR noted the subject sale was a sheriff's sale. Counsel

acknowledged the sale was a sheriff's sale but argued "a sale is a sale." Counsel also presented the sheriff's sale appraisal and inspection report, which are not tax-lien dated. He also supplied a deposition transcript wherein counsel had deposed a member of the county's foreclosure team. Counsel's argument was that the sale coupled with the sheriff's sale appraisal created a presumption of value like any other arm's-length sale. The BOR retained the fiscal officer's value, and appellant appealed to this board.

[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). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the auditor nor the BOR bears the "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." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

[4] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. However, the Ohio Supreme Court has told us to presume a sheriff's sale is not a voluntary, arm's-length transaction. *Olentangy Local Sch. Bd. Of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, ¶ 2.

[5] Upon review, we find appellant has not carried its burden. The Ohio Supreme Court has expressly rejected counsel's proposed bright-line rule. See *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 548, 2018-Ohio-919. Counsel has made

this identical argument in several cases, and this board has continually rejected the argument. See, e.g., *C & R Property Management, LLC v. Cuyahoga Cty. Bd. of Revision* (Sept. 12, 2018), BTA No. 2017-1127, unreported; see also *CSHFLW Properties 4, LLC v. Cuyahoga Cty. Bd. of Revision* (Aug. 14, 2019), BTA No. 2018-1382, unreported. In all three cases, counsel relied on the sheriff's sale coupled with the sheriff's sale appraisal. In no case did any party with actual firsthand knowledge of the sale testify at the BOR level or before this board.

[6] We reject the evidence in this case, just as we have done in the past, for two reasons. First, a sheriff's sale is presumed to be a forced sale, which does not create a presumption of value. Second, the sheriff's sale appraisal presented in this case does not rehabilitate the sale, per se. It likewise does not rehabilitate the sale in this case because it is not tax-lien dated and no appraiser appeared to testify about how it was created. Nor did the appraisal contain adjustments to the comparable properties and the appraiser did not appear to testify to explain the appraisal and its conclusions. See *Gloria J. Hill v. Hamilton Cty. Bd. of Revision* (Apr. 3, 2019), BTA No. 2018-1392, unreported (discussing non-tax-lien dated appraisals where the appraiser does not testify).

[7] We acknowledge the Ohio Supreme Court has carved out an exception to this general rule regarding lack of testimony by appraisers. See *Copley-Fairlawn City Sch. Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 ("*Team Rentals*"). In *Team Rentals*, the Supreme Court held this board should have given weight to a non-tax-lien dated appraisal when the appraisal's proponent testified about why the appraisal was created and a party relied upon the appraisal in a business or financial transaction. Id. at ¶¶30-31. However, the Supreme Court clarified *Team Rentals* in *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058. In *Musto*, the court held this board could disregard an appraisal that had been relied upon in a financial or business transaction "in the absence of direct testimony about the preparation and actual use of" the appraisal. Id. at ¶42; *Cynthia Ciccotti v.*

Cuyahoga Cty. Bd. of Revision (Nov. 26, 2018), BTA No. 2018-352, unreported. Here, appellant failed to provide "direct testimony about the preparation" of the appraisal. *Musto*, supra. We likewise have no idea where the appraiser obtained his or her data or what adjustments (if any) were made and not testimony about any reliance similar to *Team Rentals.*

[8] For these reasons, we find the fiscal officer's value should be retained. See *Jakobovitch*,supra. We order the property valued as follows for tax year 2018:

PARCEL NUMBER 644-16-137

TRUE VALUE

$95,000

TAXABLE VALUE

$33,250

OHIO BOARD OF TAX APPEALS

NEW DAY REALTY LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-1263
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NEW DAY REALTY LLC
Represented by:
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For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
ARIANA ZIMCOSKY
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
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AKRON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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BRINDZA MCINTYRE & SEED, LLP
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CLEVELAND, OH 44114

Entered Tuesday, September 15, 2020

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

[1] New Day Realty LLC ("New Day") appeals from a decision of the Summit County Board of Revision ("BOR") retaining the fiscal officer's values for parcels 68-21345, 68-20771, and 67-61922. We decide the case on the notice of appeal, the statutory transcript, any written argument.

[2] For clarity, we outline our standard of review before discussing the facts in detail. 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). To meet that burden, an 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. A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31.

[3] Turning to 68-21345, the fiscal officer valued the parcel at $52,490 for tax year 2018, and New Day filed a complaint seeking a value of $27,333 based on a transfer from the Secretary of Veterans Affairs to Zachary Zimmer for that price. No other evidence was submitted in support of the sale. We find that sale is not indicative of value since it was a transfer from the Secretary of Veterans Affairs, meaning we are to presume the sale was not arm's-length. See *Dawson v. Cuyahoga Cty. Bd. of Revision* (Jan. 7, 2020), BTA No. 2019-651, unreported. New Day has presented no evidence that the sale was arm's-length to rebut the presumption. Therefore, we find the fiscal officer's value as retained by the BOR the appropriate value for this parcel. See *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818.

[4] The fiscal officer valued parcel 86-20771 at $58,910 for tax year 2018, and New Day filed a complaint seeking a value of $35,000, based on a May 2017 sale for that amount. In support, New Day presented the settlement statement. Because the sale is facially qualifying, the sale creates a rebuttable presumption of value in favor of the sale price. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588 (a sale of the subject property which occurred less than 24 months prior to the tax-lien date is generally recent). However, no party has presented evidence to rebut the sale. Therefore, we find the sale is the best evidence of value.

[5] The fiscal officer valued parcel 67-61922 at $45,550 for tax year 2018. New Day filed

a complaint requesting a value of $31,000. In support, New Day supplied the settlement statement showing the property transferred from U.S. Bank to Zimmer in April 2017 for $31,000. Because the sale is facially qualifying, the sale creates a rebuttable presumption of value in favor of the sale price. *Akron*, supra; see also *Italian Greek Investments v. Montgomery Cty. Bd. of Revision* (July 31, 2018), BTA No. 2017-977, unreported ("To the extent the BOR rejected the sale because it was from a bank, we find no reason to disregard the sale on that ground"). However, no party has submitted evidence to rebut the sale. Therefore, we find the sale is the best, most persuasive evidence of value.

[6] In sum, we order the properties valued as follows for tax year

2018: PARCEL NUMBER 68-21345

TRUE VALUE $52,490

TAXABLE VALUE $18,370

PARCEL NUMBER 68-20771

TRUE VALUE $35,000

TAXABLE VALUE $12,250

PARCEL NUMBER 67-61922

TRUE VALUE $31,000

TAXABLE VALUE $10,850

OHIO BOARD OF TAX APPEALS

LISA GROSS, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-115
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - LISA GROSS
OWNER
GOING TO POT
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
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CINCINNATI, OH 45202

Entered Tuesday, September 15, 2020

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

The taxpayer appeals a decision of the board of revision ("BOR"), which denied her request for remission of the late payment penalty associated with the property tax bill for the second half of tax year 2018. We proceed to consider this matter based upon the underlying application, statutory transcript certified pursuant to R.C. 5717, and any written argument submitted by the parties.

The taxpayer applied for remission of the late payment penalty for the previously mentioned tax period. By way of the application, the taxpayer alleged that her failure to timely pay the property tax bill was based upon reasonable cause. She stated that she was busy with work and inadvertently forgot to pay the property tax bill. The county treasurer recommended

denying the taxpayer's application because the property tax bill's due date was published on the Internet and in the newspaper. The county auditor agreed with the recommendation and passed the application on to the BOR to determine whether the taxpayer had demonstrated reasonable cause for her failure to timely pay the property tax bill. The BOR concluded that the taxpayer had not satisfied her burden and denied the application for remission of the late payment penalty. This appeal ensued.

On appeal, the taxpayer submitted written argument that asserted that paying the penalty would cause her a financial hardship and requested that we relieve her of the late payment penalty. The county appellees submitted written argument that argued that the taxpayer had failed to allege facts to demonstrate that she was entitled to remission of the late payment penalty.

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).

Upon review, we are constrained to find that the taxpayer has failed to demonstrate that the facts and circumstances of this matter qualifies 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. R.C. 5715.39(B) requires penalty remission for the following reasons:

> (1) The 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.

(2) In cases other than those described in division (B)(1) of this section, and except as provided in division (B)(5) of this section, 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.

(3) The 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.

(4) The 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.

(5) With 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.

Penalties must also be remitted if the "taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." R.C. 5715.39(C).

In this matter, the taxpayer alleged that her situation, i.e., that she was busy running her

business and forgot to pay the property tax bill and that she would experience a financial hardship if she is required to pay the penalty, fit within the parameters of R.C. 5715.39(C). While we sympathize with the taxpayer's circumstances, we must conclude that she is not entitled to remission of the late payment penalty. This board has held that failure to meet tax obligations suggests willful neglect, not reasonable cause. See, *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported. To the extent that the taxpayer requests that we grant her remission based upon her financial circumstances, we are unable to do so. The Ohio Supreme Court has long held this board is a creature of statute and has no power to act unless specifically authorized by statute. *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229 (1988); *Toledo v. McAndrew* (Sept. 1, 2009), BTA No. 2004-B-183, unreported. As such, we lack equitable jurisdiction and cannot grant the taxpayer the relief that she seeks out of a sense of "fairness." *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564 (1953).

Based upon the foregoing, we find that the taxpayer failed to satisfy the evidentiary burden on appeal. As a result, we deny her request for remission of the late payment penalty for the property tax bill for the second half of tax year 2018.

OHIO BOARD OF TAX APPEALS

ANNA BRETZKE, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2020-1165
vs.	)	
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

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

Entered Tuesday, September 15, 2020

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 in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was filed with the BOR thirty-three days after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

AQUARIUS PRIVACY TRUST, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2631 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AQUARIUS PRIVACY TRUST
Represented by:
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JEFFREY P. POSNER LAW
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CLEVELAND, OH 44113

Entered Tuesday, September 15, 2020

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

This appeal is now considered upon a motion filed by the county appellees for this board to remand the matter to the board of revision ("BOR") with instructions to dismiss the underlying complaint. The county appellees assert that the underlying complaint should be dismissed because the preparation of the complaint constituted the unauthorized practice of law and the complainant's agent lacked independent standing to file the complaint. In response, appellant Aquarius Privacy Trust ("Aquarius") did not contest the allegations but rather

requested that the matter be remanded to the BOR for further development as to the agent's authority to file. Notably, appellant did not submit any information or attempt to explain the identity of the agent or her relationship to the subject property.

The record shows that the Aquarius owns the subject property and is listed on line one of the complaint. The complaint does not reflect that it was filed by someone other than the owner, nor does it identify an agent on line three. On line four, the complainant's contact information includes an email address for Ashley Ellis, but the complaint does not name an agent or identify the individual who prepared and filed it. During the BOR hearing, Aquarius was represented by counsel and the identity of the individual that filed the complaint was not discussed. The BOR issued a decision maintaining the fiscal officer's value, which Aquarius appealed to this board.

R.C. 5715.19(A) provides that when a complaint is filed by "a trust, a trustee of the trust" is then authorized to file a complaint on behalf of the entity. 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.

Here, the identification of the complaint's filing agent is unclear, and there is no indication that the individual is an attorney or one who is identified by R.C. 5715.19(A). In the absence of any evidence that the complaint was filed by one authorized to file on behalf of the owner, we find the underlying complaint failed to properly invoke the BOR's jurisdiction. *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.'").

Accordingly, the county appellees' motion is well taken and this matter is hereby remanded to the Cuyahoga County Board of Revision with instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

GLS LEASCO INC., A MICHIGAN CORPORATION [CROWN ENTERPRISES CONSTRUCTION SERVICES., INC. (CROWN ENTERPRISES, INC.)], (et. al.),	)	CASE NO(S). 2019-2567
Appellant(s),	)	(REAL PROPERTY TAX)
vs.	)	DECISION AND ORDER
STARK COUNTY BOARD OF REVISION, (et. al.),	)	
Appellee(s).		

APPEARANCES:

For the Appellant(s) - GLS LEASCO INC., A MICHIGAN CORPORATION [CROWN ENTERPRISES CONSTRUCTION SERVICES., INC. (CROWN ENTERPRISES, INC.)]
Represented by:
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For the Appellee(s) - STARK COUNTY BOARD OF REVISION
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NORTH CANTON CITY SCHOOLS BOARD OF EDUCATION
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COLUMBUS, OH 43215

Entered Thursday, September 17, 2020

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

[1] GLS Leaseco, Inc., appeals from a decision of the Stark County Board of Revision ("BOR") retaining the auditor's value of parcel 5500037 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and any written argument.

[2] The subject property is improved with a truck terminal building. The auditor valued the subject property at $543,300 for tax year 2018, and appellant filed a complaint seeking a value of $400,000. The North Canton City Schools Board of Education ("BOE") filed a countercomplaint asking the BOR to retain the auditor's value. Appellant submitted an appraisal memorandum stating the property was overvalued according to the income approach and sales comparison approaches to value. Appellant also supplied various documents showing lease comparables, sales comparables, and general market data. At the BOR hearing, counsel for the BOE and appellant appeared. They outlined the position of both parties; however, no witnesses were called. The BOR retained the auditor's value.

[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). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the auditor nor the BOR bears the "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." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.).

[4] While a recent, arm's-length sale is the best evidence of value, no party advocates for a sale price. Therefore, we move on to the appraisal evidence presented in this case. See *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶31. Because statements of counsel are not evidence, the only evidence to consider are the memorandum and

attachments.

[5] The memorandum presents the owner's opinion of value. While an owner is competent to opine on the property's value, this board need not adopt that opinion of value unless probative evidence supports the owner's opinion. *Snavely v. Erie Cty. Bd. of Revision,* 78 Ohio St.3d 500 (1997). We find the memorandum is not probative for the following reasons.

[6] First, we generally reject an appraisal document, like the one submitted by appellant below, when the appraiser/author fails to appear before this board or the BOR. *Speca v.Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. As weexplained in *Speca,* when the appraiser does not appear to testify, he or she cannot speak to his or her credentials or authenticate the report (including addenda). Importantly, he or she is not available for cross-examination by the opposing party or to respond to questions posed by this board. See *venson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported.

[7] Second, the memorandum is based on hearsay evidence. That means the report is unreliable. The Ohio Supreme Court has been clear that "the owner qualifies primarily as a fact witness giving information about his or her property; usually the owner may not testify about comparable properties, because that would be hearsay." *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 140 Ohio St.3d 248, 2014-Ohio-3620, ¶19. Since the creator of the document (and compiler of the data) did not testify about the memorandum, there is no evidence the author had personal knowledge of the comparable sales, comparable leases, or the market generally.

[8] Third, the sales and lease data constitute raw, unadjusted market data. Raw market data

alone is not a substitute for a qualifying, tailored appraisal prepared by a person with knowledge of the market and appraisal expertise. See *Grenny Properties v. Cuyahoga Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1332, unreported. 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). Each comparable varies significantly from one another and the subject. Additional evidence is needed to control for those variables. See *Grenny* at 7-9.

[9] For these reasons, we find appellant has not carried its burden. We order the subject property valued as follows for tax year 2018:

TRUE VALUE

$543,300

TAXABLE VALUE

$190,160

OHIO BOARD OF TAX APPEALS

RICHMOND HEIGHTS LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-69
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RICHMOND HEIGHTS LOCAL SCHOOLS BOARD OF EDUCATION
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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SPERO PARTNERS LLC AND CUYAHOGA COUNTY
Represented by:
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SPERO PARTNERS LLC AND CUYAHOGA COUNTY
Represented by:
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Entered Thursday, September 17, 2020

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 661-09-016, 661-09-019, and 661-09-020, 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, and the written argument of the parties.

The subject property is improved with three single-story flex buildings owned by Spero Partners LLC ("Spero") through a ground lease with Cuyahoga County, which owns the land. The fiscal officer initially assessed the subject's total true value at $5,371,700. Cuyahoga County and Spero (collectively "the property owners") filed a complaint with the BOR seeking a reduction in value to $1,150,000, which it amended to $1,250,000 at the BOR hearing. The BOE filed a countercomplaint in support of the fiscal officer's value.

At the BOR hearing, the property owners presented testimony regarding Spero's purchase of the buildings and leasehold interest from 26391 Curtiss Wright Parkway Holdings, LLC in September 2017 for $800,000. The seller's listing agent appeared at the hearing to discuss the online auction process and marketing that took place, explaining that the fact the purchaser would be obtaining the buildings and a ground lease without title to the land was a deterrent for investors. Members of Spiro also appeared to testify regarding difficulty obtaining tenants for the property, indicating that the occupancy at the time of the purchase was physically 60% but several tenants were not paying.

The property owners also presented testimony and a written report from appraiser James A. Huber, MAI. Huber determined that the subject's highest and best use was for continued use as an office/warehouse or light industrial building. Huber included a valuation analysis of the land at $380,000, based on the sales of nearby properties and capitalizing the ground lease rate.

Huber's sales comparison approach to value was based on the sales of four comparable properties along with the September 2017 sale of the subject's leasehold interest. Huber adjusted the sale of the leasehold interest by adding the land value ($380,00) to the sale price of the leasehold interest ($840,000, including auction fees). After adjusting the sales of comparable properties for property rights, conditions of sale, location, and physical differences among the properties, Huber concluded that the value of the property was $18.50 per square foot, or $1,300,000 (rounded). Huber also performed the income approach, developing market rent and expenses based on the subject's actual experience as well as asking rents for other flex and office properties. Huber estimated a net operating income of $171,072, which was based a 30% vacancy and credit loss. Huber applied a 10.8% capitalization rate, which took into consideration the subject's below-market occupancy rate on the tax lien date, and 3.14% tax additur, which reflected the pro rata share paid by Spero. Huber's value conclusion based on the income approach was $1,200,000. Huber gave equal weight to both approaches and concluded to a value of $1,250,000 as of the tax lien date. BOE cross-examined Huber and the BOR members asked questions about both the appraisal and Spero's purchase of the leasehold interest.

Following the hearing, The BOR issued a decision reducing the initially assessed valuation to $1,250,000 based on the appraisal, which the BOE appealed to this board.

This board convened a hearing, at which the BOE presented the testimony and written report of appraiser Gary Barker, MAI. Barker concluded that the highest and best use for the property was continued flex industrial use, and performed the cost, sales comparison, and income approaches to value. Barker described his cost approach, in which he concluded that the land value for the subject property was $580,000, to which he added $2,390,000 attributable to

the depreciated value of the improvements. This resulted in a value of $2,970,000. Barker explained that despite the age of the building and extent of the depreciation (44%), he utilized the cost approach to reflect the quality of the building's construction and as a method of allocation among the land and building components.

Barker next discussed the sales comparison approach, in which he considered the sale of the subject property, noting that the $11 per square foot sale price was for the leasehold did not include any land value. Barker estimated that the value of the property was $40 per square foot, or $2,880,000. For his income approach Barker estimated that the subject's stabilized occupancy of was 85%, for a net operating income of $381,000. Barker applied a 9% capitalization rate plus 3.84% tax additur, which resulted in a value of $2,970,000. Barker reconciled the approaches, concluding to a value of $2,900,000 as of January 1, 2017.

The property owners cross-examined Barker, utilizing the several chapters from The Appraisal of Real Estate, 14th Edition, and submitted the fiscal officer's values for tax year 2018, asserting that they provided additional support for the BOR's 2017 valuation.

When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). 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.

Initially, we find that the September sale of the subject property's leasehold interest does not provide reliable evidence of the value of the fee simple estate. Auction sales are presumed invalid for purposes of ad valorem taxation, though this presumption may be rebutted. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. We acknowledge that both appraisers utilized the sale in their reports by adding the value of the land (as vacant) to the sale price. Nevertheless, we cannot find that this adjustment was adequate to

reflect the value of the land and the building, as the testimony from the BOR demonstrated that the property rights involved in the purchase were a deterrent to potential buyers. While helpful for a comparative analysis, we find that the circumstances of the sale were such that the appraisal evidence provides a more credible opinion of value of the fee simple interest. See *Bronx Park S. III Lancaster, L.L.C. v. Fairfield Cty. Bd. of Revision*, 153 Ohio St.3d 550, 2018-Ohio-1589.

We next look to the appraisal evidence submitted by the parties. In a case where multiple qualifying appraisals have been presented by the parties, whether before the BOR or this board, the court has 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 to "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*, 155 Ohio St.3d 247, 2018-Ohio-4286, ¶¶10-11.

As we review the two reports, we observe that both appraisers valued the property as flexible office/warehouse space and considered the sales of three common properties (including the subject property) in their respective sales comparison analyses. The primary distinction between the two appraisals was the extent to which each appraiser considered the subject's actual rate of occupancy. The property owners' primary criticism of Barker's appraisal was that he did not adequately consider the actual experience of the property. Barker explained that he believed that the building had an adequate appeal to the market and that the subject's 50% occupancy rate was well below the 85% occupancy rate demonstrated within the market. Barker attributed the low occupancy to poor management rather than the property itself and adjusted the comparable sales and performed his income analysis accordingly. By contrast, Huber relied heavily on the subject's actual experience without sufficient data to show that it corresponded with the market.

In *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996). the court commented that "an appraiser may employ actual income as reduced by actual

expenses if both amounts conform to market." Continuing, the court noted that it has "required the BTA to make factual findings, supported by the record, of the appropriate market rents and expenses to be used in the income approach to value." Id. Therefore, we find that Barker's reliance on market rates rather than the subject's actual experience was appropriate and provided a more accurate value conclusion than Huber's appraisal.

Finally, we find that the fiscal officer's tax year 2018 values for the subject property submitted by the property owners have no probative weight for tax year 2017. See, e.g., *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009- Ohio-2461, ¶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."). Accordingly, we find that Barker's appraisal provides the best evidence of the value of the subject property as of the tax lien date.

It is therefore the order of this board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

PARCEL NUMBER 661-09-016

TRUE VALUE

$ 596,280

TAXABLE VALUE

$208,700

PARCEL NUMBER 661-09-019

TRUE VALUE

$1,098,470

TAXABLE VALUE

$384,460

PARCEL NUMBER 661-09-020

TRUE VALUE

$1,205,250

TAXABLE VALUE

$421,840

OHIO BOARD OF TAX APPEALS

LOWE'S HOME CENTERS, LLC, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1975 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Thursday, September 17, 2020

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

Appellant Lowe's Home Centers, LLC ("Lowe's") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number

550-0193-0001-00, 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, the record of the hearing before this board, and the parties' written argument.

The subject property consists of 18.304 acres of land improved with a 138,031 square-foot "big box" retail property that was constructed in 2007. The auditor initially assessed the subject's total true value at $10,017,320. Lowe's filed a complaint with the BOR seeking a reduction in value to $5,521,000, while the appellee board of education ("BOE") filed a countercomplaint in support of the auditor's value. The BOR convened a hearing, though neither Lowe's nor the BOE presented additional evidence. Lowe's explained that its appraisal was not yet complete. With no evidence presented to support an alternative value, the BOR issued a decision maintaining the auditor's value. Lowe's appealed the decision to this board.

This board convened a hearing, at which Lowe's, the BOE, and the auditor presented appraisal evidence. Lowe's relied on the evidence and testimony from appraiser Richard G. Racek, Jr., MAI, who opined that the value of the subject property was $6,150,000 as of January 1, 2017. Racek determined that the highest and best use of the subject property was to continue as a single tenant retail facility, based on his theory that the property must be valued as though it were vacant on the tax lien date. Racek gave more weight to the sales comparison approach but also weighed the income approach in his reconciliation of value.

For his sales comparison approach, Racek looked at sales of nine properties, all of which were vacant at the time of the transfer and had been so for at least a few months and up to ten years. The construction dates of the properties ranged from 1987 to 2000, and the unadjusted sale prices ranged from $9.41 to $48.23 per square foot. Racek also included a list of properties that sold and were leased to Lowe's at the time of the transfer (ranging from $50.35 to $109.04

per square foot), though he did not use them in his analysis because he did not consider them a good indicator of value of the fee simple interest due to the leases in place. Racek adjusted the "fee simple" (vacant) sales to account for physical differences among the properties and their locations, and he concluded that the value of the subject property was $45.00 per square foot, or $6,210,000 (rounded).

Racek also performed an income analysis, concluding that market rent for the subject property was $4.50 per square foot. To reach this conclusion, Racek looked at current rents for properties that were occupied by a "second generation" tenant or asking rents for properties that had been vacated by their original tenant and were vacant. Racek applied a 5.0% reduction for vacancy and credit loss, resulting in an effective gross income ("EGI") of $590,083. Racek reduced $86,718 for expenses, including management and reserves for replacement. Racek indicated that he extracted capitalization rates from sales in the market (range from 6.62% to 9.93%) and described a general range of 6.5% to 12.5% for commercial investment properties. Racek applied an 8.5% capitalization rate to the resulting net operating income ("NOI") of $503,365, which resulted in an indicated value of $5,920,000. Racek gave more weight to the sales comparison but considered this conclusion in his analysis.

The auditor submitted an appraisal from Emmit L. Ford, AI-GIS, who opined that the value of the subject property was $9,130,000 as of January 1, 2017. Ford determined that the subject property's current use as first-generation retail is maximally production and the highest and best use of the subject property. Ford further explained that in his opinion, "first generation" did not necessarily refer to an original build-to-suit occupant, but rather referred to national tenants more broadly. Ford clarified that he did not value the subject property as though it were vacant on the tax lien date, but rather as though it were leased at market rates and with market vacancy, which included rent loss and costs to lease, such as leasing commissions and tenant

improvements. Ford considered the cost, sales comparison, and income approaches to value, giving weight to each (25%, 40%, and 35%, respectively) value indication in his final reconciliation.

Ford first performed the cost approach. Ford considered four land sales in the greater Cincinnati area to conclude to a value of $3,350,000 (rounded), or $350,000 per acre for the 13.304-acre site. Ford utilized Marshall Valuation Service to estimate a $6,423,963 replacement cost new for the building, including hard costs, soft costs, and entrepreneurial profit. Ford applied a 33.33% (10-year effective age out of 30-year economic life) age/life depreciation deduction ($2,141,321), based on his physical observations and a lack of external obsolescence. Ford also determined the replacement cost new for parking spaces ($662,860) and landscaping ($60,000), to which he applied a 50.00% (10-years effective age out of 20-year economic life) age/life depreciation. Ford then added the total depreciated value of site and building improvements ($5,376,621) to the land value, for a total indicated value of $8,730,000 (rounded).

Ford also performed the sales comparison approach to value, utilizing the sales of five properties that were leased by national tenants at the time of the transaction, though they were not all the first occupants of the building. To determine comparability, Ford considered the number of competitors in the area and the amount of retail spending taking place. The unadjusted prices ranged from $55.92 to $121.41 per square foot. Ford adjusted the sales for physical differences and transactional characteristics, which resulted in an adjusted price range from $61.51 to $74.66 per square foot. Ford concluded to a value of $65.00 per square foot, or $8,990,000 (rounded).

Next, Ford performed the income approach. Ford utilized a market rent of $5.75 per square foot based on a rental survey of other free-standing discount stores occupied by national tenants. Ford applied a 5.0% vacancy/credit loss rate, which resulted in an EGI of $753,994. Ford reduced this by $60,300 ($0.44 per square foot or 8.0% of EGI) for expenses. Ford capitalized the resulting

NOI of $693,675 at a rate of 7.75% plus 0.1211% vacancy-weighted tax additur, which resulted in an indicated value of $9,500,000 (rounded).

The BOE relied on an appraisal performed by James W. Burt, MAI, who opined that the value of the subject real property was $10,350,000 as of January 1, 2017. Burt concluded to this value giving most weight to the sales comparison approach, asserting that most similar properties are owner-occupied, and utilized the income approach as additional support. Burt concluded that the subject's current retail use was the highest and best use of the subject property, and relied on "first generation" sales and rent. Burt explained that this refers to a property that is up to market specifications in terms of construction, buildout, and condition, and would meet the needs of the next user with only minor modifications.

Burt's sales comparison approach was based on the sales of four comparable properties, three of which were occupied by Lowe's at the time of the transaction and another that was vacant. The unadjusted price per square foot for the comparable properties ranged from $53.72 to $121.41. After making adjustments to these sales, Burt concluded that the value of the subject was $75.00 per square foot, which was below the purchase prices for the three sales of operating Lowe's but above the vacant sale. Burt multiplied the $75.00 per square foot value by the 138,031 square feet, resulting in an indicated value of $10,350,000 (rounded).

Burt also performed the income approach to value, concluding to a market rent of $6.25 per square foot based on the rents at four comparable properties, which ranged from $5.00 to $7.95 per square foot, unadjusted. Burt applied a 5% reduction for vacancy and credit loss, resulted in an EGI of $819,559. Burt then subtracted $30,106 for expenses and capitalized the $789,453 NOI at 7.87% (7.75% plus .12% vacancy-weighted tax additur). Burt concluded to a value of $10,030,000 (rounded) based on the income approach.

Lowe's argues that this board must adopt Racek's appraisal because it is the only evidence

in the record that conforms to Ohio law. Lowe's asserts that in order to comply with R.C. 5713.03, the Ohio Constitution, and Supreme Court case law, an appraiser must value the subject property assuming a hypothetical transfer on January 1 of the tax year with no lease in place at the time of the sale. Lowe's claims that Ford and Burt failed to value the property as unencumbered by a lease and violated Ohio law, while Racek valued the unencumbered fee simple estate. The appellees each maintain that this argument has been rejected and it is Racek's appraisal that is flawed.

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. 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 to "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*, 155 Ohio St.3d 247, 2018-Ohio-4286, ¶¶10-11.

Initially, we again reject Lowe's argument that the appraisal of a property in "fee simple unencumbered" must assume a property is vacant and available to be occupied at the time of the sale. See, e.g., *Lowe's Home Centers, LLC v. Cuyahoga Cty. Bd. of Revision* (Feb. 26, 2019), BTA No. 2017-39, unreported, affirmed *Lowe's Home Ctrs., L.L.C. v. Brooklyn City Schools Bd. of Edn.*, 10th Dist. No. 19AP-179, 2020-Ohio-464, citing to *Harrah's Ohio Acquisition Co., L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 154 Ohio St.3d 340, 2018-Ohio-4370. In *Harrah's*, the court recognized that an appraiser may value "'the fee simple estate, as if unencumbered,' so long as the appraisal assumes a lease that reflects the relevant real-estate market." Id., at ¶27. Consequently,

while an appraiser *may* value a property as though it is vacant on the date of valuation (as Racek does), an appraiser is certainly not *required* to do so. Moreover, the present use of a property may be considered among the relevant factors without an appraiser adopting a "value in use" for the property. See, *Johnston Coca-Cola Bottling Co., Inc. v. Hamilton Cty. Bd. of Revision,* 149 Ohio St.3d 155, 2017-Ohio-870, ¶¶14-15. See, also, *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 268, 2018-Ohio-4282.

Next, we look to the appraisals and observe that all three appraisers utilized market data to form their conclusions. Racek, however, excluded a number of properties from his analysis based on his underlying presumption regarding the legal interest being appraised rather than based on the actual age and condition of the property or analysis of the market in which it operates. The other appraisers looked more closely at the attributes of the property and its market to choose comparables, which included both occupied and unoccupied properties. Both Ford and Burt concluded that the highest and best use for the subject property would be to continue as a national retailer, and the properties that they used conformed to this finding. As such, we find that they performed a more reliable analysis than Racek, who chose properties that were less like the subject than Ford and Burt. Upon review of their reports, as well as all data available within the record, we find that Ford's appraisal provided the best indication of value. The properties that he chose better bracketed the subject property, and we find that his cost approach offered additional support for his overall conclusion. While we acknowledge the challenges to his analysis set forth by Lowe's, we find that none diminish Ford's credibility or the reliability of his findings.

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

$9,130,000

TAXABLE VALUE

$3,195,500

OHIO BOARD OF TAX APPEALS

CHAPMAN, THOMAS B -ET AL, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	Appellee(s). CASE NO(S). 2019-2596 (REAL PROPERTY TAX) DECISION AND ORDER

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Entered Monday, September 21, 2020

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

[1] The appellant property owners appeal a decision of the board of revision ("BOR"), which determined the value of the subject real properties, parcel numbers 142-25-059 ("14902 Sunview") and 142-25-057 ("14904 Sunview"), for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this board.

[2] The subject properties are each improved with vacant single-family homes. The fiscal officer initially assessed the subjects' total true value at $29,000 and $145,400, respectively. The property owners filed a complaint with the BOR seeking reductions in value to $5,000 and

$28,000, respectively. Although the BOR convened a hearing, no one appeared to present evidence or testimony in support of the requested reductions. The BOR issued a decision maintaining the initially assessed valuations. In its notes, however, the BOR acknowledged that prior BOR decisions indicated that parcel number 14904 Sunview may be unfinished, but the record lacked evidence of its degree of completion, value in its current state, and cost to complete. From this decision, the property owners filed the present appeal.

[3] This board convened a hearing, at which appellant Pamela Chapman appeared in support of the requested reductions. Chapman explained that she was not present at the BOR hearing because the notice was sent to address of the subject property, which is not occupied. Chapman testified regarding the history and condition of the subject properties, which were both built by her father and are now owned by her and her siblings. Chapman stated that she and her siblings grew up in 14902 Sunview, and her father began building 14904 Sunview but was unable to complete it because her mother grew ill. Chapman testified that both properties are currently not habitable because of their condition, as 14902 Sunview suffered water damage and mold, while 14904 Sunview remains unfinished. Chapman submitted two appraisal reports for each property, opining values of $20,000 and $28,000, respectively, as of January 1, 2016 (obtained for earlier BOR proceedings), and $15,000 and $35,000, respectively, as of November 21, 2019 (obtained for the present appeal). All of the appraisals were prepared based on interior and exterior inspections of the property and include photographs. Chapman likewise submitted an appraisal for another property in the neighborhood to demonstrate that the value of a fully constructed home built in 2016 is $55,000, as compared to 14904 Sunview, which is not complete but valued by the fiscal officer at $145,400.

[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). 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 annot 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.

[5] 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 property owners have submitted multiple appraisal reports prepared by state-certified appraisers that viewed the exterior and interior of the property, in addition to Chapman's testimony. Although an owner is qualified to express an opinion of value, to adopt that opinion, this board must find that the evidence that forms the basis for the owner's opinion is sufficiently reliable to demonstrate the value requested. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶20. Therefore, we will consider all of the property owners' evidence and weigh it accordingly.

[6] Initially, we note that it would be improper to simply rely on the appraisals because they were presented without testimony from the respective appraiser and offered opinions of value as of dates other than January 1, 2018. 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*"). Even so, where such an appraisal contains sufficient indicia of reliability, the information contained therein may furnish

an independent basis for valuing the property. Id. at ¶27.

I[7] n this case, the record contains two appraisals for each property, with effective dates both before and after the tax lien date. As such, we find it appropriate to look at both reports and data within to weigh all information for its probative value. We observe that our review is limited without the ability to hear from the appraisers about their choice of comparable properties and the basis for any adjustments.

[8] As we first consider those that value 14902 Sunview, we find that the data within the appraisals provides additional support for the fiscal officer's value. Although both appraisers concluded to a lower value, the reports and photographs support the fiscal officer's assessment that the property was in "fair" condition on the tax lien date. Additionally, the value determined by the fiscal officer was within the range of comparable sales. Accordingly, we find that the reports fail to establish an alternative value and instead support the fiscal officer's initial assessment.

[9] Next, we find that the appraisals of 14904 Sunview, along with Chapman's undisputed testimony and the history of the fiscal officer's values, have negated the fiscal officer's value. Looking at the property record card included in the transcript, the property was valued as vacant land until an improvement value was added for tax year 2014 based on 40% completion. The total true value of the property was $30,400 and the dwelling was considered 40% complete through 2016. For tax year 2017, the fiscal officer determined that the new dwelling was 100% complete and increased the value of the property to $161,000, before reducing it to $145,400 in 2018 as a result of the countywide reappraisal. We find that the fiscal officer's conclusion that the property was 100% complete was in error, and therefore the valuation for 2018 is based on an incorrect underlying premise. Therefore, we find the property owner's evidence negated the fiscal officer's value and accord more weight to the appraisal evidence in this case. Because the primary issue with the fiscal officer's value is the level of completion on the tax lien date, we find that the

November 2019 appraisal provides the best evidence of value available in this record. This appraisal acknowledges the incomplete construction but also accounts for work that was done (if any) after the appraisal effective January 2016. While we acknowledge that an appraisal opining a value nearly two years after the tax lien date would not ordinarily be considered probative evidence of value, in this case, we find it is the best evidence before us.

[10] It is, therefore, the order of this board that the true and taxable values of the subject property, as of January 1, 2018, were as follows:

PARCEL NUMBER 142-25-059

TRUE VALUE

$29,000

TAXABLE VALUE

$10,150

PARCEL NUMBER 142-25-057

TRUE VALUE

$35,000

TAXABLE VALUE

$12,250

OHIO BOARD OF TAX APPEALS

COLE LO CINCINNATI (RIDGE) OH, LLC, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1976 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, September 22, 2020

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

[1] Appellant Cole LO Cincinnati (Ridge) OH, LLC ("Cole") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 520-0270-0089-00, 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, the record of the hearing

before this board, and the parties' written argument. We note that the hearing record for BTA No. 2018-1975 was incorporated into the record for this appeal, as the appraisers utilized similar methodologies in both appeals.

[2] The subject property consists of 10.3812 acres of land improved with a 138,587 square-foot "big box" retail property that was built in 2002 and has been occupied by Lowe's since its construction. The auditor initially assessed the subject's total true value at $9,148,220. Cole filed a complaint with the BOR seeking a reduction in value to $5,544,000, while the appellee board of education ("BOE") filed a countercomplaint in support of the auditor's value. The BOR convened a hearing, though neither Cole nor the BOE presented additional evidence. Cole explained that its appraisal was not yet complete. With no evidence presented to support an alternative value, the BOR issued a decision maintaining the auditor's value. Cole appealed the decision to this board.

[3] This board convened a hearing, at which Cole, the BOE, and the auditor presented appraisal evidence. Cole relied on the appraisal of Richard G. Racek, Jr., MAI, who opined that the value of the subject property was $6,850,000 as of January 1, 2017. The auditor presented an appraisal performed by Emmit L. Ford, AI-GIS, who opined that the value of the subject property was $8,440,000 as of January 1, 2017. The BOE submitted an appraisal performed by James W. Burt, MAI, who opined that the value of the subject real property was $9,000,000 as of January 1, 2017.

[4] As noted above, with respect to the appraiser's methodology, the parties relied on testimony and cross-examination from the hearing convened for BTA No. 2018-1975. Such methodology was discussed at length in this board's decision on the matter in *Lowe's Home Centers v. Hamilton Cty. Bd. of Revision* (Sep. 17, 2020), BTA No. 2018-1975, unreported.

[5] In the present appeal, Racek relied on the same underlying theory that the property

must be valued as though it were vacant on the tax lien date and utilized the same sales in his sales comparison analysis. After adjustments, Racek concluded to a value of $50.00 per square foot, or $6,930,000 (rounded). Likewise, Racek utilized the same market data for his income approach in both appeals, concluding to a market rental rate of $5.00 per square foot ($692,935 total annually), 5.0% vacancy/credit loss, 3.0% management expense, and reserves for replacement of $0.50 per square foot. The resulting net operating income ("NOI"), $569,245, was capitalized at 8.5%, resulting in an indicated value of $6,700,000 (rounded). Racek again gave more weight to the sales comparison approach, concluding to an overall value of $6,850,000.

[6] Ford did not value the subject property as though it were vacant on the tax lien date, but rather as though it were leased at market rates and with market vacancy, which included rent loss and costs to lease, such as leasing commissions and tenant improvements. Ford performed the cost approach, according a value of $225,000 per acre, or $2,640,000 (rounded), to the land and $5,420,354 for the depreciated value of the site and building improvements, for a total value of $8,060,000 (rounded). Ford also did a sales comparison analysis, concluding to a value of $62.00 per square foot, or $8,590,000 (rounded). Ford's income approach relied on market data to establish a rental rate of $5.60 per square foot ($776,087 total annually), 5.0% vacancy/credit loss, 3.0% management expense, 2.0% legal/accounting expense, and 3.0% reserves for replacement. Ford capitalized the resulting $678,300 NOI at 7.75% plus a 0.1965% vacancy weighted tax additur, for an indicated value of $8,540,000 (rounded). Ford considered the cost, sales comparison, and income approaches to value, giving weight to each (25%, 40%, and 35%, respectively) value indication in his final reconciliation, opining a total value of $8,440,000 (roughly $60.90 per square foot).

[7] Burt valued the property based on a highest and best use for "first generation" retail, which he defined as properties that were up to market specifications in terms of construction,

buildout, and condition, and would meet the needs of the next user with only minor modifications. Burt gave primary weight to the sales comparison approach, which was based on the sales of four "big box" retail properties. Burt's sales comparison analysis was based on the sales of four comparable properties, three of which were occupied by Lowe's at the time of the transaction and another that was vacant. After making adjustments to these sales, Burt concluded that the value of the subject was $65.00 per square foot, which was below the purchase prices for the three sales of operating Lowe's but above the vacant sale, for a total value of $9,000,000 (rounded). Burt's income approach utilized a rental rate of $5.75 per square foot ($796,875 total annually), 5.0% vacancy/credit loss, $2,500 annual legal/accounting expense, and $0.20 per square foot reserves for replacement. Burt capitalized the resulting $726,814 NOI at 7.75% plus a 0.20% vacancy weighted tax additur, for an indicated value of $9,140,000 (rounded). Burt relied primarily on the sales comparison approach for a final conclusion of value at $9,000,000 as of January 1, 2017.

[8] Cole argues that this board must adopt Racek's appraisal because it is the only evidence in the record that conforms to Ohio law. Cole asserts that in order to comply with R.C. 5713.03, the Ohio Constitution, and Supreme Court case law, an appraiser must value the subject property assuming a hypothetical transfer on January 1 of the tax year with no lease in place at the time of the sale. Cole claims that Ford and Burt failed to value the property as unencumbered by a lease and violated Ohio law, while Racek valued the unencumbered fee simple estate. The appellees each maintain that this argument has been rejected and it is Racek's appraisal that is flawed.

[9] 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. 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 all appraisals, and to "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*, 155 Ohio St.3d 247, 2018-Ohio-4286, ¶¶10-11.

[10] In *Lowe's Home Centers*, BTA No. 2018-1975, we rejected Lowe's argument that the appraisal of a property in "fee simple unencumbered" must assume a property is vacant and available to be occupied at the time of the sale. We further explained why Racek's analysis was less reliable because his underlying presumption regarding the legal interest being appraised resulted in the exclusion of a number of properties rather than a comparison based on the age, condition, or market in which the comparable properties are located. Burt and Ford, on the other hand more closely considered the subject property's attributes for choosing comparables, which we found was a more reliable approach. After reviewing all three appraisal reports, as well as all data available within the record, we found that Ford's appraisal provided the best indication of value.

[11] In the present appeal, we have the same criticisms of Racek's analysis. Racek again looked exclusively at vacant properties based on his underlying premise and not a market survey that established such properties were most comparable. We also again find that Ford's appraisal provides the best evidence of the subject property's value on the tax lien date. The comparable properties that he chose best bracketed the subject property, and we find that his cost approach offered additional support for his overall conclusion.

[12] 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

$8,440,000

TAXABLE VALUE

$2,954,000

OHIO BOARD OF TAX APPEALS

BLUE BRIDGE VIEW LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-656 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BLUE BRIDGE VIEW LLC
Represented by:
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CLEVELAND, OH 44113

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

Entered Tuesday, September 29, 2020

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 006-06-066, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and county appellees' motion to dismiss and property owner's response.

The affected board of education ("BOE") filed a complaint with the BOR, requesting that the subject property be revalued from $48,400 to $87,000 to reflect the price at which it purportedly transferred in February 2018. The property owner did not file a countercomplaint. The BOR held a hearing on the matter, at which time only the BOE appeared to submit

argument and/or evidence into the record. In doing so, the BOE submitted a warranty deed that demonstrated the $87,000 transfer of the subject property from Eugene Pallas to the property owner in February 2018. The BOR voted to increase the subject property's value consistent with the subject sale and subsequently issued a written decision to that effect. The property owner appealed to this board. None of the parties availed themselves of an opportunity to submit additional evidence at a hearing before this board.

Before we review the merits of this appeal, we must first dispose of two preliminary issues. We must first determine whether the property owner properly invoked this board's jurisdiction. 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; *Hope v. Highland Cty. Bd. of Revision*, 56 OhioSt.3d 68 (1990). By way of a motion to dismiss, the county appellees asserted that the property owner did not properly invoke this board's jurisdiction because it failed to file a copy of the notice of appeal with the BOR. However, the property owner disputed that assertion and provided a certified mail receipt to demonstrate that it had, indeed, filed a copy of the notice of appeal with the BOR. Based upon our review, we discern that the property owner filed its packet of documents, which comprised the notice of appeal, with the BOR and that the BOR misinterpreted the property owner's packet of documents as the filing of an untimely complaint for tax year 2018. As such, the motion to dismiss is denied.

Second, we note that the property owner's notice of appeal, the packet of documents, included a written narrative, which comprised argument and statements from its member Ken Grossi, in addition to other documents offered for their evidentiary value. As noted above, no one appeared on behalf of the property owner at the BOR hearing and it did not request a hearing

before this board. Because the factual assertions in the written narrative and other documents, offered for their evidentiary value, were not submitted at a hearing, we cannot consider them in our analysis. See *Neon Rave, LLC v. Franklin Cty. Bd. of Revision* (Apr. 19, 2016), BTA No. 2015-1298, unreported at 2. ("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."). Furthermore, the written narrative also included argument. Because there was no indication that Grossi was an attorney licensed to practice law in Ohio, the written argument will be stricken from the record and will not be considered. See *Megaland GP, LLC v. Franklin Cty. Bd. of Revision,* 145 Ohio St.3d 84, 2015-Ohio-4918, ¶19, fn.2, (striking a brief filed by a non-attorney on behalf of a limited liability company and indicating such filing constituted the unauthorized practice of law). As a result, we will limit our review to the evidence that is properly in the record, i.e., the documents contained in the certified statutory transcript.

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 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. 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, the minimal details of the sale have not been disputed. The property owner did not participate in the proceedings before the BOR and, as consequence, the record is void of any express challenge to the subject sale. Absent an affirmative demonstration that the subject sale was not a recent, arm's-length transaction, we find that it is best evidence of the subject property's value.

It is, therefore, the order of this board that the subject property shall be valued as follows as of the relevant tax lien date:

True Value: $87,000

Taxable Value: $30,450

OHIO BOARD OF TAX APPEALS

SMARTLAND FND1, LLC, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2019-2421
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SMARTLAND FND1, LLC
Represented by:
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Entered Tuesday, September 29, 2020

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

[1] Smartland FND1, LLC, appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the fiscal officer's value of parcel 684-10-038 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and any written argument.

[2] The subject property is improved with a single-family residence. The fiscal officer valued the property at $100,200 for tax year 2018. Appellant filed a complaint seeking a value of $27,000 citing a June 2018 sheriff's sale for that amount. Only counsel appeared for appellant at the BOR hearing. The BOR noted the subject sale was a sheriff's sale. Counsel acknowledged the sale was a sheriff's sale. Counsel also presented the sheriff's sale appraisal

and inspection report, which are not tax-lien dated. He also supplied a deposition transcript wherein counsel had deposed a member of the county's foreclosure team. The BOR retained the fiscal officer's value, and appellant appealed to this board.

[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). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. Neither the auditor nor the BOR bears the "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." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶23.).

[4] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶31. However, the Ohio Supreme Court has told us to presume a sheriff's sale is not a voluntary, arm's-length transaction. *Olentangy Local Sch. Bd. Of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, ¶2.

[5] Upon review, we find appellant has not carried its burden. The Ohio Supreme Court has expressly rejected counsel's proposed bright-line rule. See *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 548, 2018-Ohio-919. Counsel has made this identical argument in several cases, and this board has continually rejected the argument. See, e.g., *C & R Property Management, LLC v. Cuyahoga Cty. Bd. of Revision* (Sept. 12, 2018), BTA No. 2017-1127, unreported; see also *CSHFLW Properties 4, LLC v. Cuyahoga Cty. Bd. of*

Revision (Aug. 14, 2019), BTA No. 2018-1382, unreported. In all three cases, counsel relied on the sheriff's sale coupled with the sheriff's sale appraisal. In no case did any party with knowledge testify at the BOR level or before this board.

[6] We reject the evidence in this case, just as we have done in the past, for two reasons. First, a sheriff's sale is presumed to be a forced sale, which does not create a presumption of value. Second, the sheriff's sale appraisal presented in this case does not rehabilitate the sale. We generally reject appraisals that are not tax-lien dated and when no appraiser appears to testify. Here, the appraisal is not tax-lien dated, no adjustments were made, nor did the appraiser appear to testify.

[7] We acknowledge the Ohio Supreme Court has carved out an exception to this general rule. See *Copley-Fairlawn City Sch. Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 ("*Team Rentals*"). In *Team Rentals*, the Supreme Court held this board should have given weight to a non-tax-lien dated appraisal when the appraisal's proponent testified about why the appraisal was created and a party relied upon the appraisal in a business or financial transaction. Id. at ¶¶30-31. However, the Supreme Court clarified *Team Rentals* in *Musto v. Lorain Cty. Bd. of Revision*, 148 Ohio St.3d 456, 2016-Ohio-8058. In *Musto* , the court held this board could disregard an appraisal that had been relied upon in a financial or business transaction "in the absence of direct testimony about the preparation and actual use of" the appraisal. Id. at ¶42; *Cynthia Ciccotti v. Cuyahoga Cty. Bd. of Revision* (Nov. 26, 2018), BTA No. 2018-352, unreported. Here, the appellant failed to provide "direct testimony about the preparation" of the appraisal. *Musto*, supra. We likewise have no idea where the appraiser obtained his or her data or what adjustments (if any) were made.

[8] We likewise acknowledge counsel's argument that we should remand this case with instructions for the BOR to subpoena the sheriff's sale appraisers. This board independently

determines value. If counsel wanted to subpoena the appraisers, he could have done so at a hearing before this board. He neither requested a hearing nor subpoenaed a third party. Thus, we find his argument without merit.

[9] For these reasons, we find the fiscal officer's value should be retained. See *Jakobovitch*, supra. We order the property valued as follows for tax year 2018:

PARCEL NUMBER 684-10-038

TRUE VALUE

$100,200

TAXABLE VALUE

$35,070

OHIO BOARD OF TAX APPEALS

CUYAHOGA FALLS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-1980
vs.	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CUYAHOGA FALLS CITY SCHOOLS BOARD OF EDUCATION
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For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
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SMERGS, LLC
Represented by:
GRETCHEN SMERGLIA
1821 PORTAGE TRAIL
CUYAHOGA FALLS, OH 44223

Entered Tuesday, September 29, 2020

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

[1] The appellant board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject real property, parcel number 02-03063, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties. We

note that the appellee property owner, Smergs LLC, submitted a letter that includes some additional statements that are not in the record from the BOR hearing. Because these statements are not properly part of the record and have not been subject to additional questions, we cannot consider them in our determination. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

[2] The subject property is improved with a three-unit medical office building. The fiscal officer initially assessed the subject's total true value at $389,930. The BOE filed a complaint with the BOR seeking an increase in value to $525,000 based on a September 2018 sale of the subject property. At the BOR hearing, the BOE submitted evidence that Smergs purchased the subject property for $525,000 on September 13, 2018. The BOE asserted that the value of the property should be increased to the purchase price. Gretchen Smerglia appeared on behalf of Smergs and asserted that the purchase price was inflated and did not represent the true value of the property.

[3] According to Smerglia's testimony, Smergs had purchased a chiropractic business using a business loan and sought to relocate the practice to a better part of town. In its search for a new location, Smergs responded to a listing for the lease of a vacant unit in the subject property, but that space did not meet Smergs' needs. Although the property was not listed for sale, the owner indicated he would be willing to sell it, which would allow Smergs to take over the office space that was occupied by the owner as a dental office and renovate the remaining units. Because Smergs could not obtain a loan in the amount necessary for the purchase, the transaction was seller-financed, and no down payment was made. The purchase price was based on an appraisal obtained by the seller plus some additional amount to account for inflation due to the lack of a down payment. Smerglia was unsure as to the amount of the appraisal or additional payment but acknowledged that the parties negotiated a market interest rate.

[4] Smerglia also testified regarding necessary repairs to the property and submitted an estimate for the cost of renovations. The two unoccupied offices had been vacant for a significant amount of time and required renovations to bring the spaces up to current standards. The parking lot also required repairs, as the chiropractic business, local police department, and a nearby church all utilized the parking lot at various times.

[5] At the conclusion of the hearing, the BOR gave additional time for Smerglia to provide a copy of the appraisal that formed the basis of the purchase price, but it does not appear that any appraisal was submitted. The BOR concluded that Smergs overpaid for the property after purchasing it under duress, and issued a decision retaining the fiscal officer's value. From this decision, the BOE filed the present appeal. On appeal, the BOE again argues that the sale price provides the best evidence of value, while Smergs relies on the challenges made regarding the seller-financing and purported premium due to the lack of down-payment.

[6] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). 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." *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.

[7] In the present appeal, it is undisputed that the property transferred from Joseph J.N.

D'Avellow, Trustee, to Smergs, LLC on September 13, 2018 for a recorded sale price of $525,000. We find that the BOR's challenges to the reliability of the sale are without merit. A lack of exposure to the market or seller financing are not sufficient to disqualify a sale for purposes of tax valuation. 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."); *Columbus Bd. of Edn. v. Fountain Square Assocs., Ltd.*, 9 Ohio St.3d 218, 220 (1984) ("The fact that appellee obtained favorable financing does not render the sales price unrepresentative of true value.").

[8] Additionally, we find that Smergs was not under duress to purchase the property and the sale was arm's-length. According to the testimony, Smergs was looking for a new location and freely negotiated the terms of the transaction based on its financial circumstances at the time. It was not forced to change locations nor was the prior owner in a position where he was forced to sell the property. Rather, both parties to the sale made business decisions based on their circumstances at the time. There is nothing about the circumstances of this sale that demonstrates the parties did not both act in their own best interest. See *Terraza*, supra, at ¶ 9, quoting *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410, 412 (1964).

[9] Finally, even if it were supported by the evidence, the BOR's conclusion that Smergs made a "bad deal" is not a reason to reject the sale as the best evidence of value. See, e.g., *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."). Accordingly, we find that the sale was arm's-length and provides the best indication of the true value of the subject property.

[10] It is therefore the order of this board that the true and taxable values of the subject

property, as of January 1, 2018, were as follows:

TRUE VALUE	TAXABLE VALUE
$525,000	$183,750

OHIO BOARD OF TAX APPEALS

JAMES J. HAAS, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-512
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JAMES J. HAAS
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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Entered Tuesday, October 6, 2020

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. (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

KETTERING CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2333 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KETTERING CITY SCHOOLS BOARD OF EDUCATION
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For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
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MONTGOMERY COUNTY
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UNO HOLDINGS, LLC
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Entered Tuesday, October 6, 2020

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 N64 00201 0023, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property is improved with a four-unit apartment building and was initially valued by the auditor at $113,390. The BOE filed a complaint with the BOR seeking an increase in value to $169,000. The BOR convened a hearing, at which the BOE presented evidence that the property sold in April 2018 for $169,000. After several unsuccessful attempts to notify the property owner of the hearing, no one appeared on its behalf and no evidence was submitted. Following the hearing, the BOR voted to increase the value of the property to the sale price but issued a decision maintaining the initially assessed valuation. From this decision, the BOE filed the present appeal, again relying on the sale.

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 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. 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.

In the present appeal, there is no dispute that the subject property sold via an arm's-length transaction on April 23, 2018, and the sale is reflected on the property record card. As noted by the BOR during its decision hearing, there has been no express challenge to the sale, nor has any other independent evidence of value been offered. Accordingly, we find that the sale was a recent, arm's-length transaction and constitutes the best evidence of 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, 2018, were as follows:

TRUE VALUE

$169,000

TAXABLE VALUE

$59,150

OHIO BOARD OF TAX APPEALS

TERRY D. DANIEL, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2020-1284
vs.	)	
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TERRY D. DANIEL
OWNER
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CINCINNATI, OH 45211

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

Entered Tuesday, October 13, 2020

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 responses thereto, 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. Appellant's response acknowledged that the notice of appeal was not filed with the BOR. To the extent appellant indicates that this board provides notification to the BOR, 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, this matter is determined to be jurisdictionally deficient and therefore is dismissed.

OHIO BOARD OF TAX APPEALS

THUNDER HOLDINGS, LLC, (et. al.), Appellant(s), vs. STARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2405, 2019-2406, 2019-2407, 2019-2408, 2019-2409 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THUNDER HOLDINGS, LLC
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For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
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CANTON, OH 44702-1413

PLAIN LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
PLAIN LOCAL SCHOOLS BOARD OF EDUCATION
901 44TH ST NW
CANTON, OH 44709

Entered Tuesday, October 13, 2020

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

[1] In these consolidated cases, Thunder Holdings LLC ("Thunder") and TRE Properties LLC ("TRE") (brother-sister companies) appeal from five decisions of the Stark County Board of Revision ("BOR") either retaining the auditor's value of the subject properties or adopting a new value for tax year 2018. We decide the case on the notices of appeal, the statutory transcripts, and appellants' briefs.

[2] While we address the facts of each property below, we begin by summarizing the law

governing our review. 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). To meet that burden, an 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. Neither the auditor nor the BOR bear the "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." *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 12 (quoting *Colonial Village v. Washington Cty. Bd. of Revision*, 123 Ohio St.3d 268, 2009-Ohio-4975, ¶ 23.). A recent arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that predates the tax-lien date by less than 24 months is generally recent. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612.2019-2408

[3] This property is located at 2637 Maxine Avenue NE. The auditor valued the property at $35,700 for tax year 2018, and Thunder filed a decrease complaint requesting a value of $21,500. The complaint references an October 2017 sale for $11,187. At the BOR hearing, Thunder's representative appeared and presented a settlement statement, which indicates the property sold for $11,187 in October 2017. The sale is also reflected on the parcel card. The representative indicated some renovations were made. The BOR reduced the value to $32,500, and Thunder appealed to this board.

[4] Upon review, we find the sale is the best evidence of value. Thunder has presented a facially qualifying sale, which shifts the burden to any party opposing the adoption of the sale price. See *Lone Star*, supra. The sale occurred less than 24 months before the tax-lien date; we presume the sale was recent. While Thunder's representative indicated some renovations were completed, we do not find the sale should be disregarded based on those renovations. Thunder's representative testified Thunder spent approximately $10,000 in renovations on the property; however, dollar-for-dollar costs do not necessarily correlate to value. *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported (citing *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996)). Thunder's representative also testified the sale required Thunder to satisfy existing debt on the property. However, we find no tangible evidence in the record about the satisfaction of those debts or the effect on the sale price, e.g., a purchase agreement allocating the price. Therefore, we find the sale price has not been rebutted and is the best, most persuasive evidence of value.

[5] We order the property valued as follows for tax year 2018:

PARCEL NUMBER 5207572

TRUE VALUE

$11,190

TAXABLE VALUE

$3,920

2019-2407

[6] This property is located at 2915 Fairmount Street NE. The auditor valued the property at $37,700, and Thunder filed a decrease complaint requesting a value of $20,000. The complaint references a November 2016 sale for $20,000. At the BOR hearing, Thunder's representative supplied the settlement statement showing the property sold for $20,000 in November 2016. Thunder's representative testified almost no post-sale renovations were made. The BOR reduced

the value to $32,500, and Thunder appealed. Upon review, we find the sale is the best, most persuasive evidence of value. The sale is facially qualifying and recent to tax-lien date. Because no rebuttal evidence has been submitted by any party, we order the property valued as follows for tax year 2018:

PARCEL NUMBER 5206858

TRUE VALUE

$20,000

TAXABLE VALUE

$7,000

2019-2406

[7] This property is located at 2726 Dorothy Avenue NE. The auditor valued the property at $34,500 for tax year 2018. Thunder filed a complaint requesting a value of $23,000 per a September 2016 sale for that amount. At the BOR hearing, Thunder presented the settlement statement, which confirms the facts of the sale. The sale is also reflected on the parcel card. The BOR retained the auditor's value, and Thunder appealed. Upon review, we find the sale is the best, most persuasive evidence of value. The sale is facially qualifying and recent to tax-lien date. Because no rebuttal evidence has been submitted by any part, we order the property valued as follows for tax year 2018:

PARCEL NUMBER 5205224

TRUE VALUE

$23,000

TAXABLE VALUE

$8,050

2019-2409

[8] This property is located at 2633 Dorothy Avenue NE. The auditor valued the property at $35,100 for tax year 2018. TRE filed a complaint requesting a value of $18,800 per a February 2018

sale. At the BOR hearing, TRE's representative supplied the settlement statement showing the sale price was $18,740. The sale is likewise reflected on the parcel card. The BOR retained the auditor's value, and TRE appealed.

[9] Upon review, we find the sale is the best, most persuasive evidence of value. A sale that post-dates the tax-lien date also creates a rebuttable presumption of value. *Lone Star*, supra. However, no party has presented rebuttal evidence. Accordingly, we order the property valued as follows for tax year 2018:

PARCEL NUMBER 5207151

TRUE VALUE

$18,740

TAXABLE VALUE

$6,560

2019-2405

[10] This property is located at 2644 Dorothy Avenue NE. The auditor valued the property at $36,100 for tax year 2018, and Thunder filed a decrease complaint with an opinion of value at $26,000. The complaint references a September 2016 sale for $15,000. At the BOR hearing, Thunder presented the settlement statement, which states a sale price of $15,000 and a settlement date of September 19, 2016. The BOR retained the auditor's value, and Thunder appealed.

[11] Upon review, we find the sale is the best, most persuasive evidence of value. The sale is facially qualifying and recent to tax-lien date. While Thunder's representative indicated some renovations were completed, we do not find the sale should be disregarded based on those renovations. Dollar-for-dollar costs do not necessarily correlate to value. *Gallick,* supra. Because no rebuttal evidence has been submitted by any part, we order the property valued as follows for tax year 2018:

PARCEL NUMBER 5204566

TRUE VALUE

$15,000

TAXABLE VALUE

$5,250

OHIO BOARD OF TAX APPEALS

AKRON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2018-1394 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AKRON CITY SCHOOLS BOARD OF EDUCATION
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For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
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SUMMIT COUNTY
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7TH FLOOR
AKRON, OH 44308

III CASCADE BUILDING/FIRSTMERIT BANK OF OHIO NKA FIRST MERIT BANK NA (FIRST MERIT CORPORATION)HUNT
Represented by:
STEVEN R. GILL
SLEGGS, DANZINGER & GILL CO., LPA
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CLEVELAND, OH 44113

Entered Tuesday, October 13, 2020

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 with the value of the subject property, parcel 68-26126, for tax year 2017. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, record of this board's hearing, and post-hearing written argument.

[2] The subject property is one building, situated above a separately parceled parking garage owned by the City of Akron, in a multi-building office campus. The property owner filed a complaint with the BOR, requesting the subject property's value be reduced from $4,914,010 to $3,750,000. The BOE filed a countercomplaint, objecting to the request. At the BOR hearing on the matter, both parties appeared through counsel to submit argument and/or evidence. In its presentation, the property owner submitted the appraisal report and testimony of appraiser Christian M. Smith, who opined the value of the subject property to be $4,750,000 as of January 1, 2017. Smith was examined, and cross-examined, about the underlying data and methodologies used to derive his opinion of value. The BOE argued that the BOR should not accept Smith's appraisal report and testimony as the best evidence of value because he did not consider a recent sale of a nearby property and, instead, relied upon properties further away. The BOR voted to accept Smith's appraisal report as the best indication of value and subsequently issued a written decision to that effect. The BOE appealed to this board.

[3] At this board's hearing, both parties appeared through counsel to submit additional argument and/or evidence into the record. In its presentation, the BOE submitted the appraisal report and testimony of appraiser John W. Emig, which opined the value of the subject property to be $7,050,000 as of January 1, 2017, and the property owner resubmitted Smith's appraisal report. The property owner submitted additional testimony from Smith. Emig and Smith were both examined, and cross-examined, about the underlying data and methodologies used to derive their opinions of value. Both appraisers also provided commentary about the opposing appraisal report. Only the property owner submitted a post-hearing brief to assert its position more fully.

[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. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. Of*

Edn. v. Franklin Cty. Bd. of Revision, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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.

[5] An appealing party may generally carry that party's burden by showing 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 OhioSt.3d 157, 2005-Ohio-4385, ¶9. A narrow exception to that general principle, however, is the *Bedford* rule announced in *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 competent 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. When the *Bedford* rule applies, the school board must do more than rely on the auditor's valuation; the school board must "come forward with affirmative evidence of the subject property's value." *Orange City Schools Bd. Of Edn. v. Cuyahoga Cty. Bd. of Revision* (Sept. 6, 2018), BTA No. 2017-1707, unreported. The *Bedford* rule applies when: 1) the property owner filed the complaint or countercomplaint; 2)the board of revision ordered a reduction valuation based on competent evidence offered by the property owner; 3) the board of education appeals to this board; 4) the board of revision's determination is based on appraisal evidence rather than a sale. *Gahanna-Jefferson City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Sept. 10, 2018), BTA No. 2017-1178, unreported. Based upon our review of the record, we find that the *Bedford* rule applies to this matter unless the BOE can demonstrate that the property owner's appraisal report relied upon data and/or

methodologies that amount to legal error. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 700, 2016-Ohio-8375.

[6] We proceed to consider the parties' competing appraisal reports, i.e., Smith's appraisal report for the property owner versus Emig's appraisal report for the BOE. In his appraisal report, Smith began his analysis by determining the subject property's highest and best use, "as vacant" and "as improved," would be its current "office related use." Statutory Transcript at Smith Appraisal Report at 32. Smith determined that the cost approach to valuing real property was inapplicable given the age of the improvements situsued on the subject property; however, he fully developed the sales comparison and income approaches to valuing real property. Under the sales comparison approach, he compared the subject property's features to the features of five comparable sales that occurred throughout northern Ohio and Pittsburgh, Pennsylvania between October 2015 and February 2018. After adjusting the comparable properties for important differences with the subject property, i.e., market condition, age, and location, he concluded to an indicated value of $47.77 per square foot or $4,700,000.

[7] Under the income approach to value, Smith surveyed seven lease comparables in the Akron market to determine market rental rates "ranging from $10.00 to $30.75 per square foot, with varying reimbursement methodologies." Id. at 39. He determined the subject property's actual rental rate of $15.00 per square foot reflected market rent, which he applied to the subject property's 95,393 of office space and 3,000 of retail space, to conclude to potential gross income of $1,475,895. From that number, he deducted 11% ($162,348) to account for vacancy and credit loss to conclude to effective gross income of $1,313,547. After deducting $607,134 for expenses, i.e., utilities, management fee, and reserves for replacement, he concluded to net operating income of $706,413 to which he capitalized at 14.72% (including a 3.22% tax additur) before concluding to an indicated value of $4,800,000. He reconciled the indicated values, giving equal weight to

both the sales comparison and income approaches, and finally concluded the subject property's value to be $4,750,000 as of January 1, 2017.

[8] In his appraisal report, Emig began his analysis by determining the subject property's highest and best use, "as vacant," would be a combination of office and retail space and, "as improved," would be its current use. He also determined that the cost approach to valuing real property was inapplicable given the age of the improvements situsued on the subject property; however, he fully developed the sales comparison and income approaches to valuing the real property. Under the sales comparison approach, he began his analysis by determining the value of the underlying land, the parking garage, because it was separately owned and parceled. As such, he compared the features of the 0.57-acre site size necessary to support the subject property to the features of four sales of properties that were either improved with surface parking lots or buildings at the end of their useful lives that were subsequently demolished. The comparable sales were located in close proximity to the subject property and occurred between February 2011 and October 2013. After adjusting the comparable sales for differences with the 0.57-acre site size, he concluded to a land value of $500,000. He continued his analysis, under the sales comparison approach, by determining an opinion of value for the combined land and building. In doing so, he compared the subject property's features to the features of nine comparable sales that occurred in Summit County and neighboring Stark County between January 2013 and May 2018. After adjusting the comparable sales for differences with the subject property's land and building characteristics, he concluded to an indicated value of $7,300,000 after he deducted $500,000 for land value.

[9] Under the income approach, Emig surveyed twenty-two lease comparables (four of which were located in the same vicinity as the subject property) in the Akron market to determine a market rental rate of $19.00 per square foot, which he applied to the subject property's 98,524

net rentable area. In doing so, he concluded to gross potential income of $1,871,956 from which he deducted 10% ($187,196) to account for vacancy and credit loss to conclude to effective gross income of $1,684,476. After deducting $792,047 for expenses, i.e., utilities, management fee, and reserves for replacement, he concluded to net operating income of $892,429 to which he capitalized at 12.22% (including a 3.22% tax additur) before he concluded to an indicated value of $6,800,000 after he deducted $500,000 for land value. He reconciled the indicated values, giving equal weight to both the sales comparison and income approaches, and finally concluded the subject property's value to be $7,050,000 as of January 1, 2017.

[10] As we evaluate the competing appraisal reports, we acknowledge the appraisal of real property is not an exact science but is instead an opinion. *Cyclops Corp. v. Richland Cty. Bd. Of Revision* (May 30, 1985), BTA No. 1982-A-566 et seq., unreported. 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. This board is tasked with independently determining the value of real property from all the evidence in the record before us. We look not for a perfect opinion of value, but the most probative one.

[11] Upon review, we find Emig's appraisal report to be the best indication of the subject property's value. When we compare the appraisers' data and methodologies used under the sales comparison approach to value, we find Emig's analysis best reflects the subject property's value. His use of comparable data from Summit County and neighboring Stark County best demonstrated the market in which the subject property would have competed on the tax lien date. Smith relied upon market data from a wider geographic area, i.e., from Toledo and Cleveland in Ohio and Erie and Pittsburgh in Pennsylvania. We do not conclude that Smith's use of market data from areas outside of the Summit County area to be improper, generally. See, *W. Carrollton*

City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision, 2nd Dist. No. 27679, 2018-Ohio-2322, ¶47 ("[E]ach case is factually different * * * and that the BTA's rejection of the valuation provided by an appraiser in one case does not automatically impugn that appraiser's qualifications or his opinion in another case. Appraisers make judgments based on the facts of each case, and those facts differ."). However, we find it unnecessary, in this case, to rely on market data from other areas when there was ample market information within the same vicinity and general area as the subject property. Thus, it is unclear why Smith found it necessary to stray so far from the Summit County area. Furthermore, we acknowledge that Emig's comparable sales were further from the tax lien date than Smith; however, we find Emig's adjustments for market conditions to be easier to quantify and to support.

[12] When we compare the appraisers' data and methodologies used under the income approach to value, we find Emig's analysis best reflects the subject property's value. As his appraisal report and testimony demonstrate, he has a breadth and depth of knowledge of the Akron and Summit County area, which Smith did not have. For example, Smith was seemingly unaware that the Law Building, which he used a lease comparable, was at the end of its useful life as a commercial office building and was being converted to multifamily residential use. Similarly, neither Smith nor Emig testified that they had information that the subject property's use as a commercial office building would be coming to an end. Such conversion is also incompatible with Smith's highest and best use conclusions. Additionally, we question his conclusion of effective gross income. Though he relied upon lease comparables that were a combination of full service, modified gross, and triple net leases, he did not consider rent reimbursements in his calculation of potential rental income. If we exclude the Law Building from the lease comparables, of the remaining six leases, five of the lease comparables are structured such that tenants would reimburse the landlords for some expenses. And there is no indication that Smith adjusted his conclusion of

market rent upward to reflect the difference in the data and his conclusion not to include expense reimbursements in his market rent determination.

[13] 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 subject property's value is best reflected by Emig's appraisal report. It is, therefore, the order of this board that the subject property shall be valued as follows as of the relevant tax lien date:

True Value: $7,050,000

Taxable Value: $2,467,500

OHIO BOARD OF TAX APPEALS

LINDA J. GILLINOV, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2020-807
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LYNDA J. GILLINOV
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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 Tuesday, October 13, 2020

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. (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.

COCITA PROPERTIES, LTD., (et. al.),
Appellant(s),

vs.

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

CASE NO(S).
2019-2505, 2019-2508
REAL PROPERTY TAX DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - COCITA PROPERTIES, LTD.
Represented by:
KAREN H. BAUERNSCHMIDT
6700 BETA DRIVE
SUITE 100
MAYFIELD VILLAGE, OH 44143

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, October 13, 2020

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

[1] The property owner appeals decisions of the board of revision ("BOR"), which determined the value of the subject properties, parcels 121-17-010 and 002-34-058, for tax year 2018. We proceed to consider these consolidated matters based upon the notices of appeal and certified statutory transcripts.

[2] The property owners filed complaints with the BOR, requesting that parcel 121-17-010 be reduced from $67,900 to $40,000 and parcel 002-34-058 be reduced from $48,300 to $25,000. At the BOR hearings on the matters, the property owner appeared through counsel to submit argument and/or evidence in support of the complaints. Counsel noted that the property

owner intended to submit the testimony of appraiser Irina Baker; however, the BOR denied the property owner's request for continuances to accommodate Baker's travel schedule. Nevertheless, the property owner submitted appraisal reports performed by Baker, which valued each of the subject properties as of the tax lien date. Based upon the evidence submitted, the property owner amended its opinions of value to be consistent with the appraisal reports. The BOR members noted that they had questions about Baker's selection of sales comparables and inclusion of supporting documentation about them. According to the BOR hearing journals, the BOR members also questioned how the appraiser adjusted for differences in condition and use of post-foreclosure and government backed sales. The BOR subsequently issued decisions, which retained the subject properties' initially assessed values. These appeals ensued.

[3] Though the property owner opted to participate in the board's small claims process, the board determined that the commercial nature of the subject properties precluded such participation, at the request of the county appellees. R.C. 319.302(A)(1); R.C. 5703.021(B)(1). As a result, the small claims hearings were rescheduled for full merit hearings. However, this board cancelled the hearings because neither the property owner nor county appellees disclosed evidence within their respective time frames to do so. We will, therefore, decide these consolidated matters based upon the records developed before the BOR.

[4] When cases are appealed from a board of revision to this board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[C]ase law has repeatedly instructed [this board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. Of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This board must review the record to independently determine real property 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.

[5] We begin our analysis with the appraisal reports, which developed the income, sales, and cost approaches to value, submitted by the property owner. As to parcel 121-17-010, an apartment building comprised of four, three bedroom and one and one-half baths units, Baker commenced the income approach by relying upon the rental income of three, four-unit apartment buildings to determine market rental income of $2,400 per month (or $600 per unit). However, it appears that she relied upon the actual monthly rental income of parcel 121-17-010 of $2,675, to which she applied a gross-rent multiplier ("GRM") of 20, to conclude to an indicated value of $53,500. For the sales-comparison approach, she compared the parcel's features to the features of three comparable properties located within a three-mile radius that sold in 2017 and 2018 and two comparable properties located within an approximate two-mile radius that were then "currently" available for sale. After adjusting the three comparable sales for differences with the parcel, she concluded to an indicated value of $38,800. For the cost-approach, she determined a land value of $6,000, relied on Marshall and Swift to determine the depreciated, replacement-cost new of the building improvement value of $32,124, added site improvement value of $3,000, to conclude to an indicated value of $41,124. She placed weight on all three approaches of value to finally conclude the value of parcel 121-17-010 to be$ 40,400 as of January 1, 2018.

[6] As to parcel 002-34-058, an apartment building comprised of four, two bedroom and one baths units, Baker commenced the income approach by relying upon the rental income of three, four-unit apartment buildings to determine market rental income of $2,200 per month (or $600 per unit). However, it appears that she relied upon the actual monthly rental income of parcel 002-34-058 of $2,107, to which she applied a gross-rent multiplier ("GRM") of 20, to conclude

to an indicated value of $42,140. For the sales-comparison approach, she compared the parcel's features to the features of three comparable properties located within a three-mile radius that sold in 2017 and 2018 and two comparable properties located within an approximate two-mile radius that were then "currently" available for sale. After adjusting the three comparable sales for differences with the parcel, she concluded to an indicated value of $35,000. For the cost-approach, she determined a land value of $7,000, relied on Marshall and Swift to determine the depreciated, replacement-cost new of the building improvement value of $30,787, added site improvement value of $3,000, to conclude to an indicated value of $40,787. She placed weight on all three approaches to finally conclude the value of parcel 002-34-058 to be $36,000 as of January 1, 2018.

[7] Upon review, we do not find Baker's appraisal reports to be competent, credible, and probative evidence of value for a number of reasons. First, the author of the appraisal reports failed to testify before either the BOR or this board. This board generally rejects an appraiser's opinion of value when the appraiser does not appear before either the BOR or this board. See *Speca v. Montgomery Cty. Bd. of Revision* (Mar. 25, 2008), BTA No. 2006-K-2144, unreported. Compare *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St. 3d 503, 2016-Ohio-1485. As we explained in *Speca*, when the appraiser does not appear to testify, he or she cannot speak to the appraiser's credentials, authenticate or identify the appraisal report, or describe the efforts undertaken to estimate value. Importantly, the appraiser is not available for cross-examination by the opposing party or to respond to questions posed by this board. See *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No.01-V-770, unreported. Like the BOR, we have unanswered questions about the underlying data and methodologies used to support her opinions of value, which will be explained more fully below.

[8] Second, we question the appraisal reports' analyses under the income approach to

value. Baker determined market rent but proceeded to use each of the subject properties' actual monthly rental income, which were higher and lower than market rent, in her analysis. We can glean no basis to deviate from market rent. It is well settled that "an appraiser may employ actual income as reduced by actual expenses if both amounts conform to market." *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 552, 555 (1996). Furthermore, the record is void of any information about the basis for the GRM, which is particularly relevant as we are unable to review the properties utilized in the analysis and their similarity to the subject properties, such as their expense ratios and the basis for their reported rental income. The Appraisal of Real Estate (14th Ed.2013) explains that a GRM may be used to determine a property's value by comparing the income-producing characteristics of properties. It goes on to caution, however, that appraisers must be careful when attempting to employ this approach because, among other reasons, "[p]roperties with similar or even identical multipliers can have very different operating expense ratios and, therefore, may not be comparable for valuation purposes." Id. at 507. 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).

[9] Third, we question the appraisal reports' analyses under the sales comparison approach. In the appraisal report for parcel 121-17-010, Baker applied gross adjustments ranging from 21.4% to 57.5% and, in the appraisal report for parcel 002-34-058, she applied gross adjustments ranging from 16.9% to 28.5%. Such sizeable adjustments suggest that the comparable sales were not truly comparable to the subject properties. Moreover, we are unable to discern the bases for reliance upon alleged comparable properties that were dissimilar from the subject properties, i.e., relying upon apartment buildings with two bedroom and one bathroom apartment units when parcel 121-27-010 was comprised of three bedroom and one and one-half bathroom

units and with one bedroom and one bathroom units when parcel 002-34-058 was comprised of two bedroom and one bath units. We acknowledge that Baker adjusted for differences in the number of bedrooms, but not the number of bathrooms, but we cannot conclude that that adjustment adequately accounted for the market in which the subject properties would have competed on the tax lien date.

[10] Fourth, we question the appraisal reports (admittedly) low reliance on the cost approach to value. We do not find the cost approach to value to be relevant given the age of the improvements, approximately one-hundred years old and older. The court held in *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, at ¶12 "[t]he cost method is appropriately applied when * * * a building is a new structure not substantially depreciated. The Appraisal of Real Estate (12th Ed. 2001) 354 ('Because cost and market value are usually more closely related when properties are new, the cost approach is important in estimating the market value of new or relatively new construction[]')." The calculation of depreciation becomes more difficult as a property ages and we cannot ascertain, on this record, whether Baker adequately determined depreciation of the improvements situsued on the subject properties.

[11] We are mindful of our duty to independently determine the subject properties' values.*Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to satisfy the evidentiary burden on appeal. As such, we conclude that the subject properties' values shall remain as initially assessed It is, therefore, the order of this board that the subject properties' values are as follows as of the relevant tax lien date:

Parcel Number 121-17-010

True Value: $67,900

Taxable Value: $23,770

Parcel Number 002-34-058

True Value: $48,300

Taxable Value: $16,910

OHIO BOARD OF TAX APPEALS

DENNIS AND SANTINA MURPHY, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1137 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:
For the Appellant(s) - DENNIS AND SANTINA MURPHY
Represented by:
SANTINA MURPHY
7568 SANCTUARY CIR.
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 Tuesday, October 13, 2020

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. 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

GLORIA DUNCAN, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	Appellee(s). CASE NO(S). 2020-922 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GLORIA DUNCAN
OWNER
8039 CORY AVE
CLEVELAND, OH 44103

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

Entered Tuesday, October 27, 2020

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. (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

EAST SIDE MEDICAL OFFICE PROPERTIES, LLC, (et. al.), Appellant(s), vs. CLERMONT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-852 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EAST SIDE MEDICAL OFFICE PROPERTIES, LLC
Represented by:
JAMES POSTON
POSTON SEIFRIED & SCHLOEMER, 2039 D
2039 DIXIE HIGHWAY
FT MITCHELL, KY 41011

For the Appellee(s) - CLERMONT COUNTY BOARD OF REVISION
Represented by:
JASON A. FOUNTAIN
ASSISTANT PROSECUTING ATTORNEY
CLERMONT COUNTY
101 EAST MAIN STREET
BATAVIA, OH 45103

Entered Tuesday, October 27, 2020

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, appellant's response, 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 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 deputy auditor, asserting that appellant's notice of appeal was not filed with the Clermont County Board of Revision. Appellant's response did not provide documentation to demonstrate that such filing was mailed or that it was timely made. 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

PHILLIP A. MATISH, SR, (et. al.),

Appellant(s),
vs.

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

Appellee(s).

CASE NO(S). 2020-1283
REAL PROPERTY TAX DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PHILLIP A. MATISH, SR
OWNER
2865 LORETO DRIVE
WILLOUGHBY HILLS, OH 44094

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 Tuesday, November 3, 2020

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 in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was filed with the BOR thirty-four 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

BNH PLAZA LLC, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2020-1338
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BNH PLAZA LLC
Represented by:
YISRAEL HARRIS
MANAGER
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

CLEVELAND HEIGHTS UNIVERSITY HEIGHT BOARD OF EDUCATION
Represented by:
ROBERT A. BRINDZA
BRINDZA MCINTYRE & SEED LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Tuesday, November 3, 2020

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 in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was filed with the BOR forty-four 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

THOMAS D. WILKINSON, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-1425
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - THOMAS D. WILKINSON
Represented by:
THOMAS WILKINSON
321 STONER ROAD
CLINTON, OH 44216

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

Entered Tuesday, November 3, 2020

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, appellant's response, 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 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

DYE LEASING LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-1516
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:
For the Appellant(s) - DYE LEASING LLC
Represented by:
ROBERT EICHER
FINANCE MANAGER
1846 S MAIN ST
AKRON, OH 44301

For the Appellee(s) - SUMMIT COUNTY BOARD OF REVISION
Represented by:
UNA LAKIC
ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVENUE
AKRON, OH 44308

Entered Tuesday, November 3, 2020

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. (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 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

LATASHA BROWN, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-1566
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LATASHA BROWN
Represented by:
LATASHA JAMISON
OWNER
DREAMTEAM REALTY, INC.
17419 BROADWAY AVENUE
MAPLE HTS, OH 44137

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

Entered Tuesday, November 3, 2020

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, appellant's response, 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 in this matter indicates that appellant's notice of the appeal was filed with this board fifty-three days after the mailing of the BOR's decision. Appellant's response 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

BACON ROAD DEVELOPMENT, LLC, (et. al.), Appellant(s), vs. LAKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1105 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BACON ROAD DEVELOPMENT, LLC
Represented by:
JOSHUA FRAVEL
GRIFFITH LAW OFFICES
522 N. STATE ST.
WESTERVILLE, OH 43082

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

PAINESVILLE CITY LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
PAINESVILLE CITY LOCAL SCHOOLS BOARD OF EDUCATION
58 JEFFERSON ST
PAINESVILLE, OH 44077

Entered Tuesday, November 3, 2020

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 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

BACON ROAD DEVELOPMENT, LLC, (et. al.), Appellant(s), vs. LAKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1106 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BACON ROAD DEVELOPMENT, LLC
Represented by:
JOSHUA FRAVEL
GRIFFITH LAW OFFICES
522 N. STATE ST.
WESTERVILLE, OH 43082

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

RIVERSIDE LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID A. ROSE
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Tuesday, November 3, 2020

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 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

STZ VENTURES LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-1214
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
DELAWARE COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - STZ VENTURES LLC
Represented by:
TODD ERDY
82 LINCOLN ST.
POWELL, OH 43065

For the Appellee(s) - DELAWARE COUNTY BOARD OF REVISION
Represented by:
TYLER D. LANE
ASSISTANT PROSECUTING ATTORNEY
DELAWARE COUNTY
145 NORTH UNION STREET
3rd FLOOR
DELAWARE, OH 43015

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

Entered Tuesday, November 3, 2020

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

The board of education (BOE) moves this board to dismiss this matter on the basis it was not filed with the county board of revision, as well as to issue an order compelling the property owner to provide responses to discovery. Appellant did not respond to the motions. 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 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. Furthermore, the motion to compel is moot and is, therefore, denied.

OHIO BOARD OF TAX APPEALS

THE BENNICO DILLY GROUP LLC, (et. al.), Appellant(s), vs. OTTAWA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1467 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THE BENNICO DILLY GROUP LLC
Represented by:
PHILIP STRINE
OWNER
THE BENNICO DILLY GROUP LLC
5644 E. HARBOR RD. REAR
LAKESIDE MARBLEHEAD, OH 43440

For the Appellee(s) - OTTAWA COUNTY BOARD OF REVISION
Represented by:
JAMES VANEERTEN
OTTAWA COUNTY PROSECUTING ATTORNEY
OTTAWA COUNTY
315 MADISON ST., 2ND FLR
PORT CLINTON, OH 43452

DANBURY 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

Entered Tuesday, November 3, 2020

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. (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

GARY W & CONNIE R MCNAIR, (et. al.), Appellant(s), vs. OTTAWA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1457 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - GARY W & CONNIE R MCNAIR
Represented by:
GARY MCNAIR
153 LAUREL AVENUE
LAKESIDE MARBLEHEAD, OH 43440

For the Appellee(s) - OTTAWA COUNTY BOARD OF REVISION
Represented by:
JAMES VANEERTEN
OTTAWA COUNTY PROSECUTING ATTORNEY
OTTAWA COUNTY
315 MADISON ST., 2ND FLR
PORT CLINTON, OH 43452

DANBURY 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

Entered Thursday, November 5, 2020

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

The county appellees move to dismiss this matter on the basis that the notice of appeal was not filed with the county board of revision ("BOR"). This matter is decided upon the motion, appellants' response, the statutory transcript certified by the 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 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. Appellants argue that a notice of appeal was mailed to the Ottawa County Auditor, however they did not provide documentation to demonstrate 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

NASSIM KANJ, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-943
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NASSIM KANJ
Represented by:
NASSIM KANJI
25351 MARSDON DRIVE
EUCLID, OH 44132

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, November 10, 2020

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. (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

EDWARD RAMASKA, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-927
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EDWARD RAMASKA
1772 EDGEFIELD RD
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 Tuesday, November 10, 2020

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 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

TERRENCE L. SCOTT AND MARILYN SCOTT, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-513 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TERRENCE L. SCOTT AND MARILYN SCOTT
Represented by:
TERRANCE & MARILYN SCOTT
OWNERS
7101 REGINA LANE
OLMSTED TOWNSHIP, OH 44138

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
RENO J. ORADINI, JR.
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, November 10, 2020

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 provided such appeal is filed with this board *and the BOR within thirty days* after notice of the decision of the county BOR is mailed. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that

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

The record does not demonstrate that appellants filed such notice with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MARIJOY HALITZKA, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-751
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LORAIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - MARIJOY HALITZKA
3151 CLEVELAND BLVD
LORAIN, OH 44052

For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
Represented by:
CARA FINNEGAN
ASSISTANT PROSECUTING ATTORNEY
LORAIN COUNTY
225 COURT STREET
3RD FLOOR
ELYRIA, OH 44035

Entered Tuesday, November 10, 2020

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

[1] The property owner appeals a decision of the Board of Revision ("BOR"), which dismissed the complaint filed for the subject property, parcel 03-00-057-111-003, for tax year 2019. We proceed to consider this matter based upon the notice of appeal and statutory transcript certified pursuant to R.C. 5717.01.

[2] The subject property was initially assessed at $60,770. The property owner filed a complaint with the BOR. On line 9 of the complaint, the property owner listed three different parcels and corresponding sales prices. Because the property owner did not provide an opinion of value for the subject property, the BOR determined that it lacked jurisdiction to consider whether the subject property had been erroneously valued. The BOR issued a decision that

dismissed the property owner's complaint and this appeal ensued. Because our jurisdiction is derivative, the only issue before us is the propriety of the BOR's dismissal.

[3] For a complaint to be valid, it must include all information that goes to the core of procedural efficiency. *Cleveland Elec. Ilium. Co. v. Lake Cty. Bd. of Revision*, 80 Ohio St.3d 591 (1998). Further, the Supreme Court has held that "the requirement to state the amount of value runs to the core of procedural efficiency and is therefore jurisdictional." *Shinkle v.Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397, ¶22. As such, a complainant's failure to specify an opinion of value in the complaint means that the complaint fails to invoke the jurisdiction of a board of revision. Id. The complaint must contain this information because the General Assembly requires the board of revision to give notice to affected parties, but only if the requested reduction or increase is $50,000 or more in fair market value ($17,500 or more in taxable value). See R.C. 5715.19(B). When a complaint fails to provide an opinion of value, the board of revision is unable to verify whether the required notices should be sent.

[4] Here, it is undisputed that the property owner's complaint failed to provide an opinion of value for the subject property. Though the property owner referenced the sales prices of other properties, ranging from $29,500 to $45,050, there is no way to discern exactly how those properties' sales prices relate to her opinion of value for the subject property.

[5] Based upon the foregoing, we find that the BOR properly determined that it lacked jurisdiction to consider the merits of the underlying complaint. Therefore, we affirm the BOR's decision. Similarly, we also conclude that this Board lacks jurisdiction to consider the issue of the subject property's value for tax year 2019.

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1352 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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

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

BLUESHORE PROPERTIES, LLC
8699 APPLERIDGE CIRCLE
PICKERINGTON, OH 43147

Entered Tuesday, November 10, 2020

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

[1] The Board of Education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 010-024482-00, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and record of this Board's hearing.

[2] The BOE filed a complaint with the BOR, requesting the subject property be revalued from $166,000 to $325,000 to reflect the price at which it transferred in January 2019. The

property owner filed a countercomplaint, objecting 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. In its presentation, the BOE submitted sale documents, which demonstrated the property owner's $325,000 purchase of the subject property in January 2019. Based upon the sale documents, the BOE requested that the subject property be revalued accordingly. In its presentation, the property owner submitted the testimony of its member Mario Grilli who testified about the facts and circumstances of the subject sale. He testified that the property owner needed space to expand its business, which was located adjacent to the subject property, and, over the years, had unsuccessfully attempted to purchase the subject property. The property owner eventually increased its offer to $325,000, which was accepted and culminated in the subject sale. He argued that he overpaid for the subject property when considered in light of comparable sales. Grilli was examined and cross-examined by the BOR members and the BOE. At the BOR decision hearing, the BOR members determined that the subject sale was not indicative of the subject property's value because such sale was not conducted at arm's-length and subsequently issued a decision that retained the subject property's initially assessed value. This appeal ensued.

[3] At this Board's hearing, both parties appeared to supplement the record. In its presentation, the BOE submitted documents obtained from the property owner through discovery, i.e., purchase agreement, property inspection report, settlement statement, and mortgage encumbering the property, to assert that the subject sale had been an arm's-length transaction that reflected the subject property's value. Grilli provided additional testimony about the facts and circumstances of the subject sale and asserted that comparable sales demonstrated that the property owner overpaid for the subject property.

[4] Before we discuss the merits of this appeal, we must first dispose of a preliminary issue. As noted above, Grilli appeared on behalf of the property owner at this Board's hearing. In doing so, he submitted argument (arguing in favor of the BOR decision) and documentary evidence (comparable sales) in support of the property owner's position. "[I] proceedings before this Board, acts of advocacy, i.e., making legal argument and examining witnesses, constitute the unauthorized practice of law and will not be permitted by this Board. See *Richman Properties, L.L.C. v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 549, 2014-Ohio-2439, ***; *Dayton Supply & Tool Co., Inc. v. Montgomery Cty. Bd. of Revision*, 111 Ohio St.3d 367,2006-Ohio-5852." *Scaglione v. Cuyahoga Cty. Bd. of Revision* (May 21, 2018), BTA No. 2017-984, unreported at 2. (Parallel citation omitted.) Because there was no indication that Grilli was an attorney licensed to practice of law in the State of Ohio, we strike the argument and documents and will not consider them in our analysis. We will, however, consider his testimony about the facts and circumstances of the subject sale.

[5] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). 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. 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.

[6] Here, upon presentation of sale documents, the BOE created a rebuttable presumption that the property owner's $325,000 purchase of the subject property reflected its value as of the tax lien date. Neither the property owner nor BOR dispute the minimal details of the sale. The property owner asserted that it overpaid for the subject property and the BOR determined that the subject sale was not conducted between parties acting at arm's length. We do not find merit with their positions.

[7] The property owner asserted that it was forced to overpay for the subject property because of pressing business needs. 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 one 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. Here, at the BOR hearing, Grilli testified that the property owner would not have gone out of business if it did not purchase the subject property. The record is also void of any other evidence to suggest that the property owner was faced with "survival on the one hand and

swift and sure corporate death (bankruptcy) on the other hand." *Lakeside*, supra, at 549. The property owner's desire to purchase the subject property, its desire to grow its business, reflected its objective for participating in the transaction and does not rise to the level of "duress" necessary to invalidate the subject sale for tax purposes. This Board has repeatedly held that all buyers and sellers have subjective motives in any transaction and 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, at 11, unreported ("A negotiated purchase price is not invalidated merely because a purchaser later believes he made a bad deal.").

[8] Likewise, we find no merit to the BOR's conclusion that the subject sale was not conducted at arm's-length because there were no negotiations between the parties, because the subject property was not offered on the open market, and because no realtors were involved in the subject sale. The record contains sufficient evidence to demonstrate that the parties negotiated the sale. Grill testified, at the BOR hearing, that he made increasing offers to purchase the subject property, which the then property owner/seller repeatedly turned down. At this board's hearing, Grilli testified that the then property owner/seller counteroffered to sell the subject property for $400,000. The record clearly demonstrates that the parties settled at a $325,000 purchase price. Thus, there is no basis to conclude that the parties did not negotiate the subject sale price. Similarly, this Board has previously held that "merely because a property is not listed on the open market, or is offered at a 'take it or leave it' selling price, and/or a sale takes place between persons having prior business relations and/or friendships does not, per se, mandate the rejection of a sale." *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Mar. 23, 2010), BTA No. 2008-K-202, unreported. See, also *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (Apr. 28, 2009), BTA No. 2006-H-1622, unreported at 9 ("[T]his board has held that sale offers not made on the open market in the traditional sense, i.e., listed by

a realtor, do not necessarily render a sale less than arm's length."). Accord *N. Royalton City School Dist. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092.

[9] 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 BOE satisfied its evidentiary burden before the BOR and before this Board. The BOE submitted sufficient evidence to create a rebuttable presumption that the subject sale is the best indication of the subject property's value, which the property owner and BOR failed to rebut. It is, therefore, the order of this Board that the subject property shall be valued as follows as of the relevant tax lien date:

True Value: $325,000

True Value: $113,750

OHIO BOARD OF TAX APPEALS

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1350 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
Represented by:
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KPM TWO, LLC
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DAYTON , OH 45458

Entered Tuesday, November 10, 2020

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

[1] The board of education ("BOE") appeals a decision of the board of revision ("BOR"), which determined the value of the subject property, parcel 010-215365-00, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and record of this board's hearing.

[2] The BOE filed a complaint with the BOR, requesting the subject property be revalued from $356,500 to $462,500 to reflect the price at which it transferred in September 2018. The

property owner filed a countercomplaint, objecting 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. In its presentation, the BOE submitted sale documents, which demonstrated the property owner's $462,000 purchase of the subject property in September 2018. Based upon the sale documents, the BOE requested that the subject property be revalued accordingly. In its presentation, the property owner submitted the testimony of its member Pranav Patel who testified about the facts and circumstances of the subject sale. He testified that he made a series of mistakes when purchasing the subject property on behalf of the property owner, which included misunderstanding the income and expenses associated with operating the subject property's office suites and the costs to repair issues with the heating, ventilation, and air cooling systems. Patel also testified that there were occupancy/vacancy issues in 2019. He was examined and cross-examined by the BOR and BOE. At the BOR decision hearing, the BOR members noted that the subject property had been the subject of a complaint for tax year 2017, by which it had determined that the subject property's $356,500 sale in May 2017 was its best indication of value. The BOR further noted that the May 2017 sale was closest to the tax lien date and, therefore, voted to accept that sale as the best indication of the subject property's value. (The BOR included documents related to the May 2017 sale in the statutory transcript.) Because the subject property's value was already valued at the $356,500 sale price, the BOR subsequently issued a decision that retained the subject property's initially assessed value. This appeal ensued.

[3] At this board's hearing, only the BOE appeared to supplement the record. In its presentation, the BOE submitted documents obtained from the property owner through discovery, i.e., letter from the bank that financed the property owner's purchase, property

evaluation report, settlement statement, and general warranty deed, to assert that the subject sale had been an arm's-length transaction that reflected the subject property's value. Though the BOE conceded that the May 2017 sale occurred closest to the tax lien date, it argued that the property evaluation report associated with the property owner's September 2018 sale was dated closer to the tax lien date than the May 2017 sale and, therefore, the board should revalue the subject property consistent with the sale of September 2018.

[4] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). 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. 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.

[5] The record contains evidence of multiple sales that occurred recent to the tax lien date. The Supreme Court has considered the situation in which a property is subject to more than one arm's-length transfer occurring near a tax lien date, directing in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 138 Ohio St.3d 223, 2014-Ohio-523, paragraph one of the syllabus, that "[w]hen a property has been the subject of two arm's-length sales between a willing seller and a

willing buyer within a reasonable length of time either before or after the tax lien date, the sale occurring closer in time to the tax lien date establishes the true value of the property for taxation purposes." The court continued, even providing guidance as to how to determine the particular date to be utilized: "In determining the date a sale of property occurs, only for purposes of establishing the true value of property pursuant to R.C. 5713.03, 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." The May 2017 sale occurred approximately 239 days *before* the tax lien date and the September 2018 sale occurred approximately 256 days *after* the tax lien date. We begin our analysis with the sale of May 2017.

[6] The sale documents and notation on the property record card created a rebuttable presumption that the $356,600 sale of the subject property in May 2017 reflected its value as of the tax lien date. None of the parties dispute the minimal details of the sale. The BOE does not argue that such sale was not conducted between parties at arm's-length. The BOE argues, however, that the sale of May 2017 was too remote from the tax lien date and should be disregarded in favor of the sale of September 2018. We do not find merit to the BOE's arguments.

[7] The BOE did not submit any competent, credible, and probative evidence to demonstrate that market conditions changed between the sale in May 2017 and January 1, 2018. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. Though the BOE seemingly asserted that the property evaluation report demonstrates a change in market conditions, the property evaluation report is not an appraisal report and does not rise to the level of reliability necessary to be relied upon by this board. Furthermore, the BOE cites to the property evaluation report for the truth of the matter asserted and, as such, it amounts to impermissible hearsay. *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. See also *Dellick v. Eaton Corp.*, Mahoning App. No. 03-MA-246, 2005-

Ohio-566, ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). Generally, hearsay is inadmissible. Evid.R. 802."). Compare *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485 (affirming this board's use of a hearsay appraisal report when there was testimony about the reliance that the bank and property owner placed upon it in making business decisions). Moreover, we note that the BOE may have demonstrated a change in market conditions with a true appraisal report; however, it did not submit such report. *Akron City School*, supra.

[8] 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 BOE failed to rebut the presumptions accorded to the $356,600 sale of the subject property in May 2017. It is, therefore, the order of this board that the subject property shall be valued as follows as of the relevant tax lien date:

True Value: $356,500

True Value: $124,780

OHIO BOARD OF TAX APPEALS

DARREL N. UCHBAR, JR, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2020-1166
vs.	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DARREL N. UCHBAR, JR
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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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CLEVELAND, OH 44113

Entered Thursday, November 19, 2020

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. (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 shows that on August 7, 2020 the appellant filed a copy of the BOR's decision with the BOR, however the record does not demonstrate that appellant filed a notice of appeal with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

HAMM-DOLLOFF MANAGEMENT, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-283 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HAMM-DOLLOFF MANAGEMENT, LLC
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CLEVELAND, OH 44113

EUCLID CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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PETERS, KALAIL & MARKAKIS CO., LPA
6480 ROCKSIDE WOODS BLVD. SOUTH
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CLEVELAND, OH 44131-2222

Entered Thursday, November 19, 2020

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 in this matter indicates that while appellant timely filed the appeal with this board, a notice of the appeal was filed with the BOR thirty-five 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

BROIDA, LLC, (et. al.),	)
	)
Appellant(s),	)
	)
vs.	)
	)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)
	)
Appellee(s).	)

CASE NO(S). 2019-2079
REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BROIDA, LLC
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Entered Monday, November 30, 2020

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 102-25-036, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and any written argument submitted by the parties.

[2] The affected Board of Education ("BOE") filed a complaint with the BOR, requesting the subject property be revalued from $133,200 to $292,000 to reflect the price at which it transferred. The property owner filed a countercomplaint, objecting 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 sale documents to demonstrate the property owner's $292,000 purchase of the subject property in June 2018 and requested the subject property be revalued accordingly. In its presentation, the property owner submitted the testimony of its member Clark Broida who testified about the facts and circumstances of the subject sale and argued that the subject sale should be disregarded because the property owner purchased the subject property under compulsion or duress. The BOR determined that the property owner's argument and evidence lacked merit and subsequently issued a decision that revalued the subject property at $292,000. This appeal ensued.

[3] Though the property owner requested an opportunity to submit additional evidence at a hearing before this board, such hearing was sua sponte cancelled after the parties failed to disclose evidence consistent with the case management schedule. Ohio Adm. Code 5717-1-07(A)(2). Instead, the parties were provided an opportunity to submit written argument in support of their respective positions. Only the BOE availed itself of the opportunity to do so and argued that the property owner failed to demonstrate that the subject sale should be disregarded.

[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. "[C]ase law has repeatedly instructed [this Board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This Board must review the record to independently determine real property 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.

[5] We begin our analysis with the subject sale. The record contains sale documents and notation on the property record card, which memorialize the $292,000 transfer of the subject property to the property owner in June 2018. As a consequence, a rebuttable presumption was created 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 opponent of the subject sale, the property owner in this case, 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 ("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. *** The February 2013 sale price, which Terraza does not dispute, is the best evidence of the property's true value, subject to rebuttal." (Citation omitted.) The property owner does not argue that the subject sale was too remote from the tax lien date, but it does argue that the subject sale was not an arm's-length transaction because it was under compulsion or duress to relocate its business.

[6] To determine whether the subject sale was an arm's-length transaction, we look to *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23 (1989), by which 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. Because there was no evidence that the subject sale did not occur on the open market and that the parties failed to act in their own self-interest, we will focus on

whether the property owner successfully demonstrated whether the subject sale was voluntary.

[7] Here, the property owner failed to demonstrate that the subject sale occurred under circumstances amounting to compulsion or duress. It primarily argued that compelling business circumstances 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 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 those 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. 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 Avenue*. This view is borne out by the court's decision in *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 107 Ohio St. 3d 250, 2005-Ohio-6434, distinguishing in *Lakeside*: "Here, it was evident that the owners, Servetas and Stavridis, had invested time, effort, and money in this location, and there would be a loss incurred for the fixtures that would be left behind if they were forced to move. However, there was nothing in the record to indicate that the owners had made any efforts to determine whether the business could have been relocated and the costs of such relocation. The testimony in *Lakeside* was that failure to purchase the property would have resulted in Triton's bankruptcy. While the owners of the Greek Isles Restaurant would have lost

much of their investment in the fixtures if they had had to move, there was no evidence that the restaurant could not be relocated or that losing this location would cause the owners to file bankruptcy." Id. at ¶19. See, also, *Cobblestone Square Co., Ltd. v. Lorain Cty. Bd. of Revision*, 106 Ohio St. 3d 305, 2005-Ohio-5128.

[8] The record in this matter falls far short of the records in *Lakeside* and *Cleveland Mun. School*. Broida testified that the property owner was given eighteen months notice that the landlord would not be renewing its lease and that it had at least one year remaining on its lease when the subject sale occurred. Thus, it does not appear that there were any time pressures forcing the property owner to quickly relocate. Furthermore, Broida testified that he preferred operating the business in the downtown Cleveland area and, as a result, was faced with a limited supply of properties. 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 subjective motives of a specific buyer or seller. The record is notably void of any evidence to demonstrate that Broida's business was faced with corporate death if it did *not* purchase the subject property and to corroborate any of the self-serving testimony. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. No. 15AP-549, 2016-Ohio-4554.

[9] We are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). In doing so, we find that the property owner failed to rebut the presumptions accorded to the subject sale and, as a result, failed to satisfy the evidentiary burden on appeal. Absent an affirmative demonstration that the subject sale was not a recent, arm's-length sale upon which we may rely, we find that the subject property shall be valued consistent with the subject sale.

[10] It is, therefore, the order of this Board that the subject property shall be valued as follows as of the relevant tax lien date:

True Value: $292,000

Taxable Value: $102,200

OHIO BOARD OF TAX APPEALS

TALAWANDA CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2061 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, November 30, 2020

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

The Talawanda City Schools Board of Education ("BOE") appeals from a decision of the Butler County Board of Revision ("BOR") retaining the auditor's value of parcel H4100-006-000-115 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and any written argument.

The subject property is college fraternity housing near Miami University in Oxford, Ohio. The auditor valued the property at $915,780 for tax year 2018. The property transferred

from N.P.E.F. Corporation to its tenant, appellee MIOH House Corporation ("MIOH"), in February 2018 for $1,100,000.

The BOE filed a complaint requesting the property be valued at the sale price. The BOE attached the conveyance fee statement, which indicates the property transferred for $1,100,000 in February 2018.

MIOH filed a countercomplaint requesting a value of $825,000. MIOH's countercomplaint stated a reduction was justified because of a drop in occupancy and because of private restrictions placed on the property. Namely, MIOH indicated rooms could only be leased to members of the Alpha Epsilon Pi fraternity. Moreover, MIOH indicated it applied for official fraternity approval, which was granted. That means Miami University can now impose a number of requirements on students living at the subject property, e.g., students must maintain a 2.75 GPA. MIOH also attached the relevant settlement statement and purchase contract. Those documents confirm the property transferred for $1,100,000.

Only counsel for the BOE appeared at the BOR hearing. He argued the sale price should be adopted. The BOR retained the auditor's value. The speaking member stated the BOR decided to retain the value because it could not confirm the sale was an arm's-length transaction. The BOE appealed 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). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* unreported. (July 26, 2013), BTA No. 2012-L-2291, An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶ 31. A sale that post-dates tax-lien date creates a rebuttable presumption of value in favor of the sale price. See

Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶ 19. The proponent of a sale price bears "a relatively light burden and need not 'definitive[ly] show***that no evidence controvert[s] the ***arm's-length character of the sale.'" *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, 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). A proponent may generally meet their initial burden with sale documents that contain basic facts about the sale, e.g., sale price, parties, and sale date. See *Lunn*, at ¶15 (no additional testimony is usually necessary). The opposing party must then, to succeed, rebut the presumption created by the sale.

Here, the record contains the basic documents of the sale, i.e., conveyance fee statement, purchase contract, and settlement statement. The sale is recorded on the parcel card. Accordingly, the burden shifts to any party rebutting the sale. Contrary to the BOR's decision, the BOE was not required to prove the sale was arm's-length since the sale was facially valid. See *Lunn*, supra. Having reviewed the rebuttal evidence, we find no party has rebutted the sale. MIOH's argument was the value should actually be reduced below the auditor's value for two reasons, i.e., change in vacancy and private restrictions. While vacancy could impact value, MIOH did not supply this Board with evidence that vacancy is out of step with the market, nor did it present this Board with evidence explaining how (or if) vacancy affected the February 2020 sale. See *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 10, 2020), BTA No. 2019-292, unreported. We also do not find the sale should be disregarded because of the voluntary use restrictions. This Board has long rejected the argument that private, voluntary restrictions, such as the restrictions at issue in this case, should be considered when determining the value of the fee simple estate. See *Bainbrook/Laurel Springs Homeowners Association, Inc. v. Geauga Cty. Bd. of Revision* (Sept. 30, 2019), BTA No. 2018-1444, unreported (relying on *Muirfield Assn. Inc., v. Franklin Cty. Bd. of Revision*, 1 Ohio St.3d 40 (1982)). We also note the law is a sale

should not be disregarded simply because the buyer was a tenant. See generally *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092; see also *Revere Loc. Schools Bd. of Edn. v. Summit Cty. Bd. of Revision* (Apr. 20, 2020), BTA No. 2019-1058, unreported.

For these reasons, we order the property valued as follows for tax year 2018:

TRUE VALUE

$1,100,000

TAXABLE VALUE

$385,000

OHIO BOARD OF TAX APPEALS

MILFORD EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2019-1288
vs.	)	(REAL PROPERTY TAX)
CLERMONT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MILFORD EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION
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Entered Monday, November 30, 2020

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

[1] The Milford Exempted Village Schools Board of Education ("BOE") appeals from a decision of the Clermont County Board of Revision ("BOR") retaining the Auditor's values of parcels 18-25-18G-123 and 18-25-18G-245 for tax year 2018. We decide the case on the notice

of appeal, the statutory transcript, and the briefs.

[2] The Auditor valued parcel 18-25-18G-123 at $283,100 for tax year 2018. The BOE filed an increase complaint seeking a value of $684,000 citing an April 2018 sale. The Auditor valued parcel 18-25-18G-245 at $407,800 for tax year 2018, and the BOE filed an increase complaint seeking a value of $1,000,000 citing the same April 2018 sale.

[3] At the BOR hearing, evidence was presented that the subject property transferred twice on April 9, 2018. The first transfer occurred as a sale from McDump, LLC ("McDump") to Decker Building Group. LLC ("Decker"). The second sale transferred the property from Decker to appellant Remington Clean Fill, LLC ("Remington"). Per the conveyance fee statement, Decker purchased the property from McDump for $2,184,000, of which $500,000 was attributable to non-realty. Per the second conveyance fee statement, Remington purchased the property from Decker for $2,500,000 of which $1,600,000 was attributable to non-realty.

[4] At the BOR hearing, the BOE advocated for the first sale to be adopted since, in part, the second sale was not arm's-length because Mr. Decker owned both Decker and Remington and signed for both as referenced on the settlement statement.

[5] Also, at the BOR hearing, the property owner presented evidence that transferred gravel, dirt, equipment, and inventory were non-realty and should be valued according to the second conveyance fee statement and not the first. The property owner testified McDump selected a price and allocation and presented it to Decker. McDump had a second buyer on standby if Decker declined the terms. Decker accepted the terms and, based on legal advice, believed it could "fix" the allocation using a second related party transaction, i.e., the Decker to Remington transfer. Mr. Decker's son testified the personal property values for the second transfer were selected using internet research and by asking third parties their opinion of the value of the personal property. None of those persons were identified as appraisers, and none of those persons

testified to the values.

[6] The BOR retained the auditor's values, and the BOE appealed to this Board. The BOE argues the testimony and evidence presented to the BOR shows the first allocation is not supported by actual evidence meaning the allocation to personal property must be rejected per this Board's decisions in *Talawanda City Schools Bd. of Edn. v. Butler Cty. Bd. of Revision* (Aug. 15, 2019), BTA No. 2018-1274, unreported, and *Dayton City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision* (Sept. 25, 2018), BTA No. 2017-2273, unreported. Accordingly, the BOE argues the property should be valued in accordance with the entire 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). We must "independently review the evidence" before us and "render a value determination consistent with such information." *Herbert J. Hope Jr. Trustee v. Cuyahoga Cty. Bd. of Revision* (July 26, 2013), BTA No. 2012-L-2291, unreported. As the BOE is the appealing party, we must first consider whether our standard of review is modified by the *Bedford* rule. See *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 competent 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. When the *Bedford* rule applies, the school board must do more than rely on the auditor's valuation; the school board must "come forward with affirmative evidence of the subject property's value." *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Sept. 6, 2018), BTA No. 2017-1707, unreported. The Bedford rule applies when: 1) the property owner filed the complaint or countercomplaint; 2) the board of revision ordered a reduction valuation based on competent

evidence offered by the property owner; 3) the board of education appeals to this Board; 4) the board of revision's determination is based on appraisal evidence rather than a sale. *Gahanna-Jefferson City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Sept. 10, 2018), BTA No. 2017-1178, unreported. Here, we find the *Bedford* rule does not apply for three reasons. First, Remington did not file the complaint or countercomplaint. Second, the BOR did not reduce value based on Remington's evidence. Third, the BOE is relying on a sale and not appraisal evidence. Accordingly, the *Bedford* rule does not apply here.

[7] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶31. A sale that postdates the tax lien date also creates a rebuttable presumption of value. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612, ¶19. Here, we have two sales. Therefore, we must first determine which sale, if either, were arm's-length. A sale is arm's-length if "it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25, 546, N.E.2d 932(1989).

[8] The record is clear the second sale was not an arm's-length sale. It was a sale from one of Mr. Decker's companies to another solely for tax purposes. It was not a negotiated sale between parties acting in their own self-interest. See *Walters*, supra. We likewise find that allocation is unsupported by the record. Remington supplied no confirmable evidence about what resources it used to value the property, e.g., internet websites. Some of the values were based on recommendations from others, which would be hearsay evidence. Moreover, Mr. Decker's son is not an appraiser.

[9] To the earlier sale. The record is also clear that the sale was an arm's-length transaction. The sale occurred on the open market, multiple buyers were bidding for the property, and Decker was not under economic duress. See *Dublin City School Dist. Bd. of Edn. v.*

Franklin Cty. Bd. of Revision (May 5, 1995), BTA No. 93-T-1107, unreported. However, non-realty was allocated in the earlier sale. The Ohio Supreme Court has been clear that "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." *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611. If the owner fails to prove allocation with sufficient evidence, the "full sale price constitutes the property ['s] value." *Cincinnati Sch. Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 151 Ohio St.3d 109, 2017-Ohio-7650, ¶11. The Supreme Court has also held in some instances an appraisal can be used to show the value attributable to realty versus non-realty. Id. Here, we cannot find the allocation is supported because Remington agrees the earlier allocation was incorrect. In fact, it completed the second transfer to "fix" the allocation in the first transaction. Therefore, we must find the allocation in the first transfer is unsupported, and the property must be valued according to the full purchase price.

[10] For these reasons, we order the property valued as follows for tax year

2018: PARCEL 18-25-18G-123

TRUE VALUE

$894,910

TAXABLE VALUE

$313,220

PARCEL 18-25-18G-245

TRUE VALUE

$1,289,094

TAXABLE VALUE

$451,180

OHIO BOARD OF TAX APPEALS

CLEVELAND INVESTMENT GROUP, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1371 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, December 2, 2020

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. (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

SMARTLANDCL4, LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2019-2151
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, December 2, 2020

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 861-04-061, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and written argument submitted by the appellees.

[2] The property owner filed a complaint with the BOR, requesting the subject property be revalued from $98,000 to $42,100. At the BOR hearing on the matter, the property owner appeared through counsel to submit argument and/or evidence in support of the complaint. As the hearing commenced, the property owner amended its opinion of value to $70,000. In its

presentation, the property owner submitted a packet of documents that included a sheriff-sale appraisal, which valued the subject property at $70,000 as of October 3, 2017, and sheriff deed, which demonstrated a foreclosure sale that transferred the subject property to an entity affiliated with the property owner for $42,100 in January 2018. Based upon the evidence, the property owner argued that the county had already determined that the subject property should be valued at $70,000, through the sheriff-sale appraisal, and, therefore, it was inappropriate to revalue the subject property at $98,000 for tax year 2018. The BOR rejected the property owner's argument and evidence and issued a decision that retained the subject property's initial value. This appeal ensued.

[3] Though the property owner requested an opportunity to submit additional evidence at a hearing before this Board, such hearing was sua sponte cancelled after the parties failed to disclose evidence consistent with the case management schedule. Ohio Adm. Code 5717-1-07(A)(2). Instead, the parties were provided an opportunity to submit written argument in support of their respective positions. Only the appellees availed themselves of the opportunity to do so and argued that the property owner failed to satisfy the burden to provide competent, credible, and probative evidence of 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. "[C]ase law has repeatedly instructed [this Board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This Board must review the record to independently determine real property 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.

[5] We begin our analysis with the $42,100 transfer of the subject property via sheriff sale in January 2018. Though the sale of a property is generally considered the best evidence of its value, see *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, at ¶31, sheriff sales are presumptively invalid, see R.C. 5713.04. However, the Supreme Court has held that R.C. 5713.04 is not an absolute bar to establish a 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 ("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."). Here, the property owner submitted no evidence to challenge the presumption that the sheriff sale was anything other than a forced sale. Furthermore, the property record card showcases a $0 transfer to the current property owner. We discern that this is a related party sale and not indicative of value.

[6] Upon further review of the record, we conclude that the property owner failed to provide competent, credible, and probative evidence of the subject property's value. The property owner relied upon a sheriff-sale appraisal to support its opinion of value. We have repeatedly held that sheriff-sale appraisals are not particularly helpful in our quest to determine real property value. In doing so, this Board has relied upon Supreme Court precedent in *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St. 3d 548, 2018-Ohio-919. There, the court determined that it was legal error to rely upon an appraisal report performed for purposes of a sheriff's sale and concluding that "the sheriff's-sale appraisal credited by the [board of revision] 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." Id. at ¶18. See, also *Mechal & Schlomi, LLC v. Cuyahoga Cty. Bd. of Revision* (Jan. 8, 2020), BTA No. 2018-1305, unreported; *CSHFLW Properties 4, LLC v. Cuyahoga Cty. Bd. of Revision* (Aug. 14, 2019), BTA No. 2018-1382 et al., unreported; *C & R Property Mgmt., LLC v. Cuyahoga Cty. Bd. of Revision* (Sept. 12, 2018), BTA No. 2017-1127 et seq., unreported.

[7] Similarly, in this matter, the sheriff-sale appraisal contains no factual information and supporting facts and analysis that would assist this Board, or the BOR, in its quest to independently determine the subject property's value. Furthermore, though counsel for the property owner provided extensive argument about sheriff-sale appraisals, i.e., how they are procured and used, at the BOR hearing, statements of counsel are not evidence. See e.g., *Yim v.Cuyahoga Cty. Bd. of Revision* (Jan. 8, 2020), BTA No. 2018-2166, unreported at 5, appeal pending 8th Dist. No. CA-20-109470 ("We have repeatedly held that statements of counsel are not evidence. See *Corporate Exchange Bldgs. JV & V, L. P. v. Franklin Cty. Bd. of Revision*, 82 Ohio St.3d 297, 299 (1998). See, also, *Hardy v. Delaware Cty. Bd. of Revision*, 106 Ohio St.3d 359, 2005-Ohio-5319, ¶14 (discussing adverse consequences which may result from a party's failure to present witness testimony before the Board and electing instead to rely upon documentary exhibits discussed by counsel)."). (Parallel citations omitted.)

[8] The property owner also argued that the appellees should be estopped from arguing against the sheriff-sale appraisal given the county's reliance upon it during the foreclosure proceeding and given the BOR's refusal to issue subpoenas for appraisers in prior proceedings. As an initial matter, there is no evidence that the property owner attempted to subpoena the appraisers involved in the sheriff-sale appraisal *in this matter*. Even if the property owner requested subpoenas and the BOR denied such request(s), the record highlights the property owner's failure to subpoena the appraisers for a hearing *before this Board*. Furthermore, it is well settled

that estoppel does not apply against the state. See *Reynolds Ave. Transfer Station v. Franklin Cty. Bd. of Revision* (Nov. 30, 2001), BTA No. 2001-S-217, unreported; *Psathas v. Cuyahoga Cty. Bd. of Revision* (Jan. 12, 2001), BTA No. 2000-M-1471, unreported; *Salama v. Cuyahoga Cty. Bd. of Revision* (Nov. 9, 2007), BTA No. 2007-V-450, unreported.

[9] The property owner also argued that it was unfair to require the property owner to commission its own appraisal when the record included the sheriff-sale appraisal, thus, the burden should be on the appellees to disprove the validity of the sheriff-sale appraisal. It is well settled that the complainant has the burden to prove real property value and that county auditors and/or boards of revision have no duty to disprove initially assessed values. See e.g., *Hess v. Belmont Cty. Bd. of Revision* (June 6, 2019), BTA Nos. 2016-2673 et al., unreported at 4 ("[T]he complainant bears a burden not to merely challenge the auditor's valuation or assessment, but rather to provide competent and probative evidence that an alternative value reflects the true value of the subject property.").

[10] We are mindful of our duty to independently determine the subject property's value *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the evidence contained in [the BOR] transcript"). Based upon the record before us, we find that the property owner failed to satisfy the evidentiary burden on appeal. It is, therefore, the order of this Board that the subject property shall be followed as of the relevant tax lien date:

True Value: $98,000

Taxable Value: $34,300

OHIO BOARD OF TAX APPEALS

STORE MASTER FUNDING VI, LLC, (et. al.),
Appellant(s),

vs.

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

CASE NO(S).
2015-1492, 2015-1493
REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, December 2, 2020

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

This case comes to us on remand from a decision of the Ohio Supreme Court. See *Store Master Funding VI, L.L.C. v. Franklin Cty. Bd. of Revision*, 155 Ohio St.3d 253, 2018-Ohio-4301. Our instructions are to consider the evidence in the existing record in light of the statutory change to R.C. 5713.03 and the Ohio Supreme Court's decisions in *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, and *Spirit Master Funding*

IX, L.L.C. v. Cuyahoga Cty. Bd. of Revision, 155 Ohio St.3d 254, 2018-Ohio-4302.Specifically, this Board is required to fully consider the appraisal evidence submitted by appellant Store Master Funding VI, L.L.C. ("Store Master") for tax year 2013.

We summarized the facts of this case in our prior merit decision in this case. We restate those facts here for clarity.

> The subject property was initially assessed a true value of $5,911,600. Both Store Master and the affected board of education ("BOE") filed complaints with the BOR, which requested that the subject property's value be changed. The BOE filed its complaint, first, which requested that the subject property's value be increased to $6,446,000 to reflect the price at which it transferred in October 2014. Then Store Master filed its complaint, which requested that the subject property's value be decreased to $1,920,300.
>
> The BOR held a consolidated hearing on the complaints, at which time both parties appeared through counsel to submit argument and evidence in support of their respective positions. The BOE submitted a conveyance fee statement and general warranty deed, which memorialized the $6,445,959.34 transfer of the subject property from Geneva Exchange Fund XXXVI, LLC, and other entities (collectively "Geneva Exchange"), to Store Master in October 2014. Relying upon the transfer, the BOE requested that the BOR value the subject property consistent with the price at which it transferred. In its presentation, Store Master asserted that the subject sale was not the best indication of the subject property's value because the sale reflected the value of the leased fee interest, not the fee simple interest. Instead, Store Master argued, the subject property should be valued consistent with the report and testimony of appraiser Richard Racek, Jr., MAI, who opined the value of the subject property to be $2,600,000 as of January 1, 2014. Relying upon

> its evidence, Store Master amended its opinion of value to $2,600,000 and requested that the BOR reduce the subject property's value to that value. The BOE argued that Store Master had failed to rebut the presumptions accorded to the subject sale and, as a result, it was inappropriate to rely upon Racek's report and testimony. The BOR subsequently issued a decision, which increased the subject property's value to $6,446,000, and this appeal ensued.***

Store Master Funding VI, L.L.C. v. Franklin Cty. Bd. of Revision (Aug. 9, 2016), BTA No. 2015-1492, unreported. We found that the October 2014 sale was the best indication of the subject's value and we declined to consider Racek's appraisal in light of precedent at the time. The Ohio Supreme Court has clarified that a recent, arm's-length sale remains the best evidence of value and creates a presumption of value. See *Terraza 8*at ¶¶ 31-34. However, that presumption is rebuttable, and a party may rebut a sale with appraisal evidence. See id. at ¶ 37.

We next clarify our understanding of the Ohio Supreme Court's instructions on remand. When this case was before us the first time, Store Master made two arguments, as evidenced by its brief. First, Store Master argued Racek's appraisal was the best and most persuasive evidence of value. Second, Store Master argued the sale should be disregarded, or at least modified because the property sold subject to an existing lease. We rejected both arguments, but we note the Ohio Supreme Court's decision only directs us to consider Racek's appraisal. The court did not hold we were wrong in rejecting Store Master's leased fee sale argument. Therefore, we find that issue not properly before us. Even if it were, the Tenth District has since made clear that a leased fee sale still creates a presumption of value unless a party shows the lease had above-market value, either because of the lease terms, rental rate, or creditworthiness of the tenant. *Menlo Realty Income Props. 28, L.L.C. v. Franklin Cty. Bd. of Revision*, 10th Dist. No. 19AP-316, 2019-Ohio-4872; see also *Beavercreek Towne Station, L.L.C. v. Greene Cty. Bd. of Revision* (Aug. 29, 2019),

BTA No. 2015-1488, unreported (outlining Ohio Supreme Court cases on point). Accordingly, our review is confined to the review of Racek's appraisal. We must determine if that appraisal is better evidence of value than the sale.

Having reviewed Racek's appraisal, we find Store Master has rebutted the presumption created by the sale because the lease in place was above-market. The rental rate in place on both the tax-lien date and the sale date was $6.32/SF. See Racek Appraisal at 45. Mr. Racek's appraisal shows that the rate was above-market. See generally *Menlo;* see also Racek Appraisal at page facing page 44. Therefore, we find the sale is not the best evidence of value.

Because Mr. Racek's appraisal is the only remaining evidence before us, we find his appraisal is the best evidence of value. He developed his appraisal using the sales comparison and income capitalization approaches. We note that no party disputes the data he used or has made any specific arguments against the appraisal. See *Villa Allegra Limited Partnership v. Mercer Cty. Bd. of Revision* (Sept. 23, 2019), BTA No. 2018-2050, unreported. Therefore, we find his appraisal is the best evidence of value and order the property valued as follows for tax year 2013:

PARCEL NUMBER: 530-166430-00

TRUE VALUE

$2,600,000

TAXABLE VALUE

$910,000

OHIO BOARD OF TAX APPEALS

DAVID D. ENIX, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-1240
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
GREENE COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

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Entered Friday, December 4, 2020

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

The county appellees move to dismiss this matter on the basis that the notice of appeal was not filed with the county Board of Revision ("BOR"). 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 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 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 demonstrates that appellant filed his notice of appeal with this Board and the BOR thirty-six days and thirty-seven days, respectively, after the BOR mailed its 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

LICKING HEIGHTS LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2016-2685
vs.	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

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Entered Monday, December 7, 2020

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

This case is again before the Board on remand from the Tenth District. See *Licking Heights Loc. Schools Bd. of Edn. v. Franklin Cty. Bd of Revision*, 10th Dist. Franklin No.

18AP-345, 2019-Ohio-5082. The Tenth District has ordered us to clarify our first decision where we discussed certain "renovations" and to determine if our original ultimate decision was correct based on the clarification.

We begin with our prior decision. See *Licking Heights Loc. Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Apr. 17, 2018), BTA No. 2016-2685, unreported. Therein, we described the facts as follows:

> The auditor initially valued the subject property, a 240-unit apartment complex, at $13,253,000 for tax year 2015, and $13,257,100 for tax year 2016. The appellee property owner, Jefferson Chase OH Partners LLC ("Jefferson Chase"), filed a complaint against valuation for tax year 2015 requesting a decrease in value to $10,800,000; the BOE filed a countercomplaint in support of the auditor's valuation. At the BOR hearing, counsel for Jefferson Chase appeared and offered 2015 financial information in support of its opinion of value of $13,014,300. Counsel also noted that the sale of the property in October 2014, which involved other properties, had been previously found to be forced and not probative evidence of value by this Board in unrelated cases involving other properties that transferred in the same transaction. *Kengary Way OH Partnership LLC v. Fairfield Cty. Bd. of Revision* (July 22, 2016), BTA Nos. 2015-1432,1433, unreported. The BOE presented two appraisals prepared in connection with the October 2014 sale, which opined to values of $15,275,000 and $14,900,000 as of dates in December 2013, S.T. [statutory transcript], Exs. 2-3; counsel for Jefferson Chase objected to both appraisals as hearsay and as not valuing the property as of tax lien date. The BOE also presented the appraisal report and testimony of Thomas D. Sprout, MAI, who opined a value of $17,429,000 as of tax lien date. Mr. Sprout noted that he was not

granted access to the property in connection with his appraisal. The BOR ultimately found that the October 2014 sale of the property, previously accepted by the BOR for the prior tax year, was the best evidence of value, and determined that no change in value was warranted. The BOR issued two decisions: one for 2015 retaining the auditor's initial value of $13,253,000, and one for 2015 retaining the auditor's initial value of $13,257,100.

On appeal, both the BOE and Jefferson Chase called expert appraisers. Here is our discussion of the appraisal evidence:

> On appeal, the BOE again presented the testimony of Mr. Sprout and his updated appraisal report opining a value of $16,040,000 as of tax lien date. H.R., Ex. A. Mr. Sprout also provided verbal reviews of the two previously submitted appraisals performed in connection with the October 2014 sale. Jefferson Chase presented the appraisal report and testimony of Melissa Dean Speert, who opined a value of $11,120,000 as of tax lien date. H.R., Ex. 1. Both appraisers primarily relied on the income approach to value. Through cross-examination and written argument, each party argues that its appraiser's opinion of value is more probative given the characteristics of the subject property and market data. In addition, Jefferson Chase reiterated its objection to consideration of the two financing appraisal reports. As discussed herein, this board accords them no weight in our determination of value, and, therefore, overrules the objection.

We described Mr. Sprout's appraisal as follows:

Mr. Sprout estimated the gross potential income of the subject property by looking to four rent comparables near the subject; he determined a market rent of $650 for the 48 1-bedroom/1-bath units, $750 for the 100 2-bedroom/1.5-bath units, $950 for the 44 3-bedroom/2 bath units, and $1,025 for the 48 3-bedroom/2.5-bath townhome units. He additionally added $50/month income for the 94 garages at the property to conclude a gross potential rent of $2,422,800. From this, he deducted 6% for vacancy and collection loss, added $450/unit for water reimbursement and $600/unit for other income, to conclude a net effective gross income of $2,529,432. He estimated expenses at $4,207 per unit, including a $300/unit reserve for replacement, to conclude to a net operating income ("NOI") of $1,519,855. He then capitalized the NOI at 9.44%, including tax additur, to determine a value of $16,100,000 as of tax lien date. After deducting $60,000, or $250/unit, for personal property, he arrived at a final value conclusion of $16,040,000 for the subject real property. We described Ms. Speert's appraisal as follows:

Ms. Speert conducted a similar analysis, determining market rents of $600 for the 48 1-bedroom/1-bath units, $750 for the 100 2-bedroom/2-bath units, $910 for the 44 3-bedroom/2-bath units, and $975 for the 48 3-bedroom/2.5-bath units. After deducting 10% for vacancy and collection loss and adding $126/unit as income from the garages and $570/unit as other income, she arrived at an effective gross income of $2,225,952. She then deducted expenses of $4,000 per unit, plus a $350/unit reserve for replacement, to arrive at an NOI of $1,181,952. She capitalized the NOI at 10.19%, including tax additur, to determine a value of $11,600,000 as of tax lien date. After deducting $480,000, or $2,000 per unit, for personal property, she arrived at a final value conclusion of $11,120,000. During her testimony, Ms. Speert

highlighted the multiple deferred maintenance/condition issues that existed at the subject property on tax lien date. Although she acknowledged that renovations/repairs were made in 2015 after tax lien date, i.e., complete redesign and renovation of the clubhouse, upgrade of pool and sundeck, replacement of all HVAC and water heaters, new countertops and appliances in the units, she tended towards the lower end of the market in determining value, noting that such repairs had not been made as of January 1, 2015.

The Tenth District's remand instructions to this Board are to clarify what "renovations" were probative to our analysis. In our prior decision, we discussed these renovations as follows:

> It is their differing premises about the condition of the property on tax lien date that is at the center of the appraisers' differing opinions of value. Mr. Sprout's analysis was premised on renovations already being made at the property as of tax lien date, allowing the property to garner higher rental rates, as indicated in his appraisal report: "It is assumed the roofs and mechanical systems were in good repair as of the tax lien date. It is also assumed the general condition of the property at the time of viewing [i.e., May 5, 2017] was reasonably similar to that as of the tax lien date." H.R., Ex. A at 14. During his testimony, Mr. Sprout indicated that the two financing appraisals submitted to the BOR indicated that renovations on the property would be completed prior to tax lien date. H.R. at 10. In contrast, Ms. Speert took into consideration the fact that "[a]s of January 1, 2015, the subject's clubhouse, several roofs and site amenities were in need of renovation or replacement and the kitchen counter tops were in need of replacement," as reported by the property's management. H.R., Ex. 1 at 27; H.R. at 77, 97. She indicated that the total cost of the renovations, which occurred during 2015 and 2016, was $2,700,000. H.R. at 100-

101. Ms. Speert's statements are confirmed by the auditor's property record card, which indicates that minor interior alterations to the subject's leasing office were complete in May 2015, and that further remodeling was done into 2016. S.T., Ex. C.

Upon review of the record, we still find Ms. Speert's analysis more probative and better evidence of value. Since the Tenth District was unsure what we meant by "renovations," i.e., the pre-tax-lien date renovations or the post-tax-lien date renovations, we begin there. We clarify that we found, and still find, Ms. Speert had a better understanding of the subject property as it existed on the tax lien date because she understood the post-tax lien date changes. We still find, as we did before, that Ms. Speert's appraisal is more probative because it better accounts for deferred maintenance. Ms. Speert's deferred maintenance findings were based on her personal inspection of the property as well as information obtained from the owner. H.R. at 56; Speert Appraisal at 27. As Jefferson Chase noted in its initial brief and remand brief, Ms. Speert better understood and accounted for deferred maintenance. Ms. Speert testified she accounted for deferred maintenance for the old roof, HVAC components, and water heaters. H.R. at 59. She referenced numerous other deferred maintenance issues throughout her testimony. She also had probative data to support her deferred maintenance estimate. Id.

Second, we find Ms. Speert's appraisal slightly more reliable because of some ambiguities in Mr. Sprout's appraisal, e.g., potentially flawed data for sale comparable two, failing to adequately consider water expenses more explicitly in his analysis, unlike Ms. Speert's appraisal. See, e.g., Speert Appraisal at 49.

Our earlier opinion noted we found nothing wrong with Mr. Sprout's appraisal per se, and the Tenth District's decision left that finding untouched. However, our obligation is to find value based on the best evidence, and we find Ms. Speert's appraisal to be slightly better evidence of value because it better understood the subject property.

For these reasons, we order the property valued as follows for tax year 2015:

TRUE VALUE

$11,120,000

TAXABLE VALUE

$3,892,000

We again remand this matter to the BOR with instructions to vacate its tax year 2016 decision, which should have not been decided by BOR decision at issue.

OHIO BOARD OF TAX APPEALS

NATHANIEL D OSICKI, (et. al.),	)	Appellee(s).)
Appellant(s),	)	CASE NO(S). 2020-750
vs.	)	
LAKE COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	DECISION AND ORDER

APPEARANCES:

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Entered Monday, December 7, 2020

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 08A001E00010, for tax year 2019. However, before we reach the merits of this appeal, we must first consider a motion to dismiss filed by the appellees. By way of the motion, the appellees assert that the property owner failed to file a copy of the notice of appeal with the BOR as required by R.C. 5717.01. The property owner responded and provided proof that he emailed a copy of the notice of appeal to Carrie Valvoda, an office manager for the BOR, on June 1, 2020. As such, we find no merit to the appellees' motion to dismiss and deny it.

[2] We proceed to consider the merits of this matter based upon the notice of appeal,

certified statutory transcript, and written argument submitted by the parties.

[3] The property owner filed a complaint with the BOR, requesting the subject property be revalued from $353,550 to $318,050. At the BOR hearing on the matter, the property owner appeared to submit argument and/or evidence in support of the complaint. In doing so, he asserted that neighboring properties were valued less than the subject property and submitted a document that he compiled to highlight the difference in assessed values and/or sale prices. He noted that the average assessed value per square foot, which was lower than his opinion of the subject property's value, demonstrated that the subject property had been overvalued. The BOR asked the property owner about the facts and circumstances of the newly built home sitused on the subject property, which was complete in mid-2018. The BOR determined that the property owner's evidence was insufficient and voted to maintain the subject property's $353,550 value. This appeal ensued.

[4] Neither the property owner nor appellees availed themselves of the opportunity to submit additional evidence into the record at a hearing before this Board. Instead, the property owner resubmitted the documents previously provided to the BOR, which included updated argument to assert that the subject property has been overvalued when compared to other nearby properties. The property owner also submitted a new document in support of this appeal. However, because this document was not submitted at a hearing, it will not be considered in our analysis. See *Neon Rave, LLC v. Franklin Cty. Bd. of Revision* (Apr. 19, 2016), BTA No. 2015-1298, unreported at 2 ("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."). The appellees submitted written argument to assert that the property owner paid approximately $367,000 to buy the land and to construct the home sitused on the subject property and that the BOR (and Auditor) had valued the subject property at a lower value. As a result, the

appellees argued, this Board should affirm the BOR's decision.

[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. "[C]ase law has repeatedly instructed [this Board] to eschew a presumption of the validity" to decisions of boards of revision. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St. 3d 458, 2017-Ohio-5823, at ¶7. This Board must review the record to independently determine real property 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] As an initial matter, we note that the parties agree that the subject property has been valued with some consideration to the costs to construct the home sitused on the subject property. Though the property owner seemingly argued that it was inappropriate to consider construction costs to value the subject property, the Supreme Court has held otherwise. 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')."). Compare *W. Carrollton City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 150 Ohio St.3d 215, 2017-Ohio-4328. Though there appears to be some agreement that it cost approximately $367,000 to buy the land and to construct the home, we are unable to definitively conclude to that because the record does not contain sufficient information, such as complete information about the hard and soft costs of construction, to do so.

[7] The property owner primarily argued that the assessed values of other properties necessitates a reduction to the subject property's value. 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 nonconformity 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 asserted that it was unfair to value the subject property at a higher percentage of its "sale price," i.e., the construction costs, when other

properties were valued at a lower percentage of their sales prices, we have considered and rejected that argument. See e.g., *Loewengart v. Delaware Cty. Bd. of Revision* (Aug. 31, 2020), BTA No. 2019-1312, unreported; *Gupta v. Lucas Cty. Bd. of Revision* (May 28, 2020), BTA No. 2019-905, unreported, appeal pending 6th Dist. No. G-4801-CL-202001106-000.

[9] In sum, we do not find the property owner's evidence to be competent, credible, or probative evidence of the subject property's value. See, *Barker v. Hamilton Cty. Bd. of Revision* (Nov. 30, 2018), BTA No. 2018-414, unreported at 2 (though an owner is free to express an opinion of value, this board may "properly reject that opinion when the evidence that forms the basis for the owner's opinion fails to demonstrate the value requested.").

[10] It should be noted that the statutory transcript included a sales-comparison approach compiled by an unknown person on behalf of the BOR. It is unclear how much reliance the BOR placed upon this document to reach its decision. However, we do not find such document to be persuasive.

[11] 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 has failed to satisfy the evidentiary burden on appeal. It is, therefore, the order of this Board that the subject property shall remain as initially assessed as of the relevant tax lien date:

True Value: $353,550

Taxable Value: $123,740

BRYAN BUTERA, (et. al.),
Appellant(s),

vs.

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

CASE NO(S). 2020-782, 2020-783
(REAL PROPERTY TAX)
DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BRYAN BUTERA
2935 LYNN DRIVE
WILLOUGHBY HILLS, OH 44092

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 Monday, December 7, 2020

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. (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

SPIRIT MASTER FUNDING IX, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2015-2188, 2015-2195 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SPIRIT MASTER FUNDING IX, LLC
Represented by:
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SLEGGS, DANZINGER & GILL, CO., LPA
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CLEVELAND, OH 44113

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
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CLEVELAND, OH 44113

ORANGE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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FRANTZ WARD LLP
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CLEVELAND, OH 44114

Entered Tuesday, December 8, 2020

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

This matter is again before the Board of Tax Appeals on remand from the Supreme Court, which issued a decision and judgment entry in *Spirit Master Funding IX, L.L.C. v.Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 254, 2018-Ohio-4302, vacating this Board's decision and order, dated September 1, 2016. The Court held that this Board did not fully consider the appraisal evidence presented by the property owner, Spirit Master Funding IX

("Spirit Master"), as rebuttal to the sale evidence relied upon by the Board of Education ("BOE"). The Court vacated this Board's decision and remanded the matter for this Board to weigh and address the appraisal evidence. Id. at ¶1.

The subject property is improved with a 7,534 square-foot freestanding restaurant constructed in 1977 that operates as a Red Lobster. The Fiscal Officer initially assessed the value of the subject property at $2,016,400, and the BOE filed a complaint seeking an increase to a value of $3,439,000. At the BOR hearing, the BOE submitted deeds and conveyance fee statements evidencing two transfers of the subject property during 2014. On August 6, 2014, the subject property transferred from N and D Restaurants Inc. to Red Lobster Hospitality LLC for $2,925,880. Then, on December 29, 2014, Spirit Master purchased the property from Red Lobster Hospitality for $3,439,029. The BOE sought an increase to the second sale price, indicating that the first sale may have been a corporate spin-off, but acknowledging actual knowledge regarding the transaction.

Spirit Master did not provide any evidence regarding either sale, but counsel stated that the first sale was reported in the papers as a spin-off and that the second was purportedly a sale-leaseback, though no lease was submitted. Spirit Master claimed that neither sale represented the fee simple value of the real estate, and offered appraisal evidence from Richard G. Racek, Jr., MAI. Racek opined that the value of the subject property was $1,535,000 as of January 1, 2014 and January 1, 2015. Racek testified regarding the 2014 transfers, indicating that his knowledge came from discussions with an individual from Red Lobster with knowledge of the sale. Racek disregarded both transfers and stated the first was the bulk sale of the entire Red Lobster chain (admittedly with no lease in place) while the second sale was "leased fee" because it sold with a lease in place. On cross-examination, Racek acknowledged that he had spoken with someone involved in the first transaction but had not discussed the second transaction.

Racek performed the sales comparison approach, relying on sales of properties both with and without leases in place at the time of their transfer, with unadjusted unit prices ranging from $125.36 to $418.91 per square foot. Racek concluded to a value of $200 per square foot, or $1,500,000 (rounded), which was higher than the sales of properties that were vacant at the time of their transfer but lower than the properties that sold with a lease in place. Racek also performed the income approach to value, estimating a market rental rate of $17.50 per square foot (on a net basis) based upon five leases in place and two asking rates. Racek applied a 5.0% reduction for vacancy/credit loss, 3.0% management/administrative cost expense, and $0.50 per square foot reserves for replacement. Racek capitalized the resulting net operating income of $117,728, at a rate of 7.5%, for a total indicated value of $1,570,000. Racek gave weight to both approaches, concluding to a value of $1,535,000 as of January 1, 2014 and January 1, 2015.

The parties waived the opportunity to appear before this Board to submit additional evidence, and instead relied on written argument. Spirit Master argued that we must reject both sales and rely, instead, on Racek's opinion of value. The BOE argued that Spirit Master failed to rebut the presumptions accorded to transfers of the subject property. This Board issued a decision finding value based on the August 2014 sale, the transfer to the tax lien date. We rejected Spirit Master's argument that this Board must disregard the sale because it was the transfer of the leased fee interest, noting that Spirit Master had failed to submit a lease. We noted that statements of counsel are not evidence and found that Racek's testimony about the sales was unreliable hearsay that was not corroborated or supported by other evidence. After finding that Spirt Master failed to demonstrate that the August 2014 sale was not a recent, arm's-length transaction, we found that the sale was the best indication of the subject property's value and declined to consider Racek's appraisal report.

Spirit Master appealed the decision, and the Court held as follows:

The parties do not dispute that the August 2014 sale was at arm's length and recent

> to the tax-lien date. Under amended R.C. 5713.03, the price of that sale is not "conclusive evidence" of the subject property's value. *Terraza*, 150 Ohio St.3d 527, 2017-Ohio-4415, 83 N.E.3d 916, at ¶ 30. Rather, it only presumptively represents the value of the unencumbered fee-simple estate." *Bronx Park*, 153 Ohio St.3d 550, 2018-Ohio-1589, 108 N.E.3d 1079, at ¶ 13. Thus, the BTA needed "to consider not just the sale price but also any other evidence the parties present[ed] that is relevant to the value of the unencumbered fee-simple estate." Id. at ¶ 12. Because the BTA did not consider Spirit Master's appraisal evidence, we must vacate the BTA's decision and remand the case for the BTA to weigh and address that evidence. See *Terraza* at ¶ 39; *Bronx Park* at ¶ 13.

Spirit Master Funding IX, 2018-Ohio-4302, ¶6. The Court further commented that "[t]he school board is correct in pointing out that the property was not encumbered by a lease at the time of the August 2014 sale." Id. at ¶8. Nevertheless, the Court explained, "[b]y showing that the subject property was not encumbered by an above-market lease at the time of the sale, the School Board addresses only one aspect of Racek's appraisal. It fails to recognize that Racek's valuation may have some evidentiary value as an independent matter apart from that concern. Because Racek's appraisal is relevant evidence, the BTA should have considered and weighed it." Id. at ¶9.

On remand, we need not address whether the August 2014 sale is reliable evidence of value. Rather, we must merely consider Racek's appraisal to determine whether it provides a better indication of value than the sale of the subject property. As we consider the appropriate weight to give Racek's appraisal, we are mindful that the "best-evidence rule of property valuation" creates a rebuttable presumption that the sale price reflected true value. *Terraza*, supra. We observe that Racek has performed a reasonable and well-supported appraisal analysis, but ignored the sales of the subject property, instead relying on the adjusted sales of other properties.

All of the properties utilized by Racek required some adjustments for differences in property characteristics, such as condition or location, all of which require some subjective judgment to make up for the inherent differences among the properties. By contrast, the sale of the subject property itself requires no adjustment and no subjectivity to determine how a hypothetical buyer would consider its physical attributes. Similarly, the income approach requires subjective judgments based on the experience of other properties rather than the experience of the subject. Thus, we find that Racek's appraisal report, which failed to utilize either sale of the subject property, should be attributed less weight than a recent arm's-length sale.

We recognize that the Court previously left this Board's finding that the August 2014 sale constituted a qualifying sale of the subject property for purpose of valuation. We further note that Spirit Master has offered no evidence to show that the sale is nevertheless unreliable evidence of value. Accordingly, we find that the sale is more persuasive and should be given more weight than Racek's report.

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

TRUE VALUE

$2,925,880

TAXABLE VALUE

$1,024,060

OHIO BOARD OF TAX APPEALS

FRESH HOUSE START HOUSING SOLUTIONS, (et. al.),
Appellant(s),

vs.

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

CASE NO(S). 2020-1934
REAL PROPERTY TAX DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FRESH HOUSE START HOUSING SOLUTIONS
Represented by:
RUZHI LIANG
31200 CHARDON RD
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For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
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LAKE COUNTY
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P.O. BOX 490
PAINESVILLE, OH 44077

Entered Wednesday, December 9, 2020

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. (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

ROBERT RICHARD VANDERKAM, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-689 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROBERT RICHARD VANDERKAM
OWNER
4386 WOODLAND HILLS BLVD
DAYTON, OH 45414

For the Appellee(s) - MONTGOMERY COUNTY BOARD OF REVISION
Represented by:
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MONTGOMERY COUNTY
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P.O. BOX 972
DAYTON, OH 45422

Entered Wednesday, December 9, 2020

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

This case involves a decision by the Montgomery County Board of Revision ("BOR") affirming the denial of appellant's 2018 homestead exemption application for parcel E21 17207A0100 for tax year 2018. This Board docketed the initial filing as a notice of appeal from the BOR. However, upon further review, the Board determined appellant may not have intended to file a notice of appeal; he may have intended the filing to be service on this Board that an appeal had been filed in the Montgomery County common pleas court. Additionally, the filing was untimely as it was filed more than 30 days after the BOR issued its decision. This Board issued a show cause order to determine the purpose of the filing and to determine this Board's jurisdiction. Appellant did not respond.

Upon review, we find we lack jurisdiction because, even if appellant did intend to file a notice of appeal it was untimely. See R.C. 5717.01. Moreover, it does not appear the notice of appeal was timely filed with the BOR, meaning this Board lacks jurisdiction.

We note that even if we did reach the merits, we would find appellant has not carried his burden. R.C. 323.152(A) provides for a reduction in a property owner's tax bill pursuant to a statutory scheme. See generally *Johnson v. Greene Cty. Bd. of Revision* (July 23, 2019), BTA No. 2018-852, unreported (outlining the homestead exemption statute). To gain the exemption, the property owner must show she or he is a qualified owner whose income does not exceed a statutory amount adjusted for inflation. See *Lucas v. Franklin Cty. Bd. of Revision* (Sept. 30, 2019), BTA No. 2019-377, unreported. "Income" for purposes of the exemption means adjusted gross income of the owner *and* the owner's spouse for the year preceding the year in which the application is made. See 323.152(A); R.C. 323.151(C) (defining "total income"). The property owner bears the burden of showing he or she qualifies for the exemption. See generally *Lucas*.

Appellant filed an exemption application for the subject property, which was initially denied. The denial letter, addressed to appellant, states that "[y]our wife must sign the application and/or complete form DTE105H so that I'm able to verify her income." After, appellant filed a BOR complaint arguing the exemption was wrongly denied because he was the "sole owner." The complaint also states, "I have not seen my so called wife***since 1981/2." At the BOR hearing, appellant raised many ongoing and past legal issues, most of which were unrelated to the exemption. With regard to his marital status, he stated he was married in Michigan but was "unsure" if he was still married. Appellant did not present evidence that the marriage ended, e.g., a death certificate, divorce decree. The BOR denied the exemption.

The property owner had the burden of proving he met all the elements for the exemption. Appellant conceded he was, and presumably is, married. He presented no evidence that marriage

was terminated by death, annulment, dissolution, or divorce. Appellant had the duty to either show the marriage ended or to provide proof of income for his wife. He did neither. Accordingly, if we did reach the merits, we would find the BOR did not error in denying the exemption.

For these reasons, this appeal is dismissed.

OHIO BOARD OF TAX APPEALS

TUSCARAWAS VALLEY LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.),	)	Appellee(s).
Appellant(s),	)	CASE NO(S). 2020-104
vs.	)	(REAL PROPERTY TAX)
STARK COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TUSCARAWAS VALLEY 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:
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STARK COUNTY
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SPRINGWOOD LAKE CLUB PROPERTY
Represented by:
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CANTON, OH 44735-6963

SPRINGWOOD LAKE CLUB PROPERTY
Represented by:
MATTHEW R. HUNT
KRUGLIAK, WILKINS, GRIFFITHS & DOUGHERTY CO., LPA
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P.O. BOX 36963
CANTON , OH 44735-6963

Entered Wednesday, December 9, 2020

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, 204 parcels in Stark County, for tax year 2018. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

The subject property consists of 204 parcels of land owned by the Springwood Lake Camp Club ("Springwood"), within the Springwood Lake Camp Ground, which includes a total of 220 lots owned by Springwood and roughly 856 parcels owned by individual owners. The parcels at issue in the subject appeal are used for additional green space due to topography issues, wooded coverage, and overhanging powerlines. The individual owners add various improvements to their parcels, such as pole-constructed overhanging shelters, sheds, or decks. The Auditor initially assessed the subject's total true value at $708,300 ($3,500 for most parcels). Springwood filed a complaint with the BOR seeking a reduction in value to $1,500 per parcel, while the BOE filed a countercomplaint in support of the Auditor's value.

At the BOR hearing, Springwood relied on testimony from its treasurer, Scott Johnson, and an appeal report performed by Gary Ziegler, an appraiser in the Auditor's office that runs the commercial division, who valued the property at $451,100. Ziegler testified regarding the process by which the Auditor initially assessed the value at $3,500 per parcel, as well as the methodology he used to value the property. Ziegler visited the property and observed the presence of various issues with many of the parcels that required adjustments to the Auditor's initial value, such as topography, wooded areas, and powerlines. Ziegler explained the difficulty of obtaining sales data within the campground because of the inclusion of personal property within the recorded transfers. Based on his observations of the lots and the data, Ziegler started with the $3,500 per lot base value and reduced each parcel based on the negative physical attributes (e.g., 50% reduction due to lot shape). The total value of the lots after making these adjustments was $451,500. The BOE raised challenges to various components of Ziegler's analysis and the

reliability of the underlying data but did not present any independent evidence of value.

The BOR issued a decision reducing the initially assessed valuation to $451,100, indicating that the new values reflected changes to the Auditor's records and resulting values from the CAMA (computer-assisted mass appraisal) system. From this decision, the BOE filed the present appeal.

When cases are appealed from a board of revision to this Board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). While valuation determinations made by county boards of revision are not presumptively correct, see, e.g., *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078, under certain circumstances, when the BOR adopts a new value based on the owner's evidence, it has the effect of "shifting the burden of going forward with evidence to the board of education on appeal to the BTA." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543, ¶16.

In the present appeal, the BOR considered the evidence submitted by Springwood, and reduced the value of the subject property consistent with the observations and recommendations from the head of the Auditor's commercial division. By contrast, the BOE submitted no independent evidence of value and did not make any express legal challenges to the BOR's decision or Ziegler's analysis. Based on the record before us, we find that the Ziegler's value is competent, well-supported, and the best evidence of value. Accordingly, we affirm the BOR's decision. It is therefore the order of this Board that the total true and taxable values of the subject property, as of January 1, 2018, were $451,100 and $157,890, respectively, as allocated by the BOR.

OHIO BOARD OF TAX APPEALS

1170 E. 152 LLC, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-1212
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 1170 E. 152 LLC
Represented by:
MARC ZIMBERG
3377 BLANCHE RD.
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
SAUNDRA CURTIS-PATRICK
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1200 ONTARIO STREET, 8TH FLOOR
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CLEVELAND MUNICPAL CITY SCHOOL DISTRICT BOARD OF EDUCATION
Represented by:
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1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Thursday, December 10, 2020

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

The county appellees move to dismiss this matter on the basis that the notice of appeal was not filed with the county Board of Revision ("BOR"). This matter is decided upon the motion, appellant's response, the statutory transcript certified by the 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

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 reflects that while appellant timely filed the appeal with this Board, the notice of appeal was filed with the BOR thirty-four days after the mailing of the BOR's decision. Appellant's response denied the county appellees' claim that the appeal was untimely filed but did not provide documentation to demonstrate that the appeal was timely filed with the BOR. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this Board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

DEBORAH DECEMBLY, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-992
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEBORAH DECEMBLY
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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 Thursday, December 10, 2020

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

The county appellees move to dismiss this matter on the basis that the notice of appeal was not filed with the county Board of Revision ("BOR"). 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 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 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

DAVID MANN, (et. al.),	)	Appellee(s).)
	)	
Appellant(s),	)	CASE NO(S). 2020-1115
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MEDINA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	

APPEARANCES:

For the Appellant(s) - DAVID MANN
2245 ROUND ROCK DRIVE
AKRON, OH 44333

For the Appellee(s) - MEDINA COUNTY BOARD OF REVISION
Represented by:
HEIDI CARROLL
ASSISTANT PROSECUTING ATTORNEY
MEDINA COUNTY
60 PUBLIC SQUARE
MEDINA, OH 44256

Entered Monday, December 14, 2020

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

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