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OF THE
OHIO BOARD OF TAX APPEALS (BTA)
(Last Updated Saturday, December 31, 2022)

VOLUME 5 – 1/4/21 - PRESENT

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OHIO BOARD OF TAX APPEALS

JAMIE L. DELORENZO, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1911 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JAMIE L. DELORENZO
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
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Entered Monday, January 4, 2021

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 appellant did not file an initial application for remission with the county treasurer prior to filing an appeal with this Board. Appellant did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified to this Board, and appellant's notice of appeal.

On October 14, 2020, appellant filed an application for remission with this Board, which was construed as a notice of appeal. Appellant did not include a copy of a decision from the

Hamilton County Board of Revision ("BOR"). The record shows that appellant filed an application for remission with the BOR on November 9, 2020. Subsequently, on November 30, 2020, the BOR issued a decision to deny the application.

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

HENRY W TUTTLE, (et. al.), Appellant(s), vs. LAKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1401 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HENRY W TUTTLE
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RIVERSIDE LOCAL SCHOOLS BOARD OF EDUCATION
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Entered Monday, January 4, 2021

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

This matter is now considered upon a motion to dismiss filed by the county appellees to dismiss the present appeal, which is now construed as a motion to affirm the decision of the Board of Revision ("BOR") based on the nature of the motion and the BOR's decision. The

county appellees argue that the underlying complaint was filed by individual not authorized to do so. Appellant appealed a decision by the BOR dismissing the matter because it was filed by Henry W. Tuttle, while the property was owned by "Tuttle Henry W TR."

The Supreme Court has made it clear that there is no statutory requirement for a complainant to correctly identify the owner of a subject property. See *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627. There remains, however, a burden to prove that a complainant has 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. R.C. 5715.13 outlines who has standing to file a decrease complaint and provides that "[t]he county board of revision shall not decrease any valuation unless a party affected thereby or who is authorized to file a complaint under section 5715.19 of the Revised Code makes and files with the Board a written application therefor, verified by oath, showing the facts upon which it is claimed such decrease should be made." Thus, to have standing, a complainant must be identified by R.C. 5715.19(A), as one who may file a complaint. See *Groveport Madison*, supra, at ¶25.

The county appellees argue that appellant lacked standing because he was not the owner of the property. While it is true that R.C. 5715.19 permits "[a]ny person owning taxable real property in the county" to properly file a complaint, if the person is a trust, it further authorizes "a trustee of the trust" to file such a complaint. As such, as the trustee, Tuttle was authorized under R.C. 5715.19 and had proper standing to file the complaint on behalf of the property owner trust. See also *Dayton Supply & Tool Co., Inc. v. Montgomery Cty. Bd. of Revision*, 111 Ohio St.3d 367. Thus, the complaint properly vested the BOR's jurisdiction.

Accordingly, we remand this matter to the BOR for further proceedings.

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). 2019-134, 2019-135 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
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Entered Monday, January 4, 2021

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

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 decide the case on the notice of appeal, the statutory transcript, and the parties' briefs.

Because the cases are related, we begin by returning to our decision in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Aug. 29, 2019), BTA No. 2017-1454, unreported (*Long I*), valuing the property at $5,400,000 for tax year 2016. We summarized the facts as follows:

The subject property, comprised of land and a partially complete self-storage facility ("facility") on the tax lien date, was initially assessed at $5,987,300. The property owner filed a complaint with the BOR, which requested that the subject property be revalued at $1,450,000 based upon the incomplete status of the improvement on the tax lien date. The BOE filed a countercomplaint, which objected to the request.

At the BOR hearing on the matter, both parties appeared through counsel. In its presentation, the property owner submitted the testimony of Joseph Beatty, an officer of an entity that co-owned the property owner, and George Harvey, a manager with the property owner who oversaw the construction of the facility. Beatty referred to the facility as a "special use" property, with limited use for another owner, because it was built on 10x10 grid and had high ceiling height. According to Harvey, on the tax lien date, the facility was "basically a shell of a structure" that lacked any mechanicals. Statutory Transcript ("S.T.") at BOR Hearing Audio. In support of the complaint, the property owner submitted a packet of documents, which included excerpts from a larger document (referred to as "RedTeam Performance Overview" for construction work completed between June 30, 2015 and June 30, 2016) to provide a "snapshot of what was occurring at the beginning of each month leading up to" the tax lien date, printed

on June 28, 2017; photographs of the subject property that were taken throughout tax year 2015; excerpts from status reports from February 2016 to April 2016 and selected photographs of the ongoing construction for each month during that period; and rent rolls from May 2016 to December 2016. Id. The BOE cross-examined both Beatty and Harvey about their knowledge of the subject property as of the tax lien date and the cost to construct the facility up to that point. Beatty testified that he believed the facility to be less than 50% complete on tax lien date. Based upon the evidence presented, the property owner requested that the subject property's land be valued consistent with the $1,000,000 price at which it transferred in March 2015, when it was a parking lot, and to value the facility based upon its level of completion on the tax lien date. Conversely, the BOE requested that the subject property's initial value be retained because the property owner failed to provide cost to construct the facility as of the tax lien date.

At the BOR decision hearing, the BOR members concluded that the facility was only 20% complete on the tax lien date. As a result, they voted to value the subject property's land consistent with the price at which it transferred in March 2015 ($1,000,000), and to value the partially complete self-storage facility at 20% of $7,263,100 (the "auditor's cost estimates as complete"), i.e., $ 1,361,800. S.T. at BOR Exhibit; BOR Decision Audio. The BOR subsequently issued a decision, which valued the subject property at $2,361,800, and this appeal ensued.

At this Board's hearing, both parties appeared again through counsel. In its

presentation, the BOE submitted the appraisal report and testimony of appraiser of Thomas D. Sprout, member of the Appraisal Institute. Sprout was examined, and cross-examined, about the underlying data and methodologies used to derive his conclusion that the subject property should be valued at $5,400,000 as of January 1, 2016. Sprout testified that he believed that information available to him regarding the facility's construction costs indicated that the facility was between 65% and 76% complete on tax lien date. In support of Sprout's appraisal report and testimony, the BOE also submitted "Application And Certification For Payment" (referred to as "AIA" for "American Institute of Architects"), which provided the amount of the underlying construction loan, and payments made from such loan, and general descriptions of the work performed in exchange for those loan payments, and a copy of a financing appraisal report performed in contemplation of the underlying construction loan, which valued the subject property in various states and at various periods. In its presentation, the property owner submitted additional testimony from Beatty who expanded upon or refined his prior testimony. He disputed Sprout's testimony about the facility's level of completion and testified that "it's more in the 30 percent range." Hearing Record ("H.R.") at 55. The property owner also submitted an updated copy of the "RedTeam Performance Overview" for construction work completed between January 1, 2016 and January 1, 2017, which also included total construction costs.

We ultimately found Mr. Sprout's opinion of value to be the best evidence of value because we found his percentage of completion to be better supported by the evidence. Per his

appraisal, we adopted a true value of $5,400,000. No party appealed that decision.

We now return to this case. Both the BOE and Long filed complaints for tax year 2017. The BOE requested a value of $10,500,000; Long requested a value of $2,361,800. At the BOR hearing, Mr. Sprout testified and presented an appraisal on behalf of the BOE. He appraised the property at $8,375,000 as of January 1, 2017, using the cost approach. He appraised the property at $8,200,000 using the income approach. Long presented the testimony and appraisal of Robert Weiler, MAI. He valued the property at $4,200,000 as of January 1, 2017, using the cost approach, income capitalization approach, and sales comparison approach. Before this Board issued *Long I*, the BOR adopted Mr. Weiler's appraisal for tax years 2017 and 2018. The BOE appealed.

At this Board's hearing, the BOE recalled Mr. Sprout, and Long recalled Mr. Weiler. Long also called Joseph Beatty, vice president of the management company that handles the subject property. He testified to his understanding that the occupancy of the subject property continually increased with time. The parties filed briefs, and we struck Long's initial briefs for failure to comply with this board's rules. However, we permitted the parties to file reply briefs.

Upon review, we find Mr. Sprout's appraisal to be the best evidence for two primary reasons.

First, Mr. Sprout's appraisal is consistent with our decision in *Long I*; Mr. Weiler's is not. In *Long I*, we valued the property at $5,400,000 as of January 1, 2016. Mr. Beatty's testimony and the appraisals confirm the property was *more* developed on January 1, 2017, and occupancy had *increased*. As the BOE correctly notes, those developments would make the property more valuable not less. Accordingly, Mr. Weiler's opinion of value is inconsistent with our opinion in *Long I*.

Second, we find no serious defects with Mr. Sprout's appraisal. Mr. Weiler's appraisal has a serious defect, as the parties agree. Mr. Weiler misanalysed in his income approach, which

led him to understate value by almost 20%. All parties acknowledge the defect. See BOE Br. at 4-6; Long Br. at Weiler Affidavit. Indeed, that is the reason Long attempted to supplement the record after the hearing to resolve the problems with Mr. Weiler's appraisal.

In sum, we find Mr. Sprout's cost approach to be most persuasive in light of our decision in *Long I* and given the age of the building on the tax lien date. For these reasons, we order the property valued as follows for tax year 2017:

TRUE VALUE
$8,375,000
TAXABLE VALUE
$2,931,250

Because the BOR took jurisdiction over an open tax year (2018), we reverse that portion of its decision and remand with instructions to vacate the 2018 determination. See *Gallick v. Franklin Cty. Bd. of Revision* (Oct. 30, 2017), BTA No. 2016-405, unreported.

OHIO BOARD OF TAX APPEALS

BILAL ABED ALLHAMZEH, (et. al.), Appellant(s), vs. LAKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-971 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BILAL ABED ALLHAMZEH
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Entered Tuesday, January 5, 2021

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 34A007J000280, for tax year 2019. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript. The property owner filed a complaint with the BOR, requesting the subject property be revalued from $67,200 to $20,000. By way of the complaint, the property owner asserted that he bought the subject property for $20,000 or $20,154 in March 2016 and that the subject property had few amenities and needed updates. No one appeared on behalf of the property owner at the BOR hearing and the BOR issued a decision that retained the subject property's value. This appeal ensued.

[2] None of the parties availed themselves of the opportunity to submit evidence at a hearing before this Board. The county appellees filed written argument to argue that the sale of March 2016 was too remote to the tax lien date and, therefore, not indicative of the subject property's value.

[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] We begin our analysis with the property owner's $20,154 purchase of the subject property in March 2016, which seemingly formed the basis of the property owner's requested valuation. 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, 2019. 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 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."). For this reason, we must conclude that the property owner's $20,154 purchase of the subject property in March 2016 was too remote from the tax lien date and, consequently, is not reflective of its value.

[5] To the extent that the property owner argued that defects of the subject property necessitated a reduction to its value, we must also reject that argument. The property owner failed to provide evidence to quantify the specific diminution in value that resulted from the defects. *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* unreported. (Mar. 15, 2016), BTA No. 2015-1451,

[6] 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 property's value. As a result, it is the order of this Board that the

subject property's value shall remain as initially assessed as of the relevant tax lien date:

True Value: $67,200

Taxable Value: $23,520

OHIO BOARD OF TAX APPEALS

JUAN MONCLUS ANA MONCLUS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-921 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JUAN MONCLUS ANA MONCLUS
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Entered Tuesday, January 5, 2021

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

CHAD C WELKER, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-900 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CHAD C WELKER
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Tuesday, January 5, 2021

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 notice of appeal, and the statutory transcript certified by the county board of revision ("BOR").

R.C. 5717.01 allows for an appeal to be taken to this board from a decision of a county 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.").

During this board's small claims hearing, the appellant property owner asserted that he was unaware that he was required to file a copy of the notice of appeal with the BOR. Unfortunately, by proceeding in a pro se capacity, the appellant risked the possibility that he may not have a complete understanding of the appeal process; however, his election to proceed pro se does not relieve him of the responsibilities imposed upon him. See, e.g., *Phelps v. Ohio Atty. Gen.*, Franklin App. No. 06AP-751, 2007-Ohio-14, at ¶8 ("We recognize that appellants are acting pro se. Nevertheless, a pro se litigant '"is held to the same rules, procedures and standards as those litigants represented by counsel and must accept the results of her own mistakes and errors."').

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

RUTH ANNA CARLSON, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-834 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RUTH ANNA CARLSON
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Tuesday, January 5, 2021

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 685-26-008, 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 is improved with a 3,248-square-foot townhome and was initially assessed by the Fiscal Officer at a total true value of $532,000. Appellant filed a complaint with the BOR seeking a reduction in value to $398,000. The BOR convened a hearing, at which appellant asserted that the value of the subject property was not consistent with the assessed values of similar properties in the same area. Appellant also described some conditions that

made the area somewhat less desirable. The BOR issued a decision maintaining the initially assessed valuation, which appellant appealed to this Board. On appeal, appellant again argued that the Fiscal Officer valued the subject property disparately from other properties in the immediate area, focusing on the percentage of the change in value from the prior year's assessment. The county appellees argue that appellant has failed to meet her burden of proof and the value determined by the Fiscal Officer and retained by the BOR should be maintained by this Board.

[3] 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 her opinion of value is not probative, her 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.").

[4] Initially, we must reject appellant's argument that the Fiscal Officer's value for the subject property from the earlier tax year or the change in value of 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.").

[5] Second, a discussion about negative conditions in the area 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 her burden to demonstrate a reduced value for the subject property.

[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

$532,000

TAXABLE VALUE

$186,200

OHIO BOARD OF TAX APPEALS

RALPH COOPER, (et. al.), Appellant(s), vs. CLARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-825 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RALPH COOPER
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NEW CARLISLE, OH 45344

For the Appellee(s) - CLARK COUNTY BOARD OF REVISION
Represented by:
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Entered Tuesday, January 5, 2021

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 260-1-25-310-3, for tax year 2019. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript. The property owner filed a complaint with the BOR, requesting the subject property be revalued from $288,590 to $270,000. Information about neighboring properties was attached to the complaint. At the BOR hearing on the matter, the property owner appeared to submit argument and evidence in support of the requested value. He argued that neighboring properties were assessed at values lower than his property, which demonstrated that the subject property had been overvalued. The property owner argued that the subject property and neighboring

properties should have gone up in value in the same proportion. The BOR determined that the property owner's argument and evidence were unpersuasive and issued a decision that retained the subject property's initial value. This appeal ensued.

[2] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. The property owner attached a document to his notice of appeal. Because this document was submitted outside the hearing context, it will not be considered in our analysis. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 16 (1996).

[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] In this matter, 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.").

[5] 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 to demonstrate that the subject property should be valued at $270,000 or any other value that deviates from its initially assessed value. As a result, it is the order of this Board that the subject property shall remain as initially assessed as of the tax lien date:

True Value: $288,590

Taxable Value: $101,010

OHIO BOARD OF TAX APPEALS

HELEN D. LINTER, TR, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-328 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HELEN D. LINTER, TR
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For the Appellee(s) - FRANKLIN COUNTY BOARD OF REVISION
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Entered Tuesday, January 5, 2021

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

[1] The appellant property owner appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real property, parcel number 025-012945, 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 parties' written argument. We note that the property owner attached several documents to her brief. The appellee Board of Education ("BOE")

moved to strike these documents and portions of the property owner's brief that reference them. To the extent that these documents were not submitted during a hearing and are, therefore, not properly in the record, we grant the BOE's motion to strike them from consideration and the record. *Columbus Bd. of Education v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

[2] The subject property consists of 11.392 acres of undeveloped industrial land. The Auditor initially assessed the subject's total true value at $532,600. The property owner filed a complaint with the BOR seeking a reduction in value to $400,000. The BOE filed a countercomplaint in support of the Auditor's value.

[3] The BOR convened a hearing, at which appellant relied on testimony from its tax representative, Billy McVeigh. McVeigh testified that the property had several topographical issues that impacted its potential for development. McVeigh claimed that in previous years, the assessed value took these issues into consideration but that the 2017 value did not. McVeigh also performed a sales comparison analysis, utilizing the sales of seven properties and adjusting them based on size, date, and condition. Based on this analysis, McVeigh concluded that the value of the property should be $30,000 per acre, or $345,000 (rounded). The BOE objected to McVeigh's testimony about the sales because he lacked personal knowledge of the transactions. The BOE also asserted that McVeigh's sales comparison analysis was not a formal appraisal and lacked necessary support for his conclusions. The BOE further argued that any information regarding prior year's valuations was not relevant for the current tax year.

[4] The BOR issued a decision maintaining the initially assessed valuation. During the BOR decision hearing, the BOR indicated that it found that the property owner failed to submit competent and probative evidence of value, such as owner testimony or an impartial value opinion, and that the value from a previous year was not relevant for tax year 2017, which was a reappraisal year for Franklin County. From this decision, the property owner filed the present

appeal. On appeal, the parties relied on written argument, reiterating the positions set forth during the BOR hearing.

[5] 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.").

[6] In this case, appellant relied on testimony of negative conditions, specifically purported issues with its shape and topography. 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. Therefore, the presence of adverse factors alone does not provide a basis for a reduction.

[7] Moreover, we agree with the BOR that the Auditor's value for a prior year is not relevant for the tax year at issue. The auditor is required to value and assess taxes against real property in the county, including a reappraisal of property values once every six years and 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). 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, values from earlier years carry no weight in our 2017 determination.

[8] The property owner relied on McVeigh's sales comparison analysis to demonstrate the value of the subject property. We find, however, that the property owner failed to demonstrate that McVeigh was qualified to perform an appraisal analysis sufficient to support a reduction in the value of the property for purposes of ad valorem taxation. 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. McVeigh does not qualify

as an "owner" entitled to provide an opinion of the subject's value, nor has the property owner shown that McVeigh otherwise possesses the expertise regarding the valuation of property to perform a reliable analysis. See, e.g., *Poenisch v. Franklin Cty. Bd. of Revision* (Jan. 23, 2015), BTA No. 2014-961, unreported, citing The Appraisal of Real Estate (13th Ed. 2008) (noting that while a variety of real estate professionals may have extensive training in their field and develop some appraisal expertise, as a group, real estate sales people "typically do not consider all the factors that professional appraisers do."). Furthermore, we find that McVeigh has not provided sufficient support for his adjustments. Therefore, McVeigh's sales comparison analysis is not competent and probative evidence of value.

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

[10] It is therefore the order of this Board that the true and taxable values of the subject property, as of January 1, 2017, were as follows:

TRUE VALUE

$532,600

TAXABLE VALUE

$186,410

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). 2017-73 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, January 5, 2021

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

This matter is again before the Board of Tax Appeals on remand from the Eighth District Court of Appeals, which issued a decision and judgment entry in *Spirit Master Funding IX, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 107382, 2019-Ohio-1349, vacating this Board's decision and order, dated June 8, 2018. 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 ¶2. To reach this decision, the Court relied on the Supreme Court's decision in *Spirit Master Funding IX, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 254, 2018-Ohio-4302 ("*Spirit Master I*").

The subject property is improved with a 7,534 square-foot freestanding restaurant built in 1977 and operating as a Red Lobster. The Fiscal Officer initially assessed the value of the subject property at $2,016,400. Spirit Master filed a complaint seeking a decrease in value to $1,535,000, and the BOE filed a countercomplaint seeking an increase to a value of $3,439,000. The BOR convened a hearing, but due to a technical issue, no audio recording is available. The parties agreed to supplement the record with the audio recording from the tax year 2014 BOR proceedings, which involved the same parties, same sales, and same appraisal report.

At the BOR hearing, the BOE submitted deeds and conveyance fee statements evidencing two transfers of the subject property during 2014. On July 21, 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 counsel acknowledged that he had no personal 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 a 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 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 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 December 2014 sale, the transfer closest to the tax lien date. We rejected Spirit Master's argument that this Board must disregard the sale because it was the transfer of a leased fee interest, noting that Spirit Master had failed to submit a lease. We found

that Racek's testimony about the sales were unreliable hearsay that was not corroborated or supported by other evidence. After finding that Spirt Master failed to demonstrate that the December 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 to the 8th District Court of Appeals, which vacated our decision and ordered the Board to weigh and address Spirit Master's appraisal evidence. The Court relied heavily on *Sprit Master I*, which explained:

> 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 thatevidence. See *Terraza* at ¶ 39; *Bronx Park* at ¶ 13. *Spirit Master I*, 2018-Ohio-4302, ¶6. None of the parties disputed the recency or arm's-length nature of the sale, and the court noted 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.

In the present appeal, we must consider the evidentiary weight appropriate for Spirit Master's appraisal evidence for tax year 2015. To do so, we must first determine whether the record contains sufficient evidence that a recent arm's-length sale of the subject real property took place, and if the answer is to the affirmative, whether the opponent of the sale 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, such as the appraisal evidence presented in this case, to demonstrate that the sale was not reflective of market value or provide affirmative evidence of value. *Sprit Master I,* at ¶9, citing *Westerville City School Dist.*, supra. We note that the Court has acknowledged that while appraisers must rely on hearsay evidence to perform their job, this Board is justified in excluding an appraiser's statement regarding the sale of the property itself, particularly where "[t]he basis for [the appraiser's] statement rested solely on a conversation she had with an unnamed owner who did not testify before the BOR or the BTA." *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046, ¶36. This narrow rule applies to those circumstances "in which an appraiser acts merely as a conduit of information concerning material facts about the subject property itself," and the party fails to present testimony from the owner. Id. First, we look at whether the December 2014 sale provides reliable evidence of value. None of the parties has challenged the recency or arm's-length nature of the transaction. The question is whether the lease in place impacted the purchase price to the extent that it did not reflect the value of the real property but rather the value of the lease. There is an assertion that the parties entered into the lease around the time of the sale and that the lease terms reflect a financing arrangement rather than market lease rates. The record,

however, contains no competent or probative evidence to corroborate this claim. Indeed, Racek's testimony on this matter was based on conversations with individuals involved in the August 2014 sale and not with anyone from the sale at issue. Thus, we find that any information relayed through Racek is not sufficiently reliable to invalidate the sale without some corroboration. Likewise, Racek included a summary of purported lease terms in his appraisal. Without the lease itself in evidence, however, we are unable to corroborate those statements or determine the timing of the commencement of the lease as it compares to the sale. Accordingly, on the record before us, we cannot conclude that the purported lease had an impact on Spirit Master's sale price.

Next, we must consider whether Racek's appraisal 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.

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

TRUE VALUE

$3,439,000

TAXABLE VALUE

$1,203,650

OHIO BOARD OF TAX APPEALS

PAUL & CAROL SCHMITMEYER TRUSTEES, (et. al.), Appellant(s), vs. MERCER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1291 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PAUL & CAROL SCHMITMEYER TRUSTEES
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Entered Wednesday, January 6, 2021

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

Appellants appeal a decision of the Board of Revision ("BOR"), which determined the value of the subject real property, parcel numbers 27-161500.0000 and 27-161400.0000, for tax year 2019. 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 submitted by the appellee Board of Education ("BOE") and the county appellees.

The Auditor initially assessed the subject's total true value at $287,160. The BOE filed a complaint with the BOR seeking an increase in value to $525,000. At the BOR hearing, the BOE submitted evidence that the subject property transferred from Heckman Real Estate LLC to Paul M. Schmitmeyer and Carol A. Schmitmeyer for $525,000 on November 7, 2019. The BOE argued that the sale price represented the true value of the subject property. Appellants did not participate at the hearing. The BOR issued a decision increasing the initially assessed valuation to $523,550, which appellants appealed to this Board, seeking reinstatement of the Auditor's value. Appellants did not request a hearing at which they could present evidence or submit written argument in support of their position. The BOE and the county appellees both assert that the sale price provides the best evidence of value.

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). 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, there is no dispute that the subject property sold via an arm's-length transaction on November 7, 2019. The property owner provided no basis for this Board to reject

the sale or other independent evidence of value. 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. We allocate the total sale price among parcels based on their proportionate share of the Auditor's original assessment. See *FirstCal Indus. 2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921.

It is, therefore, the order of this Board that the true and taxable values of the subject property, as of January 1, 2019, were as follows:

PARCEL NUMBER 27-161500.0000

TRUE VALUE

$433,590

TAXABLE VALUE

$151,760

PARCEL NUMBER 27-161400.0000

TRUE VALUE

$91,410

TAXABLE VALUE

$31,990

OHIO BOARD OF TAX APPEALS

TIMOTHY & DENNIS MCCOLLEY, (et. al.), Appellant(s), vs. BELMONT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1034 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TIMOTHY & DENNIS MCCOLLEY
OWNER
120 MARTH DRIVE
SAINT CLAIRVILLE, OH 43950

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

Entered Tuesday, January 12, 2021

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

The property owner has filed the instant appeal, asserting that a complaint was filed with the Belmont County Board of Revision ("BOR"), which challenged the value of parcel 34-00933.000 and 34-00233.000, for tax year 2019. However, they argued that though the parties entered into a settlement agreement as to parcel 34-00933.000, the BOR failed to issue a written decision on the value of parcel 34-00233.000. As a result, we must first determine whether this Board has jurisdiction to consider the value of parcel 34-00233.000. In doing so, we consider this matter based upon the notice of appeal, and its attachments, and certified statutory transcript.

The record reveals the following. On March 6, 2020, the property owners filed a

complaint on the above-referenced parcels. On May 11, 2020, the County Auditor sent the property owners a settlement offer as to parcel 34-00933.000, which the property owners accepted on May 22, 2020. There was no indication that parcel 34-00233.000 was included in the settlement offer. On July 7, 2020, the property owners filed a notice of appeal with this Board, which specifically challenged the value of parcel 34-00233.000 and noted they "[d]id not receive written decision[,] only verbal by Bernie." By way of a supporting statement attached to the notice of appeal, the property owners conceded that the BOR did not provide a written decision as to the value of parcel 34-00233.000. On July 13, 2020, the BOR noticed the property owners of its intent to hold a merit hearing on the matter at 11:00 AM on July 29, 2020. The statutory transcript included a record of a BOR hearing though it is unclear if it occurred on July 29, 2020, because the DTE-Form 3, certified by the County Auditor, indicated that the BOR issued a written decision to the property owners on July 14, 2020, more than two weeks prior to the scheduled hearing date. Nevertheless, during that hearing, Mrs. McColley and a member of the BOR reference this appeal, which suggested that the BOR hearing occurred *after* the property owners filed their notice of appeal. Though this Board specifically requested that the BOR file a complete statutory transcript, see *McColley v. Belmont Cty. Bd. of Revision* (Interim Order, October 8, 2020), BTA No. 2020-1034, unreported, the BOR failed to provide a copy of a BOR decision.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St.

147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this Board.

Here, it is undisputed that the BOR had not yet issued a written decision prior to the filing of the instant appeal. Because the BOR failed to demonstrate that it issued a written decision as to parcel 34-00233.000, it would appear that the BOR has yet to fulfill its statutory duty to do so. As such, we are constrained to find that we lack the authority to consider the merits of this appeal. Accordingly, the matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

HEATH & MICHELLE LAUDICK, (et. al.), Appellant(s), vs. CLERMONT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-866 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - HEATH & MICHELLE LAUDICK
Represented by:
HEATH LAUDICK
OWNER
1112 BLACK HORSE RUN
LOVELAND, OH 45140

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 12, 2021

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

The appellants appeal 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 the first half of tax year 2019. We proceed to consider this matter based upon the underlying application, certified statutory transcript, and appellants' written argument.

The appellants applied for remission of the late-payment penalty for the previously mentioned tax period. The appellants asserted that they timely mailed their check payment for the property-tax bill, which their bank did not pay because of insufficient funds. They asserted that sufficient funds were contained in the account, however, an error in the setup of the account

prevented payment on the check. As a result, their bank dishonored the check upon presentation on two occasions. The BOR subsequently issued a written decision that denied the appellants' request for remission of the late-payment penalty and this appeal ensued. Only the appellants submitted written argument, arguing that fairness dictated 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 appellants have not demonstrated that the facts and circumstances of this matter qualify for remission of the late-payment penalty pursuant to R.C. 5715.39, which provides the guidelines to determine when real property tax late-payment penalties shall be remitted. 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 appellants requested remission of the late-payment penalty under R.C. 5715.39(B)(4) and 5715.39(C). Unfortunately, they failed to provide evidence that they timely mailed their property-tax bill payment "on or before the last day for payment of such tax[]" as required on the application. Given the facts of this matter, even if they could demonstrate that they mailed their property-tax bill payment within the timeframe indicated by R.C. 5715.39(B)(4), we would still conclude that they would not have been entitled to penalty remission because the property-tax bill was not actually paid. It is undisputed that the appellants' bank did not honor their check payment for the property-tax bill payment. As such, we conclude that the appellants are not entitled to remission of the late-payment penalty pursuant to R.C. 5715.39(B)(4).

We proceed to consider whether the appellants have demonstrated that penalty remission would be appropriate consistent with R.C. 5715.39(C). Though we sympathize with the appellants, we cannot conclude that their failure to timely pay the property-tax bill amounted to reasonable cause. The record indicates that the appellants had at least one late payment of property-tax bills for tax year 2018. 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. We see no reason to stray from our prior holdings. As such, we conclude that the appellants are not entitled to remission of the late-payment penalty pursuant to R.C. 5715.39(C).

The appellants have requested that this Board grant their request out of a sense of fairness. This Board does not have equitable jurisdiction and, therefore, cannot grant them the relief that they seek out of a sense of fairness. See, *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564, 569 (1953).

Based upon the foregoing, we affirm the BOR's decision to deny the appellants' request for remission of the late-payment penalty associated with the property-tax bill for the first half of tax year 2019.

OHIO BOARD OF TAX APPEALS

SUNSHINE DEVELOPMENT PROPERTIES, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1050, 2020-1051 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - SUNSHINE DEVELOPMENT PROPERTIES
Represented by:
DEBORAH ARINGTON
PROPERTY MANAGER
SUNSHINE DEVELOPMENT PROPERTIES
13400 MADISON AVE
LAKEWOOD, OH 44107

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

LAKEWOOD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Tuesday, January 12, 2021

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

The property owner appeals from a decision of the Board of Revision ("BOR"), which determined the value of the subject property, parcel 315-16-008, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

The affected Board of Education ("BOE") filed a complaint with the BOR, requesting the subject property be revalued from $291,400 to $327,500, purportedly to reflect the price at

which it transferred in November 2017. No countercomplaint was filed. At the BOR hearing, only the BOE appeared to submit argument and/or evidence. In doing so, the BOE submitted sale documents to demonstrate two transfers of the subject property, which occurred "recent" to the tax lien date: the $327,500 transfer of the subject property from AHA Development I, LLC to Sunshine Development Corporation ("SDC") in August 2017 and the $0 exempt transfer of the subject property from SDC to Sunshine Development Properties in November 2017. Based upon the evidence, the BOR voted to revalue the subject property at $327,500 and this appeal ensued. While this matter was pending, this Board *sua sponte* consolidated these cases given their duplicative nature.

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.

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.

We begin our analysis with the sale closest to the tax lien date. *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687. The record is void of any competent, credible, and probative evidence related to the $0 exempt transfer of the subject property from SDC to the property owner in November 2017. As a result, we do not find such sale to be reflective of the subject property's value.

We proceed to consider whether the earlier sale, the $327,500 transfer of the subject property from AHA Development I, LLC to SDC in August 2017 was the best indication of the subject property's value, which was the basis of the BOE's complaint and BOR's decision. We find that upon presentation of the sale documents, by the BOE, the BOR properly determined that the BOE satisfied the "relatively light initial burden[]" to demonstrate that the subject property should be valued consistent with its $327,500 transfer in August 2017. See, *Lunn*, supra.

On appeal, the property owner failed to provide any rebuttal argument and/or evidence to demonstrate that such sale was not the best indication of the subject property's value. See, *Terraza 8*, supra. The property owner failed to advance any argument or evidence to support this appeal. Though it had an opportunity to submit evidence at a hearing before this Board, the property owner opted not to avail itself of such opportunity. Instead, this Board set a briefing deadline to allow the parties to submit written argument in support of their respective positions. The property owner opted not to avail itself of such opportunity, to assert that the subject property should not be valued

consistent with its $327,500 transfer of August 2017. We note that the notice of appeal highlights that "[t]he economy is bad in the area of the property[]" as the basis for the appeal. We have previously held that a notice of appeal is not an adequate substitute for reliable documentary and testimonial evidence. A notice of appeal merely constitutes unsworn, unproven statements, claims and allegations. Evidence presented at a hearing is accepted only upon conditions designed to ensure 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. As a result of the absence of any argument and/or evidence in support of this appeal, we find that the property owner failed to satisfy the evidentiary burden on appeal.

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 its evidentiary burden. The record contains sufficient evidence to demonstrate that the subject property should be valued consistent with the sale of August 2017. We find, therefore, that the subject property shall be valued as follows as of the relevant tax lien date:True Value: $327,500 Taxable Value: $114,630

OHIO BOARD OF TAX APPEALS

RAAJAGANAPATHY LLC, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1126 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RAAJA GANAPATHY LLC
Represented by:
RAAJA GANAPATHY
OWNER
7620 CONLEY LN
DUBLIN, OH 43016

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

Entered Tuesday, January 12, 2021

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

[1] Raajaganapathy LLC appeals from a decision of the Franklin County Board of Revision ("BOR") denying penalty remission for the first half of 2019. No party requested a hearing. We decide the case on the notice of appeal, the statutory transcript, and any written argument.

[2] Appellant failed to timely pay its real property tax bill for the first half of 2017, and the BOR granted penalty remission. Its tax bill for the first half of 2019 was due January 21, 2020, but appellant failed to timely pay. After the Treasurer assessed a 5% penalty, appellant filed a

remission application. The Treasurer recommended the application be denied, and the Auditor denied the application. The BOR likewise denied the application due to prior delinquency. In its notice of appeal, appellant's owner simply indicates payment was "accidentally" sent late.

[3] 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.

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

[5] Here, we find appellant has not shown it is entitled to penalty remission because the facts of this case do not match any of the scenarios listed in R.C. 5715.39. Likewise, we find appellant has not shown the failure to timely pay was due to reasonable cause and not willful neglect especially in light of appellant's history of failing to timely pay the tax.

For these reasons, we find the BOR did not err. Appellant's application is denied.

OHIO BOARD OF TAX APPEALS

BENTAL LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-620 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BENTAL 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

Entered Tuesday, January 12, 2021

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 687-09-005, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, statutory transcript, and motion to remand filed by the appellees.

[2] We begin our analysis with the appellees' motion to remand, to ensure that we have jurisdiction to consider the merits of this appeal. By way of the motion, the appellees allege that the underlying complaint was filed on behalf of the property owner by a person not authorized to do so. The complaint failed to identify the complainant and though the person who filed the

complaint identified herself/himself as "manager," the signature on the complaint was illegible. The appellees asserted that the complaint was filed by Yisrael Harris, a person who was not an owner/member of the limited-liability company that owns the subject property. Harris responded to the motion on behalf of the property owner. Because there was no indication that he was an attorney licensed to practice law in Ohio, his response 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).

[3] 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.

[4] Here, there is no indication that Harris was an owner-member of entity that owned the property, an attorney, or one who was identified by R.C. 5715.19(A) to file complaints on behalf of another. Though he was identified as "manager," such a relationship did not allow him 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 at ¶17 ("Property managers,

however, are not among the nonlawyers who are explicitly authorized to file complaints under R.C. 5715.19(A).").

[5] In the absence of any evidence that the complaint was filed by one authorized to file on behalf of the property 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, we grant the appellees' motion to remand this matter to the Cuyahoga County Board of Revision with instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

MOHIELDIN ELGAALI, (et. al.),
Appellant(s),

vs.

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

CASE NO(S). 2020-2000
REAL PROPERTY TAX) DECISION AND ORDERAPPEARANCES:

For the Appellant(s) - MOHIELDIN ELGAALI
OWNER
14417 ELDERWOOD AVE.
EAST CLEVELAND, OH 44112

For the Appellee(s) - Cuyahoga County Board of Revision
Represented by:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, January 12, 2021

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

MICHAEL MILLER/JERMAINE MUSE/NEW AGE CORP MANA GROUP LLC, (et. al.),	)	
	)	CASE NO(S). 2020-1954
Appellant(s),	)	
	)	(REAL PROPERTY TAX)
vs.	)	
	)	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	
Appellee(s).		

APPEARANCES:

For the Appellant(s) - MICHAEL MILLER/JERMAINE MUSE/NEW AGE CORP MANA GROUP LLC
Represented by:
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5221 LEE ROAD, SUITE 100
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MAPLE HEIGHTS CITY SCHOOLS BOARD OF EDUCATION
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CLEVELAND, OH 44131-2222

Entered Thursday, January 14, 2021

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

PORAT GROUP 3, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1399 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PORAT GROUP 3, LLC
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Entered Tuesday, January 19, 2021

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

Porat Group 3, LLC, appeals from a decision of the Cuyahoga County Board of Revision ("BOR") dismissing appellant's valuation complaint, filed July 23, 2020, as untimely. We decide the case on the notice of appeal, the statutory transcript, and any written argument.

The question in this case is a legal one. R.C. 5715.19 requires a complainant to file their valuation complaint with the county auditor "on or before the thirty-first day of March***." See

R.C. 5715.19(A)(1); see also R.C. 5715.19(A)(1)(F) (a complaint postmarked by March thirty-first is timely). The parties do not dispute the complaint in this case was filed in July 2020, after the filing deadline.

Appellant argues its complaint was timely, however, because the March deadline was tolled by Am. Sub. H.B. 197 of the 133rd General Assembly. The General Assembly passed the Bill in March 2020. The version passed by the General Assembly and passed to the Governor contained language tolling certain deadlines and statutes of limitation. Specifically, Section 22, provided that certain deadlines "set to expire between March 9, 2020, and July 30, 2020, shall be tolled[.]" That included "[a]ny other criminal, civil, or administrative time limitation or deadline under the Revised Code."

On March 27, 2020, the Governor vetoed the text "or deadline[.]" Per the veto, he did so for the following reasons:

> This provision is intended to apply only to criminal statutes of limitations, civil statutes of limitations, administrative statutes of limitations and other statutorily created time limitations in court cases. Removing the boxed language clarifies that this provision does not apply to statutory tax deadlines or due dates, including those tax deadlines or due dates adjusted elsewhere in this bill. The Tax Commissioner has the authority to individually extend tax deadlines and due dates based upon particularized situations. All other state agencies, boards and commissions will work with Ohio citizens in individual circumstances. This clarification, and maintaining revenue sources, such as the sales tax, which has already been collected by vendors but not yet remitted to the State and distributed to local governments, to fund essential government services, is imperative during the duration of the Governor's COVID-19 emergency declaration. Therefore, this veto is in the public interest.

The General Assembly did not override the veto. See Ohio Constitution, Article II, Section 16 (outlining the General Assembly's ability to override a veto). No party has cited additional legislation that would affect this case.

Appellant's argument is that, even if the Governor's veto language is considered, the first part of the relevant provision independently tolls the complaint deadline. The original clause stated "[a]ny other criminal, civil, or administrative time limitation or deadline under the Revised Code." Again, the Governor vetoed the "or deadline" so the provision would not apply to "tax deadlines or due dates." Appellant urges us to find the complaint deadline is a statute of limitations and not a "tax deadline[] or due date" per the veto.

We find the argument unpersuasive for three reasons. First, appellant's reading is inconsistent with this Board's decisions finding H.B. 197 does not apply to notices of appeal to this Board, i.e., a tax deadline just like the valuation complaint deadline. See, e.g., *Chapman v. McClain* (Oct. 13, 2020), BTA No. 20-1162, unreported. Second, we find no legal source supporting appellant's argument that the Governor's veto was insufficient to stop the tolling of tax deadlines. Appellant cites no case from any other tribunal or court. Finally, we also look to the long-established rule of construction that the specific trumps the general. See generally *State v. Pribble*, 158 Ohio St.3d 490, 2019-Ohio-4808. Here, the Governor vetoed the *specific* deadline language since that provision was on point for tax deadlines. Additionally, while appellant cites three Eight District cases calling the deadline a statute of limitations, other courts, including the Ohio Supreme Court, have deemed the date a deadline. See e.g., *Kohl's III v. Marion Cty. Bd. of Revision*, 140 Ohio St.3d 522, 2014-Ohio-2872.

Appellant also argues the reasons the Governor gave, for example, "maintaining revenue," are inapplicable to the complaint deadline. We think that clearly wrong since real property taxes provide the government with resources necessary during a time of pandemic, even if the complaint deadline does not affect the payment date. Indeed, any taxes due for the year in question are partially due and owing as of the date of this decision.

For these reasons, we find appellant's argument unpersuasive, and we affirm the dismissal.

OHIO BOARD OF TAX APPEALS

EDWARD F HOBAN / NATIONAL CHURCH RESIDENCES OF HOLY TRINITY, OH, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-3006, 2020-144 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EDWARD F HOBAN / NATIONAL CHURCH RESIDENCES OF HOLY TRINITY, OH
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BEDFORD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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Entered Monday, January 25, 2021

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

[1] The board of education ("BOE") has moved for this Board to remand the matter to the Cuyahoga County Board of Revision ("BOR") with instructions to dismiss the underlying complaint. The BOE argues that as a ground lessee of the subject property, National Church Residences of Holy Trinity, OH ("Trinity") lacked standing to file the underlying complaint. As

such, the BOR did not have jurisdiction over the complaint. This matter is now decided upon the motion, the responses thereto, the transcript certified by the BOR, and appellant's notice of appeal.

[2] The record shows that in March 2019, Trinity filed a decrease complaint for property owned by Edward F. Hoban. The complainant identified its relationship to the property as "Lessee." During the BOR hearing, the BOE raised a jurisdictional objection to the complaint on the basis that the complainant was not the owner of the property, nor did the complainant own other property in Cuyahoga County. Therefore, the BOE argued, the complainant did not have standing to file the complaint. Trinity responded that a long-term lease was akin to ownership and established Trinity's standing to file. Trinity further maintained that National Church Residences ("NCR"), which is the managing partner of Trinity, is also the managing partner of other properties owned in the county. The BOR acknowledged the jurisdictional challenge but issued a decision of retaining the Fiscal Officer's value for the subject property. From this decision, Trinity file the present appeal.

[3] In its motion, the BOE argues that Trinity failed to establish itself as the fee-simple owner-of-record of the subject property and that Trinity does not own any taxable real property in Cuyahoga County. The BOE maintains that the subject property is owned by Edward F. Hoban, and that the terms of the lease did not establish Trinity's ownership. See *Diley Ridge Med. Ctr. v. Fairfield Cty. Bd. of Revision*, 141 Ohio St. 3d 149, 2014-Ohio-5030. Consequently, Trinity lacked standing, and the BOR lacked jurisdiction to hear the underlying complaint.

[4] In response to the motion, Trinity argues that it had standing to file the complaint through its ownership of the building, relying on a memorandum of understanding attached to its response. The memorandum indicates Trinity owns all buildings, structures, improvements, and fixtures, but also that it is effective upon the date the agreement is executed by all parties

and exhibits the signature of the administrator of the Roman Catholic Diocese of Cleveland, dated March 31, 2020. The signature areas for Trinity and for the managing member of Holy Trinity II Senior Housing Limited Partnership are blank. Trinity also attached a copy of an open-end mortgage deed which recognizes Trinity "is lawfully seized and possessed in fee simple interest." Additionally, Trinity points out that the Auditor's value of the property provides separate valuation for the land and for the building.

[5] R.C. 5715.19 provides that "[a]ny person owning taxable real property in the county or in a taxing district with territory in the county" may file a complaint; or "a person owning taxable real property in another county may file such a complaint only with regard to any such determination affecting real property in the county that is located in the same taxing district as that person's real property is located." The Supreme Court has previously determined that a lessee does not have standing to file a complaint when the lessee does not own the subject property or other property in the county. See, *Victoria Plaza, LLC v. Cuyahoga Cty. Bd. of Revision* (1999), 86 Ohio St.3d 181, 183; *Performing Arts School of Metro Toledo, Inc. v. Wilkins* (2004), 104 Ohio St.3d 284. Additionally, this Board has determined that when ownership is divided between land and improvements, both owners have standing to file a complaint challenging property value. *Valibar Realty Co. v. Cuyahoga Cty. Bd. of Revision* (Jan. 6, 2006), BTA Nos. 2003-T-633, et al, unreported. Nevertheless, a party that maintains its standing as a ground lessee through its ownership of the building must both assert and prove its claim. See *Diley Ridge*, supra, at ¶24.

[6] To determine legal ownership, this Board first looks to the terms of the ground lease. The ground lease is for a term of 99 years, commencing upon the lessee's closing of a Section 202 Capital Advance from the Department of Housing and Urban Development ("HUD"). The terms of the lease authorize Trinity to obtain said advance, secured by a mortgage on the leasehold estate. While these terms allow Trinity to secure a mortgage, they do not alter the terms of the ground

lease, which does not expressly grant ownership of the improvements to Trinity.

[7] Additionally, although we acknowledge that the memorandum of understanding reflects that Trinity obtained funding, operates, and owns the building, such memorandum is effective upon the date it was signed (March 31, 2020), which was subsequent to the filing of the underlying complaint. Furthermore, the memorandum indicates that nothing therein alters the rights or obligations of the parties under the lease. As such, we find that the memorandum does not establish Trinity as an owner of either the land or the building at the time the complaint was filed. Additionally, we agree with Trinity that the Fiscal Officer provides a separate valuation for the land and for the building, the record does not reflect a separation of ownership.

[8] Based upon the foregoing, we conclude that Trinity failed to establish itself as the owner of the subject property at the time the underlying complaint was filed. Furthermore, Trinity failed to demonstrate ownership of any other property in the county. As such, Trinity did not have standing to file such complaint. It is therefore the decision of this Board that the BOR lacked jurisdiction to consider the initial complaint filed. Accordingly, this matter is hereby remanded to the BOR with instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

BERTAL ENTERPRISES VII, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1099 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BERTAL ENTERPRISES VII, LLC
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CLEVELAND, OH 44114

Entered Monday, January 25, 2021

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

SAFIA F. ANNOH, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-2099 (REAL PROPERTY TAX) ORDER

APPEARANCES:

For the Appellant(s) - SAFIA F. ANNOH
OWNER
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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EAST CLEVELAND CITY SCHOOL DISTRICT BOARD OF EDUCATION
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CLEVELAND, OH 44114

Entered Wednesday, January 27, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days*

after notice of the decision is mailed by the BOR. (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 F. HOBAN / HOLY TRINITY II SENIOR HOUSING LIMITED PARTNERSHIP, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-3007, 2020-145 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - EDWARD F. HOBAN / HOLY TRINITY II SENIOR HOUSING LIMITED PARTNERSHIP
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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BEDFORD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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WESTLAKE, OH 44145

Entered Wednesday, January 27, 2021

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

[1] The Board of Education ("BOE") has moved for this Board to remand the matter to the Cuyahoga County Board of Revision ("BOR") with instructions to dismiss the underlying complaint. The BOE argues that as a ground lessee of the subject property, Holy Trinity II Senior Housing Limited Partnership ("Trinity"), lacked standing to file the underlying

complaint. As such, the BOR did not have jurisdiction over the complaint. This matter is now decided upon the motion, the responses thereto, the transcript certified by the BOR, and appellant's notice of appeal.

[2] The record shows that in March 2019, Trinity filed a decrease complaint for property owned by Edward F. Hoban. The complainant identified its relationship to the property as "Lessee." During the BOR hearing, the BOE raised a jurisdictional objection to the complaint on the basis that the complainant was not the owner of the property, nor did complainant own other property in Cuyahoga County. Therefore, the BOE argued, the complainant did not have standing to file the complaint. Trinity responded that a long-term lease was akin to ownership and established Trinity's standing to file. Trinity further maintained that National Church Residences ("NCR"), which is the managing partner of Trinity, is also the managing partner of other properties owned in the county. The BOR acknowledged the jurisdictional challenge but issued a decision of retaining the Fiscal Officer's value for the subject property. From this decision, Trinity filed the present appeal.

[3] In its motion, the BOE argues that Trinity failed to establish itself as the fee-simple owner-of-record of the subject property and that Trinity does not own any taxable real property in Cuyahoga County. The BOE maintains that the subject property is owned by Edward F. Hoban, and that the terms of the lease did not establish Trinity's ownership. See *Diley Ridge Med. Ctr. v. Fairfield Cty. Bd. of Revision*, 141 Ohio St. 3d 149, 2014-Ohio-5030. Consequently, Trinity lacked standing, and the BOR lacked jurisdiction to hear the underlying complaint.

[4] In response to the motion, Trinity argues that it had standing to file the complaint through its ownership of the building, relying on a memorandum of understanding attached to its response. The memorandum indicates Trinity owns all buildings, structures, improvements, and fixtures, but also that it is effective upon the date the agreement is executed by all parties and

exhibits the signature of the administrator of the Roman Catholic Diocese of Cleveland, dated March 31, 2020. The signature areas for Trinity and for the managing member of Holy Trinity II Senior Housing Limited Partnership are blank. Trinity also attached a copy of an open-end mortgage deed which recognizes Trinity "is lawfully seized and possessed in fee simple interest." Additionally, Trinity points out that the Auditor's value of the property provides separate valuation for the land and for the building.

[5] R.C. 5715.19 provides that "[a]ny person owning taxable real property in the county or in a taxing district with territory in the county" may file a complaint; or "a person owning taxable real property in another county may file such a complaint only with regard to any such determination affecting real property in the county that is located in the same taxing district as that person's real property is located." The Supreme Court has previously determined that a lessee does not have standing to file a complaint when the lessee does not own the subject property or other property in the county. See, *Victoria Plaza, LLC v. Cuyahoga Cty. Bd. of Revision* (1999), 86 Ohio St.3d 181, 183; *Performing Arts School of Metro Toledo, Inc. v. Wilkins* (2004), 104 Ohio St.3d 284. Additionally, this Board has determined that when ownership is divided between land and improvements, both owners have standing to file a complaint challenging property value. *Valibar Realty Co. v. Cuyahoga Cty. Bd. of Revision* (Jan. 6, 2006), BTA Nos. 2003-T-633, et al, unreported. Nevertheless, a party that maintains its standing as a ground lessee through its ownership of the building must both assert and prove its claim. See *Diley Ridge*, supra, at ¶24.

[6] To determine legal ownership, this Board first looks to the terms of the ground lease. The ground lease is for a term of 99 years, commencing upon the lessee's closing of a Section 202 Capital Advance from the Department of Housing and Urban Development ("HUD"). The terms of the lease authorize Trinity to obtain said advance, secured by a mortgage on the leasehold estate. While these terms allow Trinity to secure a mortgage, they do not alter the terms of the ground

lease, which does not expressly grant ownership of the improvements to Trinity.

[7] Additionally, although we acknowledge that the memorandum of understanding reflects that Trinity obtained funding, operates, and owns the building, such memorandum is effective upon the date it was signed (March 31, 2020), which was subsequent to the filing of the underlying complaint. Furthermore, the memorandum indicates that nothing therein alters the rights or obligations of the parties under the lease. As such, we find that the memorandum does not establish Trinity as an owner of either the land or the building at the time the complaint was filed. Additionally, we agree with Trinity that the Fiscal Officer provides a separate valuation for the land and for the building, the record does not reflect a separation of ownership.

[8] Based upon the foregoing, we conclude that Trinity failed to establish itself as the owner of the subject property at the time the underlying complaint was filed. Furthermore, Trinity failed to demonstrate ownership of any other property in the county. As such, Trinity did not have standing to file such complaint. It is therefore the decision of this Board that the BOR lacked jurisdiction to consider the initial complaint filed. Accordingly, this matter is hereby remanded to the BOR with instructions to dismiss the underlying complaint.

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). 2019-394, 2019-461 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
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Represented by:
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ABIGAIL ACQUISITION, LLC
Represented by:
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Entered Monday, February 1, 2021

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

[1] The board of education ("BOE") and property owner appeal a decision of the Board of Revision, which determined the value of the subject property, parcel 010-021884-00, for tax years 2017 and 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and written argument submitted by the parties.

[2]The BOE filed a complaint, requesting the subject property's value be increased from

$6,825,000 to $9,600,000. The property owner did not file a countercomplaint. The BOR held a hearing on the matter at which the parties appeared to submit argument and/or evidence. As the hearing commenced, counsel for the BOE noted that the subject property's improvements, an apartment building, were subject to an abatement. As such, counsel suggested that the BOR could rely upon forthcoming appraisal evidence to value the subject property's land, which was not subject to an abatement. In its presentation, the BOE submitted the report and testimony of appraiser Thomas D. Sprout, which opined the value of the subject property to be $8,165,000 as of the tax lien date. Sprout was examined and cross-examined about the underlying data and methodologies used to derive his opinion of value. Based upon the evidence presented, the BOE requested that the subject property be revalued accordingly. The property owner argued that Sprout's appraisal report was unreliable because he did not inspect the interior of the subject property's improvements. (It should be noted that the parties incorporated the record of another case, BOR No. 17-901074/BTA No. 2018-393 which involved the same counsel and witness.) At the BOR decision hearing, though the BOR members noted that it did not find Sprout's appraisal report to be competent evidence of value because he did not inspect the subject property and view the subject property's financial data, they nevertheless voted to accept Sprout's appraisal report as to his conclusion of the subject property's land value. As a result, the BOR voted to increase the subject property's land value from $651,900 to $1,020,000. The BOR subsequently issued a decision that increased the subject property's total value to $7,193,100. The BOE and property owner appealed the decision to this Board, which were consolidated on the property owner's unopposed motion.

[3]Though these appeals were originally scheduled for a merit hearing before this Board, the BOE and property owner waived the hearing. Instead, they opted to submit written argument to assert their respective arguments. In its submissions, the BOE argued that only it had provided

competent, credible, and probative evidence, in the form of Sprout's appraisal report, and, therefore, satisfied its evidentiary burden to prove that the subject property's value should be increased. In its submissions, the property owner conversely argued that the BOR erred by relying upon Sprout's appraisal report. Instead, the property owner argued that the subject property's value should have remained as initially assessed.

[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 exempt transfer of the subject property from Abigail, LLC to Abigail Acquisition, LLC in tax year 2015. (We note that, in its written argument, the property owner disputed whether the record demonstrated that the subject property had actually been the subject of a transfer. We conclude that there is, indeed, sufficient evidence in the record to demonstrate that the subject property transferred via an entity transfer.) We find the 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. 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 *Cleveland Metropolitan Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (June 29, 2020), BTA No. 2018-497, unreported; see also *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 107199, 2019-Ohio-634. However, this Board has not considered the sale of a membership interest to be a real property sale when the record lacks specific evidence of the transaction, which makes 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 Cy. 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. Here, the record is devoid of any evidence to demonstrate that the subject sale was solely the sale of real property and, therefore, we cannot conclude that such sale reflects the subject property's value.

[6]We proceed to evaluate Sprout's appraisal report. He began his analysis by determining the subject property's highest and best use "as vacant" and "as improved" would be multi-family residential use. He considered the three approaches to valuing real property, concluded that the cost approach was inapplicable given the income-generating nature of the subject property, and proceeded to develop the sales and income approaches to value. Under the sales-comparison approach, Sprout commenced his analysis by developing a land value as if the subject property did not have improvements, i.e., "as if vacant." He compared the features of the subject property's land characteristics to the characteristics of six comparable sales located in the

same vicinity as the subject property that sold between June 2014 and May 2017. After adjusting the comparable land sales for differences with the subject property's land, he concluded to a land value of $1,020,000 as of the tax lien date. Sprout continued his analysis by developing an opinion of value as the subject property existed on the tax lien date, "as improved," as a 69-unit apartment complex. He compared the subject property's overall features to the features of five comparable properties located in the same vicinity as the subject property that sold between May 2015 and March 2016. After adjusting the comparable sales for differences with the subject property, he determined a per-unit value of $117,500, which he applied to the subject property's 69 units to arrive at a lower-end value of $8,100,000. He also developed an effective gross income multiplier ("EGIM") analysis, concluding an EGIM of 8.50, based upon the comparable sales and the subject property's estimated stabilized effective gross income resulted in a value estimate of $8,250,000. Taking into consideration all of the conclusions reached under the sales-comparison approach, Sprout concluded an indicated range in value between $8,100,000 and $8,250,000 as of January 1, 2017.

[7]Under the income approach to value, Sprout surveyed the market to determine market rent and expenses. In doing so, he relied upon the lease rates of nine other apartment communities in the same vicinity as the subject property and determined market rent for the subject property's one, two, and three-bedroom units, i.e., $975 per month for the forty, one-bedroom units, $1,350 per month for the ten, two-bedroom units, and $1,600 per month for the nineteen, three-bedroom units. He concluded a gross potential income of $994,800, deducted $49,740 (5%) to account for vacancy and credit loss, added $24,150 (or $350 per unit) to account for other income, to conclude an effective gross income of $969,210. From that number, he deducted $244,043 of expenses, based upon six expense comparables located throughout Franklin County, Ohio, to account for items such as advertising and administrative and management fees, to conclude a net operating

income of $725,167. Sprout capitalized net operating income at 8.88% to conclude an indicated value of $8,165,000 as of January 1, 2017. He reconciled the indicated values, placing most weight on the income approach to value and little weight on the sales-comparison approach to value, and finally concluded the subject property's value to be $8,165,000, allocated $1,020,000 to land, $7,076,000, and $69,000 for furniture, fixtures, and equipment ("FF&E"), as of January 1, 2017.

[8]As we review Sprout's appraisal report, we note that 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.

[9]Though the property owner advanced a number of arguments to assert that Sprout's appraisal report was not competent, credible, and probative evidence of the subject property's value, we disagree for the most part. We agree that his land value is not reflective of the subject property's value as it existed on the tax lien date, as improved land, not as vacant land. In *Milanov v. Franklin Cty. Bd. of Revision* (May 11, 2018), BTA Nos. 2016-1936 et al., unreported, we disregarded dueling appraisal reports that valued land improved with condominiums subject to a tax abatement because they valued the land as unimproved vacant land. Compare *NWD300 Spring LLC v. Franklin Cty. Bd. of Revision* (Dec. 23, 2015), BTA Nos. 2015-106 et al., unreported, affirmed on appeal 151 Ohio St.3d 193, 2017-Ohio-7579. We see no reason to stray from our prior decision in this matter and accord no weight to Sprout's conclusion of vacant land value.

[10]However, as to the property owner's remaining arguments, we find them meritless.

First, the property owner alleged that Sprout's use of entity transfers, under the sales-comparison approach, violated the Supreme Court's decision in *Palmer House*. We reject that argument. While *Palmer House* is applicable to the subject property's entity transfer from tax year 2015, which was a sale comparable one, that was not the case for the remaining comparable sales. In *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 154 Ohio St.3d 449, 2018-Ohio-2046 ("*UTSI*"), at ¶¶ 37-38, the court held:

> This is not to deny as a general matter the force of UTSI's logic that an expert appraiser must at times rely on hearsay evidence to perform his or her job. 'Some hearsay evidence necessarily is always involved with expert testimony. To become an expert, one must read and learn from sources which are necessarily outside the evidence at trial. It is this knowledge obtained from outside sources which qualifies a witness as an expert.' *Worthington City Schools v. ABCO Insulation,* 84 Ohio App.3d 144, 152, *** (10th Dist.1992); *see also* 2 Gianelli, *Evidence,* Section 703.9, at 103-104 (3d Ed.2010) ('In one sense, most expert testimony is based, in part, on hearsay').
>
> But the BTA's hearsay determination does not throw these practical observations into doubt. The scope of its ruling applies to the narrow class of cases in which an appraiser acts merely as a conduit of information concerning material facts about the subject property itself, namely, whether the property's sale was between related parties. Whether the BTA would run afoul of the Rules of Evidence in excluding on hearsay grounds, say, an appraiser's reliance on

> market data prepared by a third party is something that can be addressed in a proper case. *See Buckeye Hospitality*, 146 Ohio St.3d 470, 2016-Ohio-757, ***, at ¶ 10-11 (noting appraiser's reliance on market data prepared by third parties). (Parallel citations omitted.)

Sprout testified that he spoke to people involved in the entity transfers, in sales comparables, two, three, four, and five, used in the sales-comparison approach and confirmed that only the real property transferred. Thus, under *UTSI*, we find that there was no impropriety in his use of entity transfers as sales comparables. We note, however, that he gave little weight to his conclusion of value under the sales-comparison approach.

[11]Second, the property owner attempted to assail Sprout's methodologies and conclusion of value because he failed to consider the subject property's actual income and expenses. Instead, he relied upon market information to develop his income approach to value. 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. Furthermore, it is undisputed that the subject property was an income producing property on the tax lien date and, as a result, it was appropriate for Sprout to place the most weight on the indication of value under the income approach to value. Thus, we find that Sprout properly developed and relied upon market income and market expenses to determine the subject property's value.

[12]Third, the property owner argued that Sprout's appraisal report must be disregarded because he did not inspect the subject property. Based upon the facts of this matter, we reject this

argument. A review of the record demonstrates that Sprout requested an opportunity to view the subject property and the property owner did not respond. As previously noted, the subject property's improvements were approximately two years old on the tax lien date and the condition of such improvements would have little impact on the income approach to value, which is the most persuasive approach to valuing real property in this matter. Thus, we find Sprout's inability to inspect the subject property, under the facts in this matter, does not require this Board to reject his appraisal report.

[13]Fourth, the property owner argued that it would be inappropriate to change the subject property's land value because the subject property's improvements were subject to a tax abatement. Though the terms of the tax abatement are not in the record, it is undisputed that the subject property's land was *not* part of such abatement and was, therefore, still subject to tax. The essence of the property owner's argument requests that this Board provide favorable treatment to the subject property's land although the appropriate taxing agency opted not to do so. The property owner has cited no law to support this argument. Because the subject property's land was still subject to taxation, we reject the property owner's argument.

[14]Finally, we note that the property owner 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-Ohio-489 (1994). Hence, we decline to address this issue.

[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"). In doing so, we note that the BOE offered appraisal evidence to support its requested value, while the property owner chose to rely upon its cross-examination of Sprout and argument

challenging the probative value of the appraisal report. As the Supreme Court has reiterated, a party's election to forego the presentation of valuation evidence and rely solely upon argument and cross-examination is not without risk. See *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St. 3d 193, 2013-Ohio-4543. We find Sprout's appraisal report, specifically his overall $8,165,000 conclusion of value under the income approach to be competent, credible, and probative evidence of the subject property's value. Although we agree with his $69,000 allocation to FF&E, we do not agree with his allocation of value between the subject property's land, $1,020,000, and improvements, $7,076,000. Instead, we find it appropriate to allocate value consistent with county auditor's initial valuation. See *First Cal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of* Revision, 125 Ohio St.3d 485, 2010-Ohio-1921.

[16]It is, therefore, the order of this Board that the subject property shall be valued as follows as of the relevant tax lien date(s):

Parcel Number: 010-021884-00

Land: $773,300

Improvements: $7,322,700

FF&E: $69,000

Total: $8,165,000

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). 2019-2054 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, February 2, 2021

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 10007732, 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 consists of 4.76 acres of commercial land, which the Auditor classified as "roadway-pending" for tax year 2018 and valued at $342,200. The property owner,

Berkshire Farms LLC, filed a complaint with the BOR seeking a reduction in value to $0. The BOE filed a countercomplaint in support of the Auditor's value. At the BOR hearing, Mark Memmer, the owner of Berkshire Farms, appeared in support of the requested reduction. Memmer testified that the roadway was complete in 2017 to support the subdivision, inspections took place throughout 2018, and the County Commissioners formally approved the transfer for public ownership on January 2, 2019. Memmer claimed that the process was extended beyond 2018 because of holiday-related delays, but otherwise the property would not have had any assessed value as a public roadway. The BOE asserted that the Auditor's value should be retained because the relevant tax lien date is January 1, 2018 and the roadway was not approved until 2019. The BOR issued a decision reducing the subject's value to $0, which led to the present appeal. We note that the record also contains a report from an appraiser in the Auditor's office that recommends the auditor's value be maintained.

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 this case, the BOR reduced the value of the property to $0, based on a January 2, 2019 resolution of acceptance as a public road. There is no dispute that the subject property was not formally a public road on the tax lien date. Nevertheless, we find that the property effectively was

a public roadway and could be used for no other purpose because the plat map had been approved and the parcel required only formalities before it could be formally approved as a public road. Accordingly, we find that the BOR's value was proper and that the BOE was required, but failed, to submit independent evidence of value to meet its burden on appeal.

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

TRUE VALUE

$0

TAXABLE VALUE

$0

OHIO BOARD OF TAX APPEALS

M A KAPLAN LIVING TRUST, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1333 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - M A KAPLAN LIVING TRUST
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Entered Friday, February 12, 2021

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

[1] The property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 741-07-068, 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, which requested a reduction to the subject property's value from $230,000 to $189,000. At the BOR hearing on the matter, Marina Kaplan, trustee of the property owner, appeared in support of the complaint. She explained that the subject property was a residential rental property, which generated $1,700 monthly rental income, with a tenant who has failed to maintain the subject property. As a result, the city of

Beachwood assessed multiple housing violations against the property owner. Ms. Kaplan argued that the subject property's increase in value from the prior triennial period, $189,000, to $230,000, had created a financial hardship given her ongoing, contentious divorce proceedings and her employment status. In support of the complaint, she submitted information about the assessed values, and resultant property tax due, of other properties, a comparable sale, and photographs of the subject property. 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 largely reiterated the testimony that she previously provided to the BOR. However, she submitted additional evidence, i.e., photographs, information from the Fiscal Officer's page for the subject property and other properties, which highlighted their salient features, most recent transfer, and/or their property tax due, and an appraisal report.

[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 are constrained to find that the property owner has failed to provide competent, credible, and probative evidence of the subject property's value. As an initial matter, we must reject the property owner's argument that the subject property's prior triennial value, purported to be $189,000, should carry forward into tax year 2018. The Fiscal Officer was under a statutory duty to reassess real property values, in light of the existing market conditions, for tax year 2018. See, generally, R.C. 5713.01(B), 5715.33, and 5715.34. In carrying out such duty, the 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). It should also be noted that the property owner failed to provide any specific documentary evidence to support valuing the subject property at $189,000.

[6] The property owner submitted an excerpt from an appraisal report performed by appraiser Charles Flagg, which opined the value of the subject property to be $200,000. Because Flagg did not testify at this Board's hearing, the excerpt constitutes unreliable hearsay. 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 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), 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 report contains sufficient indicia of reliability, the information contained within the appraisal report may furnish an independent basis for valuing the property. *Team Rentals*, supra, at ¶27. Though Ms. Kaplan noted that the complete appraisal report was performed for purposes of divorce proceedings, we do not find the excerpt that she provided to this Board to be credible. The excerpt that was provided to the Board does not have an "as of" date for the appraiser's valuation. However, we note that the excerpt provided information related to the subject property's features for tax year 2015 and that the comparable sales occurred in tax year 2016. Because we are unable to relate the information within the appraisal report to the tax lien date at issue, January 1, 2018, we are unable to rely upon the excerpt from the appraisal report to reduce the subject property's value.

[8] The property owner submitted comparable sales to support its 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 salient features of the subject property. A review of the comparable sales highlights the varied nature of the homes sitused on those properties. For example, a review of the comparable sales submitted at this Board's hearing demonstrates that those homes vary by design (including ranch, Cape Cod, bungalow, and Colonial styles), date of sale (occurring throughout tax year 2019 though the tax lien date was January 1, 2018), and square footage (ranging from 1,315 square feet to 2,767 square feet), and number of bedrooms and bathrooms (ranging from three to four bedrooms and to two to three bathrooms). The comparable properties' site sizes (ranging from 0.233 acres to 0.682 acres) also vary. This Board has repeatedly held that unadjusted comparable sales data are an 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).

[9] 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.").

[10] 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. For example, how much should the subject property's value be reduced because of the alleged interior condition of the home. We cannot say because the property owner failed to provide sufficient evidence to demonstrate such the effect on value of the condition of or defects in the property. *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.)

[11] 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 in light of her hardships. *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564, 569 (1953).

[12] 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 to support this appeal. 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: $230,000

Taxable Value: $80,500

OHIO BOARD OF TAX APPEALS

SYLVANIA CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. LUCAS COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2019-1943 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, February 16, 2021

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

[1] The Board of Education ("BOE") appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject property, parcels 82-06000 and 82-06002, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The property owner filed a complaint with the BOR, requesting the subject property's

value be reduced from $9,212,300 to $7,000,000. (The record provides varying values for the subject property, i.e., in the DTE-Form 3, property record cards, audio of BOR hearing, and BOR decision letter. We accept the subject property's initial value as provided in the audio of the BOR hearing and decision letter.) The BOE filed a countercomplaint, objecting to the request. (The BOR purportedly provided a copy of the BOE's countercomplaint, unfortunately, no such document was provided.)

[3] At the BOR hearing on the matter, both parties appeared to submit argument and/or evidence in support of their respective positions. George Lathrop, a managing member of the property owner as well as its property manager, appeared on behalf of the property owner. He testified as to his experience as a real-estate broker and the subject property's historic operations as a medical-office building and the local medical-office market. Lathrop was cross-examined about the topics about which he testified. In support of the property owner's complaint, appraiser Jonas A. Westrin testified consistent with his appraisal report, co-authored with Ryan D. Hugueley, which opined the value of the subject property to be $7,700,000 as of the tax lien date. The property owner amended its opinion of value to conform to Westrin's appraisal report. Westrin was examined and cross-examined about the underlying data and methodologies used to develop his conclusion of value. There was some discussion about the subject property's participation in a tax-increment financing ("TIF") program, which would end after tax year 2018. At the BOR decision hearing, the BOR members voted to reduce the subject property's value consistent with Westrin's appraisal report, $7,700,000, as of January 1, 2018. In doing so, they voted to retain the $104,600 value of parcel 82-06000 and decrease the value of parcel 82-06002 from $9,107,700 to $7,595,400 for tax year 2018. (The BOR also noted that, because the TIF would no longer be in place, the total $7,700,000 value would be placed on parcel 82-06000 for tax year 2019.) This appeal ensued.

[4] Though the BOE initially requested an opportunity to submit evidence at a hearing before this Board, this Board sua sponte canceled the hearing after the parties failed to disclose their evidence consistent with the case management schedule. None of the parties availed themselves of the opportunity to submit written argument in lieu of such hearing.

[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 appraisal report submitted by the property owner. Westrin began his analysis by determining the subject property's highest and best use "as vacant" and "as improved" would be office use. He considered the three approaches to valuing real property, concluded that the cost approach was inapplicable given the age of the improvements and the difficulty with accurately estimating depreciation, and proceeded to develop the sales and income approaches to value. Under the sales-comparison approach, Westrin compared the subject property's overall features to the features of five comparable properties located throughout northern Ohio that sold between April 2016 and December 2017. After adjusting the comparable properties for differences with the subject property, he concluded an indicated value of $7,760,000. Under the income approach to value, Westrin surveyed the market to determine

market rent, expenses, and capitalization rate. In doing so, he relied upon the lease rates of seven other office properties located throughout northern Ohio to determine market rent of $23.00 per square feet, which he applied to the subject property's 69,972 of rentable space, to conclude potential gross income of $1,609,356. From that number, he deducted $241,403 (15%) to account for vacancy and credit loss and added $38,485 to account for other sources of income (expense reimbursement), to conclude effective gross income of $1,406,438. After deducting $448,696 for expenses, i.e., utilities, management fee, and reserves for replacement, he concluded net operating income of $957,742, which he capitalized at 12.53% (including a 3.53% tax additur) before concluding an indicated value of $7,640,000. 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 $7,700,000 as of January 1, 2018.

[7] As we review the merits of this matter, we must note the burden of proof in this matter. Because the BOR reduced value based upon the property owner's appraisal evidence, the *Bedford* rule, pronounced in *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St. 3d 449, 2007-Ohio-5237, applies. 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. 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. Here, the BOE failed to come forward with affirmative evidence of value. The BOE also failed to assert or to demonstrate legal error in Westrin's appraisal report and/or the BOR's reliance upon it. Upon review, we glean no legal error in the appraisal report. As a result, we find that the BOE failed to satisfy its evidentiary burden on appeal.

[8] Accordingly, we agree that the property owner provided competent, credible, and probative evidence of value to the BOR and conclude that the BOR properly relied upon such evidence. It is, therefore, 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:

Parcel No. 82-06000

True Value: $104,600

Taxable Value: $36,610

Parcel No. 82-06002

True Value: $7,595,400

Taxable Value: $2,658,390

OHIO BOARD OF TAX APPEALS

ELIAS KARSHEH, ZACHARIAH COHEN, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-2269 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ELIAS KARSHEH, ZACHARIAH COHEN
Represented by:
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N. OLMSTED, OH 44070

For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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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 Wednesday, February 17, 2021

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

[1] The county appellees move to remand this appeal with instructions to dismiss the underlying complaint on the basis that it was prepared and filed by a person not authorized to do so, consequently rendering the complaint as jurisdictionally deficient. No response to the

motion was filed. Accordingly, this matter is decided upon the county appellees' motion, the statutory transcript ("S.T.") certified by the Board of Revision ("BOR") pursuant to R.C. 5717.01, and appellants' notice of appeal.

[2] The record shows that on March 30, 2020, a decrease complaint was filed with the BOR by Hani Nader as an agent for the property owners, Karsheh Elias & Cohen Zachariah. After considering the complaint, the BOR issued a decision finding that no change in value was warranted. The property owners then filed the present appeal. In its motion, the county appellees argue that the complaint was not filed by an individual authorized by R.C. 5715.19(A) and that Mr. Nader, a real estate salesperson, engaged in the unauthorized practice of law by filing the complaint. As such, the county appellees argue that the complaint failed to properly invoke the jurisdiction of the BOR.

[3] The Supreme Court has reaffirmed that "if someone other than the property owner prepares and files the complaint on behalf of the owner, that person must be an attorney or authorized by law to make such filing." *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 230, 2018-Ohio-4244, ¶11. Further, R.C. 5715.19(A) specifies non-attorney agents who may file on behalf of an owner, including spouses, appraisers, real estate brokers, accountants, and corporate officers. Real estate salespersons are *not* among those non-attorney agents authorized to file valuation complaints on behalf of another and engage in the unauthorized practice of law when they do so. *Greenway*, supra, at ¶17. A complaint filed by a non-attorney agent not authorized by law fails to invoke the board of revision's jurisdiction. *Sharon Village, Ltd. v. Licking Cty. Bd. of Revision*, 78 Ohio St.3d 479 (1997).

[4] Based upon the foregoing, we find that Mr. Nader was not authorized to file the complaint on behalf of the owners. See, also, *Ruhl/Stuckey v. Montgomery Cty. Bd. of Revision*

(Jan. 29, 2013), BTA No. 2012-L-2524, unreported. Accordingly, we find that the complaint failed to invoke the jurisdiction of the BOR and hereby remand this matter with instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

CARAMAN NICOLAE, VASILICA, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-2118 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CARAMAN NICOLAE, VASILICA
Represented by:
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OWNER
CARAMAN CORPORATION
5489 RIVERVIEW DRIVE
NORTH ROYALTON, OH 44133

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

Entered Wednesday, February 17, 2021

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

[1] This matter is now considered upon the county appellees' motion to affirm the decision of the Cuyahoga County Board of Revision ("BOR") to dismiss the underlying complaint. The county appellees assert that the complaint against the valuation of real property was filed by an individual who was not authorized to do so and, therefore, the BOR dismissed the complaint. No written response to the motion was filed, but the merits of the motion and the BOR's decision were discussed during a small claims telephonic hearing. Accordingly, this matter is decided upon the motion, the statutory transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, appellants' notice of appeal, and the statements made during the telephonic hearing.

[2] The record shows that on March 31, 2020, a complaint against the valuation of real property was filed by George Caraman as an agent for the property owner, Caraman, Vasilica, Nicolae. S.T., Exhibit A. At the BOR hearing, George Caraman testified that he is the son of the property owner. He further testified that he is not an appraiser, broker, or attorney. S.T., Exhibit E. Thereafter, the BOR issued a decision to dismiss the complaint for the reason that the complainant engaged in the unauthorized practice of law. Subsequently, the property owner filed an appeal with this Board. During the small claims telephonic hearing, George Caraman explained that his parents have limited ability to speak or write English and that he filed the complaint to assist them. George Caraman further stated that he was acting with their consent and that he had filed complaints on behalf of his parents before and without any trouble with the county. The county appellees asserted that the appellants could have hired an attorney to prepare and file the complaint if they needed such assistance and it would have been lawfully filed.

[3] 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. R.C. 5715.19(A) governs who may file a complaint against the valuation of real property. The Supreme Court has held that those specified in the statute may file a complaint without the assistance of an attorney on behalf of another, without such actions constituting the unauthorized practice of law. *Marysville Exempted Village School Dist. Bd. of Edn. v. Union Cty. Bd. of Revision*, 136 Ohio St.3d 146, 2013-Ohio-3077; *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 134 Ohio St.3d 529, 2012-Ohio-5680.

[4] This Board has previously found that non-attorney family members are not authorized

to file a complaint with a board of revision on behalf of other family members. See *Glick v. Wayne Cty. Bd. of Revision* (July 28, 2006), BTA No. 2004-P-552, unreported (remanding with instructions to dismiss a complaint filed by father on behalf of children); *Lavery v. Summit Cty. Bd. of Revision* (Nov. 2, 2001), BTA No. 200-V-1647, unreported. The Supreme Court has found that a non-attorney operating under a power of attorney engages in the unauthorized practice of law when he or she prepares and files a complaint with a board of revision on behalf f a taxpayer. See *Fravel v. Stark Cty. Bd. of Revision*, 88 Ohio St.3d 574 (2000), citing *Disciplinary Counsel v. Cleman*, 88 Ohio St.3d 155 (2000). Nowhere is it alleged that an attorney was involved in the preparation and filing of the underlying complaint.

[5] Based upon the foregoing, we find that George Caraman, son of the property owners, was not authorized to file the underlying complaint. See also, *Ruhl/Stuckey v. Montgomery Cty. Bd. of Revision* (Jan. 29, 2013), BTA No. 2012-L-2524, unreported. Accordingly, this the decision of the Cuyahoga County Board of Revision to dismiss the underlying complaint is hereby affirmed.

OHIO BOARD OF TAX APPEALS

D.D.K. INV, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-812
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - D.D.K. INV, LLC
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 Wednesday, February 17, 2021

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 645-10-061, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The property owner filed a complaint with the BOR, requesting the subject property be revalued from $86,000 to $30,000 purportedly based upon the price at which it transferred in August 2015. No one appeared on behalf of the property owner at the BOR hearing and the

BOR issued a decision that retained the subject property's value. This appeal ensued. None of the parties availed themselves of the opportunity to submit evidence at a hearing before this Board.

[3] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. Yisrael Harris filed a motion to supplement the record on behalf of the property owner. There was no indication that Harris was an attorney licensed to practice law in Ohio; thus, it appears that he has engaged in the unauthorized practice of law by attempting to represent the property owner in this matter, i.e., engaging in motion practice. 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 strike the motion to supplement the record and order Harris to cease and desist from the unauthorized practice of law.

[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 $30,000 purchase of the subject

property in August 2015, which formed the basis of the property owner's requested valuation. 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 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."). For this reason, we must conclude that the property owner's $30,000 purchase of the subject property in August 2015 was too remote from the tax lien date and, consequently, is not reflective of its value.

[6] 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 property's value. As a result, it is the order of this Board that

the subject property's value shall remain as initially assessed as of the relevant tax lien date:

True Value:

$86,000

Taxable Value:

30,100

OHIO BOARD OF TAX APPEALS

MMS INV LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-811
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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

Entered Wednesday, February 17, 2021

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 682-23-077, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, statutory transcript, and motion to remand filed by the appellees.

[2] We begin our analysis with the appellees' motion to remand, to ensure that we have jurisdiction to consider the merits of this appeal. By way of the motion, the appellees allege that the underlying complaint was filed on behalf of the property owner by a person not authorized to do so. The complaint failed to identify the complainant and though the person who filed the

complaint identified herself/himself as "manager," the signature on the complaint was illegible. The appellees asserted that the complaint was filed by Yisrael Harris, a person who was not an owner or member of the limited-liability company that owns the subject property. In support of this assertion, the county appellees provided answers to interrogatories submitted to the property owner during the discovery process, which only identified Moshe and Michal Shurin as the owner-members of the property owner and identified Harris as "statutory agent and manager."

[3] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. Yisrael Harris filed a response to the motion to remand and filed a motion to supplement the record on behalf of the property owner. There was no indication that Harris was an attorney licensed to practice law in Ohio; thus, it appears that he has engaged in the unauthorized practice of law by attempting to represent the property owner in this matter, i.e., engaging in motion practice. 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 strike Harris's filings and will not consider them. We also order him to cease and desist from the unauthorized practice of law.

[4] 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.

[4] Here, there is no indication that Harris was an owner-member of the property, an attorney, or one who was identified by R.C. 5715.19(A) to file complaints on behalf of another. Though he was identified as "statutory agent and manager," such a relationship did not allow him 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 at ¶17 ("Property managers, however, are not among the nonlawyers who are explicitly authorized to file complaints under R.C. 5715.19(A).").

[5] In the absence of any evidence that the complaint was filed by one authorized to file on behalf of the property 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, we grant the appellees' motion to remand and remand this matter to the Cuyahoga County Board of Revision with instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

AIRBORNE MFG CO, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2229, 2019-2228 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - AIRBORNE MFG CO
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SLEGGS, DANZINGER & GILL CO., LPA
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For the Appellee(s) - LORAIN COUNTY BOARD OF REVISION
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LORAIN COUNTY PROSECUTOR
225 COURT STREET
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ELYRIA, OH 44035

ELYRIA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
NEAL E. HUBBARD
HUBBARD AND HUBBARD
5330 MEADOW LANE COURT, SUITE A
SHEFFIELD VILLAGE, OH 44305

Entered Wednesday, February 17, 2021

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

[1] Airborne MFG appeals from a decision of the Lorain County Board of Revision ("BOR") valuing parcels 06-25-014-106-003, 06-25-014-106-004, and 06-25-014-106-005 for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and the parties' written argument.

[2] The subject property is improved with offices and manufacturing space. The Auditor

valued the three parcels at $1,499,160 for tax year 2018. Airborne filed decrease complaints, and the BOR held a hearing. There, Airborne presented the appraisal and testimony of Ronald Eberly, Jr., MAI, who valued the parcels at $920,000 as of January 1, 2018.

[3] Eberly appraised the property using the cost and sales comparison approaches. For his cost approach, he used five land sales which ranged from $50,000/acre to $62,648/acre. He calculated the replacement cost using Marshall and Swift valuation data. He ultimately calculated an indicated cost approach valuation of $980,000.

[4] For the sales comparison approach, he used six comparable sales, all of which were located in Cuyahoga County or Summit County. He adjusted the sales for a variety of differences including condition. His indicated sales comparison valuation was $920,000. He gave more weight to the sales comparison approach and calculated a final value of $920,000.

[5] The BOR adopted a value of $1,104,000. The BOR's speaking member indicated the BOR found Eberly's comparables were too dissimilar, but it found a downward adjustment was warranted based on the advice of the Auditor's office. Airborne appealed and asks this Board to adopt Eberly's appraised value.

[6] When cases are appealed from a board of revision to this Board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). 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.

[7] A recent, arm's-length sale constitutes the best evidence of a property's value. *Terraza8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, ¶31. However, there have been no such recent transfers, and no party advocates for any such sale price. Instead, Airborne argues Eberly's appraisal is the best indication of value. We agree. We do not find the BOR's argument to be persuasive. Eberly selected comparables close in proximity with similar uses. He made adjustments to the property based on his review of the subject property. The BOR argues Eberly selected comparables improved with between 3% and 20% office space. The subject property is improved with 31% office space. Eberly's report indicates his belief more manufacturing space would be a higher and better use of the property. We also note Eberly adjusted several of his sales for office space percentage. We see nothing in the record that would cause us to reject Eberly's opinion of value on this basis.

[8] For these reasons, we order the property valued as follows for tax year

2018: PARCEL 06-25-014-106-003

TRUE VALUE

$56,880

TAXABLE VALUE

$19,910

PARCEL 06-25-014-106-003

TRUE VALUE

$806,760

TAXABLE VALUE

$282,370

PARCEL 06-25-014-106-005

TRUE VALUE

$56,370

TAXABLE VALUE

$19,730

OHIO BOARD OF TAX APPEALS

KEVIN MARINO, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-975
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
BUTLER COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - KEVIN MARINO
OWNER
611 MAPLE AVE
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, February 17, 2021

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

This matter is now considered following this Board's issuance of an order to show cause why this matter should not be dismissed for lack of jurisdiction. *Marino v. Butler Cty. Bd. of Revision* (Interim Order, Nov. 10, 2020), BTA No. 2020-975, unreported. As indicated in our earlier order, it appears that the appellant may not have followed the procedures to properly challenge the issue raised in the notice of appeal, i.e., related to delinquent property taxes, or otherwise appealed from a decision of the board of revision. The appellant did not respond to our order.

R.C. 5703.02 grants this Board 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 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 the Revised Code." (Emphasis added.) Adherence to the conditions imposed by R.C. 5717.01 is essential to establishing jurisdiction before this Board. See *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990).

The appellant has presented no indication that he followed the proper steps to challenge delinquent property taxes and/or that a decision was issued by the Board of Revision from which this appeal could be taken. Accordingly, the appellant has failed to invoke this Board's jurisdiction and this matter is hereby dismissed.

OHIO BOARD OF TAX APPEALS

KEN TENWALDE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-952
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
PAULDING COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - KEN TENWALDE
OWNER
24880 CR 10
DEFIANCE, OH 43512

For the Appellee(s) - PAULDING COUNTY BOARD OF REVISION
Represented by:
JOSEPH BURKARD
PROSECUTING ATTORNEY
PAULDING COUNTY PROSECUTOR'S OFFICE
120 S. WALNUT STREET
PAULDING, OH 45879

Entered Wednesday, February 17, 2021

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

This matter is before the Board of Tax Appeals upon the filing of a motion to dismiss filed by the county appellees. By way of the motion, the county appellees assert that this Board lacks jurisdiction to consider the merits of this matter because the appellant property owner first filed an appeal with the Court of Common Pleas and subsequently filed the instant appeal. The appellant did not respond to the motion within the time frame to do so. Based upon the record before us, the motion to dismiss is granted.

The motion to dismiss is premised upon the two manners by which an aggrieved party may appeal a decision of a county board of revision. 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 ***." R.C. 5717.05 provides that *"[a]s an alternative to the appeal provided for in section 5717.01 of the Revised Code,* 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. The appeal shall be taken by the filing of a notice of appeal with the court and with the Board within thirty days after notice of the decision of the board is mailed ***." (Emphasis added.) As the relevant statutes demonstrate, an appealing party may only invoke the jurisdiction of one tribunal, either this Board *or* the court of common pleas, not both.

Here, the record demonstrates that the appellant appealed to this Board on July 10, 2020. A review of the notice of appeal (which are the same documents attached to the motion to dismiss) indicates that it was previously filed with the Paulding County Clerk of Courts on July 6, 2020 and that such filing was assigned case number CI-20-076. The notice of appeal included an attachment, i.e., an envelope addressed to the Paulding County Court of Common Pleas, postmarked on July 2, 2020. Because it appears that the property owner filed an ap peal with another tribunal *prior* to filing the appeal in this matter, it is clear that this Board lacks jurisdiction to consider the merits of this appeal.

Accordingly, for the above-stated reasons, this appeal is dismissed.

OHIO BOARD OF TAX APPEALS

RCDT LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-621
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - RCDT 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:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, February 17, 2021

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 687-10-021, 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 county appellees.

[2] The property owner filed a complaint with the BOR, requesting the subject property be revalued from $75,400 to $30,000 purportedly based upon the price at which it transferred in August 2015. No one appeared on behalf of the property owner at the BOR hearing and the BOR issued a decision that retained the subject property's value. This appeal ensued. None of

the parties availed themselves of the opportunity to submit evidence at a hearing before this Board. The county appellees submitted written argument, asserting that the sale, upon which the property owner relied, was too remote from the tax lien date and, therefore, not reflective of the subject property's value.

[3] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. Yisrael Harris filed a motion to supplement the record on behalf of the property owner. There was no indication that Harris was an attorney licensed to practice law in Ohio; thus, it appears that he has engaged in the unauthorized practice of law by attempting to represent the property owner in this matter, i.e., engaging in motion practice. 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 strike the motion to supplement the record and order Harris to cease and desist from the unauthorized practice of law.

[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 $30,000 purchase of the subject property in August 2015, which formed the basis of the property owner's requested valuation. 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 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."). For this reason, we must conclude that the property owner's $30,000 purchase of the subject property in August 2015 was too remote from the tax lien date and, consequently, is not reflective of its value.

[6] 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 property's value. As a result, it is the order of this Board that the

subject property's value shall remain as initially assessed as of the relevant tax lien date:

True Value: $75,400

Taxable Value: $26,390

OHIO BOARD OF TAX APPEALS

STEVENS PRESERVATIONS LLC, (et. al.), Appellant(s), vs. LAKE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2429, 2019-2430, 2019-2431, 2019-2432 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - STEVENS PRESERVATIONS LLC
Represented by:
DAVID GORNIK
ESQUIRE
DAVID GORNIK ATTORNEY
7103 BRIGHTWOOD DRIVE
CONCORD TOWNSHIP, OH 44077

For the Appellee(s) - LAKE COUNTY BOARD OF REVISION
Represented by:
HARRISON CRUMRINE
ASSISTANT PROSECUTOR
LAKE COUNTY PROSECUTOR
P.O. BOX 490
105 MAIN ST.
PAINESVILLE, OH 44077

WILLOUGHBY-EASTLAKE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ELIZABETH GROOMS-TAYLOR
HOOVER KACYON, LLC
527 PORTAGE TRAIL
CUYAHOGA FALLS, OH 44221

Entered Wednesday, February 17, 2021

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

[1] Appellants appeal decisions of the Board of Revision ("BOR"), which determined the value of the subject real property, parcel numbers 27-B-040-0-00-001-0, 27-B-040-0-00-007-0,

27-B-040-0-00-023-0, and 27-B-040-0-00-024-0, 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 any written argument submitted by the parties.

[2] The auditor initially assessed the subject's total true value at $940,750. Appellants filed complaints with the BOR seeking a reduction in value to $0. The appellee Board of Education ("BOE") filed countercomplaints in support of the Auditor's value. At the BOR hearing, appellants relied on testimony from their owner, Francis J. DeMilta, and the Vice President of Brownfield and Remediation Services for Partners Environmental Consulting, John Garvey. DeMilta testified regarding the current use of the property, while Garvey discussed its historical use and environmental issues based on a Phase I environmental property assessment that he completed.

[3] DeMilta explained that the property is used for his scrap and recycling business, with several buildings also occupied by tenants for warehouse or cold storage. DeMilta testified that a portion of the subject property benefits from a tax exemption after new construction in 2015. DeMilta indicated that one of the buildings was damaged by fire, and he chose to use the insurance payout to construct an addition, which cost nearly $1.5 million, to use as office space for his business. DeMilta asserted that he obtained a Phase I environmental assessment from Garvey to determine the likely cost to remediate the land to the extent necessary to alleviate potential liability for a future buyer.

[4] Garvey testified that the property had a significant history of industrial use, including some activity from the Department of Defense. Garvey explained that Phase I assessment was based primarily on document review of historical records, and it will cost $156,000 to perform a Phase II assessment to find out remediation costs, which he estimated would be $1-2 million.

The Phase II assessment would include taking samples of the actual soil to determine the extent of contamination. Garvey stated that he did not believe the property could be sold without a Phase II assessment, which would provide more detailed information regarding the extent of the necessary remediation.

[5] The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeals. On appeal, appellants asserted that the property in its current state would bring no value on the open market because of the potential time and financial costs associated with remediation and the process to obtain a No Further Action Letter and Covenant Not to Sue from the Ohio Environmental Agency. The BOE argued that appellants failed to provide any evidence to establish a fair market value for the subject property or to demonstrate that the possible environmental issues existed.

[6] In the present appeal, appellants' burden was to come forward with sufficient evidence not only to show that is the Auditor's value 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, 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."). In this case, appellants relied on evidence of negative conditions, specifically the environmental issues and resulting stigma associated with the subject property's history of industrial use. Assuming that the environmental issues discussed in the phase I assessment are ultimately found to be present, it is

unclear as to the extent that 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. See, also, *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227, 228 (1996). Here, Garvey and DeMilta both indicated that the property would not sell in its current condition, though it had not been listed for sale and a formal analysis had not yet been done to determine the extent of environmental issues present or the cost of remediation. While we acknowledge that Garvey estimated a cost of more than $1 million, there has been no evidence as to how those potential costs impact its value.

[7] Appellants argue that the property cannot be sold in its present condition and, therefore, has no value. This Board, however, has historically rejected the argument that a property is worthless or has zero value. See, e.g., *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Mar. 5, 2015), BTA No. 2014-1227, unreported; *Loritz v. Butler Cty. Bd. of Revision* (May 6, 2008), BTA No. 2006-K-1503, unreported. Although unique circumstances may exist that establish a parcel of land has only nominal value, those circumstances are not present in this case, particularly where the property is actively used for not only DeMilta's business, but also rented to tenants for their use. Additionally, DeMilta rents space to tenants and chose to further improve the property with new construction that cost roughly $1.5 million (though this addition is not included in the value of the subject property), which demonstrates that the property continues to have some utility despite any environmental factors that may or may not impact its value.

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

competent and probative, or not credible, and there is no evidence from which the BTA can independently determine value, it may approve the Board of Revision's valuation, without the Board of Revision presenting any evidence.").

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

PARCEL NUMBER

27-B-040-0-00-001-0

TRUE VALUE

$64,300

TAXABLE VALUE

$22,510

PARCEL NUMBER

27-B-040-0-00-007-0

TRUE VALUE

$53,600

TAXABLE VALUE

$18,760

PARCEL NUMBER

27-B-040-0-00-023-0

TRUE VALUE

$772,260

TAXABLE VALUE

$270,290

PARCEL NUMBER

27-B-040-0-00-024-0

TRUE VALUE

$50,590

TAXABLE VALUE

$17,710

OHIO BOARD OF TAX APPEALS

CLEVELAND METROPOLITAN SCHOOLS BOARD OF EDUCATION, (et. al.),	)
Appellant(s),	)
vs.	)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)
Appellee(s).	)

CASE NO(S). 2019-2247
(REAL PROPERTY TAX)

DECISION AND ORDER

APPEARANCES:

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

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

SAMCO PROPERTIES, LTD.
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, February 17, 2021

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 001-21-102, 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 property owner, Samco Properties, LTD ("Samco").

[2] The Fiscal Officer initially assessed the subject's total true value at $1,074,000. The BOE filed a complaint with the BOR seeking an increase in value to $5,000,000. At the BOR hearing, the BOE explained that the property was under construction on the tax lien date, but the improvements were given $0 value by the Fiscal Officer based on a level of completion below 35%. The BOE acknowledged that the improvements were not 100% complete on January 1, 2018 but asserted that they were more than 35% complete. The BOE conceded that it did not have any documentation to demonstrate an accurate alternative level of completion but maintained that driving past the property on the tax lien date would have shown that construction as substantially complete. As such, the BOE claimed that some value for the improvements should be reflected in the subject property's assessed value. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

[3] On appeal, the BOE again sought a value of $5,000,000. After the parties failed to disclose any additional evidence or witness testimony, this Board converted the scheduled hearing to a briefing date. The BOE did not object to this conversion and did not file any written argument in support of its requested increase. In its brief, Samco argued that the value assessed by the Fiscal Officer and maintained by the BOR should be retained by this Board because the BOE failed to demonstrate an alternative value.

[4] In the present appeal, the BOE's burden was to come forward with sufficient evidence not only to show that is the Fiscal Officer's value 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 documented purchase price of land and the

cost of improvements. Id. at ¶¶11-12, citing *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572, 574-575 (1994).

[5] In the present appeal, we find that the BOE failed to meet its burden. The BOE relied on counsel's observations and documents related to the commencement of construction during 2017. None of the BOE's evidence reflected the level of completion on the tax lien date, much less that it was more than 35% complete, which is the level reflected in the Fiscal Officer's records. Therefore, this Board could not determine a value to attribute to the improvements or even that the Fiscal Officer's value was not correct.

[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

$1,074,000

TAXABLE VALUE

$537,000

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). 2019-393

(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

ASTON PLACE ACQUISITION, LLC
Represented by:
LAUREN M. JOHNSON
VORYS, SATER, SEYMOUR AND PEASE LLP
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P. O. BOX 1008
COLUMBUS, OH 43216-1008

Entered Wednesday, February 17, 2021

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

[1] The Board of Education ("BOE") appeals a decision of the Board of Revision, which determined the value of the subject property, parcel 010-045096-00, for tax years 2017 and 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and written argument submitted by the parties.

[2] The BOE filed a complaint, requesting the subject property's value be increased from $8,450,000 to $14,000,000. The property owner did not file a countercomplaint. The BOR held a hearing on the matter at which both parties appeared to submit argument and/or evidence. As the hearing commenced, counsel for the BOE noted that the subject property's improvements, an apartment building, were subject to an abatement. As such, counsel suggested that the BOR could rely upon forthcoming appraisal evidence to value the subject property's land, which was not subject to an abatement. In its presentation, the BOE submitted the report and testimony of appraiser Thomas D. Sprout, which opined the value of the subject property to be $11,800,000 as of the tax lien date. Sprout was examined and cross-examined about the underlying data and methodologies used to derive his opinion of value. Based upon the evidence presented, the BOE requested that the subject property be revalued accordingly. The property owner argued that Sprout's appraisal report was unreliable because he did not inspect the interior of the subject property's improvements. (It should be noted that the parties incorporated the record of this case into the record of another case, BOR No. 17-901075/BTA No. 2018-394, which involved the same counsel and witness.)

[3] At the BOR decision hearing, the BOR members noted that Sprout did not review the subject property's financial statements and did not develop the cost approach to valuing real property in his analysis. They also noted that they were unable to verify the details of the comparable sales used in his sales-comparison approach because such sales were entity transfers and confidential, and the details of subject property's own entity transfer in tax year 2015. As such, the BOR voted to reject Sprout's appraisal report and testimony and to retain the subject property's initially assessed value. This appeal ensued.

[4] Though this appeal was originally scheduled for a merit hearing before this Board, the BOE and property owner waived the hearing. Instead, they opted to submit written argument to assert their respective arguments. In its submissions, the BOE argued that only it had provided competent, credible, and probative evidence, in the form of Sprout's appraisal report, and,

therefore, satisfied its evidentiary burden to prove that the subject property's value should be increased. In its submissions, the property owner conversely argued that Sprout's appraisal did not satisfy the evidentiary burden and, therefore, should be disregarded. Instead, the property owner argued that the subject property's value should remain as initially assessed.

[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. ofEdn. 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 exempt transfer of the subject property from Aston Place Apartments, LLC to Aston Place Acquisition, LLC in tax year 2015. (We note that, in its written argument, the property owner disputed whether the record demonstrated that the subject property had actually been the subject of a transfer. We conclude that there is, indeed, sufficient evidence in the record to demonstrate that the subject property transferred via an entity transfer.) We find the 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. 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 *Cleveland Metropolitan Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (June 29, 2020), BTA No. 2018-497, unreported; see also *Orange City Schools Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 107199, 2019-Ohio-634. 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 makes 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 Cy. 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. Here, the record is void of any evidence to demonstrate that the subject sale was solely the sale of real property and, therefore, we cannot conclude that such sale reflects the subject property's value.

[7] We proceed to evaluate Sprout's appraisal report. He began his analysis by determining the subject property's highest and best use "as vacant" and "as improved" would be multi-family residential use. He considered the three approaches to valuing real property, concluded that the cost approach was inapplicable given the income-generating nature of the subject property, and proceeded to develop the sales and income approaches to value. Under the sales-comparison approach, Sprout commenced the sales-comparison approach by developing a land value as if the subject property did not have improvements, i.e., "as if vacant." He compared the features of the subject property's land characteristics to the characteristics of upon five comparable sales located in the same vicinity as the subject property that sold between August 2014 and February 2017. After adjusting the comparable land sales for differences with the

subject property's land, he concluded to a land value of $1,750,000 as of the tax lien date. Sprout continued his analysis by developing by developing an opinion of value as the subject property existed on the tax lien date, "as improved," as a 59-unit apartment complex. He compared the subject property's overall features to the features of five comparable properties located in the same vicinity as the subject property that sold between April 2014 and March 2016. After adjusting the comparable sales for differences with the subject property, he determined a per-unit value of $200,000, which he applied to the subject property's 59 units to arrive at an upper-end value of $11,800,000. He also developed an effective gross income multiplier ("EGIM") analysis, concluding to an EGIM of 9.25, based upon the comparable sales and the subject property's estimated stabilized effective gross income resulted in a value estimate of $11,500,000. Taking into consideration all of the conclusions reached under the sales-comparison approach, Sprout concluded to an indicated range in value between $11,500,000 and $11,800,000 as of January 1, 2017.

[8] Under the income approach to value, Sprout surveyed the market to determine market rent and expenses. In doing so, he relied upon the lease rates of eight other apartment communities in the same vicinity as the subject property and determined market rent for the subject property's one and two bedroom units and garage, i.e., $1,600 per month for the thirty-two, one-bedroom units, $1,800 per month for the twenty-seven, two-bedroom units, and $135 per month for the 50 garages. He concluded a gross potential income of $1,278,600, deducted $63,930 (5%) to account for vacancy and credit loss, added $29,500 (or $500 per unit) to account for other income, to conclude an effective gross income of $1,244,170. From that number, he deducted $225,292 of expenses, based upon six expense comparables located throughout Franklin County, Ohio, to account for items such as advertising and administrative and management fees, to conclude a net operating income of $1,018,878. Sprout capitalized net operating income at 8.63% to conclude

an indicated value of $11,800,000 as of January 1, 2017. He reconciled the indicated values, placing most weight on the income approach to value and little weight on the sales-comparison approach to value, and finally concluded the subject property's value to be $11,800,000, allocated $1,750,000 to land, $9,875,000 to improvements, and $175,000 for furniture, fixtures, and equipment ("FF&E"), as of January 1, 2017.

[9] As we review Sprout's appraisal report, we note that 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.

[10] Though the property owner advanced a number of arguments to assert that Sprout's appraisal report was not competent, credible, and probative evidence of the subject property's value, we disagree for the most part. We agree that his land value is not reflective of the subject property's value as it existed on the tax lien date, as improved land, not as vacant land. In *Milanov v. Franklin Cty. Bd. of Revision* (May 11, 2018), BTA Nos. 2016-1936 et al., unreported, we disregarded dueling appraisal reports that valued land improved with condominiums subject to a tax abatement because they valued the land as unimproved vacant land. Compare *NWD300 Spring LLC v. Franklin Cty. Bd. of Revision* (Dec. 23, 2015), BTA Nos. 2015-106 et al., unreported, affirmed on appeal 151 Ohio St.3d 193, 2017-Ohio-7579. We see no reason to stray from our prior decision in this matter and accord no weight to Sprout's conclusion of vacant land value.

[11] However, as to the property owner's remaining arguments, we find them meritless. First, the property owner alleged that Sprout's use of entity transfers, under the sales-comparison approach, violated the Supreme Court's decision in *Palmer House*. We reject that argument.

While *Palmer House* is applicable to the subject property's entity transfer from tax year 2015, which was sale comparable three, that was not the case for the remaining comparable sales. In *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046 ("*UTSI*"), at ¶¶ 37-38, the court held:

> This is not to deny as a general matter the force of UTSI's logic that an expert appraiser must at times rely on hearsay evidence to perform his or her job. 'Some hearsay evidence necessarily is always involved with expert testimony. To become an expert, one must read and learn from sources which are necessarily outside the evidence at trial. It is this knowledge obtained from outside sources which qualifies a witness as an expert.' *Worthington City Schools v. ABCO Insulation*, 84 Ohio App.3d 144, 152, *** (10thDist.1992); *see also* 2 Gianelli, *Evidence*, Section 703.9, at 103-104 (3d Ed.2010) ('In one sense, most expert testimony is based, in part, on hearsay').
>
> But the BTA's hearsay determination does not throw these practical observations into doubt. The scope of its ruling applies to the narrow class of cases in which an appraiser acts merely as a conduit of information concerning material facts about the subject property itself, namely, whether the property's sale was between related parties. Whether the BTA would run afoul of the Rules of Evidence in excluding on hearsay grounds, say, an appraiser's reliance on market data prepared by a third party is something that can be addressed in a proper case. *See Buckeye Hospitality*, 146 Ohio St.3d 470, 2016-Ohio-757, ***, at ¶ 10-11 (noting appraiser's reliance on

market data prepared by third parties).

(Parallel citations omitted.)

Sprout testified that he spoke to people involved in the entity transfers, in sales comparables one, two, four, and five, used in the sales-comparison approach and confirmed that only the real property transferred. Thus, under *UTSI*, we find that there was no impropriety to his use of entity transfers as sales comparables. We note, however, that he gave little weight to his conclusion of value under the sales-comparison approach.

[12] Second, the property owner attempted to assail Sprout's methodologies and conclusion of value because he failed to consider the subject property's actual income and expenses. Instead, he relied upon market information to develop his income approach to value. 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. Furthermore, it is undisputed that the subject property was an income producing property on the tax lien date and, as a result, it was appropriate for Sprout to place the most weight on the indication of value under the income approach to value. Thus, we find that Sprout properly developed and relied upon market income and market expenses to determine the subject property's value.

[13] Third, the property owner argued that Sprout's appraisal report must be disregard because he did not inspect the subject property. Based upon the facts of this matter, we reject this argument. A review of the record demonstrates that Sprout requested an opportunity to view the subject property and the property owner did not respond. As previously noted, the subject property's improvements were approximately two years old on the tax lien date and the condition

of such improvements would have little impact on the income approach to value, which is the most persuasive approach to valuing real property in this matter. Thus, we find Sprout's inability to inspect the subject property, under the facts in this matter, does not require this Board to reject his appraisal report.

[14] Fourth, the property owner argued that it would be inappropriate to change the subject property's land value because the subject property's improvements were subject to a tax abatement. Though the terms of the tax abatement are not in the record, it is undisputed that the subject property's land was *not* part of such abatement and was, therefore, still subject to tax. The essence of the property owner's argument requests that this Board provide favorable treatment to the subject property's land although the appropriate taxing agency opted not to do so. The property owner has cited no law to support this argument. Because the subject property's land was still subject to be taxed, we reject the property owner's argument.

[15] We note that the BOR rejected Sprout's appraisal report, in part, because he did not develop a cost approach to value. According the property record card, the improvements were 100% complete on January 1, 2015 and, as such, the improvements were at least two years old on the tax lien date of January 1, 2017. Because the subject improvements were more than one year old, Sprout's failure to develop a cost approach does not require us to reject his appraisal report. See *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St. 3d 281, 2007-Ohio-1948.

[16] 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 note that the BOE offered appraisal evidence to support its requested value, while the property owner chose to rely upon its cross-examination of Sprout and argument challenging the probative value of the appraisal report. As the Supreme Court has reiterated, a

party's election to forego the presentation of valuation evidence and rely solely upon argument and cross-examination is not without risk. See *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision,* 139 Ohio St. 3d 193, 2013-Ohio-4543. We find Sprout's appraisal report, specifically his overall $11,800,000 conclusion of value under the income approach to be competent, credible, and probative evidence of the subject property's value. Although we agree with his $175,000 allocation to FF&E, we do not agree with his allocation of value between the subject property's land, $1,750,000, and improvements, $9,875,000. Instead, we find it appropriate to allocate value consistent with the County Auditor's initial valuation. See *First Cal Industrial 2 Acquisition LLC v. Franklin Cty. Bd. of* Revision, 125 Ohio St.3d 485, 2010-Ohio-1921.

[17] It is, therefore, the order of this Board that the subject property shall be valued as follows as of the relevant tax lien date(s):

Parcel Number: 010-045096-00

Land: $1,066,750

Improvements: $10,558,250

FF&E: $175,000

Total: $11,800,000

OHIO BOARD OF TAX APPEALS

DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1680 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS
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CLEVELAND, OH 44113

Entered Monday, February 22, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. 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

DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1661 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS
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CLEVELAND, OH 44113

Entered Monday, February 22, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. 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

PWF GORDON SQ LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1470
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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CLEVELAND, OH 44113

Entered Monday, February 22, 2021

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 ("BOR") or with this Board. 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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. 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 more than five (5) months after the mailing of the BOR's decision. Upon consideration of the existing record, and for the reasons stated in the motion, we must conclude that this Board does not have jurisdiction to consider the instant matter. As such, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

HECTOR VEGA, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1459
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LICKING COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
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Entered Monday, February 22, 2021

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

This matter is now considered upon the county appellees' motion to dismiss the present appeal. The county appellees assert that at the time appellant filed his appeal, no final decision had 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 2, 2020, the appellant filed a notice of appeal to this Board seeking remission of a penalty for late payment of real property taxes, however the documentation attached did not include a copy of a decision from the Board of Revision ("BOR"). The county appellees represent that on September 15, 2020, subsequent to appellant's appeal, the BOR issued a decision to approve the remission of the assessed penalty; a copy of the decision is attached to the motion.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county 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 did not appeal from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

GANOR HOLDINGS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1339
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Represented by:
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CLEVELAND, OH 44113

Entered Monday, February 22, 2021

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

This matter is now considered upon the county appellees' motion to remand with instructions to dismiss the underlying complaint. The county appellees assert that the underlying complaint was filed by a person not authorized to do so and, therefore, failed to properly invoke the jurisdiction of the Board of Revision ("BOR"). Appellant did not respond to the motion. Accordingly, this matter is now decided upon the motion, the transcript certified by the BOR, and appellant's notice of appeal.

The record shows that a decrease complaint against the valuation of real property was filed with the Cuyahoga County Board of Revision. The property record card shows that the

owner of the subject property is Ganor Holdings LLC. The complaint does not list anyone as the complainant if not owner or as the complainant's agent. However, the complaint does show a telephone number for a contact person and is signed by an individual who identified as the manager, though the manager's signature is illegible. When the BOR issued a decision finding no change in value, Yisreal Harris, Manager, filed an appeal with this Board. The county appellees' motion argues that a manager is not one who is authorized by R.C. 5715.19(A) to file a complaint on behalf of the owner. Further, the county appellees argue that the complaint was filed by a non-attorney manager who engaged in the unauthorized practice of law.

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. "Managers" are not among the nonlawyers who are explicitly authorized to file complaints under R.C. 5715.19(A). *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d230, 2018-Ohio-4244. 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.

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. 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

DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1686 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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CLEVELAND, OH 44113

Entered Tuesday, February 23, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. 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

DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1683 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS
Represented by:
DEREK STRAUSS, EXECUTOR
ADM EST OF BERTHA B. STRAUSS
10888 LAKEBROOK DRIVE
KIRTLAND, OH 44094

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, February 23, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. 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

DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1688 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS
Represented by:
DEREK STRAUSS, EXECUTOR
ADM EST OF BERTHA B. STRAUSS
10888 LAKEBROOK DRIVE
KIRTLAND, OH 44094

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, February 23, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. 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

DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1690 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS
Represented by:
DEREK STRAUSS, EXECUTOR
ADM EST OF BERTHA B. STRAUSS
10888 LAKEBROOK DRIVE
KIRTLAND, OH 44094

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, February 23, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. 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

DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1691 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS
Represented by:
DEREK STRAUSS, EXECUTOR
ADM EST OF BERTHA B. STRAUSS
10888 LAKEBROOK DRIVE
KIRTLAND, OH 44094

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, February 23, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. 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

DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1693 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS
Represented by:
DEREK STRAUSS, EXECUTOR
ADM EST OF BERTHA B. STRAUSS
10888 LAKEBROOK DRIVE
KIRTLAND, OH 44094

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 24, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. 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

DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1692 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS
Represented by:
DEREK STRAUSS, EXECUTOR
ADM EST OF BERTHA B. STRAUSS
10888 LAKEBROOK DRIVE
KIRTLAND, OH 44094

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 24, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. 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

DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1667 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS
Represented by:
DEREK STRAUSS, EXECUTOR
ADM EST OF BERTHA B. STRAUSS
10888 LAKEBROOK DRIVE
KIRTLAND, OH 44094

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 24, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. (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

DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1665 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS
Represented by:
DEREK STRAUSS, EXECUTOR
ADM EST OF BERTHA B. STRAUSS
10888 LAKEBROOK DRIVE
KIRTLAND, OH 44094

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 24, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. (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

DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1663 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS
Represented by:
DEREK STRAUSS, EXECUTOR
ADM EST OF BERTHA B. STRAUSS
10888 LAKEBROOK DRIVE
KIRTLAND, OH 44094

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 24, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. (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

DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1662 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS
Represented by:
DEREK STRAUSS, EXECUTOR
ADM EST OF BERTHA B. STRAUSS
10888 LAKEBROOK DRIVE
KIRTLAND, OH 44094

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 24, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. (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 J. PAWLOWSKI, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1413
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JOHN J. PAWLOWSKI
948 CRANBROOK DRIVE
HIGHLAND HEIGHTS, OH 44143

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 24, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. (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

DELAWARE CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. DELAWARE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-2164 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DELAWARE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
5747 PERIMETER DR; SUITE 150
DUBLIN, OH 43017

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

WATERS, INC.
Represented by:
ANDREW WECKER
50 NORTH SANDUSKY STREET
DELAWARE, 43015-1926

Entered Monday, March 1, 2021

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

[1] This case is before the Board on a motion to remand with instructions to dismiss filed by the Board of Education of the Delaware City Schools ("BOE"). This matter is now decided upon the motion, the responses thereto, the notice of appeal, and the statutory certified transcript filed pursuant to R.C. 5717.01.

[2] Under R.C. 5715.19 (A), complaints against the valuation of real property must be filed

by March 31 of the ensuing tax year, i.e., by March 31, 2020 for tax year 2019. The Supreme Court has held that full compliance with R.C. 5715.19(A), including the filing deadline, is required "before a county board of revision is empowered to act on the merits of the claim." *Stanjim Co. v. Mahoning Cty. Bd. of Revision*, 38 Ohio St.2d 233, 235 (1974). The Court has expressly noted that "statutory filing requirements are mandatory, jurisdictional requirements which cannot be waived even by a tax official." *VeriFone, Inc. v. Limbach*, 69 Ohio St.3d 699, 702 (1994). See also *Bd. of Edn. of the Westerville City Schools v. Delaware Cty. Bd. of Revision* (May 17, 2011), BTA No. 2011-K-152, unreported.

[3] Here, the property owner filed the underlying complaint in July 2020, well past the statutory deadline. However, the Board of Revision ("BOR") exercised jurisdiction over the complaint and modified the Auditor's value. The BOE argues in its motion that the complaint was untimely which deprived the BOR of jurisdiction to consider the property's valuation.

[4] Upon review, we find the BOE is correct. We note the property owner argues the complaint deadline was tolled by H.B. 197. However, as we held in *Porat Group 3, LLC v. Cuyahoga Cty. Bd. of Revision* (Jan. 19, 2021), BTA No. 2020-1399, unreported, that bill did not toll the deadline. The Governor vetoed the portion of the bill that would arguably have extended that deadline.

[5] For these reasons, the BOE's motion is granted. The BOR's decision is vacated, and we remand this case with instructions to dismiss the underlying complaint as untimely.

OHIO BOARD OF TAX APPEALS

DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1672 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS
Represented by:
DEREK STRAUSS, EXECUTOR
ADM EST OF BERTHA B. STRAUSS
10888 LAKEBROOK DRIVE
KIRTLAND, OH 44094

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 1, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. (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

FRANCINE M. VENTO TRUSTEE, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2020-1239 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FRANCINE M. VENTO TRUSTEE
Represented by:
NICHOLAS VENTO
ESQ.
1375 EAST 9th STREET
SUITE 900
CLEVELAND, OH 44114

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

Entered Tuesday, March 2, 2021

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, it was not timely filed with the county Board of Revision ("BOR"), and the complainant lacked standing. 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 is mailed by the county BOR. (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.").

Although appellant argues that the motion was not timely filed, subject matter jurisdiction of this Board may be raised at any time during the pendency of the appeal. See *Painesville v. Lake Cty. Budget Comm.*, 56 Ohio St.2d 282, 284-285 (1978), citing *Gates Mills Investment Co. v. Parks*, 25 Ohio St.2d 16, 19-20 (1971) ("The failure of a litigant to object to subject-matter jurisdiction at the first opportunity is undesirable and procedurally awkward. But it does not give rise to a theory of waiver, which would have the force of investing subject-matter jurisdiction in a court which has no such jurisdiction."); *National Tube Co. v. Ayres*, 152 Ohio St. 255 (1949), paragraph one of the syllabus ("The Board of Tax Appeals has control over its decisions until the actual institution of an appeal or the expiration of the time for an appeal.").

The record does not demonstrate that appellant filed such notice with the BOR. The record is also clear the appeal was untimely. Appellant's response argues that the BOR was notified of the appeal by this Board's docketing letter, attached as Exhibit B. 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 BOR. *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. Further, the record reveals that appellant's notice of appeal

was filed with this Board forty-eight (48) days after the mailing of the BOR's decision. Further, although appellant argues that HB 197 extended the deadline in which to file this appeal, such extension does not apply to notices of appeal filed with this Board. See *Chapman v. McClain* (Oct. 13, 2020), BTA No. 2020-1162, unreported; *Porat Group 3, LLC v. Cuyahoga Cty. Bd. of Revision* (Jan. 19, 2021), BTA No. 2020-1399, unreported.

Upon consideration of the existing record, this matter is determined to be jurisdictionally deficient and therefore is dismissed. Because we find appellant failed to vest this Board with jurisdiction, we need not address the standing issue.

OHIO BOARD OF TAX APPEALS

DEAN AND GILI, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1343
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - DEAN AND GILI, 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

Entered Wednesday, March 3, 2021

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

[1] This matter is now considered upon the county appellees' motion to remand with instructions to dismiss the underlying complaint. The county appellees' motion argues that a manager is not one who is authorized by R.C. 5715.19(A) to file a complaint on behalf of the owner and engaged in the unauthorized practice of law by doing so. This matter is now decided upon the motion, the transcript certified by the BOR, and appellant's notice of appeal.

[2] The record shows that a decrease complaint against the valuation of real property parcel number 682-16-019 was filed with the Cuyahoga County Board of Revision for tax year 2018. The complaint does not list anyone as the complainant if not owner or as the complainant's

agent. However, the complaint does show a telephone number for a contact person and is signed by an individual who identified as the manager, though the manager's signature is illegible. The property record card shows that the owner of the subject property is Dean and Gili, LLC. Appellant waived appearance at the BOR hearing and submitted a HUD settlement statement, signed by Renee Rini; and a limited warranty deed for the subject property, dated 10/28/2016, as evidence for the BOR's consideration. When the BOR issued a decision to retain the property's value, Yisreal Harris, manager, filed an appeal with this Board.

[3] 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. Non-owner "managers" are not among the nonlawyers who are explicitly authorized to file complaints under R.C. 5715.19(A). *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 230, 2018-Ohio-4244.

[4] Although Mr. Harris responded to the motion on behalf of the property owner, there is no indication that he is an attorney licensed to practice law in Ohio. As such, his response 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). 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. 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

NS RASKIN LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1335
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - NS RASKIN 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

Entered Wednesday, March 3, 2021

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

[1] This matter is now considered upon the county appellees' motion to remand with instructions to dismiss the underlying complaint. The county appellees' motion argues that a manager is not one who is authorized by R.C. 5715.19(A) to file a complaint on behalf of the owner and engaged in the unauthorized practice of law by doing so. This matter is now decided upon the motion, appellant's response, the transcript certified by the BOR, and appellant's notice of appeal.

[2] The record shows that a decrease complaint against the valuation of real property parcel number 682-12-021 was filed with the Cuyahoga County Board of Revision for tax year 2018.

The complaint does not list any one as the complainant if not owner or as the complainant's agent. However, the complaint does show a telephone number for a contact person and is signed by an individual who identified as the manager, though the manager's signature is illegible. The property record card shows that the owner of the subject property is NS Raskin LLC. Appellant waived appearance at the BOR hearing and submitted a HUD settlement statement, signed by managing member Yisreal Harris; and a general warranty deed for the subject property, dated 2/18/2015, as evidence for the BOR's consideration. When the BOR issued a decision to reduce the property's value, Yisreal Harris, manager, filed an appeal with this Board.

[3] 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.

[4] Although Mr. Harris responded to the motion on behalf of the property owner, there is no indication that he is an attorney licensed to practice law in Ohio. As such, his response 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). 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. 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

WHITE TIMOTHY T II & AMY, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-135 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WHITE TIMOTHY T II & AMY
Represented by:
TIMOTHY WHITE
437 HILLCREAST DRIVE
WYOMING, OH 45215

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

Entered Monday, March 15, 2021

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellants did not file an initial complaint with the Hamilton County Board of Revision ("BOR") and thus no final decision has been issued. Appellants did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county BOR, and appellants' notice of appeal.

The appellants filed a notice of appeal with this Board, however the documentation attached to appellants' notice of appeal does not constitute a BOR decision. The statutory transcript contains certification that there is no record of a decision issued for the subject property. R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and

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

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellants have not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

FOX, LAURA M. TRUSTEE, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1226 (REAL PROPERTY TAX) ORDER

APPEARANCES:

For the Appellant(s) - FOX, LAURA M. TRUSTEE
Represented by:
ANNIE M. STRUPP
350 S. 200 E, UNIT 500
SALT LAKE CITY, UT 84111

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 15, 2021

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

This matter is now considered upon the filing of a motion to dismiss filed by the Board of Revision ("BOR"), asserting that this Board lacks jurisdiction to consider this matter, i.e., application for remission of the late-payment penalty for untimely payment of property tax, because the appellant failed to submit the application to the appropriate Cuyahoga County official and because the BOR did not issue a decision from which the taxpayer could appeal. The appellant did not respond to the motion.

R.C. 5703.02 grants this Board 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 Board of Tax Appeals within thirty days after *notice of the decision of the county board of*

revision is mailed as provided in division of (A) of section 5715.20 the Revised Code." (Emphasis added.) Adherence to the conditions imposed by R.C. 5717.01 is essential to establishing jurisdiction before this Board. See *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990).

The appellant has presented no indication that she followed the proper steps to challenge delinquent property taxes and/or that a decision was issued by the BOR from which this appeal could be taken. Accordingly, the appellant has failed to invoke this Board's jurisdiction and this matter is dismissed.

OHIO BOARD OF TAX APPEALS

GEORGE C. RUSSELL, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1383
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
ERIE COUNTY BOARD OF	)	
REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - GEORGE C. RUSSELL
Represented by:
JONATHAN F. CLARK
ATTORNEY AT LAW
5551 LIBERTY AVENUE
VERMILION, OH 44089

For the Appellee(s) - ERIE COUNTY BOARD OF REVISION
Represented by:
GERHARD R. GROSS
ASSISTANT PROSECUTING ATTORNEY
ERIE COUNTY
247 COLUMBUS AVE.
SUITE 319
SANDUSKY, OH 44870

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

BETH A. RUSSELL
4353 LINDA DR.
VERMILLION, OH 44089

Entered Monday, March 15, 2021

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

[1] Appellant George C. Russell appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real property, parcel number 12-01620.000, 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 appellant attached additional documentation to his brief that was not presented to the BOR or during a hearing before this Board. Therefore, we will not consider the attachments in our determination.

[2] The subject property consists of 1.001 acres of land improved with a single-tenant medical office building occupied by appellant's dental practice. The office building was constructed in 2006 and comprises 3,436 square feet of space on the first floor and a basement. The Auditor initially assessed the subject's total true value at $488,620. Appellant filed a complaint with the BOR seeking a reduction in value to $390,000. The appellee Board of Education ("BOE") filed a countercomplaint in support of the Auditor's value.

[3] At the BOR hearing, appellant submitted multiple appraisal reports in support of his requested reduction. Two appraisals were prepared by Daniel D. Farley, who appeared before the BOR to testify regarding his analysis. Farley first prepared a report opining a value of $390,000 as of July 6, 2017 for purposes of divorce litigation. Farley updated his report to find value for purposes of the tax valuation appeal process and opined that the value of the property was $390,000 as of January 1, 2018.

[4] For his sales comparison approach, Farley considered the sales of four properties located in Erie, Lorain, Sandusky, and Huron counties, with unadjusted sale prices ranging from $99.64 to $108.02 per square foot. Farley adjusted the sales to account for physical differences among the properties, for an adjusted range from $112.11 to $114.24 per square foot. Farley concluded to a value of $113.42 per square foot, or $390,000 (rounded) totals. Farley also performed the income approach, calculating a net operating income of $39,715 based on a rental rate of $14.00 per square foot, triple net, 5% vacancy/credit loss, and $5,984 operating expenses.

Farley applied a 10% capitalization rate, which indicated a value of $400,000 (rounded) based on this approach. In his final reconciliation, Farley gave most weight to the sales comparison approach because the most likely buyer of a property like the subject would be an owner-occupant. Farley indicated the income approach was given careful consideration and provided good support for his conclusion of $390,000 as of January 1, 2018.

[5] Appellant also submitted an appraisal prepared by Timothy D. Winslow for purposes of a personal financial decision, though he did not testify regarding his analysis. Winslow opined that the value of the subject property was $395,000 as of October 24, 2018. Appellant indicated that he primarily relied on Farley's appraisal as it was most relevant to the tax lien date.

[6] The BOE did not present any independent evidence of value, but appellee owner Beth A. Russell appeared to submit an appraisal that she had prepared in conjunction with the divorce litigation with appellant. The appraiser, Paul D. Provencher, opined that the value of the property was $480,000 as of April 23, 2019. Although he was not present at the BOR hearing, Provencher was reached by phone during the hearing. Provencher indicated that because the appraisal was prepared for different purposes and not effective January 1, 2018, he could not offer an opinion of value as of the tax lien date. The BOR bifurcated its hearing to give additional time for Provencher to update his report and then appear before the BOR.

[7] At the second BOR hearing, Provencher testified regarding an updated report that opined a value of $480,000. Provencher indicated that he relied solely on the sales comparison approach because he felt it was most applicable to the subject property as most buyers would not acquire a building similar to the subject for purposes of rental income. Provencher utilized the sales of four properties located in Erie and Lorain county, ranging from $80.95 to $142.78

per square foot (unadjusted). Provencher adjusted the sales for physical differences among the properties and changes in market conditions, if necessary, between the time of the sale and the tax lien date. Particularly, Provencher indicated that he considered whether the comparable properties had basement space because it provided additional storage space that is necessary for medical office buildings, which frees up more valuable space on the main floor. The adjusted prices ranged from $93.09 to $148.50 per square foot. Provencher concluded to a value of $140.00 per square foot, or $480,000 (rounded) total. Provencher also included information regarding a property listed for sale at an asking price of $138.22 per square foot.

[8] The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. On appeal, appellant argued that the BOR failed to take Winslow's appraisal into consideration and instead relied on Provencher's appraisal after allowing additional time to reschedule. Appellant took issue with the BOR's decision to allow the additional time to update the report, the inclusion of information about a listing of a property rather than a sale, the subjective decisions made by Provencher regarding his choice of comparable properties and adjustment thereto, and the BOR's rejection of information regarding a sale of a property near the subject.

[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 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.

[10] As we look at the appraisals in this case, we observe that both Winslow and Provencher performed credible and supported evaluations of the subject property. Both considered the subject property's physical attributes as well as the market at the time of the tax lien date. Both appraisers accounted for the value attributable to the presence of the basement, though Provencher placed a higher premium on that space. The primary difference among the two appraisals, as pointed out by appellant in his brief, is the choice of comparables. As the BOR pointed out during its decision hearing,

> [T]he information that was provided in the appraisal by the Complainant had comparables from Fremont, Amherst, Norwalk, and Sandusky, and I believe there might have been also Berlin Heights, and the property is located on the southeast, actually south-central part of Vermilion, right off of Route 2 and within full view of the interchange.
>
> The opposing counter-appraisal used comparables in Lorain County and one in Erie County, in Berlin Heights. The other three were within four to five miles east of the subject property, and it would be my opinion that they're more representative of the market in that particular part of the county as opposed to Huron County, Sandusky County, and the City of Sandusky.

[11] We agree with the BOR regarding the appraisers' choice of comparable properties. We find that Provencher provided a better analysis of the subject property based on its location. We also find that he supported the value he placed on the basement space in the context of a

medical office building similar to the subject property. Additionally, we find no error in his decision not to apply the income approach as both appraisers agreed that an owner-occupant would be the most likely user of the subject property. Finally, we find no reason to exclude Provencher's updated report from our analysis simply because the BOR gave additional time to one of the owners of the property.

[12] 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

$480,000

TAXABLE VALUE

$168,000

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). 2019-448 (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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FRANKLIN COUNTY BOARD OF REVISION
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DISTRICT ONE II, LLC
Represented by:
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Entered Monday, March 15, 2021

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 010-243355-00, 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, the record of the hearing before this Board, and the written argument submitted by the parties.

[2] The subject property is improved with a 228-unit apartment complex that also includes parking garage buildings, a pool, and a clubhouse. The Auditor initially assessed the subject's total true value at $23,700,000. The BOE filed a complaint with the BOR seeking an increase in value to $34,800,000. At the BOR hearing, the BOE amended its opinion of value to $33,500,000, asserting that the property sold in March 2017 for this amount and such sale provides the best evidence of value. The BOE acknowledged that the title transferred through an apparent related party transaction but maintained that this was in furtherance of a "drop down LLC" sale. The BOE relied on a mortgage document (principal amount $26,100,000) and a CoStar report to demonstrate the details of the sale. The appellee property owner, District One II, LLC ("District One"), objected to the BOE's documents, noting none of them were certified copies. District One further observed that the sale documents reflected that no consideration was paid. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

[3] At the hearing before this Board, the BOE submitted a purchase agreement to demonstrate the terms of the relevant transfer and a financing appraisal opining value as of February 14, 2017. The BOE argued that these documents support its claim that the transaction was effectively the sale of real estate and other personal property typically included in such a transaction. District One objected to the BOE's evidence because it had not been timely disclosed prior to the hearing and based on a lack of authenticating testimony. The BOE acknowledged that did not disclose the evidence until one day before the hearing but maintained that such failure was due to discovery delays. The BOE further asserted that District One knew about the evidence because it had disclosed the documents to the BOE as part of discovery. The attorney examiner reserved ruling on the objections and set a briefing schedule.

[4] Upon consideration of the record, we agree that the BOE failed to timely disclose the purchase agreement and financing appraisal, which were identified as exhibits just one day prior to the hearing. Additionally, we find that the BOE failed to show good cause as to why the exhibits should nevertheless be considered. The BOE maintained that District One did not timely provide discovery responses, which were purportedly received in July, beyond the BOE's disclosure deadline. In this case, the BOE did not merely disclose its evidence beyond the deadline, but rather it disclosed just one day before the hearing. The discovery dispute in this case did not excuse the BOE's duty. Accordingly, we sustain District One's objection on the basis of untimely disclosure and will not consider the BOE's exhibits in our determination. See *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Sep. 12, 2019), BTA No. 2017-1588, unreported; *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Jan. 8, 2020), BTA No. 2018-1369, unreported. Thus, we need not address District One's objections on the basis of hearsay or a lack of foundation.

[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] The BOE argues that the value of the subject property should increase to the sale price from a March 2017 transaction, which was accomplished through an exempt transfer of the real property to a new related entity and the sale of the membership interest in the owner entity. Generally, we agree with the BOE that such a transfer may provide the best evidence of value for real property. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 59 Ohio St.3d 283, 2020-Ohio-353. The proponent of the sale, however, must prove that such a transaction was substantively the sale of the real estate. Id.

[7] In the present appeal, we find that the BOE has failed to meet its burden. The record includes the CoStar reports, mortgage documents, deed, and exempt conveyance statement. Notably, the sale documents do not reflect a sale price, and the mortgage agreement for $26,100,000 with the CoStar report claiming a sale price of $33,500,000 do not show that any particular amount was consideration for the real property. In such circumstances, we must conclude that the BOE failed to meet its burden to establish the minimum details regarding the sale to rely on the transaction to establish value. See *Cleveland Mun. School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 109028, 2020-Ohio-542. Therefore, we cannot rely on the sale.

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

[9] It is, therefore, the order of this Board that the true and taxable values of the subject property, as of January 1, 2017, and January 1, 2018, were as follows:

TRUE VALUE	TAXABLE VALUE
$23,700,000	$8,295,000

OHIO BOARD OF TAX APPEALS

MICHAEL GUILFOIL AND CHRISTINA WULFSON (1208 SYCAMORE, LLC), (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2020-2437
vs.	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - MICHAEL GUILFOIL AND CHRISTINA WULFSON (1208 SYCAMORE, LLC)
Represented by:
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
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ASSISTANT PROSECUTING ATTORNEY
HAMILTON COUNTY
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CINCINNATI, OH 45202

CINCINNATI CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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ATTORNEY AT LAW
DAVID C. DIMUZIO, INC.
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CINCINNATI, OH 45202

Entered Tuesday, March 16, 2021

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 appellants failed to file a copy of their notice of appeal with the Board of Revision ("BOR"). During this Board's small claims telephone hearing, appellants conceded that they had not filed their notice of

appeal with the BOR but asserted that they were not aware of the requirement and believed that the BOR would receive notice from this Board.

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, must be dismissed.

Even if we were to consider the merits of the appeal, however, we would find that appellants failed to meet their burden and would maintain the values determined by the BOR. The Auditor initially assessed the total true value of the subject property at $126,660 for tax year 2019, and the appellee Board of Education ("BOE") filed a complaint seeking an increase to a value of $500,000 based on an October 2019 sale. The BOR increased the value to the sale price, and appellants filed the present appeal, arguing that the sale did not represent the value of the property because it was not arm's-length. Specifically, appellants claim that they own the adjacent building and approached the owner of that building in an attempt to purchase the

property for long-term growth and their future business plans. Citing the existing relationship as neighbors and the fact that the prior owner was not seeking to sell the property, appellants claimed that the parties to the transaction were not typically motivated and the sale was, therefore, not arm's-length. These factors alone, however, are insufficient to render the sale invalid for purposes of establishing the true value of the subject property.

A preexisting relationship among the parties alone does not disqualify a sale, even where the buyer approached the seller, 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 (a sale from a landlord to a tenant was arm's-length). The court also 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. Here, the parties negotiated the transaction based on their subjective goals to reach a sale price acceptable to both. Therefore, the sale in this case "qualifies" as the best evidence of the subject property's value.

Accordingly, if we were to consider the merits of the present appeal, we would find value based on the sale, consistent with the BOR, and the practical effect would be the same. As noted above, however, this Board lacks jurisdiction over the matter, and it is hereby dismissed.

OHIO BOARD OF TAX APPEALS

NANCY J. CONNELLY, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1912
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
BUTLER COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - NANCY J. CONNELLY
OWNER
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FAIRFIELD, OH 45014

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
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HAMILTON, OH 45012-0515

Entered Tuesday, March 16, 2021

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

[1] Nancy Connelly appeals from a decision of the Butler County Board of Revision ("BOR") denying real property tax penalty abatement for the first half of 2019. We decide the case on the notice of appeal, the statutory transcript, and any written argument.

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

[2] In her application, appellant argues she did not receive a timely tax bill. She received the bill in June 2020, well after the tax was due in February 2020. While the application is somewhat ambiguous, it does not appear she attempted to obtain the bill, but she does acknowledge she received the bill in June 2020. R.C. 5715.39(B) contemplates such a scenario. However, it requires the taxpayer to seek to obtain a copy of the bill within thirty days of the

due date. Appellant did not do so here. The facts show penalty remission is likewise not warranted under any other scenario listed in R.C. 5715.39(B). While R.C. 5715.39(C) requires penalty remission when a late payment was due to reasonable cause and not willful neglect, the BOR rejected the application because appellant has a late payment history. The record supports that finding. Accordingly, we find appellant has not shown the late payment was due to reasonable cause and not willful neglect given her history of making late payments.

[3] For these reasons, the BOR's decision is affirmed. The application is denied.

OHIO BOARD OF TAX APPEALS

JAMES TARAS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1770
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - JAMES TARAS
4655 VALLEY WOODS DR.
INDEPENDENCE, OH 44131

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

Entered Tuesday, March 16, 2021

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

[1] The appellant challenges a decision of the Cuyahoga County Board of Revision ("BOR), which denied an application for remission of the late-payment penalty assessed for the late payment of property-tax bill for the first half of tax year 2019. We proceed to consider this matter based upon the notice of appeal certified and statutory transcript.

[2] The appellant filed an application requesting remission of the late-payment penalty for the above-cited tax period. By way of the application, the appellant alleged that the late payment of the property tax bill was based upon reasonable cause, not willful neglect, and included a written statement noting that personal hardship led to the late property-tax payment. The County Treasurer recommended that the application be denied because of a history of delinquent property tax payments. The County Fiscal officer agreed, denied the application, and

forwarded it to the BOR to determine whether the appellant had demonstrated reasonable cause for the untimely property-tax payment. The BOR determined that the appellant had not, in fact, demonstrated reasonable cause and issued a decision, which denied the request for remission of the late-payment penalty. This appeal ensued. The appellant 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.

[3] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. As noted above, the appellant 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 appellant 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 insure 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* (1996), 76 Ohio St.3d 13, 16 (1996).

[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 find that the appellant has failed to demonstrate that the facts and circumstances of this matter qualify for remission of the late payment penalty pursuant to R.C. 5715.39(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] It appears that the BOR considered whether remission of the late-payment penalty would be appropriate consistent with R.C. 5715.39(B)(1) and (B)(3). Based upon the limited record before us, we can discern no negligence or error on the part of the county fiscal officer and/or county treasurer such that remission of the late-payment penalty would be appropriate under R.C. 5715.39(B)(1). Likewise, we glean no evidence to demonstrate that the appellant experienced serious health issues sixty days before the property-tax bill's due date and that the appellant paid the property-tax bill sixty days after its due date such that remission of the late-payment penalty would be appropriate under R.C. 5715.39(B)(3).

[7] We are also constrained to conclude that the appellant has not demonstrated that remission of the late-payment penalty would be appropriate under 5715.39(C). It is undisputed that the appellant had a history of untimely property-tax payments and, as such, we cannot conclude that failure to timely pay the property-tax bills amounted to reasonable cause. 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. We find, therefore, that the appellant is not entitled to remission of the late-payment penalty on this basis.

[8] While we sympathize with the appellant's plight, we cannot grant him the relief he seeks out of a sense of fairness. 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. See *Cleveland Gear Co. v. Limbach*, 35 Ohio St.3d 229 (1988); *Toledo v. McAndrew* (Sept. 1, 2009), BTA No. 2004-B-183, unreported.

[9] Based upon the foregoing, we find that the appellant has failed to provide sufficient evidence, which would allow this Board to grant remission of the penalty associated with the late-payment of the property-tax bill for the first half of tax year 2019.

OHIO BOARD OF TAX APPEALS

ALMAZ GASIMOVA, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1353, 2020-1412 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ALMAZ GASIMOVA
Represented by:
GEORGE PERSIANO
REAL ESTATE BROKER
6888 DEEPWOOD
MAYFIELD VILLAGE, OH 44143

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

Entered Tuesday, March 16, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. 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

NEW DAY REALTY LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1577
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF	)	
REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

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:
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ASSISTANT PROSECUTING ATTORNEY
SUMMIT COUNTY
53 UNIVERSITY AVE.
7TH FLOOR
AKRON, OH 44308

Entered Tuesday, March 16, 2021

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

[1] The property owner appeals a decision of the Summit County Board of Revision ("BOR"), which determined the value of the subject property, parcel 6744653, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The property owner filed a complaint with the BOR, requesting the subject property's value be reduced from $51,550 to $37,000 purportedly based upon the price at which it transferred in November 2018. The BOR held a consolidated hearing, which included the subject property and other properties that are not the subject of this appeal. The property owner appeared through its member Zachary Zimmer who testified about the facts and circumstances

of the sale of November 2018, condition of the subject property, and rental income derived from the subject property. The BOR voted to retain the subject property's value and this appeal ensued.

[3] None of the parties availed themselves of the opportunity to submit additional evidence into the record at a hearing before this Board and/or to submit written argument in support of their respective positions.

[4] When cases are appealed from a board of revision to this Board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[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 purchase of the subject property in November 2018. The record includes documentation, a settlement statement and notation on the property record card, which memorialized the property owner's $37,000 purchase of the subject property. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St. 3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision*, 138 Ohio St.3d 153, 2014-Ohio-104. We acknowledge that the property record card indicates that the property owner purchased the subject property from an estate sale. However, without some evidence to the contrary, we have found that transfers of real property via estate sales to be sufficient evidence of value. See e.g., *Zimmer v. Stark Cty. Bd. of Revision*

(Nov. 6, 2017), BTA Nos. 2017-622 et al., unreported.

[6] 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"). Absent an affirmative demonstration that the subject sale was not a recent, arm's-length transaction, we find it to be reflective of the subject property's value as of the relevant tax lien date:

True Value: $37,000

Taxable Value: $12,950

OHIO BOARD OF TAX APPEALS

NICOLAE CARAMAN, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-2124, 2020-2117 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NICOLAE CARAMAN
Represented by:
GEORGE CARAMAN
OWNER
CARAMAN CORPORATION
5489 RIVERVIEW DRIVE
NORTH ROYALTON, OH 44133

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

Entered Tuesday, March 16, 2021

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

[1] This matter is now considered upon the county appellees' motion to affirm the decision of the Cuyahoga County Board of Revision ("BOR") to dismiss the underlying complaint. The county appellees assert that the complaint against the valuation of real property was filed by an individual who was not authorized to do so and, therefore, the BOR dismissed the complaint. No written response to the motion was filed, but the merits of the motion and the BOR's decision were discussed during a small claims telephonic hearing. Accordingly, this matter is decided upon the motion, the statutory transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, appellant's notice of appeal, and the statements made during the telephonic hearing.

We note that although the motion was filed only in BTA No. 2020-2124, it appears that appellant filed two appeals regarding the same BOR decision. As such, this Board has consolidated the matters for purposes of this decision.

[2] The record shows that on March 31, 2020, a complaint against the valuation of real property was filed by George Caraman as an agent for the property owner, Caraman, Vasilica, Nicolae. S.T., Exhibit A. At the BOR hearing, George Caraman testified that he is the son of the property owner. He further testified that he is not an appraiser, broker, or attorney. S.T., Exhibit E. Thereafter, the BOR issued a decision to dismiss the complaint for the reason that the complainant engaged in the unauthorized practice of law. Subsequently, the property owner filed an appeal with this Board. During the small claims telephonic hearing, George Caraman explained that his father has limited ability to speak or write English and that he filed the complaint to assist him. George Caraman further stated that he acted with his father's consent and that he had filed complaints on behalf of his father before without any trouble with the county. The county appellees asserted that the appellant could have hired an attorney to prepare and file the complaint if he needed such assistance and it would have been lawfully filed.

[3] 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. R.C. 5715.19(A) governs who may file a complaint against the valuation of real property. The Supreme Court has held that those specified in the statute may file a complaint without the assistance of an attorney on behalf of another, without such

actions constituting the unauthorized practice of law. *Marysville Exempted Village School Dist. Bd. of Edn. v. Union Cty. Bd. of Revision*, 136 Ohio St.3d 146, 2013-Ohio-3077; *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 134 Ohio St.3d 529, 2012-Ohio-5680.

[4] This Board has previously found that non-attorney family members are not authorized to file a complaint with a board of revision on behalf of other family members. See *Glick v. Wayne Cty. Bd. of Revision* (July 28, 2006), BTA No. 2004-P-552, unreported (remanding with instructions to dismiss a complaint filed by father on behalf of children); *Lavery v. Summit Cty. Bd. of Revision* (Nov. 2, 2001), BTA No. 200-V-1647, unreported. Nowhere is it alleged that an attorney was involved in the preparation and filing of the underlying complaint.

[5] Based upon the foregoing, we find that George Caraman, son of the property owner, was not authorized to file the underlying complaint. See also, *Ruhl/Stuckey v. Montgomery Cty. Bd. of Revision* (Jan. 29, 2013), BTA No. 2012-L-2524, unreported. Accordingly, the decision of the Cuyahoga County Board of Revision to dismiss the underlying complaint is hereby affirmed.

OHIO BOARD OF TAX APPEALS

PATRICIA P. NORMILE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-2012
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - PATRICIA P. NORMILE
OWNER
609 AMHERST AVE
TERRACE PARK, OH 45174

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

Entered Tuesday, March 16, 2021

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

[1] Patricia Normile appeals from a decision of the Hamilton County Board of Revision ("BOR") denying real property tax penalty remission for the first half of 2019. We decide the case on the notice of appeal, the statutory transcript, and any written argument.

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

[2] Appellant's payment was due January 31, 2020. Payment was processed on February 26, 2020. Appellant argues she wrote a check for the full amount and timely submitted the payment. She argues the Treasurer did not timely cash the check. However, the record contains the envelope appellant used. It is postmarked February 15, 2020, weeks after payment was due. Appellant has argued no other basis for penalty remission.

[3] Because the payment was not mailed until after the tax was due and because we have no other evidence of good cause, we affirm the BOR. The application is denied.

OHIO BOARD OF TAX APPEALS

AS CAPITAL LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1814
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - AS CAPITAL LLC
Represented by:
JESSIE SHEN
SOLE MEMBER
AS CAPITAL LLC
7351 MAR DEL DR.
CINCINNATI, OH 45243

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

Entered Tuesday, March 16, 2021

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 timely filed with the county Board of Revision ("BOR"). This matter is decided upon the motion, responses thereto, the transcript certified by the BOR, appellant's notice of appeal, and the statements made during the small claims telephonic hearing before this Board.

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 shows that appellant timely filed the appeal with this Board, but such notice was filed with the BOR thirty-three days after the mailing of the BOR's decision. Appellant asserts that it timely filed with the BOR based upon the date it was mailed, providing a receipt and certificate of mailing to demonstrate that it was sent via first class mail on October 3, 2020. Notices of appeal sent in this manner, however, are not entitled to a constructive filing date under R.C. 5717.01, which provides, in pertinent part:

> Such appeal shall be taken by the filing of a notice of appeal, in person or by certified mail, express mail, facsimile transmission, electronic transmission, or by authorized delivery service, with the board of tax appeals and with the county board of revision. If notice of appeal is filed by certified mail, express mail, or authorized delivery service as provided in section 5703.056 of the Revised Code, the date of the United States postmark placed on the sender's receipt by the postal service or the date of receipt recorded by the authorized delivery service shall be treated as the date of filing.

Appellant did not send the notice of appeal to the BOR by certified mail, express mail, facsimile

transmission, electronic transmission, or by authorized delivery service. As such, the date of receipt – not the date of mailing – is considered the date of 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.

OHIO BOARD OF TAX APPEALS

NEW DAY REALTY LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1576
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF	)	
REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - NEW DAY REALTY LLC
Represented by:
ZACHARY A. ZIMMER
4376 BUCKINGHAM CIR.
UNIONTOWN, OH 44685

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

Entered Tuesday, March 16, 2021

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

[1] The property owner appeals a decision of the Summit County Board of Revision ("BOR"), which determined the value of the subject property, parcel 68-19899, for tax year 2019. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The property owner filed a complaint with the BOR, requesting that the subject property be revalued from $56,920 to $44,000 based upon the price at which it transferred in October 2019. The BOR held a consolidated hearing on the matter, which included other properties that are not the subject of this appeal. The property owner testified about the facts and circumstances of his $44,000 purchase of the subject property in October 2019, the condition of the subject

property, and the rental income derived from the subject property. The BOR determined that the property owner failed to satisfy the evidentiary burden and voted to retain the subject property's initially assessed value. This appeal ensued. None of the parties availed themselves of the opportunity to submit additional evidence at a hearing 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. "[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 record includes evidence that provides the minimal details of the sale, which indicates that the property owner purchased the subject property for $44,000 on October 11, 2019. Absent an affirmative demonstration such sale is not a qualifying sale for tax valuation purposes, we find that the record shows that the transaction was both recent, arm's-length, and constitutes the best indication of the subject property's value as of January 1, 2019.

[5] 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: $44,000

Taxable Value: $15,400

OHIO BOARD OF TAX APPEALS

TERRA FIRM JDC LLC/JAMES CHILLEMI, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1354 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TERRA FIRM JDC LLC/JAMES CHILLEMI
Represented by:
JAMES CHILLEMI
21379 SNOWFLOWER RD.
ROCKY RIVER, OH 44116

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

Entered Tuesday, March 16, 2021

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

This matter is now considered following this Board's issuance of an order to show cause why this matter should not be dismissed for lack of jurisdiction. *Terra Firm JDC LLC v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Dec. 8, 2020), BTA No. 2020-1354, unreported. As indicated in our earlier order, it appears that the appellant may not have followed the procedures to properly challenge the issue raised in the notice of appeal, i.e., related to delinquent property taxes, or otherwise appealed from a decision of a board of revision. The appellant responded to the order but failed to provide any responsive documents.

R.C. 5703.02 grants this Board 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 Board of Tax Appeals within thirty days after *notice of the decision of the county board of revision* is mailed as provided in division of (A) of section 5715.20 the Revised Code." (Emphasis added.) Adherence to the conditions imposed by R.C. 5717.01 is essential to establishing jurisdiction before this Board. See *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990).

The appellant has presented no indication that he followed the proper steps to challenge delinquent property taxes and/or that a decision was issued by a board of revision from which this appeal could be taken. Accordingly, the appellant has failed to invoke this Board's jurisdiction and this matter is dismissed.

OHIO BOARD OF TAX APPEALS

JAMES CHILLEMI, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1352
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JAMES CHILLEMI
21379 SNOWFLOWER RD.
ROCKY RIVER, OH 44116

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

Entered Tuesday, March 16, 2021

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

This matter is now considered following this Board's issuance of an order to show cause why this matter should not be dismissed for lack of jurisdiction. *Chillemi v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Dec. 15, 2020), BTA No. 2020-1352, unreported. As indicated in our earlier order, it appears that the appellant may not have followed the procedures to properly challenge the issue raised in the notice of appeal, i.e., related to delinquent property taxes, or otherwise appealed from a decision of a board of revision. The appellant did not respond to the order.

R.C. 5703.02 grants this Board 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 Board of Tax Appeals within thirty days after *notice of the decision of the county board of*

revision is mailed as provided in division of (A) of section 5715.20 the Revised Code." (Emphasis added.) Adherence to the conditions imposed by R.C. 5717.01 is essential to establishing jurisdiction before this Board. See *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990).

The appellant has presented no indication that he followed the proper steps to challenge delinquent property taxes and/or that a decision was issued by a board of revision from which this appeal could be taken. Accordingly, the appellant has failed to invoke this Board's jurisdiction and this matter is dismissed.

OHIO BOARD OF TAX APPEALS

DANIELA LIOR BEN NAHUM LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1345 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DANIELA LIOR BEN NAHUM 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:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, March 16, 2021

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 682-17-119, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and county appellees' written argument.

[2] The property owner filed a complaint, requesting the subject property's value be reduced from $78,100 to $48,000 purportedly to reflect the price at which it transferred in August 2015. Although the BOR scheduled the matter for a hearing, the property owner waived the opportunity to appear. Instead, it submitted sale documents that memorialized the sale of

August 2015 and tax year 2015 BOR decision, which reduced the subject property's value to $48,000. The BOR rejected the property owner's evidence and issued a decision that retained the subject property's initially assessed value. This appeal ensued.

[3] On appeal, the property owner did not request an opportunity to submit evidence at a hearing before this Board. As a result, this Board established a deadline by which the parties could submit written argument in support of their respective positions, i.e., on or before November 19, 2020. However, on November 10, 2020, the property owner filed a motion to supplement the record with additional evidence beyond the date that would have been established by the case management plan and rules. See Ohio Adm. Code 5717-1-07(A)(2)(d). The county appellees timely filed written argument, asserting that the subject sale was too remote from the tax lien date and, therefore, not the best indication of real property value.

[4] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. As noted above, the property owner filed a motion to supplement the record with additional evidence, which was filed by Yisrael Harris in his capacity as "manager/officer." There was no indication that Harris was an attorney licensed to practice law in Ohio; thus, it appears that he has engaged in the unauthorized practice of law by attempting to represent the property owner in this matter, i.e., engaging in motion practice. 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 strike the motion to supplement the record and order Harris to cease and desist from the unauthorized practice of law.

[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] Upon review of the record, we find that the property owner failed to provide competent, credible, and probative evidence of the subject property's value. The property owner solely asserted that the $48,000 sale of the subject property in August 2015 was the best indication of its value. 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 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."). For this reason, we must conclude that the property owner's $48,000 purchase of the subject property in August 2015 was too remote from the tax lien date and, consequently, is not reflective of its value.

[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 provide competent, credible, and probative evidence of the subject property's value. As a result, it is the order of this Board that the subject property's value shall remain as initially assessed as of the relevant tax lien date:

True Value: $78,100

Taxable Value: $27,340

OHIO BOARD OF TAX APPEALS

BENTAL LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1328
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - BENTAL 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

Entered Tuesday, March 16, 2021

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

[1] This matter is now considered upon the county appellees' motion to remand with instructions to dismiss the underlying complaint. The county appellees assert that the underlying complaint was filed by a person not authorized to do so and, therefore, failed to invoke the jurisdiction of the Board of Revision ("BOR"). Appellant did not respond to the motion. Accordingly, this matter is now decided upon the motion, the transcript certified by the BOR, and appellant's notice of appeal.

[2] The record shows that a decrease complaint against the valuation of real property was filed with the Cuyahoga County Board of Revision. The property record card shows that the

owner of the subject property is Bental, LLC. The complaint does not list anyone as the complainant if not owner or as the complainant's agent. However, the complaint does show a telephone number for a contact person and is signed by an individual identified as the manager, though the manager's signature is illegible. When the BOR issued a decision finding no change in value, Yisreal Harris, Manager filed an appeal with this Board. The county appellees' motion argues that a property manager is not one who is authorized by R.C. 5715.19(A) to file a complaint on behalf of the owner. Further, the county appellees argue that the complaint was filed by a non-attorney manager who engaged in the unauthorized practice of law.

[3] 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. Property managers "are not among the nonlawyers who are explicitly authorized to file complaints under R.C. 5715.19(A). *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 230, 2018-Ohio-4244. 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.

[4] 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. 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

DARRELL RODRIGUEZ & LUCY I DAVILA-SOTO, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2020-1293 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DARRELL RODRIGUEZ & LUCY I DAVILA-SOTO
Represented by:
DARRELL RODRIGUEZ AND LUC I DAVILA-SOTO
6971 LARKSPUR LANE
LIBERTY TOWNSHIP, OH 45044

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L. FERGUSON
ASSISTANT PROSECUTING ATTORNEY
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315 HIGH STREET, 11TH FLOOR
P. O. BOX 515
HAMILTON, OH 45012-0515

Entered Tuesday, March 16, 2021

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

This matter is now considered following this Board's issuance of an order to show cause why this matter should not be dismissed for lack of jurisdiction. *Rodriguez v. Butler Cty. Bd. of Revision* (Interim Order, Dec. 7, 2020), BTA No. 2020-1293, unreported. As indicated in our earlier order, it appears that the appellant may not have followed the procedures to properly challenge the issue raised in the notice of appeal, i.e., related to delinquent property taxes, or otherwise appealed from a decision of a board of revision. The appellant did not respond to the order.

R.C. 5703.02 grants this Board 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 Board of Tax Appeals within thirty days after *notice of the decision of the county board of revision* is mailed as provided in division of (A) of section 5715.20 the Revised Code." (Emphasis added.) Adherence to the conditions imposed by R.C. 5717.01 is essential to establishing jurisdiction before this Board. See *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990).

The appellant has presented no indication that he followed the proper steps to challenge delinquent property taxes and/or that a decision was issued by a board of revision from which this appeal could be taken. Accordingly, the appellant has failed to invoke this Board's jurisdiction and this matter is dismissed.

OHIO BOARD OF TAX APPEALS

PAULA HORSFALL, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1280
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
BROWN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - PAULA HORSFALL
OWNER
7399 US HIGHWAY 52
REPLEY , OH 45167

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

Entered Tuesday, March 16, 2021

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

[1] The taxpayer appeals a decision of the Board of Revision ("BOR"), which rejected her application for remission of penalties associated with delinquent property-tax bills associated with parcel 12-023528.0000 for tax years 2013 through 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and parties' written argument.

[2] The taxpayer filed the underlying application, asserting her ongoing failure to timely pay the property-tax bills was based upon negligence or error on the part of the County Auditor and/or County Treasurer and that she repeatedly attempted to obtain the property-tax bills during tax years 2013 through 2020. She asserted that county offices provided her erroneous

information and, as a result, she believed that she did not owe property taxes during that time period. The BOR reviewed the application after both the County Treasurer and County Auditor recommended that the application be denied. The BOR subsequently issued a decision that also denied the application, noting that the taxpayer untimely paid property tax in tax year 2018 (presumably for tax year 2017) and that she had previously defaulted on a payment plan. In sum, the BOR determined that the taxpayer had not demonstrated reasonable cause for her failure to pay the property-tax bills. This appeal ensued. It is important to note that neither the taxpayer nor the appellees requested an opportunity to present evidence into the record at a hearing before this board. At various points in these proceedings, all parties submitted written argument, peppered with factual assertions, to prove the merit of their respective positions.

[3] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. As noted above, none of the parties requested a hearing before this Board to provide evidence, including testimony, about the facts relevant to this matter. However, by way of the written argument submitted with her notice of appeal, which appear to be the same argument submitted to the BOR, and by way of the written argument submitted by the county appellees, all parties make a plethora of factual assertions that are not properly before us. As such, these factual assertions are considered hearsay. See *Dellick v. Eaton Corp.*, 7th Dist. Mahoning No. 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 insure truth in the fact-finding process. Here, none of the parties requested 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* (1996), 76 Ohio St.3d 13, 16 (1996). Therefore, we will accord no weight to the factual assertions contained in the parties' written argument.

[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 appellants have not demonstrated that the facts and circumstances of this matter qualify for remission of the late-payment penalty pursuant to R.C. 5715.39, which provides the guidelines to determine when real property tax late-payment penalties shall be remitted. 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).

[6] Upon review, we find that the taxpayer has not demonstrated that she is entitled to remission of the late-payment penalties associated with delinquent property-tax payments. As noted above, she argued that she did not receive the property-tax bills because of errors on the part of the County Auditor and/or County Treasurer under R.C. 5715.39(B)(1). Our review of the self-authenticated deeds, highlighting the various transfers of the subject property since tax year 2012, suggests that errors were made by the county sheriff during foreclosure proceedings, which may have led to some of the issues raised in this matter. However, those possible errors were not

the fault of either the County Auditor or the County Treasurer and, as such, there is no evidence to support the taxpayer's claim. We find, therefore, that the taxpayer is not entitled to remission of the late-payment penalties on this basis.

[7] The taxpayer also claimed that she did not receive the property-tax bills and attempted to obtain them within thirty days of their respective due dates under R.C. 5715.39(B)(2). Though the taxpayer asserted that she repeatedly attempted to obtain the property-tax bills on various dates over the years, there is no evidence to demonstrate that she attempted to obtain them within thirty days of their due dates. Furthermore, R.C. 323.13 provides 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." Thus, even if the taxpayer did not receive the property-tax bills, she was not relieved of the duty to timely pay them. We find, therefore, that the taxpayer is not entitled to remission of the late-payment penalties on this basis.

[8] We proceed to consider whether the taxpayer demonstrated that penalty remission would be appropriate consistent with R.C. 5715.39(C). Though we sympathize with the taxpayer, we cannot conclude that her failure to timely pay the property-tax bills amounted to reasonable cause. It is undisputed that the taxpayer had at least one late payment of property-tax bills. 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. We see no reason to stray from our prior holdings. We find, therefore, that the taxpayer is not entitled to remission of the late-payment penalties on this basis.

[9] Though the taxpayer requested remission of interest assessed on the property-tax delinquencies, we note that the taxpayer did not raise this issue in the proper venue. 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 taxpayer requested remission of assessed interest from the BOR, not the Tax Commissioner, it appears that the taxpayer 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.

[10] We are mindful of our duty to independently review the record. *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 deny the taxpayer's request for remission of the late-payment penalties associated with the property-tax bills for the above-mentioned tax periods.

OHIO BOARD OF TAX APPEALS

MS. KATHLEEN T. HAYES, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1241 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MS. KATHLEEN T. HAYES
OWNER
3295 DALEFORD RD
CLEVELAND, OH 44120-3435

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, March 16, 2021

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

This matter is now considered following this Board's issuance of an order to show cause why this matter should not be dismissed for lack of jurisdiction. *Hayes v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Dec. 15, 2020), BTA No. 2020-1241, unreported. As indicated in our earlier order, it appears that the appellant may not have followed the procedures to properly challenge the issue raised in the notice of appeal, i.e., related to delinquent property taxes, or otherwise appealed from a decision of a board of revision. The appellant did not respond to the order.

R.C. 5703.02 grants this Board 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 Board of Tax Appeals within thirty days after *notice of the decision of the county board of revision* is mailed as provided in division of (A) of section 5715.20 the Revised Code." (Emphasis added.) Adherence to the conditions imposed by R.C. 5717.01 is essential to establishing jurisdiction before this Board. See *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990).

The appellant has presented no indication that he followed the proper steps to challenge delinquent property taxes and/or that a decision was issued by a board of revision from which this appeal could be taken. Accordingly, the appellant has failed to invoke this Board's jurisdiction and this matter is dismissed.

OHIO BOARD OF TAX APPEALS

BATRA HOSPITALITY GROUP INC., (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1223 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BATRA HOSPITALITY GROUP INC.
Represented by:
JAY BATRA
OWNER
400 VENTURE DR
LEWIS CENTER, OH 43035

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

Entered Tuesday, March 16, 2021

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

[1] The taxpayer appeals decisions of the Board of Revision ("BOR"), which rejected its applications for remission of penalties associated with delinquent property-tax bills for the second half of tax year 2018 and first half of tax year 2019. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The taxpayer filed the underlying applications, asserting its ongoing failure to timely pay the property-tax bills was based upon reasonable cause, not willful neglect. The taxpayer asserted that financial problems led to its failure to timely pay the property-tax bills and requested waiver of the late-payment penalties and associated interest. The BOR reviewed the

applications after both the County Treasurer and County Auditor recommended that the applications be denied. The BOR subsequently issued a decision that also denied the application, noting that the taxpayer untimely paid property tax for the first half of tax year 2018 and that late-payment penalty had been remitted for that late payment. In sum, the BOR determined that the taxpayer had not demonstrated reasonable cause for its failure to pay the property-tax bills. This appeal ensued.

[3] Before we consider the merits of this appeal, we must first dispose of preliminary issues. It is important to note that the taxpayer did not request an opportunity to present evidence for the record at a hearing before this Board. However, by way of the written statement that comprises the notice of appeal, the taxpayer makes a number of factual assertions that were not provided at a hearing before the BOR or before this Board. As such, these factual assertions 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 insure truth in the fact-finding process. 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* (1996), 76 Ohio St.3d 13, 16 (1996). Therefore, we will accord no weight to the factual assertions contained in the taxpayer's notice of appeal.

[4] Similarly, the taxpayer attached a number of documents to the written statement, which

were not previously submitted to the BOR and were not submitted at the hearing before this Board. 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 certified by 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 City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001).

[6] Upon review, we are constrained to find that the taxpayer has not demonstrated that the facts and circumstances of this matter qualify for remission of the late-payment penalty pursuant to R.C. 5715.39, which provides the guidelines to determine when real property tax late-payment penalties shall be remitted. 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).

[7] Upon review, we find that the taxpayer has not demonstrated that it is entitled to remission of the late-payment penalties associated with delinquent property-tax payments consistent with R.C. 5715.39(C). It is undisputed that the taxpayer had at least one late payment of property-tax bills, i.e., the first half of tax year 2018. 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. We see no reason to stray from our prior holdings. We find, therefore, that the taxpayer is not entitled to remission of the late-payment penalties on this basis.

[8] Though the taxpayer requested remission of interest assessed on the property-tax delinquencies, we note that the taxpayer did not raise this issue in the proper venue. Nothing in R.C. 5715.39(B) vests jurisdiction in county auditors/fiscal officers, treasurers, or boards of revisions 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 taxpayer requested remission of assessed interest from the officials other than the Tax Commissioner, it appears that the taxpayer 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.

[9] We are mindful of our duty to independently review the record. *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 deny the taxpayer's request for remission of the late-payment penalties associated with the property-tax bills for the above-mentioned tax periods.

OHIO BOARD OF TAX APPEALS

BERL F SMITH JR., (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1164
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - BERL F SMITH JR.
Represented by:
BERL SMITH
690 GARDENDALE AVE.
AKRON, OH 44310

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, March 16, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. 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

LAUREN NAPPI, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1114
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
ASHTABULA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - LAUREN NAPPI
OWNER
5269 SEAPORT CIRCLE
ASHTABULA, OH 44004

For the Appellee(s) - ASHTABULA COUNTY BOARD OF REVISION
Represented by:
GENE C. BARRETT
ASSISTANT PROSECUTING ATTORNEY
ASHTABULA COUNTY
25 WEST JEFFERSON STREET
JEFFERSON, OH 44047-1092

Entered Tuesday, March 16, 2021

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

[1] Lauren Nappi appeals from a decision of the Ashtabula County Board of Revision ("BOR") retaining the Auditor's value of two parcels for tax year 2019. Nappi appealed under our small claims docket; however, at this Board's small claims hearing it became clear this appeal does not qualify for that docket. We reassign it to the regular docket and issue this merit decision. We decide the case on the notice of appeal, the statutory transcript, and any written argument.

[2] There are two parcels at issue, one commercial and one residential. The Auditor valued parcel 05-210-00-009-00, commercial property, at $63,700 for tax year 2019. Nappi filed a complaint seeking a reduction of $10,000. The Auditor valued parcel 50-009-20-111-00,

residential property, at $74,100. Nappi filed a complaint seeking a value of $45,000. Nappi appeared via phone at the BOR hearing. Nappi testified she had been attempting to sell the commercial property but had been unable to do so. She testified the property needed repairs. However, she testified a little under half of the building was leased to a tattooist, who paid $550 in rent plus utilities. Nappi then testified about the residential property. She testified she thought she might be able to sell the property for $45,000 if sold. She testified the property was leased as of tax lien date. She also testified the property needs to be upgraded.

[3] The BOR retained the Auditor's value on both parcels. Nappi appealed to this Board through our small claims docket, but Nappi did not appear for the phone hearing. The case has been reassigned to the regular docket. 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).

[4] We find Nappi has not carried her burden. The testimony provided below was based on two things. The first was her opinion of value as the owner. The second, relatedly, was what she believed a realtor had told her. We note case law from the Ohio Supreme Court holding an owner is competent to present an opinion of value of his or her property. *Snavely v. Erie Cty.*

Bd. of Revision, 78 Ohio St.3d 500 (1997). However, the Court has also been clear this Board need not adopt that opinion of value unless probative evidence supports it. *GLS v. Stark Cty. Bd. of Revision* (Sept. 17, 2020), BTA No. 2019-2567, unreported. Here, we find no such evidence. Nappi's argument was primarily about property defects and the need for improvements. However, we are bound by case law of the Ohio Supreme Court. That Court has been very clear that a litigant must do more than prove property suffers from a negative characteristic. A party must quantify the value of those negative characteristics. It is insufficient to prove negative characteristics decrease the value somewhat. See *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996); *Hotel Statler v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1997); *Shinkle v. Ashtabula County Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. 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.

[5] We acknowledge she mentioned at the BOR hearing that her opinion was based in part on what her realtor said. That realtor did not testify; therefore, his or her testimony is unreliable hearsay. We also have no evidence the realtor was an appraiser. Salespersons are not appraisers meaning they "may or may not have extensive appraisal experience." *Springfield Local Sch. Bd. of Edn. v. Lucas Cty. Bd. of Revision* (Sept. 17, 2018), BTA No. 2017-2014, unreported (quoting The Appraisal of Real Estate (13th Ed.2008)). This Board has also said, "salespeople

evaluate specific properties, but they do not typically consider all the factors that professional appraisers do." Id.

[6] For these reasons, we retain the Auditor's values and order the property valued as follows for tax year 2019:

PARCEL 05-210-00-009-00

TRUE VALUE $63,700; TAXABLE VALUE $22,300

PARCEL 50-009-20-111-00

TRUE VALUE $74,100; TAXABLE VALUE $25,940

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). 2020-853 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PRINCETON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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NORTHPORT 441 LLC
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WEST CHESTER, OH 45069

Entered Tuesday, March 16, 2021

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

[1] The Princeton City Schools Board of Education ("BOE") appeals from a final determination of the Butler County Board of Revision ("BOR") retaining the Auditor's value of parcels M5820-043-000-010 and M5820-043-000-012 for tax year 2019. We decide the case on the notice of appeal, the statutory transcript, and the BOE's brief.

[2] Per the complaint, the subject property is improved with commercial warehouses. The Auditor valued the property at $1,672,220 for tax year 2019. The BOE filed a complaint

seeking a value of $2,000,000 citing an April 2019 sale for that amount. The BOE supplied the relevant conveyance fee statement. The sale is also reflected on the parcel card. The BOR notified the property owner of the complaint by sending the hearing notice to the subject property, 898 East Crescentville Road in West Chester, Ohio. At the BOR hearing, the BOE appeared through counsel and presented the conveyance fee statement and general details of the sale.

[3] The BOR rejected the sale. The BOR's speaking member noted the BOR rejected the sale because the owner did not appear and, since the owner did not appear, the BOR did not know if the owner had actual knowledge of the hearing. The BOR also rejected the sale because it believed the sale could have been leased fee and should be disregarded on that basis.

[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 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. 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 recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." *Terraza 8* at ¶ 33. A sale that takes place fewer than 24 months before the tax-lien date 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, ¶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.

[5] Here, the BOE presented a facially valid sale. The sale is reflected on the parcel card and consistent with the conveyance fee statement. However, no party has rebutted the sale. Accordingly, we find the sale is the best evidence of value.

[6] We quickly dispose of the BOR's objections to the sale. First, the hearing notice was sent to the subject property, which was listed as the tax mailing address on the conveyance fee statement. The BOR's speaking member also seemed to imply he had attempted to personally notify the owner, located in Florida. As notice was sent to the subject property and tax mailing address, the notice was sufficient for purposes of R.C. 5715.20. See *Springer v. Cuyahoga Cty. Bd. of Revision* (June 29, 2020), BTA No. 2020-29, unreported (quoting *Knickerbocker Properties v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d, 2008-Ohio-3192) ("***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.") Moreover, if the BOR did not fulfill its duty under R.C. 5715.20, the legally appropriate remedy would be to comply by sending proper service not simply disregarding the BOE's complaint.

[7] The BOR's second objection is legally wrong and factually unsupported. The BOR cited nothing in the record to suggest the sale was leased fee. Indeed, the conveyance fee statement does not state such although such an option is given. Case law from this Board and various courts of appeals are clear a sale should not be disregarded simply because it sold subject to an existing lease. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Tenth Dist. Franklin No. 19AP-204, 2020-Ohio-200; see also *Rancho Cincinnati Rivers, LLC v. Warren Cty. Bd. of Revision*, Twelfth Dist. Warren No. CA2019-07-075, 2020-Ohio-1319 (Twelfth District case discussing R.C. 5713.03) (appeal pending S.Ct. No. 2020-0643).

[8] For these reasons, we find the sale is the best evidence of value. We order the property valued as follows for tax year 2019:

PARCEL NUMBER M5820-043-000-010

TRUE VALUE

$1,780,470

TAXABLE VALUE

$623,160

PARCEL NUMBER M5820-043-000-012

TRUE VALUE

$219,530

TAXABLE VALUE

$76,840

OHIO BOARD OF TAX APPEALS

JOHN & MARIA PIDCOCK, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-819 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JOHN & MARIA PIDCOCK
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 16, 2021

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

[1] John & Maria Pidcock appeal from a decision of the Cuyahoga County Board of Revision ("BOR") denying penalty remission for the first half of 2019. We decide the case on the notice of appeal, the statutory transcript, and any written argument.

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.

[2] Penalties must also be remitted "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' bill for the first half of 2019 was due January 30, 2020. However, appellants did not pay the bill until February 19, 2020. They sought penalty remission arguing an "internal error" with their bank. They also alleged they "thought bill was due in February and not January." The Fiscal Officer and BOR denied the application because appellants were late on their bill for the first half of 2018 too. They were granted penalty remission for that bill.

[4] Here, we find appellants have not shown they are entitled to penalty remission because the facts of this case do not match any of the scenarios listed in R.C. 5715.39. Likewise, we find appellants have not shown the failure to pay was due to reasonable cause and not willful neglect especially in light of appellants' history of failing to timely pay the tax.

[5] For these reasons, we find the BOR did not error. Appellants' application is denied.

OHIO BOARD OF TAX APPEALS

DIMITRIOS E. BOULAS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-759
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - DIMITRIOS E. BOULAS
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Entered Tuesday, March 16, 2021

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

[1] Dimitrios Boulas appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the Fiscal Officer's value for parcel 605-10-008 for tax year 2018. With the consent of all parties, this Board held a virtual merit hearing. We now decide the case on the notice of appeal, the statutory transcript, and the record of this Board's hearing.

[2] Most of the facts in this case are undisputed. The Fiscal Officer valued the property at $775,000 for tax year 2018. Boulas and his family purchased the property, a residence, in May 2017 for $775,000. Shortly thereafter, Boulas learned the seller's son died by suicide in the back yard. The suicide occurred approximately three years before Boulas purchased the house; however, the seller did not disclose the suicide. Boulas testified at the BOR and before us that

the neighbors were aware of the suicide but did not make Boulas aware until after the sale. Boulas testified the suicide created significant stigma severely limited his family's enjoyment of the property. He testified it caused his family consternation because of his small children and because it limited his family's ability to entertain guests, especially when potential guests were aware of the suicide.

[3] Boulas also testified that shortly after the purchase he learned the prior owner used the property, in part, for the distribution (and perhaps manufacturing) of pornography. He testified that created a stigma and was particularly concerning, again, because of his small children. He further testified his family's unique difficulty because he and his family are Greek Orthodox Christians, and both of the aforementioned stigmas would be contrary to their faith. Boulas testified the seller did not disclose the fact pornography was distributed, and potentially manufactured, at the home. He also indicated he learned later that the house was known in the neighborhood as "the porno house." A fact he did not learn until after the sale.

[4] Boulas filed a decrease complaint for tax year 2018. Per the complaint, he argued a reduction was warranted because of stigma. After he filed a decrease complaint, the BOR held a hearing. Mr. Boulas testified and presented the relevant death certificate as well as case law involving "stigmatized property." He testified he would not have purchased the property had he known of the aforementioned facts. Boulas also called his realtor. His realtor testified to his belief the property was overvalued in light of the facts associated with the property. He further testified to his belief the property would be very difficult to sell at all based on his experience selling homes where suicides occurred.

[5] The BOR retained the Fiscal Officer's value of $775,000. In its opinion, the BOR held Boulas had failed to quantify any loss in value. Boulas appealed to this Board. He again

testified at this Board's hearing. He also recalled his realtor to testify. Their testimony mirrored their testimony at the BOR.

[6] When cases are appealed from a board of revision to this Board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). 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.).

[7] Because this case includes a sale, we start there. 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, 546 (1989). While the Ohio Supreme Court has rejected a bright-line recency rule, it has held a sale occurring fewer 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.

[8] Here, the record is clear the sale was an arm's-length sale. Boulas acknowledges the sale occurred without compulsion or duress. It took place on the open market, and at least one salesperson was involved. There is also no evidence Boulas and the seller had a prior relationship. Because the sale was recent and arm's-length, the sale creates a rebuttable presumption of value

in favor of the sale price, which was $775,000—the same as the Fiscal Officer's value. The question then becomes whether Boulas has carried his burden of rebutting the sale price as adopted by the Fiscal Officer.

[9] We certainly sympathize with Boulas and understand his frustration. However, we are bound by case law of the Ohio Supreme Court. That Court has been very clear that a litigant must do more than prove property suffers from negative characteristics. A party must *quantify* the value of those negative characteristics. It is insufficient to prove negative characteristics decrease the value *somewhat*. See *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996); *Hotel Statler v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1997); *Shinkle v. Ashtabula County Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. As the Eighth District has held, 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.

[10] We recognize Boulas's argument that the stigma related to his property is different in kind from a garden variety property defect. Even assuming valuation adjustments are warranted because of certain stigma, we find no case from this Board or any Court holding an appellant need not quantify the effect of the stigma on value. Indeed, our cases say the opposite. See, e.g., *Norman v. Montgomery Cty. Bd. of Revision* (July 23, 1999), BTA No. 98-K-875, unreported

(holding a party had not quantified the value of "stigma" associated with flooding); *Ho v. Geauga Cty. Bd. of Revision* (Mar. 6, 2006), BTA No. 2004-A-735, unreported (outlining this Board's case law on "stigma" from environmental contamination).

[11] We further acknowledge Boulas' argument that his realtor's testimony proves the value sought is justified. We disagree for three reasons. First, Boulas' realtor is not an appraiser. Salespersons are not appraisers meaning they "may or may not have extensive appraisal experience." *Springfield Local Sch. Bd. of Edn. v. Lucas Cty. Bd. of Revision* (Sept. 17, 2018), BTA No. 2017-2014, unreported (quoting The Appraisal of Real Estate (13th Ed.2008)). This Board has also said, "salespeople evaluate specific properties, but they do not typically consider all the factors that professional appraisers do." Id. Second, even taking the realtor's testimony at face value, he indicated at hearing that he has only represented clients in a small number of cases involving a similar fact pattern. Lack of experience in dealing with such properties weighs against the realtor's credibility in this matter. Third, the record is void of detailed evidence about how the realtor came to his opinion of value. Neither Boulas nor the realtor supplied the data underlying their appraisal argument, e.g., the comparables considered, the character of such properties, any necessary adjustments.

[12] Finally, we note case law from the Ohio Supreme Court holding an owner is competent to present an opinion of the value of his or her property. *Snavely v. Erie Cty. Bd. of Revision*, 78 Ohio St.3d 500 (1997). However, the Court has also been clear this Board need not adopt that opinion of value unless probative evidence supports it. *GLS v. Stark Cty. Bd. of Revision* (Sept. 17, 2020), BTA No. 2019-2567, unreported.

[13] While we sympathize with Boulas, binding case law compels us to find he has not carried his burden. We order the property valued as follows for tax year 2018:

TRUE VALUE

$775,000

TAXABLE VALUE

$271,250

OHIO BOARD OF TAX APPEALS

GAHANNA-JEFFERSON CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2019-2660
vs.	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

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Entered Tuesday, March 16, 2021

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

[1] The Board of Education of the Gahanna-Jefferson City Schools ("BOE") appeals from a decision of the Franklin County Board of Revision ("BOR") retaining the Auditor's value of parcel 025-000843-00 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 adjacent to the Gahanna Animal Hospital. The property is titled

to John Worman and Paula Marrie as trustees; they are both veterinarians who practice at the hospital. The auditor valued the property at $100,000 for tax year 2018. The BOE filed an increase complaint seeking a value of $225,000 citing a February 2018 sale to Drs. Worman and Marrie.

[3] The BOR held a hearing. Counsel represented the BOE, and Drs. Worman and Marrie appeared. Dr. Worman testified the practice had attempted to buy the parcel over several years but had been unable to reach an agreeable sale price with the owner. He testified at some point a realtor, presumably representing the owner, approached the practice and asked if the practice wanted to buy the property for $225,000. Drs. Worman and Marrie agreed with the hope of expanding the practice. Dr. Worman testified he felt like a "buyer under distress" and did not believe they paid fair market value. Dr. Marrie testified they did not negotiate the price because they were concerned the owner would walk away from the deal. The BOR rejected the sale, and the BOE appealed to 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). 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,

[5] 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.

[6] Upon review, we find the sale is the best evidence of value because the record is clear the sale was 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 (1989). The BOR rejected the sale for three reasons, all of which are legally insufficient or factually wrong.

[7] First, the BOR rejected the sale because the buyers were under duress. Motivation is not duress. All willing buyers have a motive to acquire property, but a motive does not amount to economic duress absent specific and "compelling business circumstances." *Westerville City Schs. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Feb. 28, 2019), BTA No. 2017-1960, unreported. Economic duress occurs when a buyer is forced to purchase a property and "never had any real choice." *Kroger Limited Partnership I v. Hamilton Cty Bd. of Revision* (Sept. 13, 2018), BTA No. 2016-2353, unreported. For example, economic duress is present when a party must purchase property or suffer "sure corporate death" or where "no alternative" exists. Id. Here, there was no such duress.

[8] Second, the BOR rejected the sale because it found the sale was not listed on the open market. An arm's-length sale generally occurs on the open market but not always. *Walters*, supra; *Beatley v. Franklin Cty. Bd. of Revision*, 1997-M-262,unreported. More fundamentally, the record shows this sale was brought about when the seller's realtor approached the buyers. The BOR noted the property was not listed on the MLS when the realtor approached the buyers. However, simply because a property was not listed on the MLS does not mean it was not arm's-length nor does it

mean it ceases to be the best evidence of value. See *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092 ("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 exposed to a broad range of potential buyers."). Accordingly, we do not find the sale ceased to be arm's-length for this reason.

[9] Third, the BOR rejected the sale because of a preexisting relationship, i.e., that the buyers had attempted to purchase the property before but had not reached a mutually agreeable price. The record does not suggest a preexisting relationship sufficient to reject the sale. See *Maple Park Courts LLC v. Cuyahoga Cty. Bd. of Revision* (Aug. 19, 2019), BTA No. 2018-1028, unreported. This Board has long held a sale was arm's-length despite a preexisting relationship when the parties acted in their own best interest. Here, the record is clear the parties had a history of acting in their own best interest. That is why they didn't agree to a sale price earlier. The buyer wanted to pay less money, and the seller wanted to receive more.

[10] For these reasons, we find the sale is the best evidence of value. We order the property valued as follows for tax year 2018.

TRUE VALUE

$225,000

TAXABLE VALUE

$78,750

OHIO BOARD OF TAX APPEALS

ARCHON CAPITAL, LP, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2141
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - ARCHON CAPITAL, LP
Represented by:
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Entered Tuesday, March 16, 2021

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, parcels 863-02-036, 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's value be reduced from $124,800 to $63,600 purportedly to reflect the price at which it transferred in June 2017. 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 $75,000 and the BOR noted that it would incorporate the record of its hearing for parcel 861-04-061, which is the subject of BTA No. 2019-2151. In its presentation, the property owner submitted a packet of documents that included a sheriff-sale appraisal, which valued the subject property at $75,000 as of April 12, 2017; sheriff deed, which demonstrated a foreclosure sale that transferred the subject property to the property owner for $63,600 in June 2017; deposition of Shaundra Howard, an employee of the County Sheriff department, in another matter; and position paper. Based upon the evidence, the property owner argued that the county had already determined that the subject property should be valued at $75,000, through the sheriff-sale appraisal, and, therefore, it was inappropriate to revalue the subject property at $124,800 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 hearings before this Board, such hearings were sua sponte cancelled after the parties failed to disclose evidence consistent with the case management schedules. 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. Initially, 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 properties' values. The property owner subsequently filed written argument, which asserted that the county appellees had stymied its efforts to satisfy its evidentiary burden and, as a result, the property owner advanced several options to address the issue. Conversely, the county appellees filed a written reply, which reiterated that the property owner failed to satisfy its evidentiary burden.

[4] Before we consider the merits of this appeal, we must first dispose of preliminary issues. By way of its written argument, the property owner requested that this Board consider remanding this matter to the BOR for additional proceedings. Specifically, the property owner requested that this matter be remanded to the BOR with instructions either to presumptively value the subject property consistent with the property owner's request, based upon the theory of estoppel, and to reconvene hearings to allow opposing parties to submit evidence to rebut those presumptive value or to order the BOR to subpoena witnesses, i.e., the appraisers who compiled the sheriff-sale appraisal, at reconvened hearings on this matter. We decline the property owner's invitation to remand this matter and take this opportunity to reiterate two well-settled points of law. First, estoppel does not lie against the state. See e.g., *Sutak v. Belmont Cty. Bd. of Revision* (June 23, 2020), BTA No. 2019-1852, unreported. Second, 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., *Amsdell v. Cuyahoga Cty. Bd. of Revision*, 69 Ohio St.3d 572, 574 (1994). The property owner had an opportunity to address any evidentiary deficiencies, from the BOR hearing, at a hearing before this Board. The property owner opted not to avail itself of this opportunity and such decision is not without consequence. Based upon the foregoing, we deny the property owner's request to remand this matter to the BOR and proceed to consider the merits of this appeal.

[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 $63,600 transfer of the subject property via sheriff sale in June 2017. 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. See, *Yim v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. No. CA-20-109470, 2020-Ohio-6742; *Hersh v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. No. CA-20-109035, 2020-Ohio-3596.

[7] Upon 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 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.

[8] 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.)

[9] The property owner submitted the deposition of Howard, the employee from the county sheriff's office in support of its opinion of value. We do not find the deposition to be

competent, credible, and probative evidence. It appears that the property owner relied upon the deposition for the truth of the matter asserted, which is unreliable hearsay. *Dellick v. Eaton Corp.*, Mahoning App. No. 03-MA-246, 2005-Ohio-566, at ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid. R. 801(C). Generally, hearsay is inadmissible. Evid.R. 802."). Accord *Yim*, supra.

[10] The property owner also argued that it was unfair to require the property owner to commission its own appraisals when the record included the sheriff-sale appraisals, thus, the burden should be on the appellees to disprove the validity of the sheriff-sale appraisal. As we noted above, it was the property owner, as the complainant and appellant, who has the burden to prove real property value. See *Amsdell*, supra.

[11] We acknowledge the property owner's request that this Board convene a hearing and sua sponte subpoena the appraisers, who compiled the sheriff-sale appraisal, to appear at said hearing. We decline the property owner's invitation. The record is void of any indication that the property owner subpoenaed the appraisers to appear at the previously scheduled hearing before this Board. The record also demonstrates that the property owner failed to disclose any additional evidence in support of this appeal, such that an evidentiary hearing would have been necessary. If the property owner had additional evidence to support its requested value, it should have disclosed such information prior to this matter becoming ripe for decision. As such, we see no need to schedule additional proceedings in this matter.

[12] 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 valued as follows as of the relevant tax lien date:

True Value: $124,800

Taxable Value: $43,680

OHIO BOARD OF TAX APPEALS

SUTTON BUILDERS, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-1987
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Tuesday, March 16, 2021

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

[1] The property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 004-17-175, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The property owner filed a complaint with the BOR, requesting the subject property's

value be reduced from $235,500 to $150,000; the affected Board of Education ("BOE") filed a countercomplaint, objecting to the request. At the BOR hearing, both the property owner and BOE appeared to submit argument and/or evidence. The property owner submitted a packet of documents, which included unadjusted comparable sales data and various maps. Based upon its presentation, the property owner requested the subject property be revalued at $150,000. The BOE argued that the subject property's value should remain as initially assessed. The BOR voted to retain the subject property's value and 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; none of the parties availed themselves of such opportunity.

[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] In this matter, the property owner primarily argued that unadjusted comparable sales data, and deriving an average price per square foot based upon such data, indicated that the subject

property had been overvalued. We do not find any merit to the property owner's arguments. First, 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).

[6] Second, we have previously stated that "[w]e *** find the simple averaging of the [] sales to be suspect. An appraiser is to make adjustments to his sale comparable to account for differences in size, location, and other factors to bring the sales in line with what would be expected for the subject*." Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported, at 9.

[7] The property owner also argued that the subject property's initial value was too high given its prior triennial value. The county Fiscal Officer was under a statutory duty to reassess real property values, in light of the existing market conditions, for tax year 2018. See, 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).

[8] 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 find that the property owner failed to provide competent, credible, and/or probative evidence of the subject property's value. As a result, it is the order of this Board that the subject property shall remain as initially assessed as of the relevant tax lien date:

True Value: $235,500

Taxable Value: $82,430

OHIO BOARD OF TAX APPEALS

RANDY E. KAISER & SUSIE M. KAISER, (et. al.), Appellant(s), vs. COLUMBIANA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-703 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RANDY E. KAISER & SUSIE M. KAISER
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Entered Tuesday, March 16, 2021

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

[1] Randy and Susie Kaiser appeal from a decision of the Columbiana County Board of Revision ("BOR") denying current agricultural use valuation ("CAUV") on three parcels, 78-0018.001, 78-00018.003, and 31-00289.001. We decide the case on the notice of appeal, the statutory transcript, this Board's hearing record ("H.R."), and the parties' briefs.

[2] The Kaisers filed two CAUV complaints with the BOR. The first complaint relates to parcels 78-00018.003 and 78-00018.001 (the "Mountz Road parcels"). The second complaint relates to parcel 31-00289.001 (the "Georgetown Road parcel"). The Mountz Road application states the property was used for permanent pasture/animal husbandry, noncommercial timber

production, and "roads/waste/pond." The Georgetown Road application states that property was used for animal husbandry, one homesite, and "roads/waste/pond." The Kaisers supplied a number of documents with the applications such as receipts, a bill of sale, and a report created by a veterinarian showing services provided to at least one pig.

[3] The application was initially denied, it appears, on the basis of this Board's decision in *Stults v. Delaware Cty. Bd. of Revision* (Aug. 20, 2004), BTA No. 2003-P-287, unreported. That decision applied, according to the Auditor's designee, because active use is required, and it did not appear the Kaiser's property was actively used. The Auditor's designee appears to have taken the position the Kaiser's were working toward actual use but had not reached active use exclusively for agricultural purposes.

[4] The Kaisers appealed to the BOR, which held a hearing. The parties began that hearing by discussing the Mountz Road parcels. Mr. Kaiser testified the property was an abandoned strip mine that the Kaisers were converting for agricultural use. Most of the discussion centered around whether the Auditor did a sufficiently thorough inspection of the property and whether actual notice was given to the Kaisers about how to carry their burden. A BOR member noted a pavilion and boat on the property that indicated, to her, recreational use of the property. The Kaiser's disputed that contention, however. The parties discussed the Georgetown Road parcel generally. The BOR also asked the Kaisers for income and expense statements as well as federal returns showing income earned on the property. It appears that information was never received. See. H.R. at 14, 32. The BOR issued a decision on April 26, 2019. It stated it denied CAUV status for both Mountz Road parcels. It also stated it denied CAUV status to the Georgetown Road parcel on all but 2.11 acres. The BOR cited an overall lack of evidence to support a finding that the rest of the property qualified for CAUV. The Kaiser's appealed to this Board and appeared at this Board's hearing. They generally restated the same arguments made at the BOR. The BOR called Michael Smith, head of the Auditor's real estate division. He testified the Kaisers had not presented

evidence to show the property was actively used exclusively for agricultural purposes. He also noted a lack of financial information about the parcels.

[5] This Board held a merit hearing, and the Kaisers testified at that hearing. They subsequently secured counsel and filed a post-hearing brief through the same counsel. However, it appears there was a breakdown in communication between the Kaisers and counsel they were using before the hearing. They secured one lawyer, but that lawyer was unable or unwilling to continue representation. They secured another lawyer, but that lawyer said he was unable to attend the hearing. Neither entered an appearance in this case. Returning to the post-hearing briefs, new counsel (the third counsel) attached to the brief two affidavits, several photographs, numerous receipts, canceled checks, and other documents. The BOR has filed a motion to strike, asking this Board to strike or disregard the attachments to the brief and any reference to the evidence in the actual brief. The Kaisers argue the motion should be denied or, if it is granted, a new hearing should be held so the Kaisers can present the evidence. The response argues the Kaisers had difficulty securing counsel and counsel they had obtained was unable to attend this Board's hearing. If either of the Kaisers' prior counsel were unable to attend this Board's merit hearing or to represent the Kaisers, a timely continuance should have been sought. We see no good cause to reopen the record in this case. Disputes between parties and their counsel are not matters of concern for this Board. Our rules provide the opportunity for parties to deal with these situations. We grant the motion to strike for good caused shown. See Ohio Adm. Code 5717-1-16; *Columbus City Schools 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 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 2012-L-2291, unreported. (July 26, 2013), BTA No.

[7] The CAUV program grants preferential tax treatment of "land devoted exclusively to agricultural use." R.C. 5713.31 (defining "land devoted exclusively to agricultural use"). Our analysis requires us to determine if the 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, Accord, *Stults v. Delaware Cty. Bd. of Revision* (Aug. 20, 2004), BTA No. 2003-P-287, unreported. In other words, the property must be used primarily for profit.

[8] We find the Kaisers have not carried their burden because they have not shown that the property is used exclusively for commercial agriculture. The documents before us, e.g., a bill of sale, a veterinarian bill, and a few receipts show some activity is occurring on the property, but we cannot determine that a for-profit enterprise is operating. We especially note that we lack competent, tangible evidence about the income generated from the property. No income and expense statements have been provided. No tax documents have been presented. Even if we did look to the attachments to the Kaiser's brief, we would reach the same outcome. This Board cannot determine income and expense figures using unauthenticated receipts, and other documents not verified under oath and subject to cross examination.

[9] For these reasons, we affirm the decision of the BOR in full.

OHIO BOARD OF TAX APPEALS

MICHAEL WATERMAN TRUSTEE OF THE PEGASUS, ET AL., (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2019-375
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

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Entered Tuesday, March 16, 2021

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

[1] The appellant property owners, Michael Waterman Trustee of the Pegasus Investments Defined Benefit Plan, et. al, (collectively, "Pegasus"), appeal a decision of the Board of Revision ("BOR"), which determined the value of the subject real property, parcel numbers

313-14-024 and 313-14-079, for tax year 2017. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the record of the hearing before this Board.

[2] The subject property consists of 0.27 acres improved with a 2,400-square foot convenience store. The building was constructed in 1975 and operates as a 7-Eleven convenience store. The Fiscal Officer initially assessed the subject's total true value at $350,000. The appellee Board of Education ("BOE") filed a complaint with the BOR seeking an increase in value to $885,000 based on the amount for which the property recently sold. The BOR convened a hearing, at which the BOE presented evidence that the subject property transferred on December 13, 2017 and argued that the sale price provided the best evidence of the value of the subject property. Pegasus did not dispute that the sale was a recent, arm's-length transaction for $885,000. Pegasus argued, however, that the sale did not represent the value of the real estate, but rather the value of the lease agreement with 7-Eleven, which was extended in 2014. Pegasus pointed to a sale in August 2013, when the property sold for $350,000 with only eight months left on the prior lease agreement. Pegasus argued that the 2013 sale price reflected the value of the real estate, while the 2017 sale reflected the value of the lease with 7-Eleven. The BOR issued a decision increasing the initially assessed valuation to $885,000, finding that Pegasus failed to rebut the validity of the sale. From this decision, Pegasus filed the present appeal.

[3] This Board convened a hearing, at which Pegasus presented the written report and testimony from appraiser Christian M. Smith, MAI. Smith indicated that he researched both the August 2013 and December 2017 sales, explaining that the primary differences between the two sales were the lease extension and that the second sale was part of a portfolio that included three

7-Eleven stores. Smith stated that based on his discussions with one of the brokers involved in the sale, the buyers in the second transaction considered the added value of the credit tenant, the intangibles and goodwill the tenant brought to the site, and the personal property that was on site. Smith described the subject's location and site information as it compares to more recently built convenience stores. Smith indicated that while the road on which the subject is heavily traveled, it is not a main thoroughfare that the site and store are relatively small compared with those being built today. Smith also performed a market analysis and determined that the highest and best use for the subject property was to continue as a retail convenience store.

[4] To determine his opinion of value, Smith relied on the sales comparison and cost approaches to value. Smith did not rely on the income approach because most convenience store properties are either owner-operated or encumbered with long triple net leases to their respective brands. Due to the variability in the income stream and property rights, Smith found that the income approach was not applicable. Nevertheless, Smith looked at surveys of the Cleveland West submarket, which indicated that the market rental and occupancy rates for retail properties were $13.80 per square foot and 97.3%, respectively. By comparison, Pegasus receives $22.92 per square foot (triple net) for rent, and the property is 100% occupied.

[5] To develop the cost approach, Smith considered seven land sales, concluding to a value of $17.07 per square foot, or $200,000 total, for the land. Smith utilized the Marshall Valuation Service Cost Schedule to estimate the value of the improvements. Smith calculated a $315,682 direct building cost, to which he added 10% for indirect costs. Smith then added 20% entrepreneurial profit, for a total replacement cost new of $416,400. Smith reduced the building cost by 75% ($312,300) to account for incurable physical deterioration, resulting in a depreciated replacement cost of $104,100. Smith added the land value and rounded the result to an indicated value of $300,000 as of January 1, 2017.

[6] For the sales comparison approach, Smith relied on the sales of five convenience stores, with years of construction/renovation ranging from 1966 to 1986, and unadjusted price per square foot ranging from $61.48 to $168.69. Smith then adjusted the sales for differences in location, size, and age/condition, for an adjusted range of $73.78 to $168.69 per square foot. Smith concluded that the sales indicated a value between $145.00 and $165.00 per square foot, or $348,000 to $396,000 total. Smith concluded that the sales comparison approach indicated a value of $370,000 ($154.17 per square foot). Smith reconciled the two approaches to a value of $350,000, giving primary weight to the sales comparison approach.

[7] It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977). 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.

[8] In the present appeal, it is undisputed that the December 2017 sale was a recent, arm's-length transaction. Rather, Pegasus 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 Pegasus 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. We note that the argument that the property should be valued as vacant has been rejected repeatedly. 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, appeal pending, Sup. Ct. No. 2020-643. Nevertheless, 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.

[9] Here, although Pegasus did not present testimony from an individual with knowledge of the sale or motivations of ownership, the record is not without support for Pegasus's argument that the lease impacted the sale price. This is distinguishable from other appeals where the property owner relies entirely on the appraiser as the conduit of information because while appraisers must rely on hearsay evidence to perform their job, this Board is justified in excluding an appraiser's statement regarding the sale of the property itself, particularly where "[t]he basis for [the appraiser's] statement rested solely on a conversation she had with an unnamed owner who did not testify before the BOR or the BTA." See *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046, ¶36. Rebuttal evidence, however, may include an appraisal, such as the appraisal evidence presented in this case, to demonstrate that the sale was not reflective of market value or provide affirmative evidence of value. *Sprit Master*, supra at ¶9, citing *Westerville City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 308, 2018- Ohio-3855, ¶14.

[10] In this case, the record contains not only the appraisal performed by an MAI appraiser, but also the lease of the property to confirm its terms and a sale of the property with only months left on the terms of the lease. While we acknowledge that the 2013 sale is remote

from the tax lien date, see *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, we find it provides additional support for Pegasus's argument. Based on the totality of the record and the circumstances of this case, we find that Pegasus successfully met its burden to show that Smith's appraisal provides more reliable evidence of value than the December 2017 sale.

[11] 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 313-14-024

TRUE VALUE

$325,200

TAXABLE VALUE

$113,820

PARCEL NUMBER 313-14-079

TRUE VALUE

$24,800

TAXABLE VALUE

$8,680

OHIO BOARD OF TAX APPEALS

RMH HOLDINGS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-2132
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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

Entered Tuesday, March 16, 2021

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

[1] Appellant appeals a decision of the Board of Revision ("BOR"), which dismissed the complaint filed regarding the value of the subject real property, parcel number 814-05-010. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and statements made during the small claims telephonic hearing convened before this Board.

[2] Appellant filed a complaint against the value of the subject property for tax year 2018, the year for which the Fiscal Officer performed a countywide reappraisal and first year of the relevant triennial period. This case was decided by the BOR and appealed to this Board, though it was ultimately dismissed based on appellant's failure to properly file the notice of appeal.

RMH Holdings LLC v. Cuyahoga Cty. Bd. of Revision (Aug. 20, 2019), BTA No. 2019-439, unreported. Appellant again filed a complaint for tax year 2018, alleging on line 14 that the second complaint within the interim period was permitted because the property was sold in an arm's-length transaction.

[3] The BOR convened a hearing regarding the 2019 complaint, during which it discussed whether the complaint properly invoked its jurisdiction. Appellant's member acknowledged that it was the second filing within the triennial period and that the sale referenced on line 14 was the same sale that was the subject of the 2018 complaint, which was a May 4, 2018 Sheriff's Sale. The BOR issued a decision dismissing the complaint, which appellant appealed to this Board. On appeal, at the request of appellant, this Board convened a small claims telephonic hearing to allow the parties to present additional evidence and argument, but only the county appellees participated.

[4] "Under R.C. 5715.19(A)(2), a party dissatisfied with the valuation of property may file only one complaint in the [interim period]," based on the "schedule in which a reappraisal is conducted by a county every six years, with an update of valuation performed in the third year[,]" unless an exception applies. *Soyko Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 2014-Ohio-4511, ¶20. "The apparent purpose of the modification of R.C. 5715.19(A) was to reduce the number of filings, while still allowing new tax valuations in interim years in certain limited circumstances." *Dublin City School Dist. v. Franklin Cty. Bd. of Revision*, 79 Ohio App.3d 781, 784 (1992). A second complaint within an interim period "must allege and establish one of the four circumstances set forth in R.C. 5715.19(A)(2)." *Developers Diversified Ltd. v. Cuyahoga Cty. Bd. of Revision*, 84 Ohio St.3d 32, 35 (1998).

[5] Appellant relies on the exception set forth in R.C. 5715.19(A)(2)(a): "The property was sold in an arm's length transaction, as described in section 5713.03 of the Revised Code." To qualify for this exception, the sale must have "occurred after the tax lien date for the tax year for which the

prior complaint was filed and that the circumstances were not taken into consideration with respect to the prior complaint." R.C. 5715.19(A)(2); *Soyko Kulchystsky*, supra, at ¶¶23-26.

[6] In the present appeal, we find that appellant has failed to establish that the property qualifies for this exception. Although the sale took place after the 2018 tax lien date, there is no dispute that it was already taken into consideration with respect to the prior complaint. Furthermore, we note that the exception requires an arm's-length sale, and the sale relied upon by appellant is a sheriff's sale, which is presumptively not arm's-length. See *Dublin Senior Community L.P. v. Franklin Cty. Bd. of Revision*, 80 Ohio St.3d 455, 458 (1997). While this presumption may be rebutted, appellant failed to do so here. *Olentangy Local Schools Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723.

[7] 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

ALEXANDER VINOKUR, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1564
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - ALEXANDER VINOKUR
PRESIDENT
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SOLON, OH 44139

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

Entered Tuesday, March 16, 2021

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

[1] The property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 951-10-032, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The property owner filed a complaint with the BOR, which requested a reduction to the subject property's value from $735,900 to $600,000. At the BOR hearing on the matter, the property owner appeared in support of the complaint, explaining that comparable sales data indicated that the subject property had been overvalued. Upon questioning by a BOR member, the property owner further explained that he paid approximately $600,000 to purchase the land

and to build the home sitused on the subject property in 2011. The BOR voted to retain the subject property's initially assessed value, and this appeal ensued.

[3] None of the parties availed themselves of the opportunity to submit additional argument and/or evidence into the record at a hearing before this Board. We note, however, that the property owner resubmitted documents previously submitted to the BOR. Compare *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.").

[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 find that the property owner has failed to provide competent, credible, and probative evidence of the subject property's value. The property owner primarily argued that comparable sales support his claim that the subject property's value should be reduced. We disagree. No effort was made to equalize the salient features of the comparable

properties with the salient features of the subject property. A review of the comparable sales highlights the varied nature of the homes sitused on those properties. For example, a review of the comparable sales demonstrates that those homes vary by age, square footage and number of bedrooms and bathrooms. 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).

[6] To the extent that the property owner requested that the subject property's value be reduced based upon the costs to buy the land and to construct the home in 2011, we also reject that argument. As the Supreme Court stated *in Dayton-Montgomery County Port Auth. v. Montgomery County Bd. of Revision,* 113 Ohio St. 3d 281, 2007-Ohio-1948, "[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') ***." Id. at ¶12. We find, therefore, costs from 2011 not to be reflective of the subject property's value as of the tax lien date, several years later. 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 to support this appeal. It is, therefore, the order of this Board that the subject property shall remain as initially assessed as of the tax lien date:

True Value: $735,900

Taxable Value: $257,570

OHIO BOARD OF TAX APPEALS

YH HARRIS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1337
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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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 Wednesday, March 17, 2021

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

[1] This matter is now considered upon the county appellees' motion to remand with instructions to dismiss the underlying complaint. The county appellees' motion argues that a manager is not one who is authorized by R.C. 5715.19(A) to file a complaint on behalf of the owner and engaged in the unauthorized practice of law by doing so. This matter is now decided upon the motion, appellant's response, the transcript certified by the BOR, and appellant's notice of appeal.

[2] The record shows that a decrease complaint against the valuation of real property parcel number 682-33-128 was filed with the Cuyahoga County Board of Revision for tax year 2018.

The complaint does not list any one as the complainant if not owner or as the complainant's agent. However, the complaint does show a telephone number for a contact person and is signed by an individual who identified as the manager, though the manager's signature is illegible. The property record card shows that the owner of the subject property is YH Harris LLC. Appellant waived appearance at the BOR hearing and submitted a HUD settlement statement, signed by statutory agent Yisreal Harris; and a warranty deed for the subject property, dated 1/23/2015, as evidence for the BOR's consideration. When the BOR issued a decision to of no change to the property's value, Yisreal Harris, manager, filed an appeal with this Board.

[3] 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.

[4] Although Mr. Harris responded to the motion on behalf of the property owner, there is no indication that he is an attorney licensed to practice law in Ohio. As such, his response 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). 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. 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

TZITRIMBON LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1336
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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

Entered Wednesday, March 17, 2021

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

[1] This matter is now considered upon the county appellees' motion to remand with instructions to dismiss the underlying complaint. The county appellees' motion argues that a manager is not one who is authorized by R.C. 5715.19(A) to file a complaint on behalf of the owner and engaged in the unauthorized practice of law by doing so. This matter is now decided upon the motion, appellant's response, the transcript certified by the BOR, and appellant's notice of appeal.

[2] The record shows that a decrease complaint against the valuation of real property parcel number 682-18-057 was filed with the Cuyahoga County Board of Revision for tax year 2018.

The complaint does not list anyone as the complainant if not owner or as the complainant's agent. However, the complaint does show a telephone number for a contact person and is signed by an individual who identified as the manager, though the manager's signature is illegible. The property record card shows that the owner of the subject property is Tzitrinbom LLC. Appellant waived appearance at the BOR hearing and submitted a HUD settlement statement, signed by Yisreal Harris, manager; and a fiduciary deed for the subject property, dated 3/19/2016, as evidence for the BOR's consideration. When the BOR issued a decision of no change, Yisreal Harris, manager, filed an appeal with this Board.

[3] 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.

[4] Although Mr. Harris responded to the motion on behalf of the property owner, there is no indication that he is an attorney licensed to practice law in Ohio. As such, his response 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). 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. 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

BAYBROOK INVESTMENTS, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-848 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BAYBROOK INVESTMENTS, LLC
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BEREA CITY SCHOOLS BOARD OF EDUCATION
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Entered Monday, March 29, 2021

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

[1] The appellant property owner, Baybrook Investments, LLC ("Baybrook"), appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real property, parcel number 374-18-007, 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 5-story office building. The Fiscal Officer initially assessed the subject's total true value at $2,530,000. Baybrook filed a complaint with the BOR seeking a reduction in value to $1,890,000, while the appellee Board of Education ("BOE") filed a countercomplaint in support of the Fiscal Officer's value. At the BOR hearing, Baybrook amended its opinion of value to $1,250,000 based on a January 2020 sale of the subject property. Counsel for Baybrook indicated that he represented not only Baybrook, the owner at the time the complaint was filed, but also the current owner, Optimus Development LLC ("Optimus"). The BOE challenged the reliability of the sale, arguing that it was too remote from the tax lien date. The BOE asserted that 25 months had passed since the tax lien date, and that the property transferred back to its lender in August 2019, which the BOE claimed to create the appearance of distress to the property during the time between the tax lien date and the January 2020 sale. The BOE claimed that without testimony from an individual who could verify that there had not been a change to the property or market conditions, the BOR could not conclude that the sale was recent to the tax lien date. The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal.

[3] At the hearing before this Board, Baybrook argued that the BOR applied the wrong standard to the sale, distinguishing between the Court's decisions in *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588 (when a sale occurs more than 24 months before a tax lien date and is reflected on the property record case maintained by the auditor/fiscal officer, it is presumed to be too remote when the auditor/fiscal officer determined a different value during the sexennial reappraisal) and *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612 (clarifying that the rule from *Akron* does not apply to post-tax lien date sales because such a sale could not have been accounted for by the reappraisal).

[4] Baybrook also attempted to demonstrate a lack of change to the subject property or local market conditions between the tax lien date and the sale, presenting testimony from William Shy, property manager for the prior owner of the property, and Roger Riachi, the owner of Optimus. The BOE objected to their testimony, as being prohibited by R.C. 5715.19(G) because it was not offered at the BOR hearing and failed to provide good cause as to why they were not present to testify. Baybrook argued that their testimony was offered on appeal as rebuttal evidence after the BOR did not accept the sale as being too remote. The BOE disagreed with that characterization and maintained that the testimony was being offered as part of Baybrook's case-in-chief as further support of the sale. While Baybrook claimed that one of the witnesses was not available for the BOR hearing, but the record of the BOR hearing lacks any discussion of an attempt to bring witnesses. Likewise, Baybrook cited no basis for their absence, other than that it though there was no need to bring them when they had sale documents.

[5] The attorney examiner reserved ruling, and we now sustain the objection. The testimony will not be considered in our decision. See *CASA 94, L.P. v. Franklin Cty. Bd. of Revision*, 89 Ohio St.3d 622 (2000) (concluding that R.C. 5715.19(G) precluded testimony before Board of Tax Appeals which was claimed "to amplify evidence previously submitted to, but not considered by the BOR."); *1522 Indianola Ave., LLC v. Franklin Cty. Bd. of Revision* (July 6, 2007), BTA No. 2005-B-1376, unreported, at 5-6 (precluding testimony under R.C. 5715.19(G) and holding that "[i]n reviewing the record, we find that appellant has not shown good cause as to why Mr. Beatley did not testify before the BOR. His only explanation was that he believed he was in Florida at the time 'with [his] children pursuant to [his] court-ordered visitation.' The BOR hearing record simply notes that Mr. Beatley did not appear at the BOR hearing. It is apparent from the record that there was no request for a continuance of that hearing to allow for Mr. Beatley's testimony. S.T. Therefore, we preclude consideration of his testimony.").

[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, Baybrook relies on the January 2020 sale to Optimus for $1,250,000 to establish the value of the property, though the BOE argues (and the BOR found) that Baybrook failed to show that it was sufficiently recent to the tax lien date. We note that the record also includes the August 2019 transfer, which is closer to the tax lien date, but there is no indication that the transfer was the result of an arm's-length sale or the amount of consideration (if any) that was paid in exchange for title to the property. Thus, we cannot rely on this earlier transfer as evidence of value.

[8] Upon review, we disagree with the BOE and the BOR that Baybrook was required to demonstrate that the sale was recent. Because the sale took place after the tax lien date, even 25 months after the tax lien date, it benefits from the presumption of recency that was discussed in *Lone Star*, which also involved a sale occurring roughly 25 months after the tax lien date. Rather, as the opponents of the sale, the appellees were required, but failed, to provide evidence that the sale was not recent:

> We thus reverse the BTA's contrary conclusion that Lone Star was required to present additional evidence showing that either market conditions or the character of the property had remained the same between the sale date and the tax-lien date. It

follows that when the proponent of a sale price furnishes facially qualifying evidence of the sale, as Lone Star did here, it becomes the opponent's burden on rebuttal to disprove the sale's presumptive recency.

Lone Star, supra, at ¶19. While the BOE suggested that the intervening transfer suggests that there may have been a change to the property, we find that the mere allegations that the prior owner may have had financial issues, or the subject may have had vacancy problems is not sufficient to meet the burden to show the sale was not qualifying for purpose of establishing the value of the property.

[9] 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

$1,250,000

TAXABLE VALUE

$437,500

OHIO BOARD OF TAX APPEALS

DRUMME OLENA R , OLEKSII, IGOR, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-2150 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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CLEVELAND, OH 44113

Entered Monday, March 29, 2021

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

[1] The appellants appeal a decision of the Cuyahoga County Board of Revision ("BOR"), which dismissed the complaint seeking a reduction in value for the subject property, parcel 714-28-010, for tax year 2019. Because our jurisdiction is derived from the scope of the BOR decision, the only issue before us is the propriety of the BOR's dismissal.

[2] The appellants filed a complaint with the BOR requesting the subject property's value be reduced to $130,000. On line 14 of the complaint, in response to the question about previously filed complaints since the last triennial update or sexennial reappraisal, the appellants noted that the subject property sold in an arm's-length transaction between the filing of the prior complaint and instant complaint. At the BOR hearing on the matter, the BOR

questioned property owner Igor Drumme about the previously filed complaint for tax year 2018. He confirmed that the property owners filed a complaint for tax year 2018, which resulted in the BOR retaining the subject property's value, and filed a complaint for tax year 2019. Upon questioning about the recent arm's-length transaction referred to on line 14 of the tax year 2019 complaint, Drumme noted that it referred to his purchase in 2014. The BOR subsequently issued a decision dismissing the tax year 2019 complaint as an impermissible filing under R.C. 5715.19(A)(2). This appeal ensued. During this Board's small claims hearing, property owner Igor Drumme confirmed that the appellants did, in fact, file a complaint for tax year 2018.

[3] "Under R.C. 5715.19(A)(2), a party dissatisfied with the valuation of property may file only one complaint in the [interim period]," based on the "schedule in which a reappraisal is conducted by a county every six years, with an update of valuation performed in the third year[,]" unless an exception applies. *Soyko Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 2014-Ohio-4511, ¶20. "The apparent purpose of the modification of R.C. 5715.19(A) was to reduce the number of filings, while still allowing new tax valuations in interim years in certain limited circumstances." *Dublin City School Dist. v. Franklin Cty. Bd. of Revision*, 79 Ohio App.3d 781, 784 (1992). A second complaint within an interim period "must allege and establish one of the four circumstances set forth in R.C. 5715.19(A)(2)." *Developers Diversified Ltd. v. Cuyahoga Cty. Bd. of Revision*, 84 Ohio St.3d 32, 35 (1998). Here, the appellants alleged that the exception found in R.C. 5715.19(A)(2)(a), i.e., "[t]he property was sold in an arm's length transaction," allowed them to file multiple complaints in the triennial period that included tax years 2018, 2019, and 2020. However, it is undisputed that the subject property did not transfer between January 1, 2018, the tax lien date and January 1, 2019, the tax lien date for the tax year 2019 complaint. As such, we must conclude that though the appellants alleged an exception to the prohibition against filing multiple complaints within the same triennial

period, they failed to prove that such exception existed. We are constrained, therefore, to find that the appellants' tax year 2019 complaint failed to invoke the BOR's jurisdiction.

[4] Accordingly, based on the existing record, the Board finds that the BOR properly dismissed the underlying complaint as a multiple filing within the triennial period. Therefore, the decision of the BOR is affirmed.

OHIO BOARD OF TAX APPEALS

TUSHAR A. MANEK, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1823
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
WARREN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
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Entered Monday, March 29, 2021

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

[1] The appellant taxpayer appeals a decision of the Warren County Board of Revision ("BOR"), which denied requests for remission of the late-payment penalty associated with property-tax bills for various tax periods in 2016, 2018 and 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and written argument submitted by the parties.

[2] The taxpayer submitted a number of applications to the BOR, for both tax periods in 2016, for the second half of 2018, and for both tax periods in 2019. (It should be noted that the application for the first half of 2016 is not before us, as will be explained below.) Apparent from the record, the taxpayer asserted that he failed to timely pay the property-tax bills because

they were sent to the subject property, which was a rental property, and were not forwarded to him. He also noted that he experienced a serious health issue. Taken together, the taxpayer argued that his failure to timely pay the property-tax bills amounted to reasonable cause, not willful neglect. The County Treasurer recommended the application for the first half of 2016 be granted but recommended the remaining applications be denied because of the taxpayer's poor payment history. The BOR held a hearing on the matter and subsequently issued a decision that *only* granted the taxpayer's request as to the first half of 2016. This appeal ensued. None of the parties availed themselves of the opportunity to submit evidence at a hearing before this Board. Instead, they opted to submit written argument to assert their respective positions.

[3] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. As noted above, neither the taxpayer nor the county appellees requested a hearing before this Board; however, they both submitted additional information on appeal. The taxpayer submitted written argument that is replete with factual assertions that are not properly in the record, i.e., statements made outside of a hearing in which the taxpayer was placed under oath and subject to examination by other parties and submitted documentation to support his assertions. The factual assertions and documentation will not be considered in our analysis. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996). Furthermore, the county appellees submitted a document highlighting the taxpayer's payment history of property-tax bills. Because this document should have been included in the statutory transcript, as it is clear that the BOR considered the taxpayer's payment history to reach it decision, we will consider it.

[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] In this matter, the taxpayer specifically requested a review of the facts and circumstances of this matter consistent with R.C. 5715.39(C), which provides penalty remission if the BOR determines that "the taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." However, R.C. 323.13 provides 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." 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. Here, it is undisputed that the taxpayer has a history of untimely payments of property-tax bills. As such, we find that it would be inappropriate to remit the late-payment penalties on this basis.

[6] To the extent that the taxpayer asserted that his serious health issues prohibited him from timely paying the property-tax bills, it should be noted that the taxpayer did not assert that the facts and circumstances of this matter fit within the parameters of R.C. 5715.39(B)(3), which provides that "[t]he tax was not timely paid because of the death or *serious injury of the taxpayer*, or the taxpayer's confinement in a hospital within sixty days preceding the last day for payment of the tax if, in any case, the tax was subsequently paid within sixty days after the last day for payment of such tax." (Emphasis added.) While we sympathize with the taxpayer and his health issues, we cannot grant him the relief that he seeks based upon our sympathies. This Board does not have equitable jurisdiction. See *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564, 569 (1953).

[7] Based upon the foregoing, we find that the taxpayer failed to satisfy the evidentiary

burden on appeal. In doing so, this Board affirms the BOR's decision to deny the taxpayer's request for remission of the late-payment penalties associated with the property-tax bills for the second half of 2016, for the second half of 2018, and for both tax periods in 2019.

OHIO BOARD OF TAX APPEALS

HOFMAN Y.D. LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1326
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Monday, March 29, 2021

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

[1] This matter is now considered upon the county appellees' motion to remand with instructions to dismiss the underlying complaint. The county appellees assert that the underlying complaint was filed by a person not authorized to do so and, therefore, failed to properly invoke the jurisdiction of the Board of Revision ("BOR"). Appellant did not respond to the motion. Accordingly, this matter is now decided upon the motion, the transcript certified by the BOR, and appellant's notice of appeal.

[2] The record shows that a decrease complaint against the valuation of real property was filed with the Cuyahoga County Board of Revision. The property record card shows that the

owner of the subject property is Hofman .D. LLC. The complaint does not list anyone as the complainant if not owner or as the complainant's agent. However, the complaint does show a telephone number for a contact person and is signed by an individual who identified as the manager, though the manager's signature is illegible. When the BOR issued a decision finding no change in value, Yisreal Harris, Manager, filed an appeal with this Board. The county appellees' motion argues that a manager is not one who is authorized by R.C. 5715.19(A) to file a complaint on behalf of the owner. Further, the county appellees argue that the complaint was filed by a non-attorney manager who engaged in the unauthorized practice of law.

[3] 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. "Managers" are not among the nonlawyers who are explicitly authorized to file complaints under R.C. 5715.19(A). *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 230, 2018-Ohio-4244. 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.

[4] 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. 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

ERETZ AMIM, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1325
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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CLEVELAND, OH 44113

Entered Monday, March 29, 2021

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

[1] This matter is now considered upon the county appellees' motion to remand with instructions to dismiss the underlying complaint. The county appellees' motion argues that a manager is not one who is authorized by R.C. 5715.19(A) to file a complaint on behalf of the owner and engaged in the unauthorized practice of law by doing so. This matter is now considered upon the motion, appellant's response, the transcript certified by the BOR, and appellant's notice of appeal.

[2] The record shows that a decrease complaint against the valuation of real property parcel number 682-05-055 was filed with the Cuyahoga County Board of Revision for tax year 2018.

The complaint does not list anyone as the complainant if not owner or as the complainant's agent. However, the complaint does show a telephone number for a contact person and is signed by an individual who identified as the manager, though the manager's signature is illegible. The property record card shows that the owner of the subject property is Eretz Amim, LLC as transferred from Yisreal Harris to Eretz Amim, LLC by quitclaim deed on 7/14/15. Appellant waived appearance at the BOR hearing and submitted a HUD settlement statement, signed by Yisreal Harris; and a general warranty deed for the subject property, dated 4/22/2015, as evidence for the BOR's consideration. When the BOR issued a decision to reduce the property's value, Yisreal Harris, manager, filed an appeal with this Board.

[3] 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.

[4] Although Mr. Harris responded to the motion on behalf of the property owner, there is no indication that he is an attorney licensed to practice law in Ohio. As such, his response 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). 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. 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

ZY6 LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1324
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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CLEVELAND, OH 44113

Entered Monday, March 29, 2021

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

[1] This matter is now considered upon the county appellees' motion to remand with instructions to dismiss the underlying complaint. The county appellees assert that the underlying complaint was filed by a person not authorized to do so and therefore failed to properly invoke the jurisdiction of the Board of Revision ("BOR"). Appellant did not respond to the motion. Accordingly, this matter is now decided upon the motion, the transcript certified by the BOR, and appellant's notice of appeal.

[2] The record shows that a decrease complaint against the valuation of real property was filed with the Cuyahoga County Board of Revision. The property record card shows that the

owner of the subject property is ZY6 LLC. The complaint does not list any one as the complainant if not owner or as the complainant's agent. However, the complaint does show a telephone number for a contact person and is signed by an individual who identified as the manager, though the manager's signature is illegible. When the BOR issued a decision finding no change in value, Yisreal Harris, Manager, filed an appeal with this Board. The county appellees' motion argues that a manager is not one who is authorized by 5715.19(A) to file a complaint on behalf of the owner. Further, the county appellees argue that the complaint was filed by a non-attorney manager who engaged in the unauthorized practice of law.

[3] 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. "Managers" are not among the nonlawyers who are explicitly authorized to file complaints under R.C. 5715.19(A). *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 230, 2018-Ohio-4244. 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.

[4] 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. 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

EPHRAIM FITTERMAN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-26
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Monday, March 29, 2021

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

[1] The property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 722-02-093, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The property owner filed a complaint with the BOR, requesting the subject property be revalued from $107,600 to $69,400. At the hearing on the matter, the property owner appeared through counsel to submit argument and evidence in support of the complaint. As the hearing commenced, counsel for the property owner amended the property owner's opinion of value to $74,000. The property owner submitted the report and testimony of appraiser Robert Abrams,

who opined the value of the subject property to be $74,000 as of the tax lien date. Abrams was examined about the underlying data and methodologies used to derive his opinion of value. He confirmed that the subject property produced $960 in rental income per month, i.e., $480 per unit. However, later in the hearing, he testified that the subject property derived $1,400 in rental income per month, i.e., $700 per unit. Because the BOR questioned the propriety of the adjustments and conclusions made in the appraisal report, the BOR rejected it and subsequently issued a decision, which retained the subject property's initially assessed 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; none of the parties availed themselves of such opportunity.

[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 OhioSt.3d 248, 2014-Ohio-3620, at ¶19.

[5] We begin our analysis with Abrams' appraisal report. He developed all three approaches to valuing real property. Under the income approach, he surveyed the market and

relied upon three rental comparables to determine market rent. After adjusting the rental comparables for differences with the subject property's rental units, he concluded to market rent of $600 per unit or $1,200 of rental income per month. He applied a gross-rent multiplier ("GRM") of 60.61 to the monthly rental income of $1,200 to conclude to an indicated value of $72,732. Under the sales comparison approach, he compared the subject property's features to the features of three properties that had sold in 2018 or 2019 and two properties that were available for sale in 2020. After adjusting the comparable properties for differences with the subject property, Abrams concluded the subject property's to be $74,000 as of January 1, 2018. Under the cost approach, he determined an opinion of value for the site and estimated the replacement cost-new for the improvements, which he depreciated, to conclude to an indicated value of $74,843. He placed the most emphasis on the value indicated under the sales comparison approach to finally conclude the subject property's value to be $74,000 as of January 1, 2018.

[6] Upon review, we do not find Abrams' appraisal report and testimony to be competent and probative evidence of the subject property's value for multiple reasons. First, we do not find his income approach to value to be credible. We note that at the BOR hearing, Abrams testified that the subject property's two units garnered $480 per month in rent *and* $700 per month in rent. The appraisal report does not include the rental agreements, which would allow this Board to confirm the actual rent garnered by the subject property and to confirm whether the rental comparables are actually comparable to the subject property's units. 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 GRM).

[7] Second, we do not find the sales comparison approach to be credible. Abrams confirmed that he did not verify the comparable sales with people involved in the respective sales. This Board has previously rejected reliance on unverified sale information. See, e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (June 13, 2013), BTA Nos. 2011-Q-550, et seq., unreported; *Overstreet v. Hamilton Cty. Bd. of Revision* (Feb. 15, 2002), BTA No. 2001-V-639, unreported. The Appraisal of Real Estate (14th Ed.2013) also comments on the need to verify information regarding the comparable sales "to make sure that the sale occurred under conditions that meet the definition of value based in the appraisal." Id. at 125. Furthermore, Abrams made large adjustments to two of three comparable properties, which suggests that the properties really were not comparable to the subject property. We have previously held that "[t]he greater the magnitude of the adjustments, the less reliable the appraisal will be." See *Gammarino v. Hamilton Cty. Bd. of Revision* (Sept. 30, 2019), BTA Nos. 2018-622 et al., unreported at 8. Third, given the age of the subject property's improvements, we do not find the cost approach to be a reliable indicator of real property value. See *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, at ¶12.

[8] 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 find that the property owner failed to satisfy its 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 to tax lien date:

True Value: $107,600

Taxable Value: $37,660

OHIO BOARD OF TAX APPEALS

REO INVESTMENTS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2720
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

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Entered Monday, March 29, 2021

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

[1] Appellant REO Investments LLC ("REO") appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real properties, parcel numbers 645-26-100, 645-28-035, and 645-34-011, 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 single-family rental properties, and the Fiscal Officer initially assessed their values at $58,000, $56,700, and $52,600, respectively. REO filed a complaint with the BOR seeking reductions in value to $30,000 for each property. The complaint at issue

in the present appeal is one of several related complaints that involve similar evidence and testimony. BOR convened hearings on the matters during the same day, with the hearing related to BTA No. 2019-2712 (BOR case number 641-16-067-2018) taking place first. The BOR incorporated the record for this hearing into the present appeal. To the extent that the hearing record and evidence were not already certified in the transcript for this case, we incorporate the record from those BOR proceedings into the record for the present appeal. We note that during the BOR hearing for that case, the BOR set forth a list of sales of properties near the subject properties. Although this list was discussed by the witnesses and members of the BOR, it was not included in the transcript on appeal. After further attempts by this Board to attempt to obtain the list, the BOR certified that it is not available. As such, are unable to consider the list of sales in our determination.

[3] During the incorporated BOR hearing, REO presented testimony and written reports of appraiser Michael Thomas. Thomas testified that he viewed the interior of each property and relied primarily on the sales comparison approach to value for each appraisal. Thomas stated that he looked at only arm's-length sales that were exposed to the market through the multiple listings service ("MLS") and took place within the twelve months preceding the tax lien date. Thomas explained that he chose which properties were most comparable based on not only location proximity, but also similarity in condition and effective age to the relevant subject. Thomas also performed an income analysis that was offered to the BOR as an addendum because it was not included in his original report. Thomas indicated that he did not consider the income approach in his conclusion of value, but it supported his sales comparison analysis.

[4] REO also presented testimony from its managing member, Frank Dinardo, regarding its business model and the condition of the properties. Dinardo testified that REO is a

building/renovation company that also purchases distressed properties, fixes the exterior and quickly renovates the interior, and rents them to tenants. Dinardo stated that the repairs to properties that he intends to rent are done to make them free of any violations but not as nice as other properties that he renovates for owner-occupants.

[5] At the BOR hearing regarding the subject properties, REO relied on testimony from Dinardo regarding the condition of the properties and their rental income. REO also presented testimony and reports from Thomas. The BOR questioned Thomas regarding his choices of comparable properties. There was extensive discussion regarding the similarities of the appraisals presented during the hearing, during which time Thomas acknowledged that a mathematical error resulted in an incorrect value. During the hearing, Thomas amended his opinion of value, but it appears that this discussion was based on confusion regarding the report that was being discussed as it was not consistent with the reports in the record. Following the hearing, the BOR issued a decision maintaining the initially assessed valuation. On the Oral Hearing Journal Summary, the BOR indicated that it rejected the appraisals because Thomas used only lower value sales based on his distinction between "rental quality" and "owner quality." One member of the BOR dissented, though he observed that Thomas "consistently" chose to use the lower end of the market while all photographs appear to reflect the properties were in average (as opposed to below-average) condition.

[6] REO appealed the BOR's decision, again seeking a reduction in value based on the Thomas appraisals as support for the requested reductions. REO argues that this Board should find value based on the Thomas appraisals because they are the only evidence presented from

an independent third-party expert. The county appellees argue that the BOR properly rejected the appraisals as not being credible because Thomas used lower-priced sales based on his distinction between rental quality and owner quality.

[7] 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.

[8] 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, in addition to Dinardo's testimony regarding the physical characteristics of the properties, REO relies on appraisal reports prepared by Thomas, a state-certified appraiser that personally viewed the interior and exterior of each subject property. Thomas appeared to testify before the BOR, describe his methodology, and explain the basis for his conclusions.

[9] Upon review of Thomas's appraisals, which provide an opinion of value as of tax lien date, were prepared for tax valuation purposes, and attested to by a qualified expert, we find that they constitute competent and probative evidence of value. We further find that the value conclusions are reasonable and well-supported. We acknowledge the BOR's criticisms of his analysis, but we find that Thomas sufficiently explained the basis for his conclusions. We agree with the BOR that it would be improper for an appraiser to simply assume that because the subject properties are utilized as residential rental properties, they must be in below-average condition and, consequently, restrict comparable properties to only those in the lower end of the range. In this case, however, despite his comments to that effect, Thomas further explained that he personally viewed the properties and the condition of each, which he considered as he narrowed down sales to those properties that were most similar to the subject properties. Thus, the record shows that Thomas did not merely assume that the properties were in "below average" condition or "average condition" and choose the comparable properties based on that assumption. Rather, Thomas applied his observations of the properties and his knowledge of the market to choose those properties most similar and to make any necessary adjustments.

[10] Additionally, we acknowledge that Thomas amended his opinion of value for one of the properties at issue after questioning from the members of the BOR. Upon review, however, we find that the written appraisal provides a better indication of value. First, it appears that the parties were not discussing the correct report during the exchange. Second, the math error that was being discussed was not present in the written appraisal in the record.

[11] Accordingly, we find that, in the absence of any persuasive evidence or argument to the contrary, the Thomas appraisals reflect the value of the subject real properties as of the tax lien date.

[12] 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 645-26-100

TRUE VALUE $41,000

TAXABLE VALUE $14,350

PARCEL NUMBER 645-28-035

TRUE VALUE $37,000

TAXABLE VALUE $12,950

PARCEL NUMBER 645-34-011

TRUE VALUE $38,000

TAXABLE VALUE $13,300

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). 2017-278, 2017-279, 2017-280, 2017-293, 2017-295, 2017-296, 2017-297, 2017-298 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, March 29, 2021

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

[1] This case is again before the Board on remand from the Tenth District Court of Appeals. See *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 19-AP-204, 2020-Ohio-200. We issue this decision having reviewed the record from our prior proceeding, the Tenth District's opinion, and the parties' remand briefs.

[2] In our prior decision, we described the facts of this case as follows:

The subject property, a corporate campus, was initially assessed at $18,540,000 for tax year 2013. The BOE filed a complaint, which requested that the subject property's value be increased to reflect the $25,092,400 price at which it purportedly sold in November 2013. The property owner at that time, LSREF2 Tractor REO ("LSREF2") filed a countercomplaint, which objected to the request. While the matter was pending, the county auditor conducted the triennial update of real property values and assessed the subject property at $17,088,600 for tax year 2014. Both the BOE and property owner at that time, JDM II SF National, LLC ("JDM"), filed complaints with the BOR, which requested that the subject property be revalued. The BOE requested that the subject property's value be increased to reflect the $26,100,000 price at which it purportedly sold in April 2014; JDM requested that the subject property's value be decreased to $12,075,510. Apparent from the records, the BOR held these matters in abeyance, for a time, to await a decision from the Supreme Court in *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 151 Ohio St.3d 100, 2017-Ohio-7578, ("State Farm I") which involved the same parties, property, and sales, for tax years 2011 and 2012.

The BOR held a consolidated hearing on the matters at which time both the BOE and property owners appeared through counsel. In its presentation, the BOE submitted sale documents, which memorialized a $25,092,326 transfer of the subject property from State Farm Mutual Automobile Insurance Company ("State Farm") to LSREF2 in November 2013 and a $26,100,000 transfer of the subject property from LSREF2 to JDM in March 2014; a decision from this board, which evaluated the two sales for tax years 2011 and 2012, *Bd. of Edn. of the Columbus City Schools v. Franklin*

Cty. Bd. of Revision (Dec. 3, 2015), BTA No. 2014-3918, unreported, reversed by State Farm I; and a memorandum from the Department of Taxation about its interpretation of amended R.C. 5713.03. Based upon its presentation, the BOE requested that the subject property be valued consistent with the sale closest to any of the applicable tax lien dates.

In its presentation, the property owners presented the testimony of Tom O'Malley, chief operating officer and general counsel of JDM Partners, an entity affiliated with JDM. He explained that JDM's purchase of the subject property in March 2014 was part of larger sale, which included other properties owned by State Farm. Appraisers Bruce Pickering and, primarily, Ronald M. Eberly testified consistent with the appraisal report they authored, which valued the subject property at $14,900,000 as of January 1, 2013 and $13,000,000 as of January 1, 2014. The property owners requested that the subject property be valued consistent with the Pickering-Eberly appraisal report.

The BOR issued separate decisions for each year at issue: as to tax year 2013, the BOR valued the subject property at $18,540,000 consistent with county auditor's initial assessment; as to tax year 2014, the BOR valued the subject property at $25,092,400 consistent with the sale of November 2013; and as to tax year 2015, the BOR valued the subject property at $26,100,000 consistent with the sale of March/April 2014. The BOE and property owners appealed all the BOR's decisions to this board. We consolidated these matters at the BOE's unopposed request. At the merit hearing before this board, both the BOE and property owners appeared through counsel to submit additional argument and evidence into the record. In their presentation, the property owners submitted additional testimony from O'Malley and

Eberly. O'Malley reiterated and expanded upon his prior testimony about the facts and circumstances of JDM's $26,100,000 purchase of the subject property from LSREF2 in March 2014. Eberly testified about the underlying data and methodologies used to derive opinions of the subject property's value for tax years 2013 and 2014, consistent with the previously submitted appraisal report, and value for tax year 2015, consistent with a newly submitted appraisal report that valued the subject property at $13,200,000. Eberly also testified that the appraisal reports were substantially similar. However, he noted that the value conclusion for tax year 2013 included excess land, which did not apply to the value conclusions for tax years 2014 and 2015, and that the appraisal report for tax year 2015 included an additional comparable property, under the sales comparison approach. As additional support for its arguments, the property owners submitted a binder full of documents, which included a purchase agreement for the $25,092,400 sale between State Farm and LSREF2 in November 2013, a lease agreement between State Farm and LSREF2, and an assignment of the purchase and lease agreements from LSREF2 to JDM. The BOE cross-examined O'Malley and Eberly. Based upon its presentation, the property owners requested that the subject property be valued consistent with the Pickering-Eberly appraisal reports for tax years 2013, 2014, and 2015.

In its presentation, the BOE submitted the testimony of appraiser Thomas D. Sprout, who was scoped to review the Pickering-Eberly appraisal reports, as well as an appraisal report performed contemporaneous with the March/April 2014 sale by Cushman & Wakefield. Over the property owners' continuing objection, Sprout testified about the strengths and weaknesses of the appraisal reports. He was cross-examined about the scope of his assignment and the data and methodologies used to derive his conclusions. The BOE

submitted sale documents and the Cushman & Wakefield appraisal report and proffered a list of other triple-net properties that were leased, or available to lease, in the market. Based upon its presentation, the BOE requested that the subject property be valued consistent with the $26,100,000 sale of March/April 2014 for tax years 2013, 2014, and 2015.

The property owners recalled Eberly to testify about the selection of comparable properties under the sales comparison approach and the impropriety of developing an income approach when valuing the fee simple interest. On cross examination, he conceded that he did not determine market rent in the analysis to determine the subject property's value.

Subsequent to this board's merit hearing, the parties submitted written argument to more fully assert their respective positions. In their written argument, the property owners asserted that they had successfully demonstrated that the $26,100,000 sale of March/April 2014 was not indicative of the subject property's value and argued that the subject property should be valued consistent with the Pickering-Eberly appraisal reports. They also requested that Sprout's testimony be stricken from the record for a number of reasons. In its written argument, the BOE asserted that the property owners had failed to demonstrate that the $26,100,000 sale of March/April 2014 was not indicative of the subject property's value and argued that they had failed to demonstrate that the sale price was influenced by the underlying lease in place at the time of the sale.

[3] Upon review, we found the 2014 sale to be the best evidence of value for tax years 2013-2014, and we found the property owners' evidence was not more persuasive. The property owner appealed to the Tenth District, which issued a decision on January 23, 2020. Therein, the

Tenth District remanded the case to us for clarification and to reevaluate because our opinion cited pre-2003 case law. See Opinion at 11-12. Additionally, the Tenth District ordered us to reconsider the sale by taking greater account of State Farm's creditworthiness. Id.

[4] We first note the Tenth District's decision dismissed one of the property owner's primary objections. First, the Tenth District held that "we dispense with any suggestion by JDM that the 2014 sale necessarily cannot provide an arm's length market value for the property simply because 'the [sale] relationship was defined by the same lease' in *State Farm I* that was 'central to the decision of JDM to buy the lease fee,' and that the holding of *State Farm I* therefore directly and automatically dictates the result here." Id. at 4. In other words, the sale is still probative evidence of value.

[5] For the following reasons, we again find the sale is the best and most persuasive evidence of value for the tax years at issue. To the extent the Tenth District said our prior decision was ambiguous, we clarify here that we are evaluating the facts of this case based on *Terraza 8, LLC v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, and its progeny. 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, just as the Tenth District has recognized. *Menlo Realty Income Properties 28, LLC v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 19AP-316, 2019-Ohio-4872. We also acknowledge as the Tenth District noted in its decision, that the tenant's creditworthiness is one factor. See Opinion at 6 (citing *GC Net Lease @(3) (Westerville) Investors, L.L.C., v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-385.). Upon review, we still agree that the sale is the best evidence of value. As the BOE correctly argues in its brief:

> The owners' witness[es] simply expressed that they were interested in a property occupied by State Farm because they had had success with other properties they

occupied. Again, there are plenty of other properties that sell and are occupied by high-quality tenants. No evidence was offered that this particular tenant made this lease more valuable than any other lease with a similar tenant.

[6] We agree. The issue, in this case, is not whether State Farm is a credit tenant. It is. But that is not the dispositive question. The question, per *GC Net Lease*, is whether creditworthiness pushed the sale price above market. JDM never proved that, and the record before us shows that it was not. See e.g., Sprout Appraisal Review and Cushman & Wakefield appraisal. More fundamentally, JDM's appraiser did not consider the market. We cannot determine what is above-market if we do not know what the market is, either based on terms of a lease or lease rate. JDM did neither. Nothing in the Tenth District's decision tells us what specific evidence proved what the market would pay. Its decision only says State Farm was a credit tenant. But that is only half of the analysis, and JDM did not prove the second part of the analysis.

[7] As the BOE notes, the Tenth District did not find this Board improperly found the property owners' appraisals as unpersuasive. Instead, the Tenth District directed us to clarify how such evidence was less persuasive evidence of value than the sale. We find several primary concerns, noted in various places in our prior decision. First, the Pickerling-Eberly appraisal fails to consider market rents. Without that data, as noted above, we cannot determine the relevant market. Actual rents provide little insight without a marketed comparator. Second, the appraisal is inconsistent with the appraisers' highest and best use, as we noted in our original decision. Third, the choice to use mostly vacant comparables properties makes the appraisal less probative because the property was occupied.

[8] All of these issues were addressed in the original decision and, as the BOE notes, the Tenth District did not disregard those findings. Because it did not do so, we find no lawful reason to deviate from the findings of our prior decision. For these reasons, we find, per *Terraza*, that

the sale created a rebuttable presumption of value. We do not find JDM presented this Board with better evidence of value because we find serious flaws with the Pickerling-Eberly appraisal for the reasons stated above. Those obvious defects make the appraisals less persuasive of value. Accordingly, we order the property valued as follows for tax years 2013, 2014, and 2015:

TRUE VALUE	TAXABLE VALUE
$26,100,000	9,135,000

OHIO BOARD OF TAX APPEALS

WILLIAM SWAIN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1285
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

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Entered Monday, April 5, 2021

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

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that no final decision has been issued. Appellant did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On August 14, 2020, the appellant filed an application for remission with this Board. Appellant did not include a copy of a board of revision ("BOR") decision. The county appellees attached to their motion the affidavit of the clerk for the Franklin County BOR, stating that there is no record of a decision issued for the subject property.

R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and

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

Upon consideration of the existing record, and for the reasons stated in the motion, we find that appellant has not appealed from a BOR decision, and this matter is, therefore, premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

NACHI INVESTMENTS, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-25 (REAL PROPERTY TAX) DECISION AND ORDER

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Entered Monday, April 5, 2021

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

[1] The property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 721-28-012, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The property owner filed a complaint with the BOR, requesting the subject property be revalued from $132,400 to $69,500 based upon the value opined by an appraisal report. At the hearing on the matter, the property owner appeared through counsel to submit argument and evidence in support of the complaint. As the hearing commenced, counsel for the property

owner amended the property owner's opinion of value to $98,000. The property owner submitted the report and testimony of appraiser Robert Abrams, who opined the value of the subject property to be $98,000 as of the tax lien date. Abrams was examined about the underlying data and methodologies used to derive his opinion of value. Because the BOR questioned whether the condition of the subject property changed between the property owner's purchase of it in 2016 and the tax lien date, the BOR rejected Abrams's appraisal report. The BOR subsequently issued a decision, which retained the subject property's initially assessed 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; none of the parties availed themselves of such opportunity.

[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, ¶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, ¶¶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, ¶19.

[5] Because the record indicates that the subject property was the subject of a recent arm's-length transaction, we begin our analysis there. See *Conalco v. Bd. of Revision*, 50 Ohio St.2d

129 (1977). The property owner purchased the subject property from Nationstar Mortgage for $69,500 in March 2016. The BOR concluded that the subject sale occurred between related parties; however, nothing in the record supports such a finding. It appears that the BOR may have confused the relationship between the property owner and Harel, LLC, purported to be the property owner's statutory agent, as the relationship between the property owner and Nationstar Mortgage. See *N. Royalton City School Dist. Bd. of Educ. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092.

[6] The BOR also rejected the subject sale because it could not conclude that the subject property's condition remained the same between the sale and tax lien dates. Abrams acknowledged that rehabilitation work costing approximately $37,500 had occurred subsequent to the property owner's purchase and tax lien date. However, he claimed that the rehabilitation work was performed poorly. Given that Abrams inspected the subject property and confirmed that $37,500 of rehabilitation work had been performed, we conclude that it is likely that the subject property underwent material changes between the sale and tax lien dates such that the subject sale no longer reflected the subject property's value. See, generally, *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio 5932. Compare *Yim v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 109470, 2020-Ohio-6742, ¶22 ("In its decision, the BTA stated that it cannot ascertain the impact of the $45,000 of rehabilitation costs indicated in line 104 of the settlement agreement, noting that no one with firsthand knowledge of the sale testified regarding the circumstances surrounding the ale. The BTA refused to speculate as to the nature of those costs and how they may have impacted the parties' negotiations or shed light on the property's condition and value.").

[7] We now turn to the analysis contained in Abrams' appraisal report. He 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 three properties that had

sold in 2016 or 2019 and two properties that were available for sale or pending sale in 2020. After adjusting the comparable properties for differences with the subject property, Abrams concluded to an indicated value of $98,000. Under the cost approach, he determined an opinion of value for the site and estimated the replacement cost-new for the improvements, which he depreciated, to conclude an indicated value of $97,514. He placed the most emphasis on the value indicated under the sales comparison approach to finally conclude the subject property's value to be $98,000 as of January 1, 2018.

[8] Upon review, we do not find Abrams' appraisal report and testimony to be competent and probative evidence of the subject property's value for two primary reasons. First, he confirmed that he did not verify the comparable sales with people involved in the respective sales. This Board has previously rejected reliance on unverified sale information. See, e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (June 13, 2013), BTA Nos. 2011-Q-550, et seq., unreported; *Overstreet v. Hamilton Cty. Bd. of Revision* (Feb. 15, 2002), BTA No. 2001-V-639, unreported. The Appraisal of Real Estate (14th Ed.2013) also comments on the need to verify information regarding the comparable sales "to make sure that the sale occurred under conditions that meet the definition of value based in the appraisal." Id. at 125. Second, Abrams made large adjustments to the comparable properties, which suggests that the properties really were not comparable to the subject property, i.e., gross adjustments of approximately 27.6% applied to comparable sale one; gross adjustments of approximately 24.1% applied to comparable sale two; and gross adjustments of approximately 28.8% applied to comparable sale three. We have previously held that "[t]he greater the magnitude of the adjustments, the less reliable the appraisal will be." See *Gammarino v. Hamilton Cty. Bd. of Revision* (Sept. 30, 2019), BTA Nos. 2018-622 et al., unreported at 8. Furthermore, given the age of the subject property's improvements, we do not find the cost approach to be a reliable

indicator of real property value. See *Dayton-Montgomery Cty. Port Auth. v. Montgomery Cty. Bd. of Revision*, 113 Ohio St.3d 281, 2007-Ohio-1948, ¶12.

[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 satisfy its 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: $132,400

Taxable Value: $46,340

OHIO BOARD OF TAX APPEALS

COLERAIN HOLDINGS, LLC, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1853 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - COLERAIN HOLDINGS, LLC
Represented by:
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#14A
OCEANO, CA 93445

For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
Represented by:
JAY R. WAMPLER
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HAMILTON COUNTY
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CINCINNATI, OH 45202

Entered Wednesday, April 7, 2021

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

[1] The taxpayer appeals a decision of the Hamilton County Board of Revision ("BOR"), which denied its request for remission of the late-payment penalties associated with the untimely payments of the property-tax bills, for parcels 188-0017-0060-00, 188-0017-0061-00, and 202-0040-0363-00, for the first half of 2019. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The taxpayer filed a single application for remission with the County Treasurer, asserting that its failure to timely pay the property-tax bills, for the above-referenced parcels and tax periods, amounted to reasonable cause, not willful neglect. The taxpayer asserted that

the property-tax bills were sent to the property manager who was unavailable because of a death in the family and that a member of the property owner, Michael Albaum, did not receive the property-tax bills. The County Treasurer recommended the requests be denied because the taxpayer did not request copies of the property-tax bills within thirty days of their due dates. The BOR rejected the requests, noting that the taxpayer had not demonstrated reasonable cause for failing to timely pay the property-tax bills. This appeal ensued. None of the parties availed themselves of the opportunity to submit evidence at a hearing before this Board.

[3] Before we consider the merits of this appeal, we must first dispose of preliminary issues. Though the taxpayer did not request a hearing before this Board, Albaum submitted a document that included a mixture of factual assertions and legal argument. Because there is no indication that Albaum was an attorney licensed to practice law in Ohio, it appears that he engaged in the unauthorized practice of law by filing legal argument on behalf of the taxpayer. As a result, the legal 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). Furthermore, the factual assertions will not be considered in our analysis because they were not made under oath at a hearing before the BOR or before this Board. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

[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] In this matter, the taxpayer specifically requested review of the facts and circumstances of this matter consistent with R.C. 5715.39(C), which provides penalty remission if the BOR

determines that "the taxpayer's failure to make timely payment of the tax is due to reasonable cause and not willful neglect." However, R.C. 323.13 provides 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." 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. Moreover, to the extent that the property-tax bills were not mailed to Albaum, there is no indication that a change of address was submitted according to statute. See R.C. 323.13 ("[a] change in the mailing address of any tax bill shall be made in writing to the county treasurer."). As such, we find that remission of the late-payment penalties would be inappropriate in this matter.

[5] Based upon the foregoing, we find that the taxpayer did not demonstrate that it is entitled to remission of the late-payment penalties associated with the property-tax bills for parcels 188-0017-0060-00, 188-0017-0061-00, and 202-0040-0363-00 for the first half of tax year 2019.

OHIO BOARD OF TAX APPEALS

NEAL AND NADINE LADER, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1980 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NEAL AND NADINE LADER
Represented by:
NADINE LADER
OWNER
5620 EMERALD RIDGE PKWY
UNIT 5D
SOLON, OH 44139-1871

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

Entered Monday, April 12, 2021

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

This matter is now considered following this Board's issuance of an order to show cause why this matter should not be dismissed for lack of jurisdiction. *Lader v. Cuyahoga Cty. Bd. of Revision* (Interim Order, Jan. 27, 2021), BTA No. 2020-1980, unreported. As indicated in our earlier order, it appears that the appellants may not have followed the procedures to properly challenge the issue raised in the notice of appeal, i.e., related to delinquent property taxes, or otherwise appealed from a decision of the Board of Revision. The appellants did not respond to our order.

R.C. 5703.02 grants this Board 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 board of tax appeals within thirty days after *notice of the decision of the county board ofrevision* is mailed as provided in division of (A) of section 5715.20 the Revised Code." (Emphasis added.) Adherence to the conditions imposed by R.C. 5717.01 is essential to establishing jurisdiction before this Board. See *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990).

The appellants have presented no indication that they followed the proper steps to challenge delinquent property taxes and/or that a decision was issued by the Board of Revision from which this appeal could be taken. Accordingly, the appellants have failed to invoke this Board's jurisdiction and this matter is dismissed.

OHIO BOARD OF TAX APPEALS

CANTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. STARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2020-993 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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

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

SMJD PROPERTIES, LLC
JEFFREY DOLL
6151 DRESSLER ROAD NW
NORTH CANTON, OH 44720

Entered Monday, April 12, 2021

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

[1] The appellant Board of Education ("BOE") appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real property, parcel numbers 248011, 248012, 248013, 248113, and 248114, for tax year 2019. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the BOE's written argument.

[2] The subject property is improved with a three-unit retail building, along with two

adjacent vacant parcels. The Auditor initially assessed the subject's total true value at $963,500. The appellee property owner, SMJD Properties, LLC ("SMJD"), filed a complaint with the BOR seeking a reduction in value to $234,300. The BOE filed a countercomplaint in support of the Auditor's value. The BOR convened a hearing, at which SMJD relied on its purchase of the property in November 2019 for $234,300 and testimony from its owner, Jeffrey Doll, regarding the property and the sale. Doll stated that SMJD purchased the subject property at an auction, at which time two of the three units were leased at $1.50 per square foot. Doll stated that the prior owner had attempted to lease the subject property but could not get higher rents or lease all three of the spaces. Doll indicated that there were two separate auctions that took place on-site on the same day, with "a handful" of people present. Doll testified that the improved parcels were auctioned first, with one other person bidding. After Doll had the highest bid on the improved parcels, no one else bid on the two vacant parcels that sold next. On cross-examination, Doll acknowledged that the property sold via an absolute auction, meaning that there was no minimum bid for properties. During this exchange, the property owner claimed the sale was "irrelevant," and that the BOR should consider the subject property's neighborhood, the prior owner's inability to lease the subject at higher rates, and the fact that another tenant vacated the property after the sale.

[3] The BOR issued a decision reducing the total value of the property to $234,300 based on the sale, which led to the present appeal. On appeal, the BOE argues that because the sale was an absolute auction, it was presumed not to be arm's-length. The BOE further asserts that SMJD had not overcome the burden to establish that the sale was nevertheless a valid indication of value through evidence regarding marketing efforts or other exposure to the market.

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

[5] In the present appeal, it is undisputed that SMJD purchased the subject property at an auction. As noted, the court has held that "R.C. 5713.04 establishes a rebuttable presumption that a sale price from an auction is not evidence of a property's value. However, that presumption may be rebutted by evidence showing that the sale occurred at arm's length between typically motivated parties. See *Fenco* [*Cincinnati School Dist. Bd. of Edn. v.Hamilton Cty. Bd. of Revision*], 127 Ohio St.3d 63, 2010-Ohio-4907, *** at ¶34." *Olentangy Local Schools*, supra, at ¶40. Thus, where a property sells via auction, the burden is on the proponent of the sale to show that the transfer was an arm's-length transaction.

[6] Notably, this sale was the result of an absolute auction, and the subject property would have sold regardless of the amount of the minimum bid. Doll testified that there were roughly five people present but only one other bidder on one of the sales. It appears that the sales were marketed, but the extent of such marketing is not clear. Even Doll appeared to walk away from the sale as evidence of value when he faced questioning about the details of the auction. Thus, we find that SMJD failed to establish that the sale price reflected the subject's value despite resulting from an absolute auction. Accordingly, we find that the record lacks sufficient evidence to show that the sale was arm's-length and cannot utilize the transfer as a basis to reduce the subject's value.

[7] While we acknowledge Doll's testimony regarding the negative conditions experienced by the subject property and the rental/vacancy issues, it is not sufficient to support a reduction in value. *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996). In *Throckmorton*, 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. Accordingly, we find no evidence in the record to support a value different than that initially determined by the auditor.

[8] It is, therefore, the order of this Board that the true and taxable values of the subject property, as of January 1, 2019, were as follows:

PARCEL NUMBER 248011

TRUE VALUE $212,500

TAXABLE VALUE $74,380

PARCEL NUMBER 248012

TRUE VALUE $337,700

TAXABLE VALUE $118,200

PARCEL NUMBER 248013

TRUE VALUE $400,900

TAXABLE VALUE $140,320

PARCEL NUMBER 248113

TRUE VALUE $8,200

TAXABLE VALUE $2,870

PARCEL NUMBER 248114

TRUE VALUE $4,200

TAXABLE VALUE $1,470

OHIO BOARD OF TAX APPEALS

MASSILLON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. STARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-991 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MASSILLON CITY SCHOOLS BOARD OF EDUCATION
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For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
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FENTON INTERIORS, INC
GRANT KOWELL
P.O. BOX 724
MASSILLON, OH 44648

Entered Monday, April 12, 2021

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

[1] The appellant Board of Education ("BOE") appeals a decision of the Board of Revision ("BOR"), finding value of the subject real property, parcel number 604413, for tax year 2019. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the BOE's written argument.

[2] The Auditor assessed the total true value of the subject property at $228,000. On February 14, 2020, a complaint was filed by Grant Kowell on behalf of F+M Properties,

seeking a reduction to $100,000. The complaint indicates that the owner was Fenton Interiors Inc., that the complainant's relationship was "purchasing on land contract," and that Kowell was acting in his capacity as "manager." The BOR convened a hearing, though no one appeared on behalf of Fenton Interiors or F+M Properties, though the complaint indicated that the reduction was justified based on the "county's own inspection." The BOE asserted that the reduction was not justified and further argued that the complaint should be dismissed. The BOE claimed that because F+M was not the owner of the property and did not appear to own property in the county, it lacked the authority to file the complaint. Following the hearing, the BOR reduced the value of the property to $128,900 based on the recommendation of a staff appraiser. From this decision, the BOE filed the present appeal.

[3] On appeal, none of the parties requested a hearing. Instead, the BOE relied on written argument in support of its request for the Auditor's value to be reinstated. The BOE first argued that F+M Properties lacked standing to file the complaint because it was not the titled owner of the property when the complaint was filed. The BOE claimed that even if the statement that F+M Properties were purchasing the property pursuant to a land installment contract, that would grant merely an equitable interest in the property and not legal title sufficient to confer standing. As such, the matter should be remanded to the BOR with instructions to dismiss the underlying complaint, with the practical effect of reinstating the Auditor's initial value. The BOE further maintained that even if the complaint were valid, the Auditor's value should be reinstated because the record lacked any testimony from the owner or the appraiser, nor was the staff report discussed during the BOR hearing. None of the appellee parties submitted written argument or responded to the BOE's jurisdictional challenge.

[4] R.C. 5715.19 provides that "[a]ny person owning taxable real property in the county or in a taxing district with territory in the county" may file a complaint or "a person owning taxable

real property in another county may file such a complaint only with regard to any such determination affecting real property in the county that is located in the same taxing district as that person's real property is located." While the holder of legal title of real property has standing to file a complaint under R.C. 5715.19, the owner of an equitable interest in real property does not. See *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. of Revision*, 86 Ohio St.3d 181 (1999). This Board has held that the purchaser of a property under a land contract, where title had not yet been conveyed by deed, is an equitable owner of the property and therefore lacks standing to file a complaint. See *Heidenreich v. Montgomery Cty. Bd. of Revision* (Oct. 21, 2008),BTA No. 2008-V-1164, unreported. Accordingly, we find that the record shows that the underlying complaint did not invoke the jurisdiction of the BOR.

[5] Therefore, the complaint filed with the BOR in this matter was insufficient to invoke that tribunal's jurisdiction. Accordingly, we hereby remand this matter to the BOR with instructions to dismiss the underlying complaint, with the practical effect of reinstating the Auditor's initially assessed value.

OHIO BOARD OF TAX APPEALS

SOKOL GREATER CLEVELAND GYMNASTIC & EDUCATIONAL ORGANIZATION INC., (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2020-989
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - SOKOL GREATER CLEVELAND GYMNASTIC & EDUCATIONAL ORGANIZATION INC.
Represented by:
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
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Entered Monday, April 12, 2021

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

[1] The Sokal Greater Cleveland Gymnastic and Educational Organization, Inc., appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the Fiscal

Officer's value of parcel 123-22-029 for tax year 2018. No party availed themselves of the ability to present new evidence to this Board. No party filed a brief. We decide the case on the notice of appeal and the statutory transcript.

[2] The Fiscal Officer valued the subject property at $621,300 for tax year 2018, and appellant filed a complaint seeking a value of $400,000. The Cleveland Municipal School District Board of Education ("BOE") filed a countercomplaint asking the Fiscal Officer's value be retained. At the BOR hearing, appellant was represented by counsel, who submitted a packet of information about the property and information on comparable sales. The BOE argued appellant failed to carry its burden. No party called witnesses. The BOR retained the Fiscal Officer's value, finding appellant had not carried its burden.

[3] When cases are appealed from a BOR 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.).

[4] After review, we find appellant has not carried its burden. It relies solely on a packet of unadjusted market data provided by counsel. Statements of counsel are not evidence, nor did counsel assert he had personal knowledge of any of the properties or sales. See generally *Garland Real Estate, LLC v. Tuscarawas Cty. Bd. of Revision* (Jan. 28, 2020), BTA No. 2018-1241,

unreported. Even if we assume the data is accurate, unadjusted market data is generally insufficient to warrant a change in value. 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).

[5] We find appellant has failed to carry its burden. We order the property valued as follows for tax year 2018:

TRUE VALUE

$621,300

TAXABLE VALUE

$217,460

OHIO BOARD OF TAX APPEALS

EDWARD JAMES, TRUSTEE OF THE EDWARD JAMES TRUST UAD JULY 15, 2005, (et. al.),	)	
	)	CASE NO(S). 2020-1156
Appellant(s),	)	
vs.	)	(REAL PROPERTY TAX)
STARK COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - EDWARD JAMES, TRUSTEE OF THE EDWARD JAMES TRUST UAD JULY 15, 2005
Represented by:
TODD KOTLER
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6370 MT. PLEASANT ST. NW
NORTH CANTON, OH 44720

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
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JACKSON LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
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COLUMBUS, OH 43215

Entered Tuesday, April 13, 2021

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

[1] Appellant Edward James, Trustee of the Edward James Trust UAD July 15, 2005 ("James") appeals a decision of the Board of Revision ("BOR"), which determined the value of

the subject real property, parcel number 10011330, for tax year 2019. 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 virtual hearing convened before this Board.

[2] On the tax lien date, the subject property consisted of roughly 28.91 acres of land improved with a single-family home constructed in 1976 and several outbuildings. The Auditor initially assessed the subject's total true value at $665,500. The appellee Board of Education ("BOE") filed a complaint with the BOR seeking an increase in value to $927,500. The BOR convened a hearing, at which the BOE submitted evidence that James purchased the subject property from Nancy E. Tobin on May 17, 2019 for $927,500. It appears that the dwelling was demolished after the sale and construction had begun prior to the BOR hearing. No one appeared on behalf of James, and nothing was presented to rebut the sale. The BOR issued a decision increasing the initially assessed valuation to $927,500. From this decision, James filed the present appeal.

[3] This Board convened a virtual hearing, at which James conceded that the sale was reliable evidence of the total true value of the subject property on the tax lien date. James argued, however, that the allocation proposed by the appraiser in the BOR Standard Report attributed too much value to the land as compared to the improvements. Instead, James argued, the Board should rely on an appraisal that opined the value of the land was $400,000 as of June 12, 2019. The BOE objected to the appraisal claiming that it was unauthenticated hearsay and irrelevant because it was prepared for financing purposes and did not value the property as of the tax lien date. The attorney examiner overruled the objection, noting that the Board will give the appraisal the appropriate weight based on the issues raised by the BOE. The BOE also noted that the appraisal's overall opinion of value was $1,410,000 as of June 12, 2019, an amount significantly higher than the sale price relied upon by the BOE and BOR.

[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. In the present appeal, there is no dispute that the sale provides the best evidence of value. Rather, James contests the allocation among land and building. We note that there is no indication in the record that BOR issued a formal decision regarding the allocation, but James seeks for this Board to establish such an allocation. As evidence, James relies on the financing appraisal.

[5] Initially, we observe that it would be improper to simply rely on the appraisal because it was presented without testimony from the appraiser and offered an opinion of value as of a date other than January 1, 2019. *Copley-Fairlawn City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 147 Ohio St.3d 503, 2016-Ohio-1485, ¶21. We acknowledge that 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. The circumstances of the present appeal, however, do not demonstrate such reliability. Notably, record lacks any testimony concerning the appraisal or evidence regarding the extent to which anyone relied on this appraisal in its decision-making process.

[6] Even if we were to consider the appraisal, however, we would not find it probative of evidence regarding an allocation among land and building. First, the appraiser did not perform a sales comparison analysis of vacant land sales. Instead, she made site adjustments in her analysis of the sales of improved properties. The properties were all improved with homes that ranged

from 4,622 square feet to 8,802 square feet, with site sizes that ranged from 2.00 acres to 19.44 acres, as compared to the subject's 28.91 acres. The adjustments for site size ranged from $77,000 to $147,000. In this case, we find that the appraisal does not include sufficient support for this Board to rely on the appraiser's conclusion regarding land value. Additionally, based on comments within the report, it appears that the owner of the property disagreed with the appraiser's site value adjustments. Finally, from a practical standpoint, if this Board were to find that the site value was $400,000, that would result in an allocation of $527,500 to some outbuildings constructed at various times between 1920 and 1984 and a residence that was demolished just months after the sale. While we do not attribute the full amount of the sale price to the land, we find that the appraiser's allocation is not reliable evidence of the value of the land for purposes of ad valorem taxation.

[7] Having rejected the appraiser's allocation relied upon by James, we are left to consider a proper valuation. The Court has discussed the proper treatment of the sale price when the building was razed after purchase. *Blatt v. Hamilton Cty. Bd. of Revision*, 123 Ohio St.3d 428, 2009-Ohio-5260. In *Blatt*, the Court affirmed this Board's decision to allocate a sale price among auditor's values for land and building as they existed on the date of the purchase. While we acknowledge that the dwelling was still present in this case, we find *Blatt* instructive. Thus, while there is some argument the full increase could be attributable to the land because the buildings were subsequently demolished, we must find that the buildings contributed to the overall value when the sale took place and allocate the value consistent with 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, 2019, were as follows:

TRUE VALUE

LAND $589,810

BUILDING $337,690

TOTAL $927,500

TAXABLE VALUE

LAND $206,430

BUILDNG $118,200

TOTAL $324,630

OHIO BOARD OF TAX APPEALS

M&S REAL ESTATE, LLC, (et. al.),	)	
	)	CASE NO(S).
Appellant(s),	)	2020-2240, 2020-2241, 2020-2244,
	)	2020-2245, 2020-2251
vs.	)	
	)	
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	(REAL PROPERTY TAX)
	)	
	)	DECISION AND ORDER
Appellee(s).	)	

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Represented by:
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CLEVELAND, OH 44113

Entered Tuesday, April 13, 2021

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

[1] The appellant appeals decisions of the Cuyahoga County Board of Revision ("BOR"), which dismissed the complaints filed regarding the value of the subject properties, parcel numbers 104-15-133, 105-22-128, 105-25-011, 105-25-099, 118-10-051, 104-14-093, 105-25-076, 104-13-020, 104-15-092, and 109-17-024, for tax year 2019. These consolidated matters are now considered upon the notices of appeal, the transcripts certified by the BOR and any written argument submitted by the parties.

[2] The appellant filed several complaints with the BOR, which requested reductions to the subject properties' values. In response to line 14 on the complaints, the property owner conceded that it had filed earlier complaints, which challenged the subject properties' values for

tax year 2018 and asserted that there were various bases for filing the complaints that challenged the subject properties' values for tax year 2019, i.e., arm's-length sale, casualty, and/or change in occupancy.

[3] The BOR held multiple hearings on the complaints at which the property owner appeared through counsel. At each hearing, the BOR provided the property owner an opportunity to submit evidence to support the assertions alleged on line 14 of the complaints for tax year 2019. The property owner submitted the testimony of its member Kevin Malone, who testified about the alleged arm's-length sale, casualty, and/or change in occupancy relevant to each complaint. The BOR determined that the property owner's evidence did not establish that the subject properties were the subject of arm's-length sales, casualties, and/or changes in occupancy. As a result, the BOR issued decisions that dismissed the underlying complaints for lack of jurisdiction as impermissible multiple filings during the triennial period. These appeals ensued.

[4] The property owner and county appellees filed written argument to assert their respective positions. These matters proceeded to small claims telephone hearings at which time the property owner appeared through counsel. Malone also participated in the hearings. This Board sua sponte consolidated these matters given the substantial similarities in the issues raised and parties involved.

[5] "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, LLC. v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 2014-Ohio-4511, ¶20. "The apparent purpose of the modification of R.C. 5715.19(A) was to reduce the number of filings, while still allowing new tax valuations in interim years in certain limited circumstances." *Dublin City School Dist. v. Franklin Cty. Bd. of Revision*,

79 Ohio App.3d 781, 784 (1992). A second complaint within an interim period "must allege and establish one of the four circumstances set forth in R.C. 5715.19(A)(2)." *Developers Diversified Ltd. v. Cuyahoga Cty. Bd. of Revision*, 84 Ohio St.3d 32, 35 (1998).

[6] The interim period relevant to these appeals involves tax years 2018, 2019, and 2020. Additionally, the Fiscal Officer conducted the sexennial reappraisal of real-property values for Cuyahoga County in 2018. See, generally, R.C. 5713.01(B), 5715.33, and 5715.34.

[7] In BTA No. 2020-2240, which involves parcels 104-15-133 and 105-22-128, the property owner asserted that these parcels were the subject of arm's-length transactions. The Supreme Court has held that there are three elements to satisfy the jurisdictional bar on a successive complaint that alleges an arm's-length sale: "(1) [t]he second-filed complaint must allege that the property value should be changed on account of the property's having been sold in an arm's length transaction; (2) [t]he sale must have occurred after the tax-lien date for the tax year for which the prior complaint was filed; and (3) [t]he sale must not have been "taken into consideration with respect to the prior complaint." *Soyko Kulchystsky, L.L.C.*, supra, at ¶12. In this matter, the property record cards demonstrate that these parcels transferred in 2015 and 2016, respectively, and, therefore, cannot satisfy the *Soyko* standard. In addition, these parcels were previously the subject of appeals before this Board, regarding the parcels' values for tax year 2018. See *M&S Real Estate, LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 20, 2020), BTA No. 2019-2913, unreported. For these reasons, we find that the property owner did not demonstrate that it was entitled to file another complaint, challenging the value of parcels 104-15-133 and 105-22-128, for tax year 2019.

[8] In BTA No. 2020-2241, and its duplicative appeal BTA No. 2020-2251, which involve parcels 105 -25-011, 105-25-099, and 118-10-051, the property owner asserted multiple bases for filing another complaint for tax year 2019. First, it asserted that these parcels were the subject of

arm's-length transactions. However, the property record cards demonstrate that these parcels transferred in 2017 and, therefore, the property owner cannot satisfy the *Soyko* standard. In addition, these parcels were previously the subject of appeals before this Board, regarding the parcels' values for tax year 2018. See *M&S Real Estate, LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 20, 2020), BTA No. 2019-2906, 2019-2916, unreported. Second, the property owner asserted that these parcels lost value due to a casualty. This Board has previously held that a "casualty" is an identifiable event. See *Overstreet v. Hamilton Cty. Bd. of Revision* (Jan. 19, 2010), BTA No. 2008-M-2025, unreported; *Price v. Lucas Cty. Bd. of Revision* (June 30, 1994), BTA No. 93-T-987, unreported. Further, the Supreme Court has held that there are three elements to satisfy the jurisdictional bar on a successive complaint that alleges a casualty-loss: (1) "the second-filed complaint must assert that casualty loss justified the filing[;]" (2) "the event triggering the exception must have occurred after the tax-lien date of the year for which the earlier complaint was filed;" [and] (3) "the triggering event must not have been "taken into consideration with respect to the prior complaint[.]" *Glyptis*, supra, at ¶12. Accord *Soyko*, supra.

Here, though the property owner identified the state of the local real estate market as the "casualty" that negatively impacted these parcels' values, it has failed to identify an identifiable, discrete event that occurred after January 1, 2018, and/or that the BOR did not previously consider. Third, the property owner asserted that that occupancy changes of at least 15% had a substantial economic impact on the parcels' values. It is undisputed that the parcels were vacant on January 1, 2018, and remained vacant on January 1, 2019, therefore, the property owner cannot demonstrate any occupancy change, much less a 15% change in occupancy, after January 1, 2018. For these reasons, we find that the property owner did not demonstrate that it was entitled to file another complaint, challenging the value of parcels 105-25-011, 105-25-099, and 118-10-051, for tax year 2019.

[9] In BTA No. 2020-2244, which involve parcels 104-14-093 and 105-25-076, and BTA No. 2020-2245, which involve parcels 104-13-020, 104-15-092, and 109-17-024, the property owner asserted that multiple bases for filing complaints for tax year 2019. First, the property owner asserted that these parcels lost value due to a casualty, i.e., the local real estate market. We have already noted the unsuccessful nature of this argument. See, supra. Second, the property owner asserted that occupancy changes of at least 15% had a substantial economic impact on the parcels' values. Again, we have already noted the unsuccessful nature of this argument given that these parcels were vacant during the relevant times. See, supra. In addition, these parcels were previously the subject of appeals before this Board, regarding the parcels' values for tax year 2018. See *M&S Real Estate, LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 20, 2020), BTA Nos. 2019-2911, 2019-2916, unreported. For these reasons, we find that the property owner did not demonstrate that it was entitled to file complaints, challenging the value of parcels 104-14-093, 05-25-076, 104-13-020, 104-15-092, and 109-17-024, for tax year 2019.

[10] Accordingly, based on the existing record, the Board finds that the BOR properly dismissed the underlying complaints as multiple filings within the triennial period. Therefore, the decisions of the BOR are affirmed.

OHIO BOARD OF TAX APPEALS

BURTPROP, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-2243
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

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Entered Tuesday, April 13, 2021

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

[1] The appellant appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which dismissed the complaint filed regarding the value of the subject property, parcel 007-16-023, for tax year 2019. This matter is now considered upon the notice of appeal, the transcript certified by the BOR and any written argument submitted by the parties.

[2] The appellant filed a complaint with the BOR, which requested a reduction to the subject property's value. In response to line 14 on the complaint, the property owner conceded that it had filed an earlier complaint, which challenged the subject property's value for tax year 2018 and asserted that there were various bases for filing the complaint that challenged the subject property's value for tax year 2019, i.e., casualty, and/or change in occupancy.

[3] The BOR held a hearing on the complaint at which the property owner appeared through counsel. At the hearing, the BOR provided the property owner an opportunity to submit evidence to support the assertions alleged on line 14 of the complaint for tax year 2019. The property owner submitted the testimony of its member Kevin Malone, who testified about the alleged casualty, and/or change in occupancy. The BOR determined that the property owner's evidence did not establish that the subject property was the subject of a casualty, and/or change in occupancy. As a result, the BOR issued a decision that dismissed the underlying complaint for lack of jurisdiction as an impermissible multiple filing during the triennial period. This appeal ensued.

[4] The property owner filed written argument to assert its positions. This matter proceeded to a small claims telephone hearing at which time the property owner appeared through counsel. Malone also participated in the hearing.

[5] "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, LLC. v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 2014-Ohio-4511, ¶20. "The apparent purpose of the modification of R.C. 5715.19(A) was to reduce the number of filings, while still allowing new tax valuations in interim years in certain limited circumstances." *Dublin City School Dist. v. Franklin Cty. Bd. of Revision*, 79 Ohio App.3d 781, 784 (1992). A second complaint within an interim period "must allege and establish one of the four circumstances set forth in R.C. 5715.19(A)(2)." *Developers Diversified Ltd. v. Cuyahoga Cty. Bd. of Revision*, 84 Ohio St.3d 32, 35 (1998).

[6] The interim period relevant to this appeal involves tax years 2018, 2019, and 2020.

Additionally, the Fiscal Officer conducted the sexennial reappraisal of real-property values for Cuyahoga County in 2018. See, generally, R.C. 5713.01(B), 5715.33, and 5715.34.

[7] In this matter, the property owner asserted that multiple bases for filing another complaint for tax year 2019. First, the property owner asserted that the subject property lost value due to a casualty. This Board has previously held that a "casualty" is an identifiable event. See *Overstreet v. Hamilton Cty. Bd. of Revision* (Jan. 19, 2010), BTA No. 2008-M-2025, unreported; *Price v. Lucas Cty. Bd. of Revision* (June 30, 1994), BTA No. 93-T-987, unreported. Further, the Supreme Court has held that there are three elements to satisfy the jurisdictional bar on a successive complaint that alleges a casualty-loss: (1) "the second-filed complaint must assert that casualty loss justified the filing[;]" (2) "the event triggering the exception must have occurred after the tax-lien date of the year for which the earlier complaint was filed;" [and] (3) "the triggering event must not have been "taken into consideration with respect to the prior complaint[.]" *Glyptis v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 597, 2018-Ohio-1437, at ¶12. Accord *Soyko Kulchystsky, L.L.C.*, supra. Here, though the property owner identified the state of the local real-estate market as the "casualty" that negatively impacted the subject property's value, it has failed to identify a specific, identifiable event that occurred after January 1, 2018 and/or that the BOR did not previously consider. Second, the property owner asserted that that occupancy changes of at least 15% had substantial economic impact on the subject property's value. It is undisputed that the subject property was vacant on January 1, 2018 and remained vacant on January 1, 2019, therefore, the property owner cannot demonstrate any change any occupancy, much less a 15% change in occupancy, after January 1, 2018. It should also be noted that the subject property was previously the subject of an appeal before this Board, which challenged its value for tax year 2018. See *M&S Real Estate, LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 20, 2020), BTA No. 2019-2906 et al., unreported. For these reasons, we find

that the property owner did not demonstrate that it was entitled to file another complaint, challenging the subject property's value, for tax year 2019.

[8] Accordingly, based on the existing record, the Board finds that the BOR properly dismissed the underlying complaint as a multiple filing within the triennial period. Therefore, the decision of the BOR is affirmed.

OHIO BOARD OF TAX APPEALS

REO INVESTMENTS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2712
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

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Entered Thursday, April 15, 2021

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

[1] Appellant REO Investments LLC ("REO") appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real properties, parcel numbers 641-16-067, 641-17-081, and 642-22-100, 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 during the BOR hearing, the BOR set forth a list of sales of properties near the subject properties. Although this list was discussed by

the witnesses and members of the BOR, it was not included in the transcript on appeal. After further attempts by this Board to attempt to obtain the list, the BOR certified that it is not available. As such, are unable to consider the list of sales in our determination.

[2] The subject properties are single-family rental properties, and the Fiscal Officer initially assessed their values at $55,300, $57,700, and $51,600, respectively. REO filed a complaint with the BOR seeking reductions in value to $30,000, $30,000, and $25,000, respectively. At the BOR hearing, REO presented testimony and written reports of appraiser Michael Thomas. Thomas testified that he viewed the interior of each property and relied primarily on the sales comparison approach to value for each appraisal. Thomas stated that he looked at only arm's-length sales that were exposed to the market through the multiple listings service ("MLS") and that took place within the twelve months preceding the tax lien date. Thomas explained that he chose which properties were most comparable based on not only location proximity, but also similarity in condition and effective age to the relevant subject. Thomas also performed an income analysis that was offered to the BOR as an addendum because it was not included in his original report. Thomas indicated that he did not consider the income approach in his conclusion of value, but it supported his sales comparison analysis.

[3] REO also presented testimony from its managing member, Frank Dinardo, regarding its business model and the condition of the properties. Dinardo testified that REO is a building/renovation company that also purchases distressed properties, fixes the exterior and quickly renovates the interior, and rents them to tenants. Dinardo stated that the repairs to properties that he intends to rent are done to make them free of any violations but not as nice as other properties that he renovates for owner-occupants.

[4] The BOR members questioned Thomas and Dinardo extensively, challenging the

underlying assumption of Thomas's methodology that all rental properties are in below-average condition and should not be compared with owner-occupied homes. Following the hearing, the BOR issued a decision maintaining the initially assessed valuation. On the Oral Hearing Journal Summary, the BOR indicated that it rejected the appraisal because Thomas used only lower value sales based on his distinction between "rental quality" and "owner quality." One member of the BOR dissented, though he observed that Thomas "consistently" chose to use the lower end of the market while all photographs appear to reflect the properties were in average (as opposed to below average) condition.

[5] REO appealed the BOR's decision, again seeking a reduction in value. On appeal, REO again relied on the Thomas appraisals and testimony from Dinardo during the BOR hearing as support for the requested reductions. REO argues that this Board should adopt the values determined by Thomas because they are the only evidence presented from an independent third-party expert. The county appellees argue that the BOR properly rejected the appraisals as not being credible because Thomas used lower-priced sales based on his distinction between rental quality and owner quality.

[6] When cases are appealed from a board of revision to this Board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). 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.

[7] 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, in addition to Dinardo's testimony regarding the physical characteristics of the properties, REO relies on appraisal reports prepared by Thomas, a state-certified appraiser that personally viewed the interior and exterior of each subject property. Thomas appeared to testify before the BOR, describe his methodology, and explain the basis for his conclusions.

[8] Upon review of Thomas's appraisals, which provide an opinion of value as of tax lien date, were prepared for tax valuation purposes, and attested to by a qualified expert, we find that they constitute competent and probative evidence of value. We further find that the value conclusions are reasonable and well-supported. We acknowledge the BOR's criticisms of his analysis, but we find that Thomas sufficiently explained the basis for his conclusions. We agree with the BOR that it would be improper for an appraiser to simply assume that because the subject properties are utilized as residential rental properties, they must be in below-average condition and, consequently, restrict comparable properties to only those in the lower end of the range. In this case, however, despite his comments to that effect, Thomas further explained that he personally viewed the properties and the condition of each, which he considered as he narrowed down sales to those properties that were most similar to the subject properties. Thus, the record shows that Thomas did not merely assume that the properties were in "below average" condition or "average condition" and choose the comparable properties based on that assumption. Rather

Thomas applied his observations of the properties and his knowledge of the market to choose those properties most similar and to make any necessary adjustments. Accordingly, we find that, in the absence of any persuasive evidence or argument to the contrary, Thomas's appraisals reflect the value of the subject real properties as of the tax lien date.

[9] 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 641-16-067

TRUE VALUE $37,000

TAXABLE VALUE $12,950

PARCEL NUMBER 641-17-081

TRUE VALUE $34,000

TAXABLE VALUE $11,900

PARCEL NUMBER 642-22-100

TRUE VALUE $26,000

TAXABLE VALUE $9,100

OHIO BOARD OF TAX APPEALS

ELAINE MOCNIK, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-2024
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

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Entered Monday, April 19, 2021

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

[1] The appellant property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 001-16-155, for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, hearing before this Board, and property owner's motion for reconsideration and associated filings.

[2] The property owner filed a complaint with the BOR, requesting the subject property's value be reduced from $136,000 to $122,000. By way of the complaint, the property owner disclosed that the subject property had been the subject of a $136,000 transfer in September 2017. The BOR held a hearing on the matter at which the property owner appeared to submit argument and/or evidence. In doing so, she submitted an appraisal report performed by Alan

Weiner, which opined the subject property's value to be $122,000 as of January 1, 2019, and requested that the subject property be revalued accordingly. She noted that the appraisal report provided an inaccurate photograph for the neighboring property, Comparable Sale One, which was substantially similar to the subject property and sold for $90,000 in 2019. The BOR members examined the property owner and noted that they had unanswered questions for Weiner about the appraisal report. The BOR determined that the property owner's $136,000 purchase of the subject property was the best indication of its value and issued a written decision that retained the subject property's initially assessed value. This appeal ensued.

[3] This Board held a virtual hearing at which the property owner and counsel for the county appellees appeared. (We note that there were technical issues during the hearing.) The property owner submitted Weiner's updated appraisal report, which provided an accurate photograph of the neighboring property, and again requested that the subject property be revalued at $122,000 consistent with the appraisal report. On cross-examination, she testified as to the facts and circumstances of her $136,000 purchase of the subject property in September 2017. However, she asserted that she overpaid for the subject property because of pressing family needs and that she did not understand the various defects of the subject property, i.e., problems with mold and negative effects of nearby railroad tracks on the home. In their case in chief, the county appellees argued that the subject property had been valued consistent with its recent, arm's-length transfer, which was the best indication of its value, and that the appraisal report should be disregarded because Weiner was not present to testify. The property owner requested an opportunity to call him on the phone so that he could testify; however, the attorney examiner denied her request.

[4] Before we consider the merits of this appeal, we must first dispose of preliminary issues.

As previously noted, the attorney examiner denied the property owner's request to call Weiner on the phone to testify during the hearing. The attorney examiner established a short briefing schedule to allow for the filing of a motion for reconsideration of her ruling and a motion contra. After the hearing, the property owner filed a motion for reconsideration, requesting that this Board reconvene a hearing at which Weiner could testify; the county appellees filed a motion contra, objecting to the request. The property owner filed a reply brief, noting that the BOR failed to make her aware of the basis of its decision, which she learned at this Board's hearing, and that she should have an opportunity to remediate that claimed deficiency.

[5] Upon review, we are constrained to deny the property owner's motion for reconsideration. The property owner did not disclose Weiner as a witness consistent with the case management schedule provided in Ohio Adm. Code 5717-1-07(A)(2)(d), which required the property owner to "disclose to all other parties the witnesses and evidence upon which the appeal is based not more than one hundred fifty days after the filing of a notice of appeal[.]" See also *Krehnbrink v. Testa*, 148 Ohio St.3d 129, 2016-Ohio-3391, ¶39 (Kennedy, J., concurring in judgment only) ("'Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation[]' [to] 'prevent unfair surprise and the secreting of evidence by ensuring the free flow of information.' *Hickman v. Taylor*, 329 U.S. 495, 507, *** (1947)."). At this Board's hearing, the property owner noted that she was not an attorney and unfamiliar with the rules of litigation. Unfortunately, by proceeding in a pro se capacity, the property owner risked the possibility that she may not have a complete understanding of the real-property challenge process; however, her election to proceed pro se does not relieve her of the responsibilities imposed upon her. See, e.g., *Phelps v. Ohio Atty. Gen.*, Franklin App. No. 06AP-751, 2007-Ohio-14, ¶8 ("We recognize that appellants are acting pro se. Nevertheless, a pro se litigant 'is held to the same rules, procedures and standards as those litigants represented by counsel and

must accept the results of her own mistakes and errors."'). Moreover, upon the filing of this appeal, this Board issued a docketing letter, which directs parties to familiarize themselves with the Board's rules and to act consistent with case management schedules. BTA Docketing Letter Dated October 26, 2020, ¶2 ("In anticipation of the upcoming hearing, parties must familiarize themselves with the Board's rules and comply with the applicable case management schedule ***.").

[6] We note that we overruled the county appellees objection to the submission of Weiner's updated appraisal report although it was not disclosed consistent with the case management schedule. Given that the appraisal report was provided at the BOR hearing and given that the appraisal report was only changed to provide an accurate photograph of Comparable Sale One, we concluded that there was no prejudice to the county appellees because there was no substantive change to the appraisal report.

[7] Furthermore, we acknowledge the property owner's argument that she did not know the basis of the BOR's decision until this Board's hearing. The record indicates that the property owner created an account in the electronic case management system, Modria. On November 6, 2020, the county appellees uploaded the certified statutory transcript into this appeal's electronic case file on Modria, at which time the property owner had access to information about the basis of the BOR decision. Thus, we will not reconvene a hearing on this basis.

[8] We proceed to consider the merits of this appeal.

[9] 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 the tax-lien date creates a rebuttable presumption of value in favor of the sale price. *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, ¶14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, ¶41). A proponent may generally meet their initial burden with sale documents that contain basic details about the sale, e.g., sale price, parties, and sale date. *Lunn*, at ¶15 (no additional testimony is usually necessary); *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St. 3d 691, 2017-Ohio-1412, ¶18 (noting that a party need only present minimal evidence of a sale when there is "no real dispute about the basic facts of the sale."). The opposing party must then, to succeed, rebut the presumption created by the sale.

[10] In this matter, the property record card includes a notation that memorializes the property owner's $136,000 purchase of the subject property from Sulejman Dervisevic in September 2017, which created a rebuttable presumption that the subject sale was the best indication of the subject property's value. The burden then shifted to the property owner to rebut such presumption, which she sought to do by arguing that pressing family needs required her to overpay for the subject property and by submitting Weiner's appraisal report.

[11] 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.

[12] Here, the property owner failed to demonstrate that the subject sale occurred under circumstances amounting to compulsion or duress. She primarily argued that pressing family needs required her to purchase a home with affordable utilities, of which there was limited inventory. While we sympathize with the property owner's desire to have a home that met her family's 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 e.g., *Loewengart v. Delaware Cty. Bd. of Revision* (Aug. 31, 2020), BTA No. 2019-1312, unreported (rejecting a claim that an owner overpaid for a property because of her specific health needs); *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, we note that the property owner acknowledged that the parties to the sale spiritedly negotiated the sale price from $138,000 to $136,000, 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. *Lakeside Avenue Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 540 (1996). See, also *Gupta v. Lucas Cty. Bd. of Revision*, 6th Dist. No. L-20-1106, 2021-Ohio-332 (affirming this Board's decision to value a property consistent with its sale price when the property owner argued that he was compelled to overpay for a property because of pressing family needs). Likewise, this Board has found a sale to be the best evidence of value even though a purchaser later found it misunderstood the nature of the purchased property or the purpose for purchasing the property was frustrated based upon a misunderstanding. *Bd. of Edn. of the Columbus City School Dist. v. Franklin Cty. Bd. of Revision* (May 4, 2010), BTA No. 2007-V-972, unreported.

[13] 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.

[14] The property owner primarily argued that Weiner's appraisal report demonstrated that the subject property had been overvalued and was a better indication of the subject property's value. We must reject that argument and Weiner's appraisal report. First, as noted above, the property owner has the burden to rebut the presumptions of the subject sale and submitting contrary evidence, either Weiner's appraisal report or substantially similar neighboring home selling for less, does not automatically satisfy such burden. Second, Weiner did not testify at the BOR hearing or this Board's hearing. As a result, he did not authenticate the appraisal report and was not subject to examination by the BOR members and this Board's attorney examiner or cross-examination by counsel for the county appellees. This Board has repeatedly rejected appraisal reports that are not authenticated by their authors at hearings. See e.g., *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported. Moreover, this Board relies on the fundamental proposition that "[a]n expert's opinion of value in a tax valuation case is of little help to the trier of fact if the expert does not explain the basis for the opinion[,]" and, thus, we find the lack of any testimony from Weiner to be significant. *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997). For example, though he acknowledged the property owner's $136,000 purchase of the subject property in September 2017, there is no explanation for Weiner's failure to evaluate such sale in his analysis. The appraisal report notes that "[a]t the time of the purchase[,] the owners were aware of the proximity of the [railroad] tracks, but underestimated the financial impact [of] their negative external impact." Statutory Transcript at Appraisal Report at 3. As a result, we are left to speculate whether Weiner intentionally ignored the subject sale, which *may*not have been proper for real-property valuation purposes, because the record is void of his testimony. Compare *Copley-Fairlawn City School Dist. Bd. of*

Edn. v. Summit Cty. Bd. of Revision, 147 Ohio St.3d 503, 2016-Ohio-1485.

[15] We must also reject the sale of the neighboring property, Comparable Sale One in the appraisal report, as competent, credible, and/or probative evidence of the subject property's value. There is no indication that the property owner had firsthand knowledge of the facts and circumstances of the transfer of the neighboring property. 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, at ¶19. Furthermore, because the property owner has not rebutted the presumption that her $136,000 purchase of the subject property was a recent, arm's-length sale indicative of value, it is unnecessary to look at the sales of other properties.

[16] 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"). Absent an affirmative demonstration that the subject sale was not a recent, arm's-length transaction, we find it to be reflective of the subject property's value as of the relevant tax lien date:

True Value: $136,000

Taxable Value: $47,600

OHIO BOARD OF TAX APPEALS

KATHLEEN J. ZRELAK, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-362
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Tuesday, April 27, 2021

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 Summit 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, the affidavit of the executive assistant of the Summit County BOR that there is no record of a decision issued for the subject property. R.C. 5703.02 grants

the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander* 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.

OHIO BOARD OF TAX APPEALS

ALFRED H AND MARGUERITA C. QUARLES, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1548 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, April 27, 2021

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

[1] Appellant property owners ("Owners") appeal the decision of the Board of Revision ("BOR") which dismissed their complaint as an impermissible second filing within a triennium period. The Board of Education ("BOE") moves this Board to dismiss this matter, which we

will construe as a motion to affirm the BOR's dismissal. This matter is now decided upon the BOE's motion, appellants' reply thereto, appellants' notice of appeal, and the statutory transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01.

[2] In its motion, the BOE argues that the underlying complaint failed to comply with the jurisdictional requirements of R.C. 5715.19(A)(2), and therefore is a prohibited second filing within a triennium period. The BOE provided documentation that the owners filed tax year 2018 complaints for parcel numbers 681-27-037, 681-27-038, 681-27-039, and 681-27-040. Motion, Exhibit 1. Eventually the BOR issued decisions to maintain the Fiscal Officer's 2018 value for each of the parcels. Motion, Exhibits 2-3. The BOR's decisions were appealed to this Board and docketed as BTA Nos. 2019-964, 2019-265, consolidated. At this Board, the county appellees moved to remand the appeals for lack of jurisdiction; however, we found no merit in the county appellees' assertion that the underlying complaints were filed by a person unauthorized to do so, and therefore denied their motion. We then issued a decision that maintained the Fiscal Officer's 2018 value. See *Quarles v. Cuyahoga Cty. Bd. of Revision* (Dec. 12, 2019), BTA No. 2019-964 consolidated, unreported.

[3] Thereafter, on March 26, 2020 the owners filed a tax year 2019 complaint for the same parcels; however, the complaint did not claim any of the circumstances required by R.C. 5715.19(A)(2) as a reason for the subsequent complaint. Instead, the owners wrote "also see R.C. Section 5715.19(A)(3)" as justification for filing another complaint in the same triennium period. The applicable triennium in Cuyahoga County is 2018, 2019, and 2020, the first of these years having been the one in which the sexennial reappraisal was completed. See, generally, R.C. 5713.01(B), 5715.33, and 5715.34. No one appeared at the BOR hearing; ultimately the BOR dismissed the complaint as an impermissible second filing within a triennium period.

[4] R.C. 5715.19(A)(3) provides that if "a board of revision, the board of tax appeals, or any court dismisses a complaint" by reason of unauthorized practice of law, the party affected "may refile the complaint." Previously, this Board considered a similar argument "and concluded that the statute permits the affected party to refile the *same* complaint for the same tax year and does not permit the complainant to refile a new complaint in a later year within the same triennial period. (Emphasis added) See, e.g., *W9/GLM Real Estate Ltd. Part. v. Portage Cty. Bd. of Revision* (Aug. 8, 2003), BTA No. 2002-M-2136, 2003 Ohio Tax Lexis 1050, unreported." Although the owners appear to argue that the underlying complaint was permitted by R.C. 5719(A)(3), it is undisputed their previous complaints were for tax year 2018 and the present complaint is for tax year 2019. Further, the tax year 2018 complaints were not dismissed for the unauthorized practice of law by the BOR, by this Board, or by any court.

[5] R.C. 5715.19(A)(2) expressly limits the number of times a complaint may be filed within an applicable three-year period but allows multiple filings under certain circumstances. "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.* year 2019 complaint failed to allege any of the circumstances as required by the statute. Upon review, we find that underlying complaint failed to invoke the jurisdiction of the BOR. As such, the BOR's decision is hereby affirmed.

OHIO BOARD OF TAX APPEALS

KENNETH WRENN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-951
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

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Entered Tuesday, April 27, 2021

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 timely file a copy of his notice of appeal with the Board of Revision ("BOR"). In their motion, the county appellees claim that the BOR mailed its decision on June 9, 2020, and appellant filed his notice of appeal with the BOR on July 14, 2020. The county appellees argue that because the notice of appeal was not filed within 30 days of the BOR's decision, this Board lacks jurisdiction to consider the merits of the appeal and it must be dismissed. Appellant responded, seeking to set aside the appellees' motion but not denying the assertions made by the county appellees.

During this Board's small claims telephone hearing, appellant asserted that he needed

more time to respond to the motion and would be filing an additional response. Appellant has failed to file any additional written argument or documentation to demonstrate that he timely filed. We note that appellant filed his notice of appeal with this Board on July 10, 2020, 31 days after the BOR mailed its decision.

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, must be dismissed.

OHIO BOARD OF TAX APPEALS

REO INVESTMENTS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2713
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

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Entered Tuesday, April 27, 2021

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

[1] Appellant REO Investments LLC ("REO") appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real properties, parcel numbers 642-19-091, 643-34-038, and 645-34-022, 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 single-family rental properties, and the Fiscal Officer initially assessed their values at $60,000, $63,700, and $56,500, respectively. REO filed a complaint with the BOR seeking reductions in value to $15,000, $30,000, and $30,000, respectively.

[3] The complaint at issue in the present appeal is one of several related complaints that involve similar evidence and testimony. BOR convened hearings on the matter during the same day, with the hearing related to BTA No. 2019-2712 (BOR case number 641-16-067-2018) taking place first. The BOR incorporated the record for this hearing into the present appeal. To the extent that the hearing record and evidence were not already certified in the transcript for this case, we incorporate the record from those BOR proceedings into the record for the present appeal. We note that during the BOR hearing for that case, the BOR set forth a list of sales of properties near the subject properties. Although this list was discussed by the witnesses and members of the BOR, it was not included in the transcript on appeal. After further attempts by this Board to attempt to obtain the list, the BOR certified that it is not available. As such, we are unable to consider the list of sales in our determination.

[4] During the incorporated BOR hearing, REO presented testimony and written reports of appraiser Michael Thomas. Thomas testified that he viewed the interior of each property and relied primarily on the sales comparison approach to value for each appraisal. Thomas stated that he looked at only arm's-length sales that were exposed to the market through the multiple listings service ("MLS") and took place within the twelve months preceding the tax lien date. Thomas explained that he chose which properties were most comparable based on not only location proximity, but also similarity in condition and effective age to the relevant subject. Thomas also performed an income analysis that was offered to the BOR as an addendum because it was not included in his original report. Thomas indicated that he did not consider the income approach in his conclusion of value, but it supported his sales comparison analysis.

[5] REO also presented testimony from its managing member, Frank Dinardo, regarding its business model and the condition of the properties. Dinardo testified that REO is a building/renovation company that also purchases distressed properties, fixes the exterior and

quickly renovates the interior, and rents them to tenants. Dinardo stated that the repairs to properties that he intends to rent are done to make them free of any violations but not as nice as other properties that he renovates for owner-occupants.

[6] At the BOR hearing regarding the subject properties, REO relied on testimony from Dinardo regarding the condition of the properties and REO's purchase of parcel number 642-19-091. Dinardo explained that REO purchased the property from the City of Euclid Land Reutilization Program on June 20, 2017, for $3,275. Dinardo testified that REO finished all exterior repairs during the fall after the purchase, worked on the interior during the winter, and finished the renovations by April 2018. Dinardo stated that after the repairs, REO had spent roughly $40,000 total, though it would have been more if REO had paid retail for the work and had not completed the repairs itself.

[7] For the remaining two properties, REO presented testimony and reports from Thomas. The BOR questioned Thomas extensively regarding his choices of comparable properties. Following the hearing, the BOR issued a decision maintaining the initially assessed valuation. On the Oral Hearing Journal Summary, the BOR indicated that it rejected the appraisal because Thomas used only lower value sales based on his distinction between "rental quality" and "owner quality." One member of the BOR dissented, though he observed that Thomas "consistently" chose to use the lower end of the market while all photographs appear to reflect the properties were in average (as opposed to below-average) condition. There is no indication that the BOR considered the sale of parcel number 642-19-091.

[8] REO appealed the BOR's decision, again seeking a reduction in value based on the sale of parcel number 642-19-091 and the Thomas appraisals as support for the requested reductions. REO argues that this Board should find value based on the sale and the Thomas appraisals because they are the only evidence presented from an independent third-party expert.

The county appellees argue that the BOR properly rejected the appraisals as not being credible because Thomas used lower-priced sales based on his distinction between rental quality and owner quality. The county appellees provided no argument to challenge the sale.

[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 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.

[10] 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 ,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.

[11] In this case, there is no dispute that the parcel number 642-19-091 transferred among unrelated parties for $3,275 recent to the tax lien date. There has been no challenge to the reliability of this sale nor has the BOR provided a basis for its rejection. While we acknowledge that the subsequent renovations could have rendered the sale too remote from the tax lien date, the repairs were completed in April 2018 there is no evidence in this record that the subject property was in such a different condition on January 1, 2018 that the June 2017 sale is not reliable evidence of value. Accordingly, we find that the sale provides the best evidence of the subject's value on the tax lien date.

[12] With respect to the remaining parcels, we observe that in the absents of a recent arm's-length sale of a property, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964). In this case, in addition to Dinardo's testimony regarding the physical characteristics of the properties, REO relies on appraisal reports prepared by Thomas, a state-certified appraiser that personally viewed the interior and exterior of each subject property. Thomas appeared to testify before the BOR, describe his methodology, and explain the basis for his conclusions.

[13] Upon review of Thomas's appraisals, which provide an opinion of value as of tax lien date, were prepared for tax valuation purposes, and attested to by a qualified expert, we find that they constitute competent and probative evidence of value. We further find that the value conclusions are reasonable and well-supported. We acknowledge the BOR's criticisms of his analysis, but we find that Thomas sufficiently explained the basis for his conclusions. We agree with the BOR that it would be improper for an appraiser to simply assume that because the subject properties are utilized as residential rental properties, they must be in below-average condition

and, consequently, restrict comparable properties to only those in the lower end of the range. In this case, however, despite his comments to that effect, Thomas further explained that he personally viewed the properties and the condition of each, which he considered as he narrowed down sales to those properties that were most similar to the subject properties. Thus, the record shows that Thomas did not merely assume that the properties were in "below average" condition or "average condition" and choose the comparable properties based on that assumption. Rather, Thomas applied his observations of the properties and his knowledge of the market to choose those properties most similar and to make any necessary adjustments. Accordingly, we find that, in the absence of any persuasive evidence or argument to the contrary, the Thomas appraisals reflect the value of the subject real properties as of the tax lien date.

[14] 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 642-19-091

TRUE VALUE $3,280

TAXABLE VALUE $1,150

PARCEL NUMBER 643-34-038

TRUE VALUE $33,000

TAXABLE VALUE $11,550

PARCEL NUMBER 645-34-022

TRUE VALUE $38,000

TAXABLE VALUE $13,300

OHIO BOARD OF TAX APPEALS

MILLICENT L CARTER, WIDOW OF FLOYD S CARTER JR, (et. al.), Appellant(s), vs. LUCAS COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1490 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MILLICENT L CARTER, WIDOW OF FLOYD S CARTER JR
Represented by:
MILLICENT (FOR FLOYD) CARTER
ADMINISTRATOR
52 BIRCKHEAD Pl
TOLEDO, OH 43608

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 Thursday, April 29, 2021

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

This matter is before this Board upon the filing of dueling motions filed by the parties. First, the county appellees filed a motion to dismiss, asserting that the appellant filed this appeal well beyond the statutory deadline to do so. Second, the appellant subsequently filed a motion to remand, requesting that this matter be returned to the Lucas County Board of Revision ("BOR") to allow her to present evidence of the subject property's value at a hearing. We proceed to consider the motions based upon the notice of appeal and parties' motions along with any supporting documentation.

Because we must first determine whether we have authority to consider anything more

than the county appellees' motion to dismiss, we begin our analysis there. The county appellees' motion to dismiss asserted that the BOR mailed its decision to the appellant on July 26, 2020, but the appellant did not file her notice of appeal with this Board until September 4, 2020. We also note that the DTE-Form 3, certified by the County Auditor, suggests that the appellant did not file a copy of the notice of appeal with the BOR. The appellant conversely argued that the statutory filing deadline for notices of appeal was tolled by H.B. 197 and, therefore, this appeal should be considered timely filed.

R.C. 5717.01 allows for an appeal to be taken to this Board from a decision of a county board of revision provided such appeal is filed with this Board and the board of revision within thirty days after notice of the decision of the county board of revision is mailed. See, also R.C. 5715.20. "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 review, we find the appellant's argument to be unpersuasive. This Board has concluded that H.B. 197 does not apply to notices of appeal to this Board. See, e.g., *Chapman v. McClain* (Oct. 13, 2020), BTA No. 20-1162, unreported, appeal pending Supreme Court Nos. 2020-1389, et al. As such, we are constrained to conclude that the appellant's notice of appeal is untimely and must conclude that we lack jurisdiction to consider her motion to remand and/or the merits of this appeal. However, even if we had had jurisdiction to consider the motion to remand, we would have concluded that it lacked merit as the record indicates that the BOR satisfied its statutory duty to provide the appellant with proper notice of the BOR hearing. R.C. 5715.19(C). We would have also concluded that the appellant's argument and evidence were not competent, credible, and/or probative evidence of the subject property's value. See, e.g., *Carr v. Cuyahoga Cty. Fiscal Officer*, 8th Dist. Cuyahoga No. 104652, 2017-Ohio-1050, ¶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.").

Upon consideration of the existing record, and for the reasons stated in the county appellees' motion, we find that the appellant did not timely appeal from a BOR decision, which deprives this Board of jurisdiction to consider the merits of this appeal. Accordingly, this matter is dismissed.

OHIO BOARD OF TAX APPEALS

CLYDE T. REEL, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-2198
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LICKING COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - CLYDE T. REEL
OWNER
5071 TAHQUAMENON TRAIL
FLUSHING, MI 48433

For the Appellee(s) - LICKING COUNTY BOARD OF REVISION
Represented by:
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LICKING COUNTY
20 S. SECOND ST.
NEWARK, OH 43055

LAKEWOOD LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
5747 PERIMETER DR; SUITE 150
DUBLIN, OH 43017

Entered Monday, May 17, 2021

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

[1] Clyde Reel appeals from a decision of the Licking County Board of Revision ("BOR") removing parcel 016-037572-00.000 from the current agricultural use value ("CAUV") program for tax year 2019. We decide the case on the notice of appeal, the statutory transcript, and the record of this Board's virtual hearing ("H.R."). For the following reasons, we must affirm the BOR's decision.

[2] The subject property is composed of 39.5 acres, almost entirely timberland. Reel's family has held title of the property for some time, and Reel reenrolled the land in the CAUV program shortly after he acquired title. In 2014, Reel placed the property under a timber

management plan, which listed many recommendations on how to maximize growth of quality timber. In 2016, the Auditor's representative notified Reel by letter that she had recently inspected the property and found the property improperly managed. H.R., Ex. E. The letter stated the Auditor's representative "viewed very little management and a need for proper treatment and eradication of excessive grapevine, Bush Honeysuckle/Vine, Tree of Heaven and Asian Bittersweet." Id. The letter notified Reel that the property was eligible "because of [his] timber management program" and he needed to "follow said plan" to be eligible for CAUV. Id. The letter also told Reel the Auditor's office would conduct routine inspections over the "next 18-24 months[]" to ensure compliance.

[3] In November 2018, the Auditor notified Reel that the property would be removed from the CAUV program because the Auditor's representative again discovered Reel had not managed the property in accordance with his management plan and had not worked to remove invasive growth, which was a threat to the timber. Reel appealed to the BOR, which held a hearing, at which Reel testified. Reel's testimony at the BOR hearing was very similar to the testimony he provided at our hearing, which we discuss below. The BOR issued a decision affirming the removal from the CAUV program, and Reel appealed.

[4] At our hearing, Reel testified along with two family members, his wife and daughter, about the use of the property. He testified he purchased the property primarily to hunt. He acknowledged the county had inspected the property several times, and he testified he was notified that he needed to address invasive species in accordance with CAUV rules.

[5] He testified that from 2016-2019 he only used the property for timber. He testified he never cut the timber, with the exception of some firewood for personal use. On cross-examination, Reel acknowledged very little maintenance had been conducted on the property. However, he did note that his cousin performed some maintenance such as mowing. He also acknowledged the timber management plan required control of certain kinds of vines; however, he argued such vines were native to his area.

[6] The BOR called Vince Untied, Deputy Director of Licking County's CAUV program. The BOR also submitted eight exhibits including the forestry management plan, various photographs of the property, and various communications between the Auditor's office and Reel. Untied has several degrees and certifications related to natural resources. He testified landowners within the woodlands program must control invasive (native or nonnative) and clearly mark boundaries of property. He testified he had inspected the property three times but found Reel had not complied with the management plan. Untied then testified boundaries were not marked and invasive species were not removed. He testified the invasive species needed to be removed because they would harm or even destroy surrounding timber. He indicated invasive species were "rampant." Untied authenticated a number of photographs of the property indicating showing species, e.g., grapevines, were uncontrolled. After the hearing, the Board invited the parties to unpack the legal issues in briefs. The parties decided not to do so.

[7] 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* 2012-L-2291, unreported. (July 26, 2013), BTA No.

[8] The CAUV program grants preferential tax treatment of "land devoted exclusively to agricultural use." R.C. 5713.31 (defining "land devoted exclusively to agricultural use). Our analysis requires us to determine if the 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, Accord, *Stults v.Delaware Cty. Bd. of Revision* (Aug. 20, 2004), BTA No. 2003-P-287, unreported. In other words, the property must be used primarily for profit. We note the property is not under an agreement with the federal government for conservation, meaning it does not qualify under that provision. See R.C. 5713.30(A)(1)(c).

[9] Because this case is only about timberland, we turn to the definition of "land devoted exclusively to agricultural use" as it relates to timber. See R.C. 5713.30. Because the property is larger than ten acres, R.C. 5713.30(A)(1) applies. That provision provides a property is used exclusively for agricultural purposes when it is used for commercial production of timber or for noncommercial production of timber if contiguous to property that otherwise qualifies. We see nothing in the record to suggest Reel owns surrounding property otherwise qualified. In other words, to succeed, Reel must show the property is used commercially. See *Dircksen v. Greene Cty. Bd. of Revision*, 109 Ohio St.3d 470, 2006-Ohio-2990.

[10] This Board has long recognized "[t]he difficulty in determining" when property is 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, unreported. In an appeal from our *Fife* decision, the Ohio Supreme Court held we should make a commerciality finding for timberland based on the totality of the circumstances. See *Fife v. Greene Cty. Bd. of Revision*, 120 Ohio St.3d 442, 2008-Ohio-6786.

[11] Based on the totality of the circumstances, we find Reel has not carried his burden. We first note no timber has been commercially harvested in many years, if ever. While certainly not dispositive under *Fife*, it is one factor to be considered. Second, the record before us is clear the property was not maintained in accordance with the management plan. We find Untied's testimony and photographs helpful on this point. The purpose of the management plan was to protect the timber and to improve the quantity and quality of later harvests. The photographs confirm Untied's testimony that the trees were overgrown with invasive species that could harm the timber. Third, the failure to set clear borders, while not singularly dispositive, also supports the BOR's finding that the property was not actively managed. Other facts also lend weight to the BOR's argument. For example, Reel testified his primary purpose in keeping the land was to hunt. It also appears that at least some recreational activities occur on the property. Based on this

evidence, we must find Reel has not carried his burden. We note that nothing in our decision prevents Reel from reapplying in the future at a time when the property qualifies under Ohio law.

[12] The decision of the BOR is affirmed.

OHIO BOARD OF TAX APPEALS

SHUMEI MAN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-2031
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - SHUMEI MAN
Represented by:
SHUMEI MAN
3435 MIDDLE POST LN
ROCKY RIVER, OH 44116-3939

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

Entered Monday, May 17, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. (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

JENNIFER & LESLIE LEON II, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-357 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JENNIFER & LESLIE LEON II
OWNER
3156 ROSEBAY BLVD
NORTON , OH 44203

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

Entered Monday, May 3, 2021

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

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellants did not file an initial complaint with the Summit County Board of Revision ("BOR") and thus no final decision has been issued. Appellants did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county BOR, and appellants' notice of appeal.

The appellants filed a notice of appeal with this Board, however the documentation attached to appellants' notice of appeal does not constitute a BOR decision. The county appellees attached to their motion, the affidavit of the executive assistant to the Fiscal Officer that there is no record of a decision issued for the subject property. R.C. 5703.02 grants the

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

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellants have not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

ROSEN LIVING TRUST DATED 10/31/88 FRANK & RENE ROSEN, TRUSTEES 24623 CALLE ARDILLA, CALABASAS, CA 91302, (et. al.),	)	CASE NO(S). 2020-1928
Appellant(s),	)	(REAL PROPERTY TAX)
vs.	)	DECISION AND ORDER
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
Appellee(s).		

APPEARANCES:

For the Appellant(s) - ROSEN LIVING TRUST DATED 10/31/88 FRANK & RENE ROSEN, TRUSTEES 24623 CALLE ARDILLA, CALABASAS, CA 91302
Represented by:
MARK ROSEN
24623 CALLE ARDILLA
CALABASAS, CA 91302

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

GARFIELD HEIGHTS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
KARRIE M. KALAIL
PETERS, KALAIL & MARKAKIS CO., LPA
6480 ROCKSIDE WOODS BLVD. SOUTH
SUITE 300
CLEVELAND, OH 44131-2222

Entered Monday, May 10, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. (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 PETER KRALY, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-402
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - RICHARD PETER KRALY
OWNER
18 BRISTON LANE
ROCKY RIVER , OH 44116

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 Monday, May 17, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of

appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

KATHLEEN HAYES, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-111
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - KATHLEEN HAYES
Represented by:
MS. KATHLEEN T. HAYES
OWNER
3295 DALEFORD RD
CLEVELAND, OH 44120-3435

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

Entered Monday, May 17, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

RED SHIFT PROPERTIES LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1877 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - RED SHIFT PROPERTIES LLC
Represented by:
BRIAN BENCHECK
BOTTLE HOUSE BREWING CO. THE UPS STORE #1240
13940 CEDAR RD
UNIVERSITY HTS, OH 44118-3223

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

LAKEWOOD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Monday, May 17, 2021

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 ("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 board of revision provided such appeal is filed with this Board *and the BOR within thirty days* after notice of the decision is mailed by the county BOR. (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 responded but did not provide documentation to demonstrate that a notice of the appeal was timely filed with 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

TED & IRENE THEODORE, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-392 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TED & IRENE THEODORE
Represented by:
TED & IRENE THEODORE
OWNER
2330 HERON CREST DR
CUYAHOGA FALLS, OH 44223

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

Entered Wednesday, May 19, 2021

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

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellants did not file an initial complaint with the Summit County Board of Revision ("BOR") and thus no final decision has been issued. Appellants did not respond to the motion. This matter is now decided upon the motion, the statutory transcript certified by the county BOR, and appellants' notice of appeal.

The appellants filed a notice of appeal with this Board, however the documentation attached to appellants' notice of appeal does not constitute a BOR decision. The county appellees attached to their motion, the affidavit of the Executive Assistant to the Fiscal Officer that there is no record of a decision issued for the subject property. R.C. 5703.02 grants the

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

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellants have not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

MICHAEL E. DAVENPORT, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-388 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MICHAEL E. DAVENPORT
OWNER
149 GRAND AVE
AKRON , OH 44302

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

Entered Wednesday, May 19, 2021

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 Summit 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, the affidavit of the executive assistant to the fiscal office 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

JOHN F. NOELL, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-2160
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JOHN F. NOELL
Represented by:
JOHN NOELL
487 BASSET ROAD
BAY VILLAGE, OH 44140

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 19, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of

appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

DENNIS EVANS TR, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1652
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - DENNIS EVANS TR
Represented by:
DENNIS EVANS
OWNER
863 S. HAMILTON RD
COLUMBUS, OH 43213

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

Entered Thursday, May 20, 2021

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 18, 2020, the appellant filed an application for remission with this Board. Appellant did not include a copy of a Board of Revision ("BOR") decision. The county appellees attached to their motion 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* 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

DIRE4 INSTRUCTIONAL SUPPORT SYSTEMS, INC., (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2020-1434
vs.	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - DIRE4 INSTRUCTIONAL SUPPORT SYSTEMS, INC.
Represented by:
MICHAEL SOBIESKI
ACCOUNTANT
6582 HUNTLEY RD
COLUMBUS, OH 43229-1012

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

Entered Thursday, May 20, 2021

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 1, 2020, the appellant filed an application for remission with this Board. Appellant did not include a copy of a Board of Revision ("BOR") decision. The county appellees attached to their motion 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* 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

IRENE DEWEESE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1549
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CLERMONT COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - IRENE DEWEESE
MS.
2161 STATE ROUTE 125
AMELIA, OH 45102

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 Monday, May 24, 2021

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

This matter is now considered following this Board's issuance of an order to show cause why this matter should not be dismissed for lack of jurisdiction. *Deweese v. Clermont Cty. Bd. of Revision* (Interim Order, Jan. 12, 2021), BTA No. 2020-1549, unreported. As indicated in our earlier order, it appears that the appellant may not be appealing from an (adverse) decision of the Board of Revision ("BOR"). The appellant did not respond to our order.

R.C. 5703.02 grants this Board 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 board of tax appeals within thirty days after *notice of the decision of the county board of revision* is mailed as provided in division of (A) of section 5715.20 the Revised Code." (Emphasis added.) Adherence to the conditions imposed by R.C. 5717.01 is essential to

establishing jurisdiction before this Board. See *Am. Restaurant & Lunch Co. v. Glander*, 147 Ohio St. 147 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990).

The appellant has presented no indication that she appeals from an adverse decision issued by the BOR, from which this appeal could be taken. Based upon the limited record before us, it appears that the appellant has been granted the relief that she sought from the BOR. As such, we conclude that there is no justiciable issue before us. See *Kelsch v. Hamilton Cty. Bd. of Revision* (Feb. 7, 2003), BTA Nos. 2002-T-1271 et al., unreported (dismissing appeals on the ground that appellant was not an aggrieved party who had standing to appeal since he received the values requested). Accordingly, the appellant has failed to invoke this Board's jurisdiction and this matter is dismissed.

OHIO BOARD OF TAX APPEALS

ROBERT OTTO CARSON, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-2265
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - ROBERT OTTO CARSON
670 BROADWAY AVENUE
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 Monday, May 24, 2021

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

[1] Robert Otto Carson, an attorney, appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the Fiscal Officer's value of parcel 812-13-050 for tax year 2018. Because no party requested a hearing, we decide the case on the notice of appeal, the statutory transcript, and any written argument. While Carson appealed under our small claims docket, we reassign it to the regular docket because the property is a commercial store, meaning it does not qualify for small claims under R.C. 5703.021.

[2] The Fiscal Officer valued the subject property at $82,200 for tax year 2018. Carson filed a valuation complaint seeking a value of $55,000 citing a sale for that amount that occurred on December 31, 2018. The fact of the complaint lists the owner as Lawrence Graceffo, Sr., trustee, as the owner. On line 9, Carson wrote, "Real Property sold by Trustee to me at arms length as documented by the recorded Land Contract." Carson participated in the BOR hearing. He testified he purchased the property from Graceffo, Carson's neighbor, but he indicated the

price was negotiated and the parties acted in their own best interest. Carson also testified he owned other property in Cuyahoga County. Carson also presented the land contract, which was signed in early 2018 and recorded soon after. However, he also testified the land contract had not been fully satisfied meaning legal title had not transferred and no conveyance fee statement filed. The BOR retained the Fiscal Officer's value.

[3] When cases are appealed from a BOR 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.). Because the BOR, in its brief, raises a standing issue we start there. Evidence presented at the BOR hearing shows Carson owns adjacent property, meaning he has standing to file a complaint because he owns property in the county. R.C. 5715.29.

[4] Turning to the merits, 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 recent, arm's-length sale "creates a rebuttable presumption that the sale price reflected true value." *Terraza 8* at ¶33. Here, appellant relies on a land contract. The Ohio Supreme Court has held the effective date for a land contract sale is when the conveyance fee statement is filed. See *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092. Here, however, title has not transferred, nor has a conveyance fee statement been filed. As the cases above note, even if the land contract had been completed prior

to the filing of the complaint, a land contract does not transfer title. See *Lodging Industry v. Lorain Cty. Bd. of Revision* (Dec. 19, 2016), BTA No. 2016-794, unreported. A "land contract results in a current transfer of equitable title and a subsequent transfer of legal title upon satisfaction of the contractual terms." Id.

[5] Because we do not find the land contract to be probative evidence of value, we now turn to any remaining evidence of value. Appellant relies only on his opinion of value as an equitable owner. An owner is entitled to provide an opinion of value. *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987). However, for such an 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). Here, we find appellant provided no tangible, probative evidence of value.

[6] For these reasons, we order the property valued as follows for tax year

2018: TRUE VALUE

$82,200

TAXABLE VALUE

$28,770

OHIO BOARD OF TAX APPEALS

DAVID C. HENKEL & LISA C. HENKEL, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-2231 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DAVID C. HENKEL & LISA C. HENKEL
Represented by:
LISA C. HENKEL
OWNER
3480 ROUNDWOOD RD
HUNTING VALLEY, OH 44022

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

ORANGE CITY SCHOOL DISTRICT BOARD OF EDUCATION

Represented by:
JOHN P. DESIMONE
FRANTZ WARD LLP
200 PUBLIC SQUARE, SUITE 3000
CLEVELAND, OH 44114

Entered Monday, May 24, 2021

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

[1] The property owners appeal a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel number 882-20-004, for tax year 2019. 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 owners filed a complaint with the BOR, requesting the subject property be revalued from $1,012,900 to $400,000; the affected Board of Education ("BOE") filed a

countercomplaint, objecting to the request. The BOR held a hearing on the matter, at which both parties appeared. Property owner Lisa Henkel submitted argument and evidence in support of the complaint. She testified that the subject property was purchased for $695,000 in July 2018; that the home subsequently experienced water damage that rendered it uninhabitable in October 2018; that the home was demolished in May 2019; and that the rebuilt home was completed in May 2020. She submitted a packet of documents, which included photographs and statements from various entities. Counsel for the BOE and members of the BOR examined Mrs. Henkel to gain an understanding of the chronology of events. The BOR subsequently voted to reduce the subject property's value to reflect the $695,000 price at which it transferred. This appeal ensued.

[3] This Board convened a virtual hearing at which all parties appeared (though the county appellees experienced technical issues that may have limited their participation). Mrs. Henkel reiterated her prior testimony. Upon questioning, she conceded that there was a home sitused on the subject property on the tax lien date and that it was demolished several months later. Mrs. Henkel was also examined by this Board's attorney examiner and cross-examined by opposing parties.

[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 consideration with the property owner's $695,000 purchase of the

subject property. The settlement statement 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. Therefore, the burden is on the property owners to demonstrate why the subject sale should be rejected.

[6] The property owners argued that the house should have no value because it was uninhabitable because of water damage in October 2018. Beyond the property owners' assertion, there is no corroborating evidence that the home was uninhabitable. As the owners of the subject property, the appellants are competent to testify about the subject property's value, but this Board must determine the appropriate weight to accord the testimony. *Valigore v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 302, 2005-Ohio-1733. We also note that the record lacks information on the property record card to suggest that the home was uninhabitable. 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. Furthermore, the property owners did not submit an insurance claim for the water damage. Because we find that the evidence upon which the appellants base their opinion of value is not probative, Mrs. Henkel's uncorroborated testimony is not sufficient to satisfy their 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."). To the extent that the property owners asserted that defects of the subject property, i.e., the damage that resulted from the water damage, they failed to quantify the specific diminution that resulted from such damage. *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.

[7] Additionally, we do not find the documents submitted at the BOR hearing to be competent, credible, and/or probative evidence of the subject property's value *as it existed on January 1, 2019*. As an initial matter, the documents were offered for the truth of the matter asserted and are, therefore, considered 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."). Moreover, these documents are not relevant as to the subject property's condition and/or value as of January 1, 2019.

[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 are constrained to find that the property owners did not rebut the presumption that the subject sale is the best indication of the subject property's value because their evidence was not competent, credible, and/or probative. As a result, we find that the subject property shall remain as initially assessed as of January 1, 2019:

True Value: $695,000

Taxable Value: $243,250

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). 2020-1054 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TALAWANDA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
GARY T. STEDRONSKY
ENNIS BRITTON, CO. L.P.A.
1714 WEST GALBRAITH ROAD
CINCINNATI, OH 45239

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L. FERGUSON
ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
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KEVIN J. ISON
KEVIN J. ISON PROPERTIES LLC
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Entered Monday, May 24, 2021

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

[1] The Talawanda Schools Board of Education ("BOE") appeals a decision of the Butler County Board of Revision ("BOR"), which determined the value of the subject property, parcel P6600-046-000-001, for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and BOE's written argument.

[2] The BOE filed a complaint with the BOR, requesting the subject property be revalued from $151,670 to $300,000 based upon the price at which it transferred in November 2019; the property owner did not file a countercomplaint. The BOR held a brief hearing on the matter, at

which only the BOE appeared to submit a conveyance-fee statement, which memorialized the $300,000 transfer of the subject property from Sault Associated Limited Partnership to Kevin J. Ison Properties LLC in November 2019, and to argue that the subject property should be valued consistent with the subject sale. In support of its position, the BOE submitted a decision of the Ohio Supreme Court, *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. At the BOR decision hearing, BOR member Mike Gildea noted that the record was void of the facts and circumstances of the subject sale because the property owner did not participate in the BOR hearing. As a result, he stated that there no way to determine whether the subject sale truly reflected the subject property's value. The BOR subsequently issued a decision that retained the subject property's value. This appeal ensued.

[3] None of the parties availed themselves of the opportunity to submit evidence at a hearing before this Board. Only the BOE submitted written argument, asserting that it had satisfied its evidentiary duty to submit evidence establishing the subject property's value and requesting that the subject property be revalued accordingly.

[4] An arm's-length sale constitutes the best evidence of a property's value. *Terraza*, at ¶31. A sale that post-dates the 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 details about the sale, e.g., sale price, parties, and sale date. See *Lunn*, at ¶15 (no additional testimony is usually necessary); *Dauch v.Erie Cty. Bd. of Revision*, 149 Ohio St. 3d 691, 2017-Ohio-1412, at ¶18 (noting that a party need only present minimal evidence of a sale when there is "no real dispute about the basic facts of the sale."). The opposing party must then, to succeed, rebut the presumption created by the sale.

[5] In this matter, the conveyance fee statement and property record card confirm the

details of the subject sale. Contrary to the BOR's decision, the BOE was not required to prove that the subject sale was anything other than facially valid. See *Lunn*, supra. Upon presentation of the sale document, the burden shifted to either the property owner or the BOR to rebut the presumption that the subject sale was the best indication of the subject property's value. Neither the property owner nor the BOR satisfied such burden. The property owner has not participated at any level of these proceedings and, therefore, has not submitted any rebuttal evidence.

[6] The BOR has also failed to submit any rebuttal evidence. We have repeatedly held that this particular Board of Revision erroneously shifts the evidentiary burden, for sales, based upon conjecture. See e.g., *Talawanda City Schools Bd. of Edn. v. Butler Cty. Bd. of Revision* (Nov. 30, 2020), BTA No. 2019-2061, unreported (reversing the BOR decision that rejected a sale because it could not confirm whether such sale was an arm's-length transaction even though the record was void of any evidence to suggest that it was not), *Lakota Local Schools Bd. of Edn. v. Butler Cty. Bd. of Revision* (July 9, 2019), BTA No. 2018-1121, unreported at 3 ("Though the auditor's representative discussed what he believed to be the facts and circumstances of the subject sale, there is no indication that he actually had firsthand knowledge of the topics of which he spoke."); *Bd. of Edn. of the Lakota Local School Dist. v. Butler Cty. Bd. of Revision* (Mar. 24, 2015), BTA No. 2014-3074, unreported (reversing the BOR decision that rejected a sale because it might have represented the lease-fee interest though the record was void of any evidence to support such a finding). Though the BOR speculated about a number of factors that *could* demonstrate that the subject sale was not indicative of the subject property's value, the record is void of any indication that any of those factors were present. This Board has repeatedly held that "mere speculation is not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006 Ohio 1059, at ¶26.

[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 BOE submitted sufficient evidence at the BOR hearing to demonstrate that the subject property should be valued consistent with the subject sale. Given the total lack of rebuttal evidence, we also find that the BOR erred when it rejected the subject sale as the best indication of the subject property's value. Absent an affirmative demonstration that the subject sale is not a qualifying sale for tax valuation purposes, we find the existing record demonstrates that the transaction was recent, arm's-length, and constitutes the best indication of the

subject property's value as of the relevant tax lien date.

True Value: $300,000

Taxable Value: $105,000

OHIO BOARD OF TAX APPEALS

STEPHEN EGERT, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1909
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - STEPHEN M. EGERT
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CUYAHOGA COUNTY
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CLEVELAND, OH 44113

Entered Monday, May 24, 2021

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

The appellant property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 311-02-054, 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 complaint with the BOR, requesting the subject property be revalued from $454,400 to $375,000. By way of the complaint, he asserted that various defects of the subject property necessitated a reduction to its value. At the BOR hearing on the matter, the property owner appeared to submit argument and evidence in support of the complaint. In doing so, he testified about the condition of the subject property and submitted photographs to support such testimony. The BOR determined that the property owner's argument and evidence were unpersuasive and issued a decision that retained the subject property's value. 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, we must conclude that the property owner failed to satisfy the evidentiary burden on appeal. He primarily argued that the condition of the subject property, i.e., outdated kitchen and bathrooms and issues with the foundation, roof, and water intrusion demonstrated that the subject property had been overvalued. The property owner failed to provide evidence to quantify the specific diminution in value that resulted from the defects. *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.) See, also *Schutz*, supra, at ¶17 ("Without affirmative evidence of the property's value or specific analysis of how the property's condition affected its value, any evidence of defects in the property is inconsequential."). 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 requested relief based upon his employment or financial condition, unfortunately, this Board is not allowed to consider these factors. The Ohio Supreme Court has long held that 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." *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 remain as initially assessed as of the relevant tax lien date:

True Value: $454,400

Taxable Value: $159,040

OHIO BOARD OF TAX APPEALS

ZEUS SHOPPING CENTER, INC., (et. al.), Appellant(s), vs. CHAMPAIGN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-963 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ZEUS SHOPPING CENTER, INC.
Represented by:
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For the Appellee(s) - CHAMPAIGN COUNTY BOARD OF REVISION
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GRAHAM LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
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SAINT PARIS, OH 43072

Entered Monday, May 24, 2021

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

[1] The Zeus Shopping Center, Inc., appeals from a decision of the Board of Revision ("BOR") finding the value of parcel number G21-07-10-30-00-030-09 for tax year 2019. We decide the case on the notice of appeal, the statutory transcript, and any written argument.

[2] The Auditor valued the property at $358,300 for tax year 2019. At the BOR hearing, counsel, also president of appellant, provided testimony. He testified about actual rents on the property and argued the property should be valued "on a cash flow basis." He testified he owns various properties in Ohio and Florida and is familiar with the market. A BOR member noted a

portion of the increase was due to the fact a portion of the property was not included on the property record card until 2018. The BOR retained the Auditor's value.

[3] When cases are appealed from a BOR 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.).

[4] After review, we find appellant has not carried its burden. Appellant relies solely on the testimony of its owner. To be sure, an owner is entitled to provide an opinion of value. *Smith v. Padgett*, 32 Ohio St.3d 344, 347 (1987). However, for such an 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).

[6] Appellant presented no tangible evidence of the actual market, nor did appellant have the property appraised. While we understand the appellant's owner has experience in the market, that does not make the owner an appraiser with training in real property valuation. Relatedly, this Board has long held that salespersons are not appraisers meaning they "may or may not have extensive appraisal experience." *Springfield Local Sch. Bd. of Edn. v. Lucas Cty. Bd. of Revision*

(Sept. 17, 2018), BTA No. 2017-2014, unreported (quoting The Appraisal of Real Estate (13th Ed.2008)). This Board has also said, "salespeople evaluate specific properties, but they do not typically consider all the factors that professional appraisers do." Id. Additionally, presenting actual rents is typically insufficient because those rents are only one portion of an income approach appraisal. See *Edgewood Manor of Westerville, Inc. v. Franklin Cty. Bd. of Revision* (Sept. 8, 2006), BTA No. 2004-T-706, unreported.

[7] For these reasons, we see no reason to deviate from the Auditor's value and order the property valued as follows:

TRUE VALUE

$358,300

TAXABLE VALUE

$125,410

OHIO BOARD OF TAX APPEALS

BENNINGTON ACQUISITION, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-920 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BENNINGTON ACQUISITION, LLC
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 MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
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Entered Monday, May 24, 2021

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

Bennington Acquisition, LLC, appeals from a final determination of the Cuyahoga County Board of Revision ("BOR") retaining the Fiscal Officer's value of parcels 020-08-024 and 020-08-031 for tax year 2018. The parties did not avail themselves of a hearing. No party filed written argument. We decide the case on the notice of appeal and statutory transcript.

The Fiscal Officer valued the two parcels at a total value of $540,500. Bennington filed a decrease complaint seeking a total value of $400,500. The Cleveland Municipal School

District ("BOE") filed a countercomplaint asking that the Fiscal Officer's value be retained. At the BOR hearing, counsel for Bennington argued unadjusted sales warranted an adjustment. The BOE retained the Fiscal Officer's value finding Bennington failed to carry its burden.

When cases are appealed from a BOR 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.).

After review, we find appellant has not carried its burden. It relies solely on a packet of unadjusted market data provided by counsel. Statements of counsel are not evidence, nor did counsel assert he had personal knowledge of any of the properties or sales. See generally *Garland Real Estate, LLC v. Tuscarawas Cty. Bd. of Revision* (Jan. 28, 2020), BTA No, 2018-1241, unreported. Even if we assume the data is accurate, unadjusted market data is generally insufficient to warrant a change in value. 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). We order the property valued as follows for tax year 2018: PARCEL 020-08-024

TRUE VALUE

$262,700

TAXABLE VALUE

$91,950

PARCEL 020-08-031

TRUE VALUE

$277,800

TAXABLE VALUE

$97,230

OHIO BOARD OF TAX APPEALS

MILLER-BLOCK, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-919
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - MILLER-BLOCK, LLC
Represented by:
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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CLEVELAND MUNICIPAL SCHOOLS BOARD OF EDUCATION
Represented by:
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CLEVELAND, OH 44114

Entered Monday, May 24, 2021

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

Miller-Block, LLC, appeals from a final determination of the Cuyahoga County Board of Revision ("BOR") retaining the Fiscal Officer's value of parcel 014-18-009 for tax year 2018. The parties did not avail themselves of a hearing. No party filed written argument. We decide the case on the notice of appeal and statutory transcript.

The Fiscal Officer valued the parcel at $351,100. Appellant filed a decrease complaint seeking a value of $260,000. The Cleveland Municipal School District ("BOE") filed a countercomplaint asking that the Fiscal Officer's value be retained. At the BOR hearing,

counsel for appellant argued unadjusted sales warranted an adjustment. The BOE retained the Fiscal Officer's value finding appellant failed to carry its burden.

When cases are appealed from a BOR 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.).

After review, we find appellant has not carried its burden. It relies solely on a packet of unadjusted market data provided by counsel. Statements of counsel are not evidence, nor did counsel assert that he had personal knowledge of any of the properties or sales. See generally *Garland Real Estate, LLC v. Tuscarawas Cty. Bd. of Revision* (Jan. 28, 2020), BTA No, 2018-1241, unreported. Even if we assume the data is accurate, unadjusted market data is generally insufficient to warrant a change in value. 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).

We order the property valued as follows for tax year 2018:

PARCEL 014-18-009

TRUE VALUE

$351,100

TAXABLE VALUE

$122,890

OHIO BOARD OF TAX APPEALS

836 REAL INVESTMENT LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-28 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 836 REAL INVESTMENT 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, May 24, 2021

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

[1] The property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 722-05-021, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The property owner filed a complaint with the BOR, requesting the subject property be revalued from $99,900 to $10,000 based upon the value opined by an appraisal report. The complaint also disclosed a $10,000 transfer of the subject property in December 2018. At the hearing on the matter, the property owner appeared through counsel to submit argument and evidence in support of the complaint. As the hearing commenced, counsel for the property owner amended the property owner's opinion of value to $33,500. The property owner

submitted the report and testimony of appraiser Robert Abrams, who opined the value of the subject property to be $33,500 as of the tax lien date. Abrams was examined about the underlying data and methodologies used to derive his opinion of value. He testified that the home sitused on the subject property was in very poor condition because of a fire, which mostly accounted for the very high gross adjustments in his sales comparison approach. One of the BOR members noted that, according to a newspaper article, the fire occurred in October 2018, well after the tax lien date. When questioned about his knowledge of the timing of the fire, in relation to the tax lien date and his visual inspection, Abrams conceded that he did not know when the fire occurred. The BOR subsequently issued a decision, which retained the subject property's initially assessed 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; none of the parties availed themselves of such opportunity.

[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, ¶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, ¶¶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, ¶19.

[5] As an initial matter, we note that the property owner's complaint disclosed a purported $10,000 sale of the subject property in December 2018. However, the record is void of any evidence to support such assertion. *Conalco Inc. v. Monroe Cty. Bd. of Revision*, 50 Ohio St.2d 129 (1977); *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075.

[6] We begin and end our analysis with Abrams' appraisal report. Though he purportedly valued the subject property as of the tax lien date, he failed to value the subject property *as it existed* on the tax lien date. The record suggests that the fire that damaged the home occurred several months after the tax lien date. The record indicates that Abrams valued the subject property considering the impact of the fire damage. Abrams admitted that he did not know when the fire occurred, which raises issues with the credibility of his report especially when he repeatedly emphasized the poor condition of the fire-damaged home. Ohio courts, as well as this Board, have been critical of appraisals that fail to derive value as the property existed at the tax lien date. See, e.g., *Reiling v. Smith*, 11th Dist. Geauga No. 2006-G-2705, 2007-Ohio-3370; *Phillips v. Phillips*, 11th Dist. Ashtabula No. 2006-A-0037, 2007-Ohio-3368; *195 East Broad St. Co. Ltd. v. Franklin Cty. Ed. of Revision* (Apr. 10, 2012), BTA No. 2009-K-543, unreported. But see, *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Apr. 25, 2013), BTA No. 2009-Y-2453 et. al., unreported. Additionally, in *Wingates, L.L.C. v. South-Western City Schools Bd. of Edn.*, 10th Dist. Franklin No. 10AP-846, 2011-Ohio-2372, the Tenth District Court of Appeals approved our rejection of an appraisal that failed to adequately take into consideration the property as it existed on the tax lien date.

[7] At the BOR hearing, counsel for the property owner seemingly requested some reduction to the subject property's value based upon the property owner's purported costs to rehabilitate the fire-damaged home. We note that the record is void of any evidence of such costs; however, even if the property owner's costs were in the record, we would not find this argument persuasive. Ohio courts, and this Board, have 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).

[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 property owner's evidence is not competent, credible, and/or probative evidence of the subject property's value. Such evidence failed to value the subject property as it existed on tax lien date. 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: $99,900

Taxable Value: $34,970

OHIO BOARD OF TAX APPEALS

22301 ROCKSIDE ROAD, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1154 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 22301 ROCKSIDE ROAD, LLC
Represented by:
JOHN P. DESIMONE
FRANTZ WARD LLP
200 PUBLIC SQUARE, SUITE 3000
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 Tuesday, May 25, 2021

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

22301 Rockside Road LLC appeals from a final determination of the Cuyahoga County Board of Revision ("BOR") retaining the Fiscal Officer's value of parcel 811-23-002 for tax year 2018. The parties did not avail themselves of a hearing. No party filed written argument. We decide the case on the notice of appeal and statutory transcript.

The Fiscal Officer valued the parcel at $339,100. Appellant filed a decrease complaint seeking a value of $290,000. At the BOR hearing, counsel for appellant argued unadjusted sales warranted an adjustment. He also argued the 2018 valuation was out of step with Fiscal Officer values for prior years. The BOE retained the Fiscal Officer's value finding appellant failed to carry its burden.

When cases are appealed from a BOR 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.).

After review, we find appellant has not carried its burden. It relies solely on a packet of unadjusted market data provided by counsel. Statements of counsel are not evidence, nor did counsel assert he had personal knowledge of any of the properties or sales. See generally *Garland Real Estate, LLC v. Tuscarawas Cty. Bd. of Revision* (Jan. 28, 2020), BTA No, 2018-1241, unreported. Even if we assume the data is accurate, unadjusted market data is generally insufficient to warrant a change in value. 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).

We recognize appellant's argument about the prior triennial valuation. 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). Indeed, the Court stated in *Fogg-Akron Assoc., L.P. v. Summit Cty. Bd. of Revision*, 124 Ohio St.3d 112, 2009-Ohio-6412, ¶15, that "when determining

the true value of real property for the current tax year, the assessor should not accord presumptive or prima facie validity to an earlier year's valuation."

For these reasons, we order the property valued as follows for tax year 2018:

PARCEL 811-23-002

TRUE VALUE

$339,100

TAXABLE VALUE

$118,690

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). 2020-1013 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TALAWANDA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
GARY T. STEDRONSKY
ENNIS BRITTON, CO. L.P.A.
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CINCINNATI, OH 45239

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L. FERGUSON
ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
P. O. BOX 515
HAMILTON, OH 45012-0515

COHO CAPITAL LLC
15198 WASHINGTON AVENUE NE
BAINBRIDGE ISLAND, WI 98110

Entered Tuesday, May 25, 2021

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

The Talawanda Schools Board of Education ("BOE") appeals a decision of the Butler County Board of Revision ("BOR"), which determined the value of the subject property, parcel H4100-003-000-069, for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and the BOE's written argument.

The BOE filed a complaint with the BOR, requesting the subject property be revalued from $514,160 to $975,000 based upon the price at which it transferred in December 2019; the property owner did not file a countercomplaint. The BOR held a hearing on the matter, at which only the BOE appeared to submit a conveyance-fee statement, which memorialized the

above-mentioned sale, and to argue that the subject property should be valued consistent with the subject sale. There was some discussion about the mortgage amount noted on the conveyance-fee statement; however, the mortgage itself is not in the record. One of BOR members, Mike Gildea, stated that the mortgage amount raised the specter that there were additional terms to the subject sale but also noted that he "didn't know what's going on with this particular transfer." Statutory Transcript at BOR Hearing Audio. At the BOR decision hearing, Gildea speculated about the property owner's motives for purchasing the subject property, about the terms of the subject sale, and about whether the subject sale represented the subject property's unencumbered fee-simple interest. The BOR subsequently issued a decision that retained the subject property's value. This appeal ensued.

None of the parties availed themselves of the opportunity to submit evidence at a hearing before this Board. Only the BOE submitted written argument, asserting that it had satisfied its evidentiary duty to submit evidence establishing the subject property's value and requesting that the subject property be revalued accordingly.

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 the 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 details about the sale, e.g., sale price, parties, and sale date. See *Lunn*, at ¶15 (no additional testimony is usually necessary); *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St. 3d 691, 2017-Ohio-1412, at ¶18 (noting that a party need only present

minimal evidence of a sale when there is "no real dispute about the basic facts of the sale."). The opposing party must then, to succeed, rebut the presumption created by the sale.

In this matter, the conveyance fee statement and property record card confirm the details of the subject sale. Contrary to the BOR's decision, the BOE was not required to prove that the subject sale was anything other than facially valid. See *Lunn*, supra. Upon presentation of the sale document, the burden shifted to either the property owner or the BOR to rebut the presumption that the subject sale was the best indication of the subject property's value. Neither the property owner nor the BOR satisfied such burden. The property owner has not participated at any level of these proceedings and, therefore, has not submitted any rebuttal evidence.

The BOR has also failed to submit any rebuttal evidence. We have repeatedly held that this particular Board of Revision erroneously shifts the evidentiary burden, for sales, based upon conjecture. See e.g., *Talawanda City Schools Bd. of Edn. v. Butler Cty. Bd. of Revision* (Nov. 30, 2020), BTA No. 2019-2061, unreported (reversing the BOR decision that rejected a sale because it could not confirm whether such sale was an arm's-length transaction even though the record was void of any evidence to suggest that it was not), *Lakota Local Schools Bd. of Edn. v. Butler Cty. Bd. of Revision* (July 9, 2019), BTA No. 2018-1121, unreported at 3 ("Though the auditor's representative discussed what he believed to be the facts and circumstances of the subject sale, there is no indication that he actually had firsthand knowledge of the topics of which he spoke."); *Bd. of Edn. of the Lakota Local School Dist. v. Butler Cty. Bd. of Revision* (Mar. 24, 2015), BTA No. 2014-3074, unreported (reversing the BOR decision that rejected a sale because it might have represented the lease-fee interest though the record was void of any evidence to support such a finding). Though the BOR speculated about a number of factors that *could* demonstrate that the subject sale was not indicative of the subject property's value, the record is void of any indication that any of those factors were present. This Board has repeatedly held that "mere speculation is not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006 Ohio 1059, at ¶26.

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 submitted sufficient evidence at the BOR hearing to demonstrate that the subject property should be valued consistent with the subject sale. Given the total lack of rebuttal evidence, we also find that the BOR erred when it rejected the subject sale as the best indication of the subject property's value. Absent an affirmative demonstration that the subject sale is not a qualifying sale for tax valuation purposes, we find the existing record demonstrates that the transaction was recent, and arm's-length, and constitutes the best indication of the subject property's value as of the relevant tax lien date.

True Value: $975,000

Taxable Value: $341,250

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). 2020-1032 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TALAWANDA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
GARY T. STEDRONSKY
ENNIS BRITTON, CO. L.P.A.
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CINCINNATI, OH 45239

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
DAN L. FERGUSON
ASSISTANT PROSECUTING ATTORNEY
BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
P. O. BOX 515
HAMILTON, OH 45012-0515

MORRISON RENTALS OXFORD LLC
6560 FAIRFIELD ROAD
OXFORD, OH 45056

Entered Tuesday, May 25, 2021

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

The Talawanda Schools Board of Education ("BOE") appeals a decision of the Butler County Board of Revision ("BOR"), which determined the value of the subject property, parcel H4100-122-000-046, for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and BOE's written argument.

The BOE filed a complaint with the BOR, requesting the subject property be revalued from $95,010 to $165,000 based upon the price at which it transferred in August 2019; the property owner did not file a countercomplaint. The BOR held a brief hearing on the matter, at which only the BOE appeared to submit a conveyance-fee statement, which memorialized the

$165,000 transfer of the subject property from Thelma Jane Dawley, Trustee to Holden Beach Tranquility, LLC in August 2019, and to argue that the subject property should be valued consistent with the subject sale. At the BOR decision hearing, BOR member Mike Gildea noted that the property owner did not participate in the BOR hearing to provide facts and circumstances of the subject sale. As a result, he noted that the BOR had no way of determining whether the subject sale truly reflected the subject property's value. The BOR subsequently issued a decision that retained the subject property's value. This appeal ensued.

None of the parties availed themselves of the opportunity to submit evidence at a hearing before this Board. Only the BOE submitted written argument, asserting that it had satisfied its evidentiary duty to submit evidence establishing the subject property's value and requesting that the subject property be revalued accordingly.

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 the 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 details about the sale, e.g., sale price, parties, and sale date. See *Lunn*, at ¶15 (no additional testimony is usually necessary); *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St. 3d 691, 2017-Ohio-1412, at ¶18 (noting that a party need only present minimal evidence of a sale when there is "no real dispute about the basic facts of the sale."). The opposing party must then, to succeed, rebut the presumption created by the sale.

In this matter, the conveyance fee statement and property record card confirm the details

of the subject sale. Contrary to the BOR's decision, the BOE was not required to prove that the subject sale was anything other than facially valid. See *Lunn*, supra. Upon presentation of the sale document, the burden shifted to either the property owner or the BOR to rebut the presumption that the subject sale was the best indication of the subject property's value. Neither the property owner nor the BOR satisfied such burden. The property owner has not participated at any level of these proceedings and, therefore, has not submitted any rebuttal evidence.

The BOR has also failed to submit any rebuttal evidence. We have repeatedly held that this particular Board of Revision erroneously shifts the evidentiary burden, for sales, based upon conjecture. See e.g., *Talawanda City Schools Bd. of Edn. v. Butler Cty. Bd. of Revision* (Nov. 30, 2020), BTA No. 2019-2061, unreported (reversing the BOR decision that rejected a sale because it could not confirm whether such sale was an arm's-length transaction even though the record was void of any evidence to suggest that it was not), *Lakota Local Schools Bd. of Edn. v. Butler Cty. Bd. of Revision* (July 9, 2019), BTA No. 2018-1121, unreported at 3 ("Though the auditor's representative discussed what he believed to be the facts and circumstances of the subject sale, there is no indication that he actually had firsthand knowledge of the topics of which he spoke."); *Bd. of Edn. of the Lakota Local School Dist. v. Butler Cty. Bd. of Revision* (Mar. 24, 2015), BTA No. 2014-3074, unreported (reversing the BOR decision that rejected a sale because it might have represented the lease-fee interest though the record was void of any evidence to support such a finding). Though the BOR speculated about a number of factors that *could* demonstrate that the subject sale was not indicative of the subject property's value, the record is void of any indication that any of those factors were present. This Board has repeatedly held that "mere speculation is not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006 Ohio 1059, at ¶26.

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 submitted sufficient evidence at the BOR hearing to demonstrate that the subject property should be valued consistent with the subject sale. Given the total lack of rebuttal evidence, we also find that the BOR erred when it rejected the subject sale as the best indication of the subject property's value. Absent an affirmative demonstration that the subject sale is not a qualifying sale for tax valuation purposes, we find the existing record demonstrates that the transaction was recent, arm's-length, and constitutes the best indication of the subject property's value as of the relevant tax lien date.

True Value: $165,000

Taxable Value: $57,750

OHIO BOARD OF TAX APPEALS

JN HOUSE ENTERPRISE INC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1890 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - JN HOUSE ENTERPRISE INC
Represented by:
PIERCE WALKER
ATTORNEY
MMFL LAW
101 CENTRAL PLAZA SOUTH
CANTON, OH 44702

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

GARFIELD HEIGHTS SCHOOL DISTRICT 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 Wednesday, May 26, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory.

***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989).”). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a “technicality.”

Here, the movant alleges appellant did not file, or did not timely file, their notice of appeal with the BOR. Appellant’s written argument was not responsive to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

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). 2020-934 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TALAWANDA CITY SCHOOLS BOARD OF EDUCATION
Represented by:
GARY T. STEDRONSKY
ENNIS BRITTON, CO. L.P.A.
1714 WEST GALBRAITH ROAD
CINCINNATI, OH 45239

For the Appellee(s) - BUTLER COUNTY BOARD OF REVISION
Represented by:
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BUTLER COUNTY
315 HIGH STREET, 11TH FLOOR
P. O. BOX 515
HAMILTON, OH 45012-0515

BHB PARTNERSHIP
8951 SW 8TH STREET
PLANTATION, FL 33324

Entered Monday, May 24, 2021

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

The Talawanda Schools Board of Education ("BOE) appeals a decision of the Butler County Board of Revision ("BOR), which determined the value of the subject property, parcel B1010-007-000-106, for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and BOE's written argument.

The BOE filed a complaint with the BOR, requesting the subject property be revalued from $512,300 to $1,173,000 based upon the price at which it transferred in May 2019; the property owner did not file a countercomplaint. The BOR held a brief hearing on the matter at which only the BOE appeared to submit a conveyance-fee statement, which memorialized the

$1,173,000 transfer of the subject property from Oxford DOHP, LLC to BHB Partnership in May 2019, and to argue that the subject property should be valued consistent with the subject sale. BOR member Mike Gildea noted that the subject property was operated as a Dollar General Store and purchased by an investor and that it was unclear whether this transaction was for the fee-simple interest. Counsel for the BOE noted that it was the property owner's burden to provide those answers to those questions, not the BOE's burden, which the property owner had failed to do. At the BOR decision hearing, Gildea further noted that the record was void of the motives of the parties to the subject sale and the marketing of the subject property. As a result, he stated that there no way of determining whether the subject sale truly reflected the subject property's value. The BOR subsequently issued a decision that retained the subject property's value. This appeal ensued.

None of the parties availed themselves of the opportunity to submit evidence at a hearing before this Board. Only the BOE submitted written argument, asserting that it had satisfied its evidentiary duty to submit evidence establishing the subject property's value and requesting that the subject property be revalued accordingly.

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 details about the sale, e.g., sale price, parties, and sale date. See *Lunn*, at ¶15 (no additional testimony is usually necessary); *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St. 3d

691, 2017-Ohio-1412, at ¶18 (noting that a party need only present minimal evidence of a sale when there is "no real dispute about the basic facts of the sale."). The opposing party must then, to succeed, rebut the presumption created by the sale.

In this matter, the conveyance fee statement and property record card confirm the details of the subject sale. Contrary to the BOR's decision, the BOE was not required to disprove that the subject sale was anything other than a facially valid. See *Lunn*, supra. Upon presentation of the sale document, the burden shifted to either the property owner or the BOR to rebut the presumption that the subject sale was the best indication of the subject property's value. Neither the property owner nor the BOR satisfied such burden. The property owner has not participated at any level of these proceedings and, therefore, has not submitted any rebuttal evidence.

The BOR has also failed to submit any rebuttal evidence. We have repeatedly held that this particular board of revision erroneously shifts the evidentiary burden, for sales, based upon conjecture. See e.g., *Talawanda City Schools Bd. of Edn. v. Butler Cty. Bd. of Revision* (Nov. 30, 2020), BTA No. 2019-2061, unreported (reversing the BOR decision that rejected a sale because it could not confirm whether such sale was an arm's-length transaction even though the record was void of any evidence to suggest that it was not), *Lakota Local Schools Bd. of Edn. v. Butler Cty. Bd. of Revision* (July 9, 2019), BTA No. 2018-1121, unreported at 3 ("Though the auditor's representative discussed what he believed to be the facts and circumstances of the subject sale, there is no indication that he actually had firsthand knowledge of the topics of which he spoke."); *Bd. of Edn. of the Lakota Local School Dist. v. Butler Cty. Bd. of Revision* (Mar. 24, 2015), BTA No. 2014-3074, unreported (reversing the BOR decision that rejected a sale because it might have represented the lease-fee interest though the record was void of any evidence to support such a finding). Though the BOR speculated about a number of factors that *could* demonstrate that the subject sale was not indicative of the subject property's value, the record is void of any indication that any of those factors were present. This Board has repeatedly held that "mere speculation is

not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006 Ohio 1059, at ¶26.

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 submitted sufficient evidence at the BOR hearing to demonstrate that the subject property should be valued consistent with the subject sale. Given the total lack of rebuttal evidence, we also find that the BOR erred when it rejected the subject sale as the best indication of the subject property's value. Absent an affirmative demonstration that the subject sale is not a qualifying sale for tax valuation purposes, we find the existing record demonstrates that the transaction was recent, and arm's-length, and constitutes the best indication of the subject property's value as of tax relevant lien date.

True Value: $1,173,000

Taxable Value: $410,550

OHIO BOARD OF TAX APPEALS

REBECCA LITWIN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-462
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - REBECCA LITWIN
305 ADRIAN ROAD
MILBRAE, CA 94030

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

Entered Wednesday, June 2, 2021

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 March 15, 2021, the appellant filed an application for remission with this Board. Appellant did not include a copy of a Board of Revision ("BOR") decision. The record certifies the statement of the clerk for the Hamilton County Board of Revision 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

PHILLIP NEEDHAM, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-386
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - PHILLIP NEEDHAM
2786 E BROAD STREET
BEXLEY, OH 43209

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

COLUMBUS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
MARK H. GILLIS
RICH & GILLIS LAW GROUP, LLC
5747 PERIMETER DR; SUITE 150
DUBLIN, OH 43017

Entered Wednesday, June 2, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and

not a "technicality."

The record does not demonstrate that appellant filed such notice with the BOR. Appellant responded to the motion and argued that the BTA informed and served the Franklin County Auditor the notice of appeal. This Board notes that docketing letters sent by the Board of Tax Appeals do not satisfy the requirement of R.C. 5717.01 that an appealing party file a notice of appeal with a county board of revision. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d 192 (1989). See, also, *Rumora v. Ashtabula Cty. Bd. of Revision*, BTA No. 2000-G-970 (Mar. 30, 2001), unreported. Having reviewed the motion, responses thereto, and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction. Accordingly, appellant's motion for judgment on the record and motion to accept the county's assessment for tax year 2020 are denied as moot.

OHIO BOARD OF TAX APPEALS

STEVE EMERY, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-180
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - STEVE EMERY
3030 ELLET AVE
AKRON , OH 44312

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

Entered Wednesday, June 2, 2021

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 Summit 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, the affidavit of the Executive Assistant to the Fiscal Office 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

WILLIAM A. HENNINGER, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-175 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - WILLIAM A. HENNINGER
Represented by:
WILLIAM A. HENNINGER, III
OWNER
4988 CLEARWATER DR
NORTH CANTON, OH 44720

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

Entered Wednesday, June 2, 2021

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 Summit 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, the affidavit of the executive assistant to the fiscal office 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

JAMES A. MALKOWSKI, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-307
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JAMES A. MALKOWSKI
OWNER
19253 STAFFORD AVENUE
MAPLE HEIGHTS , OH 44137

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 2, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of appeal

with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

REBECCA LITWIN, TRUSTEE, (et. al.), Appellant(s), vs. HAMILTON COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-468 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - REBECCA LITWIN, TRUSTEE
Represented by:
REBECCA LITWIN
305 ADRIAN ROAD
MILBRAE, CA 94030

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

Entered Monday, June 7, 2021

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 or application for remission 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, appellant did not attach a BOR decision. The record documents the affidavit of the BOR clerk indicating no decision has been 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

RICHARD HOLLIS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1553
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - RICHARD HOLLIS
3329 FAIRMOUNT BLVD.
CLEVELAND, OH 44118

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

Entered Tuesday, June 8, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion

and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

MARK SKITZKI / RAY TARABINI, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2633 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARK SKITZKI / RAY TARABINI
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:
SAUNDRA CURTIS-PATRICK
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Tuesday, June 8, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga*

Cty. Bd. of Revision, 46 Ohio St.3d (1989).”). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a “technicality.”

Here, the movant alleges appellants did not file, or did not timely file, their notice of appeal with the BOR. Appellants responded to the motion but failed to provide probative, tangible evidence appellant did timely file its notice of appeal with the Board of Revision. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

ISRAEL BLACKMAN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-537
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - ISRAEL BLACKMAN
Represented by:
ISREAL BLACKMAN
CEO
4225 MAYFIELD RD
SOUTH EUCLID, OH 44121

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

SOUTH EUCLID-LYNDHURST CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Tuesday, June 8, 2021

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

This case is before the Board on a motion to dismiss and a motion to remove the matter from the small claims docket. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the

appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989).”). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a “technicality.”

Here, the movant alleges appellant did not file, or did not timely file, their notice of appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction. Additionally, the motion to remove the matter from the small claims docket is denied as moot.

OHIO BOARD OF TAX APPEALS

EQUITY TRUST COMPANY CUSTODIAN FBO PATRICIA J. WILSON IRA, (et. al.),	)	
	)	CASE NO(S). 2021-182
Appellant(s),	)	
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - EQUITY TRUST COMPANY CUSTODIAN FBO PATRICIA J. WILSON IRA
Represented by:
PATRICIA WILSON
7284 FOREST COVE LANE UNIT C
NORTHFIELD, OH 44067

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

RICHMOND HEIGHTS CITY SCHOOL DISTRICT
Represented by:
KARRIE M. KALAIL
PETERS, KALAIL & MARKAKIS CO., LPA
6480 ROCKSIDE WOODS BLVD. SOUTH
SUITE 300
CLEVELAND, OH 44131-2222

Entered Tuesday, June 8, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory.

***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989).”). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a “technicality.”

Here, the movant alleges appellant did not file, or did not timely file, their notice of appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

JOHN GABORICK, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-140
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JOHN GABORICK
19494 CAVENDISH CT.
NORTH ROYALTON, OH 44133

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 8, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion

and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

LONG S. AND KIM QUYEN NGUYEN, (et. al.), Appellant(s), vs. GREENE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-2017 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - LONG S. AND KIM QUYEN NGUYEN
Represented by:
LONG S. AND KIM QUYEN NAGUYEN
OWNER
4191 FOX FERN CT
BEAVERCREEK, OH 45432

For the Appellee(s) - GREENE COUNTY BOARD OF REVISION
Represented by:
CHERI L. STOUT
ASSISTANT PROSECUTING ATTORNEY
61 GREENE ST. SUITE 200
XENIA, OH 45385

Entered Tuesday, June 8, 2021

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

This matter is now considered upon the county appellees' motion to dismiss the present appeal as premature. The county appellees assert that the appellants did not file an initial application for remission with the County Treasurer and thus no final decision has been issued. Appellants did not respond to the motion. This matter is now decided upon the motion and appellant's notice of appeal.

On October 22, 2020, the appellants filed an application for remission with this Board. Appellants did not include a copy of a Board of Revision ("BOR") decision. The county appellees attached to their motion the affidavit of the Greene 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* 147 Ohio St. 147, 150 (1946); *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990). Strict compliance with R.C. 5717.01 is essential to vest jurisdiction with this Board.

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellants have not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

J & S HIGGINS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1575
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CLERMONT COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - J & S HIGGINS LLC
Represented by:
SHELLY HIGGINS
OWNER
3481 ST. ANNES TURN
CINCINNATI, OH 45245

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 Monday, June 7, 2021

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

[1] The taxpayer appeals a decision of the Clermont County Board of Revision ("BOR"), which denied its request for remission of the late-payment penalties associated with the untimely payments of the property tax bills for the first and second halves of 2019. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The taxpayer filed a single application for remission with the County Treasurer, asserting that its failure to timely pay the property-tax bills, for the above-referenced tax periods, amounted to reasonable cause, not willful neglect. The taxpayer asserted that the property tax bills were not timely paid because of business issues and personal tragedies. The BOR denied the requests. This appeal ensued. The taxpayer submitted its notice of appeal in the form of a letter, requesting additional consideration of its application based upon the previously cited hardships.

None of the parties availed themselves of the opportunity to submit evidence at a hearing before this Board.

[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] In this matter, the taxpayer specifically requested a review of the facts and circumstances of this matter consistent with R.C. 5715.39(C), which provides penalty remission if the BOR determines that "the taxpayer's 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 a history of untimely payments of property-tax bills, which established a pattern of neglect. We find, therefore, that the appellant is not entitled to remission of the penalty on this basis.

[5] Given the issues raised in this appeal, we sympathize with the taxpayer's situation. However, this Board, as a creature of statute, only has the jurisdiction, power, and duties expressly given by the General Assembly. *Steward v. Evatt*, 143 Ohio St. 547 (1944); *Leiphart Lincoln-Mercury, Inc. v. Bowers*, 107 Ohio App. 259 (1958). This Board does not have equitable jurisdiction and, therefore, cannot grant the taxpayer the relief that it seeks out of a sense of fairness or sympathy. *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564, 569 (1953).

[6] Based upon the foregoing, we find that the taxpayer did not demonstrate that it is entitled to remission of the late-payment penalties associated with the untimely payment of property tax bills for the first and second halves of tax year 2019.

OHIO BOARD OF TAX APPEALS

BRETT GREER, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1175
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - BRETT GREER
Represented by:
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ESQUIRE
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Entered Monday, June 7, 2021

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

[1] This matter is before us upon the county appellees motion to remand with instructions to dismiss the underlying complaint for failure to invoke the jurisdiction of the Cuyahoga County Board of Revision ("BOR"). Appellant did not respond. We now consider this matter upon the motion, the statutory transcript certified by the BOR, and appellant's notice of appeal.

[2] On January 30, 2019, a complaint was filed against the valuation of property owned

by Brett Greer. The complainant identified the reason for the requested change in value was due to a land contract to purchase the property entered into on April 4, 2018. At the BOR hearing Richard Conte, counsel for and president of the complainant Conteco Trucking Company ("Conteco"), testified that Conteco is the owner of equitable interest in the property and that ownership is not expected to transfer until completion of the contract in 2023. Subsequently, the BOR issued a decision to retain the Fiscal Officer's value; thereafter the present appeal ensued. The county appellees argue in their motion that an owner of an equitable interest does not have standing to file a complaint; as such, the complaint failed to invoke jurisdiction of the BOR.

[3] This Board has previously found that a "land contract results in a current transfer of equitable title and a subsequent transfer of legal title upon satisfaction of the contractual terms." *Hatfield v. Montgomery Cty. Bd. Of Revision* (Feb. 2, 2010), BTA No. 2007-V-807, unreported. A property owner has standing to file a complaint under R.C. 5715.19; however, the owner of an equitable interest does not. See *Victoria Plaza Ltd. Liab. Co. v. Cuyahoga Cty. Bd. Of Revision*, 86 Ohio St.3d 181, 183 (1999); *Performing Arts School of Metro Toledo, Inc. v. Wilkins*, 104 Ohio St.3d 284 (2004). In this matter we find that Conteco has not provided evidence of property ownership in Cuyahoga County. As such, the BOR lacked jurisdiction to consider the complaint. Upon consideration of the foregoing, the motion is well taken. We vacate the underlying decision and remand this case to the BOR with instructions to dismiss the complaint.

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). 2020-957 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TALAWANDA CITY SCHOOLS BOARD OF EDUCATION
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Entered Monday, June 7, 2021

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

The Talawanda Schools Board of Education ("BOE) appeals a decision of the Butler County Board of Revision ("BOR), which determined the value of the subject property, parcels H4100-004-000-051 and H4100-004-000-053, for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and the BOE's written argument.

The BOE filed a complaint with the BOR, requesting the subject property be revalued from a combined value of $229,600 to $355,000. By way of the complaint, the BOE requested that the subject property be revalued consistent with the price at which it transferred in June

2019. The property owner did not file a countercomplaint. The BOR held a brief hearing on the matter at which only the BOE appeared to submit a conveyance-fee statement, which memorialized the $355,000 transfer of the subject property from Peterson Gundler, LLC to Donald J. and Mary E. Wilhelm in August 2019, and to argue that the subject property should be valued consistent with the subject sale. In support of its position, the BOE submitted a decision of the Ohio Supreme Court, *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. At the BOR decision hearing, BOR member Mike Gildea noted that the record was void of the facts and circumstances of the subject sale because the property owner did not participate in the BOR hearing. As a result, he stated that there no way to determine whether the subject sale truly reflected the subject property's value. The BOR subsequently issued a decision that retained the subject property's value. This appeal ensued.

None of the parties availed themselves of the opportunity to submit evidence at a hearing before this Board. Only the BOE submitted written argument, asserting that it had satisfied its evidentiary duty to submit evidence establishing the subject property's value and requesting that they be revalued accordingly.

An arm's-length sale constitutes the best evidence of a property's value. *Terraza*, at ¶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 details about the sale, e.g., sale price, parties, and sale date. See *Lunn*, at ¶15 (no additional testimony is usually necessary); *Dauch v.*

Erie Cty. Bd. of Revision, 149 Ohio St. 3d 691, 2017-Ohio-1412, at ¶18 (noting that a party need only present minimal evidence of a sale when there is "no real dispute about the basic facts of the sale."). The opposing party must then, to succeed, rebut the presumption created by the sale.

In this matter, the conveyance fee statement and property record card confirm the details of the subject sale. Contrary to the BOR's decision, the BOE was not required to prove that the subject sale was anything other than facially valid. See *Lunn*, supra. Upon presentation of the sale document, the burden shifted to either the property owner or the BOR to rebut the presumption that the subject sale was the best indication of the subject property's value. Neither the property owner nor the BOR satisfied such burden. The property owner has not participated at any level of these proceedings and, therefore, has not submitted any rebuttal evidence.

The BOR has also failed to submit any rebuttal evidence. We have repeatedly held that this particular Board of Revision erroneously shifts the evidentiary burden, for sales, based upon conjecture. See e.g., *Talawanda City Schools Bd. of Edn. v. Butler Cty. Bd. of Revision* (Nov. 30, 2020), BTA No. 2019-2061, unreported (reversing the BOR decision that rejected a sale because it could not confirm whether such sale was an arm's-length transaction even though the record was void of any evidence to suggest that it was not), *Lakota Local Schools Bd. of Edn. v. Butler Cty. Bd. of Revision* (July 9, 2019), BTA No. 2018-1121, unreported at 3 ("Though the auditor's representative discussed what he believed to be the facts and circumstances of the subject sale, there is no indication that he actually had firsthand knowledge of the topics of which he spoke."); *Bd. of Edn. of the Lakota Local School Dist. v. Butler Cty. Bd. of Revision* (Mar. 24, 2015), BTA No. 2014-3074, unreported (reversing the BOR decision that rejected a sale because it might have represented the lease-fee interest though the record was void of any evidence to support such a finding). Though the BOR speculated about a number of factors that *could* demonstrate that the subject sale was not indicative of the subject property's value, the record is void of any indication that any of those factors were present. This

Board has repeatedly held that "mere speculation is not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006 Ohio 1059, at ¶26.

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 submitted sufficient evidence at the BOR hearing to demonstrate that the subject property should be valued consistent with the subject sale. Given the total lack of rebuttal evidence, we also find that the BOR erred when it rejected the subject sale as the best indication of the subject property's value. Absent an affirmative demonstration that the subject sale is not a qualifying sale for tax valuation purposes, we find the existing record demonstrates that the transaction was recent, and arm's-length, and constitutes the best indication 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:

Parcel H4100-004-000-051

True Value: $343,140

Taxable Value: $120,100

Parcel H4100-004-000-053

True Value: $11,860

Taxable Value: $4,150

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). 2020-976 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TALAWANDA CITY SCHOOLS BOARD OF EDUCATION
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Entered Monday, June 7, 2021

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

The Talawanda Schools Board of Education ("BOE") appeals a decision of the Butler County Board of Revision ("BOR"), which determined the value of the subject properties, parcels H4100-124-000-049, H4100-119-000-048, and H4100-124-000-048, for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and the BOE's written argument.

The BOE filed a complaint with the BOR, requesting the subject properties be revalued consistent with the following: from $255,170 to $449,500 for parcel H4100-124-000-049, from $1,250 to $15,500 for parcel H4100-119-000-048, and from $594,630 to $1,085,000 for parcel

H4100-124-000-048. By way of the complaint, the BOE requested that the subject properties be revalued consistent with their pro-rata share of the $1,550,000 price at which they jointly transferred in August 2019. The property owner did not file a countercomplaint. The BOR held a brief hearing on the matter, at which only the BOE appeared to submit a conveyance-fee statement, which memorialized the $1,550,000 transfer of the subject properties from Talaford Rentals, LLC to Talaford Manor, LLC in August 2019, and to argue that the subject properties should be valued consistent with the subject sale. In support of its position, the BOE submitted a decision of the Ohio Supreme Court, *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415. At the BOR decision hearing, BOR member Mike Gildea noted that the record was void of the facts and circumstances of the subject sale because the property owner did not participate in the BOR hearing. As a result, he stated that there no way to determine whether the subject sale truly reflected the subject properties' value. The BOR subsequently issued a decision that retained the subject properties' value. This appeal ensued.

None of the parties availed themselves of the opportunity to submit evidence at a hearing before this Board. Only the BOE submitted written argument, asserting that it had satisfied its evidentiary duty to submit evidence establishing the subject properties' value and requesting that the subject properties be revalued accordingly.

An arm's-length sale constitutes the best evidence of a property's value. *Terraza*, at ¶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 details about the sale, e.g., sale price, parties, and sale date. See *Lunn*, at ¶15 (no additional testimony is usually necessary); *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St. 3d 691, 2017-Ohio-1412, at ¶18 (noting that a party need only present minimal evidence of a sale when there is "no real dispute about the basic facts of the sale."). The opposing party must then, to succeed, rebut the presumption created by the sale.

In this matter, the conveyance fee statement and property record card confirm the details of the subject sale. Contrary to the BOR's decision, the BOE was not required to prove that the subject sale was anything other than facially valid. See *Lunn*, supra. Upon presentation of the sale document, the burden shifted to either the property owner or the BOR to rebut the presumption that the subject sale was the best indication of the subject properties' value. Neither the property owner nor the BOR satisfied such burden. The property owner has not participated at any level of these proceedings and, therefore, has not submitted any rebuttal evidence.

The BOR has also failed to submit any rebuttal evidence. We have repeatedly held that this particular Board of Revision erroneously shifts the evidentiary burden, for sales, based upon conjecture. See e.g., *Talawanda City Schools Bd. of Edn. v. Butler Cty. Bd. of Revision* (Nov. 30, 2020), BTA No. 2019-2061, unreported (reversing the BOR decision that rejected a sale because it could not confirm whether such sale was an arm's-length transaction even though the record was void of any evidence to suggest that it was not), *Lakota Local Schools Bd. of Edn. v. Butler Cty. Bd. of Revision* (July 9, 2019), BTA No. 2018-1121, unreported at 3 ("Though the auditor's representative discussed what he believed to be the facts and circumstances of the subject sale, there is no indication that he actually had firsthand knowledge of the topics of which he spoke."); *Bd. of Edn. of the Lakota Local School Dist. v. Butler Cty. Bd. of Revision* (Mar. 24, 2015), BTA No. 2014-3074, unreported (reversing the BOR decision

that rejected a sale because it might have represented the lease-fee interest though the record was void of any evidence to support such a finding). Though the BOR speculated about a number of factors that *could* demonstrate that the subject sale was not indicative of the subject properties' value, the record is void of any indication that any of those factors were present. This Board has repeatedly held that "mere speculation is not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006 Ohio 1059, at ¶26.

We are mindful of our duty to independently determine the subject properties' 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 submitted sufficient evidence at the BOR hearing to demonstrate that the subject properties should be valued consistent with the subject sale. Given the total lack of rebuttal evidence, we also find that the BOR erred when it rejected the subject sale as the best indication of the subject properties' value. Absent an affirmative demonstration that the subject sale is not a qualifying sale for tax valuation purposes, we find the existing record demonstrates that the transaction was recent, and arm's-length, and constitutes the best indication of the subject properties' value. It is, therefore, the order of this Board that the subject properties shall be valued as follows as of the relevant tax lien date:

Parcel H4100-124-000-049

True Value: $464,730

Taxable Value: $162,660

Parcel H4100-119-000-048

True Value: $2,280

Taxable Value: $800

Parcel H4100-124-000-048

True Value: $1,082,990

Taxable Value: $379,050

OHIO BOARD OF TAX APPEALS

TITAN CLEVELAND 1 LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1922 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, June 8, 2021

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

[1] This matter is now considered upon the county appellees' motion to remand with instructions to dismiss the underlying complaint. The county appellees argue that a property manager is not one who is authorized by 5715.19(A) to file a complaint on behalf of the owner and engaged in the unauthorized practice of law by doing so. Appellant did not respond to the motion. This matter is now decided upon the motion, the transcript certified by the BOR, and appellant's notice of appeal.

[2] The record shows that a complaint was filed for property owned by Titan Cleveland 1 LLC with the Cuyahoga County Board of Revision. The complaint does not list any one as the complainant if not owner or as the complainant's agent. However, the complaint does show a telephone number for a contact person and the contact's email as jeremy@titancapital.com. Subsequent to the BOR's decision of no change to the property's value, Jeremy Levart, property manager, filed an appeal with this Board.

[3] 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. Non-owner "property managers" are not among the nonlawyers who are explicitly authorized to file complaints under R.C. 5715.19(A). *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. Of Revision,* 155 Ohio St.3d 230, 2019-Ohio-4244.

[4] 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. 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

BEAVERCREEK CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. GREENE COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1924 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - BEAVERCREEK CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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For the Appellee(s) - GREENE COUNTY BOARD OF REVISION
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TLCH, LLC
Represented by:
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Entered Monday, June 14, 2021

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

This matter is before this Board upon a motion to remand this appeal with instructions to dismiss the underlying complaint for lack of jurisdiction. The matter is now decided upon the motion, the responses thereto, the statutory transcript certified by the Board of Revision ("BOR"), and appellant's notice of appeal.

The movant argues that the complaint was untimely which deprived the BOR of jurisdiction to consider the property's valuation. The record shows that the complaint was submitted July 30, 2020. Thereafter, the BOR exercised jurisdiction over the complaint and

modified the Auditor's value. We note that although the property owner argues the complaint deadline was tolled by H.B. 197, this Board held in *Porat Group 3, LLC v. Cuyahoga Cty Bd. of Revision* (Jan 19, 2021) BTA No. 2020-1399, unreported, that said bill did not toll the deadline; the Governor vetoed the portion of the bill that would arguably have extended that deadline. The Supreme Court has held that full compliance with R.C. 5715.19(A), including the filing deadline, is required "before a county board of revision is empowered to act on the merits of the claim." *Stanjim Co. v. Mahoning Cty. Bd. of Revision*, 38 Ohio St.2d 233, 235 (1974). The Court has expressly noted that "statutory filing requirements are mandatory, jurisdictional requirements which cannot be waived even by a tax official." *VeriFone, Inc. v. Limbach*, 69 Ohio St.3d 699, 702 (1994). See also *Bd. of Edn. of the Westerville City Schools v. Delaware Cty. Bd. of Revision* (May 17, 2011), BTA No. 2011-K-152, unreported. It is clear from the record that the underlying complaint was not filed by the statutory deadline and therefore failed to properly invoke the jurisdiction of the BOR.

Upon consideration, the motion is well taken, and this matter is hereby remanded to the BOR with instructions to dismiss the underlying complaint, the practical effect being reinstatement of the Auditor's initial valuation.

OHIO BOARD OF TAX APPEALS

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

APPEARANCES:

For the Appellant(s) - MDC COAST I, LLC
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For the Appellee(s) - UNION COUNTY BOARD OF REVISION
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MARYSVILLE EXEMPTED VILLAGE SCHOOLS BOARD OF EDUCATION
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DUBLIN, OH 43017

Entered Monday, June 14, 2021

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

This matter is again before the Board of Tax Appeals on remand from the Tenth District Court of Appeals, which issued a decision and judgment entry in *MDC Coast I., L.L.C. v. Union Cty. Bd. of Revision*, 10th Dist. No. 18AP-721, 2020-Ohio-683, vacating this Board's decision and order, dated August 24, 2018. The Court held that this Board did not fully consider the appraisal evidence presented by the property owner, MDC Coast I ("MDC"), 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 further proceedings consistent with its decision. We note that the BOE has moved to strike a document submitted by MDC on remand, and MDC responded. We grant the BOE's motion and will not consider the document or references thereto in our determination.

The subject property consists of roughly 26.641 acres of land improved with a 355,000 square foot building, of which about 32,000 square feet (9%) represents finished office area. The subject's total true value was initially assessed at $10,308,840 for tax year 2015. The BOE filed a complaint with the BOR seeking an increase in value to $19,000,000, while the tenant of the property, Sumitomo Electric Wiring Systems, Inc. ("Sumitomo"), filed a countercomplaint in support of maintaining the Auditor's values, purportedly on behalf of MDC.

At the BOR hearing, the BOE provided evidence that MDC purchased the property in December 2015 for $19,000,000 and argued that the sale price was the best evidence of the true value of the subject property as of the tax lien date. The BOE also objected to Sumitomo's participation in the matter, arguing that the countercomplaint should be dismissed because as the tenant, Sumitomo lacked standing to file. In response, Sumitomo asserted that it had authority to challenge tax matters pursuant to its lease agreement and was acting as the agent for MDC. The BOR allowed Sumitomo to present its case, asking for additional argument on the issue following the hearing. To contest the reliability of the sale price, Sumitomo presented testimony from William Lefebvre, general manager of its contracts and compliance department, as well as the testimony and written report of Robert J. Weiler, Sr., MAI, who opined that the value of the property was $13,500,000 as of January 1, 2015.

Sumitomo, which was not a party to the sale transaction, argued that the sale price reflected the value of the income stream and not simply the real property. Lefebvre explained that Sumitomo previously had been leasing space in three different locations with leases nearing their end and had acquired new business. To consolidate operations to one location, Sumitomo

decided to seek a developer to build a new location that could accommodate its warehouse, testing,

and office space. At that time, Sumitomo entered into a lease that it now claims reflects an above-market rental rate. The building was completed in October 2014 for a total cost of $13,488,850, according to the development budget included in Weiler's report. In December 2015, MDC then purchased the subject property for $19,000,000. Sumitomo asserted that this purchase reflected the value of the lease in place and not the real property.

Weiler prepared an appraisal for the BOR hearing. In this appraisal, Weiler considered the cost, income, and sales-comparison approaches to value, which indicated values of $13,500,000, $11,875,000, and $13,315,000. Though the final reconciliation of value in the report indicates that he disregarded the cost approach, it is clear (and he so testified) that it formed the primary basis for his ultimate conclusion, which was $13,500,000 as of January 1, 2015. Weiler also testified that the subject's rental rate, which he indicated was $4.18 per square foot, exceeded market rent, which he concluded was $3.75. The BOE cross-examined Weiler and challenged aspects of his methodology, maintaining that the sale price established the subject's value, and the reliability of the sale had not been rebutted. The BOR issued a decision increasing the initially assessed valuation to $19,000,000 and dismissing Sumitomo's countercomplaint. From this decision, MDC filed the present appeal contesting the BOR's increase in value, but not challenging the dismissal of Sumitomo's countercomplaint.

This Board convened a hearing, at which Lefebvre and Weiler again appeared seeking to demonstrate that the sale price reflected the value of Sumitomo's lease and not the value of the real property. MDC also provided an affidavit from the Executive Vice President, General Counsel, and Secretary of MDC, which was admitted into evidence but limited in evidentiary weight because the individual was not present at either hearing to be made available to cross-examination or further questioning from this Board or the BOR. Weiler's appraisal changed somewhat between the BOR hearing and this Board's hearing, though the ultimate opinion of value and conclusion that the sale price reflected above-market rents remained unchanged. The BOE cross-examined MDC's witnesses and argued that it failed to rebut the presumption that the

recorded sale price established the true value of the subject property. Following the hearing, MDC and the BOE submitted written argument in support of their respective positions.

This Board issued a decision finding that MDC failed to rebut the presumption that the sale price reflected the property's value because it failed to show that an above-market lease led to a sale price that exceeded the true value of the subject real property. We further noted that the record lacked any reliable first-hand account regarding the sale negotiations or the motivations of either party to the transaction that would support the contention that MDC was motivated to pay a premium based on the lease or the income stream. The Board also discussed Weiler's appraisal, finding it did not establish that the lease was above market and that his opinions regarding the cost to develop the property and rate of return were not sufficient to rebut the sale.

MDC appealed the decision to the 10th District Court of Appeals, which sustained two of MDC's assignments of error. First, the Court agreed with MDC that "the BTA erred by requiring it to rebut some aspect of the sale before the BTA would fully consider MDC's appraisal evidence." *MDC Coast*, at ¶12. Like the BTA in our earlier decision, the Court explained that a recent, arm's-length sale price constitutes the best evidence of a property's value, though it no longer *conclusively* determines the value of the real property. Id. at ¶9, citing *Terraza 8, LLC v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-527; *Notestine Manor, Inc. v. Logan Cty. Bd. of Revision*, 152 Ohio St.3d 439, 2018-Ohio-2; *Spirit Master Funding IX, LLC v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 254, 2018-Ohio-4302. The Court further clarified, however, that when the opponent of a sale relies on appraisal evidence, such evidence "is equally admissible and competent as sale price evidence in proving a property's value," and must be considered by this Board "in its totality to determine whether it or the sale price more accurately values the property." *MDC Coast*, at ¶9, citing *GC Net Lease @ (3) (Westerville) Investors, LLC v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3856; *Westerville City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 308, 2018-Ohio-3855; *Spirit Master*; *Menlo Realty Income Properties 28, LLC v. Franklin Cty. Bd. of*

Revision, 10th Dist. Franklin No. 19AP-316, 2019-Ohio-4872. As such, the Court further concluded that this Board erred by not considering Weiler's ultimate conclusion of value after determining that MDC had not rebutted an aspect of the sale.

The Court likewise agreed with MDC's second assignment of error that we failed to consider all non-sale-price evidence. Specifically, the Court pointed to portions of Weiler's testimony and written report and found that "the BTA excluded relevant evidence from its analysis of whether the appraisal or sale price more accurately valued the subject property." *MDC Coast*, at ¶19. The Court found that we improperly ignored both Sumitomo's creditworthiness and that the Sumitomo leased the property on a net basis. Id. The Court further found that we ignored aspects of Weiler's appraisal and testimony from Lefebvre regarding the cost of development and build-to-suit lease agreement. Id. at ¶20-21. The Court then remanded the matter to this Board for further proceedings consistent with its decision. On remand, the parties submitted additional written argument in support of their respective positions.

As we again consider the evidence on remand, we must decide the evidentiary weight appropriate for Weiler's appraisal for tax year 2015. To do so, we must first determine whether the record contains sufficient evidence that a recent arm's-length sale of the subject real property took place, and if the answer is to the affirmative, whether the opponent of the sale has provided evidence that constitutes a more accurate value of the subject property. See *Westerville City School Dist.*, at ¶14. Rebuttal evidence may include an appraisal, such as the appraisal evidence presented in this case, to demonstrate that the sale was not reflective of market value or provide affirmative evidence of value. *Sprit Master*, at ¶9. We note that the Court has acknowledged that while appraisers must rely on hearsay evidence to perform their job, this Board is justified in excluding an appraiser's statement regarding the sale of the property itself, particularly where "[t]he basis for [the appraiser's] statement rested solely on a conversation she had with an unnamed owner who did not testify before the BOR or the BTA." *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046, ¶36. This narrow rule

applies to those circumstances "in which an appraiser acts merely as a conduit of information concerning material facts about the subject property itself," and the party fails to present testimony from the owner. Id.

With respect to the reliability of the December 2015 sale, we observe that the Court held that this Board erred in our reliance on "outdated precedent" to conclude that MDC was required to rebut some aspect of the sale before it would fully consider Weiler's conclusions. Nevertheless, the Court echoed the sentiment of this Board's decision:

> Rebuttal of the sale-price-as-best-evidence presumption occurs if the opponent of the sale price proves that an existing lease affected the sale price. In other words, the opponent of the sale price may rebut the presumption by demonstrating that the buyer of the property paid more for the property because the property was under lease.

MDC Coast, at ¶11. The Court further criticized our failure to consider Sumitomo's creditworthiness and that Sumitomo's rent was paid on a net basis as rebuttal evidence to the sale.

While we acknowledge that Weiler concluded that the sale price reflected the value of the lease and that Lefebvre stated that Sumitomo's rental rate was above market, we again conclude that MDC failed to establish that the lease was not on market terms or that the sale price was driven by the income stream. In other words, MDC failed to provide evidence to corroborate these statements. As the 10th District explained, "In determining whether an existing lease affected the sale price, a tax tribunal must consider: (1) the amount of rent charged under the lease in comparison to market rent, (2) the creditworthiness of the tenant, and (3) whether the lease is a net lease. *GC Net Lease* at ¶ 10; [*Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. No. 19AP204, 2020-Ohio-200, ¶ 13 ("*JDM II SF Natl. LLC*")], ¶ 13." *MDC*, at ¶19.

Looking at these three factors in reverse order, we acknowledge that the excerpt of the lease contained in the record shows that it was a net lease. Nevertheless, this factor alone is not sufficient

to rebut the reliability of the sale. Indeed, we note that Weiler utilized eight comparable leases in his income approach, all of which were leased on a net basis. Thus, this term alone does not make the lease of the subject property different from other leases in the market.

Next, with respect to the second factor, the 10th District referenced Weiler's characterization of Sumitomo as "an AAA-credit tenant" with "highly rated credit." Neither Weiler nor MDC, however, provided the evidence to support this conclusion. Additionally, there is no information in the record that would show Sumitomo's credit rating exceeds that of other tenants in the market. With the inability to review the basis for this opinion, we will not rely on it as the grounds to reject the sale.

Third, as we explained in our prior decision, MDC did not provide a complete copy of the lease and we were unable to independently determine whether its terms conformed to the market. See *Hilliard City Schools*. While the 10th District indicated that this Board did not consider Lefebvre's testimony that Sumitomo agreed to an above-market lease rate, to the contrary, we reviewed the testimony and found that his assertion was not supported by the evidence. As we explained in our prior decision:

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

be an explanation as to why Weiler considered additional information, it does not explain how this new information changed his opinion of market rent. Upon review of the comparable lease rates in both reports, we cannot conclude that either the $3.80 per-square-foot rent on the tax lien date or the $4.18 per-square-foot rent Sumitomo was contracted to pay in the sixth through tenth year of the lease exceeded market conditions for the subject property. Both rental rates fall within the range in each report: $2.45 (triple net) to $4.50 (modified gross) at the BOR, and $2.45 (triple net) to $4.95 (triple net) before this board. While the subject's rental rate may be at the high end of this range, this can be explained by the percentage of office space and age of the building. Weiler testified that office space leases at a higher rate than warehouse space, and a building with more office space generally sells at a higher price. Looking at the data available in the report, the subject property's 9% office space is above average, which would reasonably result in a higher rental rate. Similarly, the subject property is a brand-new building, only two months old on the tax lien date. A comparison of the rental rate of the subject to those of properties ranging in age from 1980 to 2014 with unknown office areas, would support a market rent at the higher end of the range. Accordingly, we find that despite his statements to the contrary, Weiler's report does not support a finding that the subject's rental rate exceeded market conditions.

Finally, even if we accept the contention that there was some value in the building being leased at the time of the transfer rather than being sold vacant, that does not establish that the sale was not valid if the lease was consistent with the market. The fact a property is leased at the time of sale is not in and of itself a reason to reject the transaction as evidence of value. The argument that a property must be valued as vacant 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, appeal pending Sup. Ct. No. 2020-643. Because we find that MDC has failed to establish that Sumitomo's lease impacted the sale price, we find that the sale was recent, arm's-length, and reliable evidence of the value of the subject real property.

Next, we must consider whether Weiler's appraisal provides a better indication of value than the sale of the subject property. As we consider the appropriate weight to give Weiler'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. Weiler relied extensively on the cost approach to value, though he also performed the sales comparison and income approaches to value.

Weiler relied primarily on the cost approach to value, which was based on the development budget dated October 3, 2013. This budget included $12,285,850 ($34.61 per square foot) hard costs, which incorporated $947,850 ($35,500 per acre) for the land. Soft costs, including surveys/soil testing, developer overhead, appraisal, insurance, taxes, financing, legal fees, and contingency, were estimated at $1,203,000 ($3.39 per square foot), for a total estimated cost of $13,488,850 ($38.00 per square foot). Based on this estimate, Weiler concluded to a value of $13,500,000. Weiler also included a land sale analysis based on the January 8, 2014, purchase of the subject property for $947,850 ($35,579 per acre) and four other land sales that took place in Union County between December 2009 and January 2014. Weiler concluded that the January 2014 sale price for the land was applicable and supported by the other sales, opining a value of $950,000 for the underlying land. Weiler also included a Cost Calculator for a class C distribution facility, which yielded a base cost of $12,055,964 ($33.96 per square foot), plus $120,557 (1.0 %) indirect cost, and $987,264 developer profit, for $13,163,514 estimated building cost new. Weiler then deducted 3.0%, or $329,088, to account for physical depreciation, and added the resulting depreciated building value ($12,834,426) to the value of site improvements ($250,000) and land value ($950,000). The value indicated by this estimated approach was $14,035,000.

Weiler also performed the income approach to value, though as discussed above, the rental analysis changed somewhat in the appraisal presented to this Board as compared to the appraisal submitted to the BOR. In the BOR appraisal, Weiler utilized a market rent of $3.75 per square foot, plus $0.75 per square foot reimbursable income, and applied a 4.00% vacancy/collection loss, for an effective gross income ("EGI") of $1,533,600. On appeal, Weiler's pro forma reflected a market rent of $3.50 per square foot, $0.75 per square foot reimbursable income, 7.00% vacancy and collection loss, and EGI of $1,403,137. For both appraisals, Weiler applied a 7.50% capitalization rate plus a tax additur, though the rate changed because he utilized the full additur (2.75%) for the BOR appraisal but a vacancy-weighted additur (0.20%) in the appraisal on appeal. Weiler found that the income approach indicated a value of $11,875,000 in the BOR appraisal and $13,350,000 on appeal.

Weiler also performed the sales comparison approach, which also changed between the wo appraisals without much explanation as to why. In the BOR appraisal, Weiler considered the sales of four properties that took place between July 2012 and October 2014 with buildings constructed between 1992 and 2005. The unadjusted price per square foot ranged from $32.50 to $45.27, which was adjusted to a range of $32.50 to $40.00 (though the narrative indicates the highest end of the range was $45.00 per square foot) to account for differences in building area, composition, percentage office area, land-to-building ratio, location/quality/condition, and year built. Weiler opined that based on the physical and locational attributes of the subject property, a market value near the middle end of the range, $37.50 per square foot, was warranted, which resulted in an estimated value of $13,315,000. On appeal, Weiler relied on five sales, three of which were also in the BOR report, with sale dates between July 2012 and April 2016 that were constructed between 1992 and 2005. The unadjusted sale prices ranged from $27.10 to $44.00 per square foot, and although he described the necessary adjustments, Weiler did not include the adjusted sale prices. Weiler again determined that $37.50 was appropriate, for a resulting value of $13,300,000.

Weiler found that all three approaches were reliable indicators of value and relied heavily on the cost approach to value because the subject property was constructed just months before the

tax lien date. For both appraisals, Weiler opined that the value of the property was $13,500,000 as of January 1, 2015.

Upon review of Weiler's appraisals, we again find that they neither rebut the sale nor provide more probative evidence of value. As we pointed out in our prior decision, Weiler relied heavily on the cost of development and rate of return to reach his conclusions. Weiler's cost approach, however, was based primarily on the development budget and did not include the entrepreneurial incentive the developer sought to make the project worth undertaking. This incentive translates into entrepreneurial profit once development is complete, and the profit (or loss) is realized. See The Appraisal of Real Estate (14th Ed. 2013) 573. The 10th District pointed out that Weiler did discuss the entrepreneurial profit in his analysis based on the cost calculator and included a line item of $987,264 for developer profit. Indeed, this number was significantly lower than the $5,511,150 difference between the budgeted cost of construction and the sale price. This number was not included in Weiler's opinion of value based on the cost approach, but even if we were to add that amount, or even $1,093,691 (the amount derived from applying Weiler's calculation to the budgeted cost he ultimately relied on), we find that it would not be as probative as the actual profit generated by the sale of the subject property.

In our prior decision, in our description of why Weiler's cost approach was flawed and provided a less reliable value than the sale of the subject property, we explained the importance of entrepreneurial profit in valuing a property based on the cost of development:

> Without the anticipation of some economic "reward," a developer would have no incentive to undertake a new building project. [The Appraisal of Real Estate 573 (14th Ed.2013).] A project's entrepreneurial profit is defined as the difference between the total cost of development and its market value. Id. The developer's realization of this profit depends on "how well the entrepreneur has analyzed the market demand for the property, selected the site, and constructed the improvements." Id. Thus, a developer's profit, which correlates directly to the

> property's market value, reflects not only the cost of development but also the market demand for that particular property. Market value and purchase price often relate to supply and demand associated with the characteristics of the real property itself, such as location or available alternatives, and not simply the terms of a lease that may or may not be in place. As such, even a considerable profit does not necessarily show the buyer "overpaid" or render a sale unreliable where the lease is otherwise consistent with market conditions. Rather, the entrepreneurial profit shows that the developer made a good business decision to develop a property with a higher market value than cost of construction.

The Board further explained that in this case, the entrepreneurial profit equated to difference between the sale price and the cost of development:

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

Finally, though they provided only support for his cost analysis, we find that the income and sales comparison approaches are not better evidence than the sale of the subject property itself. Looking first to the income approach, we again observe that the rents received by MDC from Sumitomo fall within the range, which adds support for the reliability of the sale. Additionally, we

find it unclear as to how Weiler chose the vacancy rate or why it changed between the two reports. Similarly, we cannot discern from the survey of local capitalization rates how those properties compare to the subject property, which was newly built and contained 32,000 square feet of office space. As noted in his report, capitalization rates depend upon location, age, building features, and lease terms, yet he utilized a rate a full percentage point lower than the lowest rate in the survey (8.5%). Thus, we question whether those properties are sufficiently similar to the subject property to make the capitalization rates derived from their sales more probative than the sale of the subject property itself. Indeed, the surveyed rates from RealtyRates.com start as low as 4.72. If this rate (plus the vacancy-weighted tax additur) is applied to the estimated net operating income, it yields a value exceeding the sale price. Likewise, we find that even with adjustments, the sales utilized by Weiler in his sales comparison approach were sufficiently different from the subject property that the sale of the subject property provides a more reliable value. These factors regarding Weiler's analysis, combined with various errors and inconsistencies within his report, make it less probative evidence of value than MDC's December 2015 purchase price.

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

PARCEL NUMBER 29-023057.0010

TRUE VALUE $6,057,400

TAXABLE VALUE $2,120,090

PARCEL NUMBER 29-0023057.0017

TRUE VALUE $12,942,600

TAXABLE VALUE $4,529,910

OHIO BOARD OF TAX APPEALS

MARIANNE POWERS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-518
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - MARIANNE POWERS
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For the Appellee(s) - HAMILTON COUNTY BOARD OF REVISION
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Entered Monday, June 14, 2021

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

This matter is considered upon a 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 record contains the affidavit of the clerk to the Board of Revision 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

OVERHEADDOOR CORPORATION, (et. al.), Appellant(s), vs. ASHTABULA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-485 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - OVERHEADDOOR CORPORATION
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Entered Wednesday, June 16, 2021

Mr. Harbarger and Ms. Clements concur. Mr. Caswell not participating.

This matter is considered by the Board of Tax Appeals based upon the filing of a motion to dismiss by the county appellees, which asserts that this Board lacks jurisdiction to consider this matter. Specifically, the county appellees argue that the appellant property owner failed to file a complaint with the Ashtabula County Board of Revision ("BOR") and, therefore, has no BOR decision from which to appeal to this Board. The property owner did not respond to the motion within the time frame to do so. Ohio Adm.Code 5717-1-13(B). We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and motion to dismiss.

The motion to dismiss is premised upon relevant portions of R.C. 5717.01, which allows for an appeal to be taken to this Board from a decision of a county board of revision provided

such appeal is filed with this Board and the board of revision within thirty days after notice of the decision of the county board of revision is mailed. See, also, R.C. 5715.20. See, e.g., *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990) ("Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal.")

In this matter, there is no indication that the property owner filed a complaint with the BOR and that the BOR issued a decision from which the property owner could appeal to this Board. Though the property owner's notice of appeal alleged that it was appealing a BOR decision dated March 2, 2021, the record is void of any evidence that the BOR issued a decision on that date or on any other date. As noted above, the property owner did not come forward to dispute the allegations made in the motion to dismiss.

Based upon the foregoing, we find that we lack jurisdiction to consider this matter. It is undisputed that there is no BOR decision from which the property owner could appeal to this Board. As a consequence, we must grant the county appellees' motion to dismiss. This appeal is now dismissed. **The previously scheduled small claims, telephone hearing for 10:30AM on June 18, 2021, is cancelled.**

OHIO BOARD OF TAX APPEALS

GREG ANTOLIK, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-378
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - GREG ANTOLIK
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Entered Monday, June 21, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of

appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

REO INVESTMENTS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2714
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Represented by:
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ESQ.
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Entered Monday, June 14, 2021

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

Appellant REO Investments LLC ("REO") appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real properties, parcel numbers 642-21-083, 644-18-013, and 644-18-014, 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 subject properties are single-family rental properties, and the Fiscal Officer initially assessed their values at $66,500, $60,900, and $65,900, respectively. REO filed a complaint with the BOR seeking reductions in value to $25,000 for each property. The complaint at issue in the present appeal is one of several related complaints that involve similar evidence and testimony. BOR convened hearings on the matter during the same day, with the hearing related

to BTA No. 2019-2712 (BOR case number 641-16-067-2018) taking place first. The BOR incorporated the record for this hearing into the present appeal. To the extent that the hearing record and evidence was not already certified in the transcript for this case, we incorporate the record from those BOR proceedings into the record for the present appeal. We note that during the BOR hearing for that case, the BOR set forth a list of sales of properties near the subject properties. Although this list was discussed by the witnesses and members of the BOR, it was not included in the transcript on appeal. After further attempts by this Board to attempt to obtain the list, the BOR certified that it is not available. As such, are unable to consider the list of sales in our determination.

During the incorporated BOR hearing, REO presented testimony and written reports of appraiser Michael Thomas. Thomas testified that he viewed the interior of each property and relied primarily on the sales comparison approach to value for each appraisal. Thomas stated that he looked at only arm's-length sales that were exposed to the market through the multiple listings service ("MLS") and took place within the twelve months preceding the tax lien date. Thomas explained that he chose which properties were most comparable based on not only location proximity, but also similarity in condition and effective age to the relevant subject. Thomas also performed an income analysis that was offered to the BOR as an addendum because it was not included in his original report. Thomas indicated that he did not consider the income approach in his conclusion of value, but it supported his sales comparison analysis.

REO also presented testimony from its managing member, Frank Dinardo, regarding its business model and the condition of the properties. Dinardo testified that REO is a building/renovation company that also purchases distressed properties, fixes the exterior, and quickly renovates the interior, and rents them to tenants. Dinardo stated that the repairs to properties that he intends to rent are done to make them free of any violations but not as nice as other properties that he renovates for owner-occupants.

At the BOR hearing regarding the subject properties, REO relied on testimony from Dinardo regarding the condition of the properties and their rental rates. REO also presented testimony and reports from Thomas. The BOR questioned Thomas regarding his choices of comparable properties. Following the hearing, the BOR issued a decision maintaining the initially assessed valuation. On the Oral Hearing Journal Summary, the BOR indicated that it rejected the appraisals because Thomas used only lower value sales based on his distinction between "rental quality" and "owner quality." One member of the BOR dissented, though he observed that Thomas "consistently" chose to use the lower end of the market while all photographs appear to reflect the properties were in average (as opposed to below-average) condition.

REO appealed the BOR's decision, again seeking a reduction in value based on the Thomas appraisals as support for the requested reductions. REO argues that this Board should find value based on the Thomas appraisals because they are the only evidence presented from an independent third-party expert. The county appellees argue that the BOR properly rejected the appraisals as not being credible because Thomas used lower-priced sales based on his distinction between rental quality and owner quality.

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, in addition to Dinardo's testimony regarding the physical characteristics of the properties, REO relies on appraisal reports prepared by Thomas, a state-certified appraiser that personally viewed the interior and exterior of each subject property. Thomas appeared to testify before the BOR, describe his methodology, and explain the basis for his conclusions.

Upon review of Thomas's appraisals, which provide an opinion of value as of tax lien date, were prepared for tax valuation purposes, and attested to by a qualified expert, we find that they constitute competent and probative evidence of value. We further find that the value conclusions are reasonable and well-supported. We acknowledge the BOR's criticisms of his analysis, but we find that Thomas sufficiently explained the basis for his conclusions. We agree with the BOR that it would be improper for an appraiser to simply assume that because the subject properties are utilized as residential rental properties, they must be in below-average condition and, consequently, restrict comparable properties to only those in the lower end of the range. In this case, however, despite his comments to that effect, Thomas further explained that he personally viewed the properties and the condition of each, which he considered as he narrowed down sales to those properties that were most similar to the subject properties. Thus, the record shows that Thomas did not merely assume that the properties were in "below average" condition or "average condition" and choose the comparable properties based on that assumption. Rather, Thomas applied his observations of the properties and his knowledge of the

market to choose those properties most similar and to make any necessary adjustments.

Accordingly, we find that, in the absence of any persuasive evidence or argument to the contrary, the Thomas appraisals reflect the value of the subject real properties 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:

PARCEL NUMBER 642-21-083

TRUE VALUE $25,000

TAXABLE VALUE $8,750

PARCEL NUMBER 644-18-013

TRUE VALUE $33,000

TAXABLE VALUE $11,550

PARCEL NUMBER 644-18-014

TRUE VALUE $31,000

TAXABLE VALUE $10,850

OHIO BOARD OF TAX APPEALS

WILLIAM M. GARDNER, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-2394
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
UNION COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Wednesday, June 23, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga*

Cty. Bd. of Revision, 46 Ohio St.3d (1989)). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the timely dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did timely file his notice of appeal with this Board or the BOR. The BOR held its hearing in August 2020 and issued a decision dated September 20, 2020. The decision was sent to appellant, and the record contains the green card return receipt indicating the decision was delivered. It actually appears the decision may have been sent before September 20, 2020, because the certified mail receipt is stamped September 15, 2020. Regardless, the signed certified mail receipt was returned to the BOR on September 21, 2020. Appellant filed a notice of appeal with this Board on December 16, 2020, and he filed his notice of appeal with the BOR on December 21, 2020. Both dates are more than thirty days after the BOR issued its decision.

Appellant does not contest he actually received the decision. However, he argues his appeal was timely for two reasons. First, he argues the BOR failed to send the decision to counsel of record, who did not receive a copy of the decision until November 19, 2020, when counsel contacted the BOR. Second, he argues the BOR failed to effectuate good service because the decision is addressed to the board of education ("BOE") who filed the original complaint. The decision lists appellant as a "cc." Ohio law compels us to reject both arguments. We start with the lack of timely service on counsel. We are sympathetic to appellant's argument, and we agree a better practice is to serve the party and counsel of record. However, we cannot expand R.C. 5715.20, which does not require additional service on counsel when service was already made on the owner directly at a place reasonably calculated to give the owner notice. See *Attaie v. Franklin Cty. Bd. of Revision* (Jan. 3, 2020), BTA No. 2019-1059, unreported. Here, not only was the decision sent to an address "reasonably calculated to give notice[,]" the owner actually received notice. *Knickerbocker Properties v. Delaware Cty. Bd. of Revision*, 119 Ohio St.3d 233, 2008-Ohio-3192; see also generally *Groveport Madison Loc. School Bd. of Edn. v.*

Franklin Cty. Bd. of Revision, 149 Ohio St.3d 706, 2017-Ohio-1428. All parties rely heavily on *Meadows Dev., LLC v. Champaign Cty. Bd. of Revision*, 124 Ohio St.3d 349, 2010-Ohio-249. As we recognized in *Attaie*, *Meadows* addresses the situation where a BOR recertifies a decision within the 30-day appeal period, when no appeal was filed in the interim, and when certification to counsel was calculated to give notice to the owner. Under *Meadows*, the appeal period restarts when the decision is recertified. However, as the BOE correctly notes, counsel requested a copy of the decision, and was given one, more than thirty days after the original decision was certified. Additionally, it does not appear the copy given to counsel was a "recertification," nor does it appear the BOR intended to recertify its decision. For these reasons, we find *Meadows* inapplicable.

Appellant's second argument is that the notice was deficient because the top of the decision is addressed to the complainant-BOE, and the owner was listed as a "cc." There is no jurisdictional requirement that the decision letter be addressed to the owner and not the BOE-complainant. We note the decision provides the owner with sufficient information. The decision lists the complainant, the complaint number, the parcel number, the property location, the owner, the original value, the BOR's adopted value, and even a notification to appellant regarding his appeal rights. Appellant relies on two cases from courts of appeals discussing courtesy copies; however, those cases relate to the Ohio Rules of Civil Procedure, which are inapplicable here. Indeed, the Ohio Supreme Court in *Meadows* specifically held the service rules from the Civil Rules are inapplicable in this area. See *Meadows* at ¶16.

For the reasons stated above, we must, and do, dismiss for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

MICHAEL LANIGAN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-105, 2021-106
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Monday, June 28, 2021

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 within thirty days after notice of such decision 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 this Board. Failure to comply with the appellate statute is fatal to the appeal." See, also, *Cincinnati School Dist. Bd. of Edn. v. Bd. of Revision of Hamilton Cty.*, 87 Ohio St.3d 363, 369 (2000) ("Only the BTA and the common pleas courts have been granted authority under R.C. 5717.01 and 5717.05 to review board of revision decisions, and even they can review decisions only where the appeals have been filed in a timely [and correct] manner.").

In these duplicative and consolidated matters, the county appellees assert that the appellant property owner did not file a complaint with the Cuyahoga County Board of Revision ("BOR") and, therefore, there is no decision from which the property owner could appeal. Notably, the property owner did not respond to the motion to dispute that contention. We have repeatedly held that, upon dispute, an appealing party has an affirmative burden of proving that all statutory requirements were satisfied to invoke this Board's jurisdiction. See e.g., *Shaw v. Cuyahoga Cty. Bd. of Revision* (Nov. 25, 2020), BTA No. 2020-324, unreported. As such, we are constrained to conclude that the property owner failed to follow the proper procedures to appeal to this Board.

Accordingly, based upon the foregoing, this Board grants the county appellees' motion and, therefore, these matters are dismissed.

OHIO BOARD OF TAX APPEALS

DENIZ EREN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-572
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

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Entered Tuesday, June 29, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme

Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

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). 2018-2287 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, June 28, 2021

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

[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 1608196, 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. To the extent that additional documentation was attached to a post-hearing brief as an attempt to submit additional evidence into the record, these documents are not properly before this board and will not be considered.

[2] The subject property consists of roughly 5.84 acres of land improved with a nursing home licensed for 147 beds. The auditor initially assessed the subject's total true value at $3,496,700. The appellee property owner, Manor Care of Canton Property, LLC ("Manor Care"), filed a complaint with the BOR seeking a reduction in value to $2,650,000. The BOE filed a countercomplaint in support of the auditor's value. At the BOR hearing, Manor Care presented the testimony and written report from appraiser Richard G. Racek Jr., who opined that the value of the subject real property was $2,250,000 as of January 1, 2017. The BOE cross-examined Racek, but did not offer any independent evidence of value.

[3] Racek testified that the property had significant obsolescence and needed a renovation that would include major capital improvements. At the time of his visit in August 2018, none of the repairs had been completed nor were any scheduled. Racek stated that the occupancy at the subject property had been declining for several years. Racek acknowledged an August 2018 transfer of the property, but indicated that it was not an arm's-length transaction and was related to bankruptcy proceedings of Manor Care, which continued to operate the property. Racek indicated that the property's occupancy and revenue would continue to decline until significant renovations are made. Racek stated that the decreasing occupancy was not necessarily a function of the operator because he was aware of other facilities operated by Manor Care continued to have 90% occupancy.

[4] With respect to his sales comparison approach, Racek considered the sales of five

operating nursing homes, each of which transferred as a going concern. The sale prices included the entire business, licensing, as well as furniture, fixtures, and equipment ("FF&E"). The parties to the sales provided both the overall sale price and an allocation among the various components. After making necessary adjustments to the sales, Racek estimated a going-concern price for the subject property of $30,000 per bed, or $4,410,000. Racek allocated $15,000 per bed ($2,205,000 total) for non-realty items (licenses, FF&E, and goodwill). This resulted in an indicated value of $2,205,000 ($15,000 per bed or $46.08 per square foot). Racek commented that although the subject property was operating at a loss, it had some intangible value of having a nursing staff in place, though it did not have other goodwill associated with the operating business. Racek also considered sales of four properties that were formerly nursing homes and sold as real estate only, which ranged from $25.25 to $115.74 per square foot for the real estate only. Racek observed that the indicated a price of $46.08 per square foot based on the allocation of the value of the going concern fell within this range. Racek finally considered an allocation based on operating ratios from the various components to generate an overall capitalization rate for the going concern.

[5] Racek next performed the income approach. Racek looked at the subject's actual income history and noted that the subject property's occupancy and revenue were declining, with the property generating no positive income during 2016 or 2017. Racek explained that because the property was not generating a positive income, he did not have net operating income to capitalize. Instead, Racek applied a gross income multiplier (.65), to the subject's actual 2017 revenue ($6,887,497), which resulted in a value of $4,476,872, or $46,854 per bed for the going concern. Racek observed that this value fell within the range established by the sales comparison approach. After deducting $2,205,000 for non-realty, the income approach indicated a value of $2,270,000. On cross-examination, Racek acknowledged that the revenue from 2017 was lower than 2016, explaining that he used the lower number because with the benefit of hindsight, the revenues were on a downward trend and continued to decrease after the tax lien date.

[6] Racek also performed the cost approach to value, though he gave it little weight due

to the difficulty of estimating the rate of depreciation for a building of this age. Racek developed a site value based on five land sales in the greater Cleveland and Akron areas for properties that were developed into senior living. Based upon these sales, Racek estimated the land value at $175,000 per acre, or $1,020,000. Racek calculated the replacement cost new was $10,731,750, to which he applied a 90% accrued depreciation, resulting in $1,073,175 as the depreciated value of the improvements. After adding the site value, the cost approach indicated a value of $2,090,000.

[7] Racek reconciled the three approaches, giving substantial weight to the sales comparison and income approaches. The cost approach was developed to give additional support to the other approaches. Racek concluded that the value of subject real property was $2,250,000 as of January 1, 2017.

[8] The BOR issued a decision reducing the initially assessed valuation to $2,250,000 based on the appraisal, including the statements regarding the subject property's condition. From this decision, the BOE filed the present appeal. This board convened a hearing at which the BOE provided evidence of a December 26, 2018 sale of the subject property, asserting that the reported sale price of $6,306,878 represents the true value of the subject property as of the tax lien date. Manor Care did not dispute that the sale was a recent arm's-length sale but argued that the total purchase price should be reduced to account for nonreality to reflect the value of the real property. Manor Care claimed that the parties stipulated to a value for a subsequent year at an amount less than the full sale price, and the BOE is engaging in "intellectual dishonesty" by advocating for the full recorded sale price. Manor Care argues that this board should affirm the BOR's decision and find value consistent with Racek's appraisal as the BOE did not sustain its burden of proof on appeal.

[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). 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. Nevertheless, 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] 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.

[11] In the present appeal, there is no dispute that the subject property transferred via a recent, arm's-length transaction. See *Lone Star Steakhouse & Saloon of Ohio, Inc. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 34, 2018-Ohio-1612. 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. Absent unusual complexities of a sale, when a property owner fails to establish a proper allocation among real and personal property, the full sale price constitutes the value of the real property. *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision*, 151 Ohio St.3d 109, 2017-Ohio-7650, ¶11.

[12] In the case of an eldercare facility, which often sell as a "bulk transaction" involving real and personal property, this board must consider all evidence to determine whether the reported purchase price included consideration for assets other than real property and, if so, the proper allocation of the purchase price. *Arbors E. RE, L.L.C. v. Franklin Cty. Bd. of Revision*, 153 Ohio St.3d 41, 2018-Ohio-1611. These assets may include personal property, such as equipment, or business value. Id. Nevertheless, just because an eldercare facility *can* transfer as a going concern, it does not establish that such is the case in the sale December 2018 sale of the subject property.

[13] The record before us includes the conveyance fee statement, the First Amendment to Purchase and Sale Agreement, Memorandum of Master Lease, Limited Warranty Deed, and Racek's testimony and report. Based on this information, we find that Manor Care failed to show that the recorded sale price includes any personal property or business value. Manor Care presented nothing to show that the sale, in fact, included the transfer of any assets to the purchaser of the real property (as opposed to the new operator). Neither the First Amendment to Purchase and Sale Agreement nor the Memorandum of Master Lease include any reference to personal property owned by the buyer of the real estate. Furthermore, if any documents existed that would definitively show whether the personal property, bed licenses, or business components of the going concern sold to the buyer of the real estate or the tenant/operator after the sale, such documents would be in the control of Manor Care. Manor Care provided no documents or testimony at this board's hearing as evidence of their claims. Thus, we need not reach whether Manor Care established a proper allocation because it failed to prove any allocation of the recorded sale price was appropriate.

[14] Next, we consider whether Racek's appraisal provides a more reliable basis for this board to value the subject property. Manor Care relies on this board's decision in *Select Medical Property Ventures, LLC v. Cuyahoga Cty. Bd. of Revision* (Aug. 23, 2019), BTA Nos. 2018-172 and 2018-228, unreported. While in that case, this board found value based on an appraisal and rejected the recorded purchase price for the bulk sale of nursing home, we find the facts distinguishable in an important way. In *Select Medical Property Ventures*, the property owner provided the purchase agreement, which reflected that the transfer included "'all furniture, fixtures, furnishings, machinery, tooling, vehicles, materials, equipment (including medical equipment), office equipment, computing and telecommunications equipment and other tangible personal property.' The agreement also contemplated the transfer of advertising materials, promotional materials, customer lists, supplier lists, market surveys, books, ledgers, files, reports, employee records, business records, operating records, and a substantial amount of additional non-realty." Id. at 2-3. This is vastly different from the present appeal, where Manor Care has failed to establish that anything other than real property was included in the recorded purchase price.

[15] We find that Racek's appraisal evidence fails to rebut the sale. First, we find that Racek's report, which is based on the sales of other properties, is less probative than a recent, arm's-length sale of the subject property itself. Second, we note that the value that Racek attributed to the subject property as a going concern, $4,410,000, was substantially lower than it sold in December 2018. Racek described a need for extensive renovations, years of declining revenue, and operations at a loss, asserting that no plans were in place to make such repairs. Yet, a buyer was willing to pay $6,306,878, nearly $2,000,000 more than his concluded value for the going concern and $4,000,000 more than his conclusion of value for the real property. Manor Care has failed to provide any evidence or explanation to account for this difference and made no challenge to the reliability of the sale. Racek's testimony indicated that the property had little, if any, business value, and it appears that the buyer was willing to purchase the property in the same

condition as the property existed on the tax lien date. Whether it was due to his reliance on the subject property's actual performance despite an operator in bankruptcy or his choice of comparable sales, we find that Racek undervalued the subject property and that the sale price provides far more reliable evidence.

[16] Finally, even if the evidence of a subsequent year's settled value were properly in the record, it is not probative evidence of value for the tax year at issue and does not rebut the sale. Therefore, in the absence of competent and probative evidence to the contrary, we find that the full recorded sale price constitutes 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, 2017, were as follows:

TRUE VALUE

$6,306,880

TAXABLE VALUE

$2,207,410

OHIO BOARD OF TAX APPEALS

KELLIE FLONNOY, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-125
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
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Entered Tuesday, July 6, 2021

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

The property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property for tax year 2019. 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.

Before we consider the merits of this appeal, we must first determine whether we have jurisdiction to do so. As such, we begin our analysis with the county appellees' motion to dismiss, which is premised upon the relevant portions of R.C. 5717.01, which allows for an appeal to be taken to this Board from a decision of a county board of revision provided such appeal is filed with this Board *and* the board of revision *within thirty days after notice of the decision* of the county board of revision *is mailed*. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence

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

In this matter, the county appellees assert that the property owner untimely filed a copy of the notice of appeal with the BOR, which precludes this Board from considering the merits of this appeal. According to the county appellees, the BOR sent its decision to the property owner on December 16, 2020 and the property owner filed her notice of appeal with this Board on January 15, 2021. However, the county appellees assert that property owner filed a copy of the notice of appeal with the BOR five days after the statutory deadline, on January 20, 2021. The property owner responded to the motion, advancing a number of arguments against the county appellees motion to dismiss, which will be considered below.

First, the property owner argues that the motion should be denied because the county appellees violated the case management schedule and Board directive by untimely filing the motion to dismiss. See Ohio Adm.Code 5717-1-07; Board of Tax Appeals Docketing Letter Dated January 15, 2021. However, as this Board's docketing letter notes, issues related to this Board's subject-matter jurisdiction may be raised at any time during the pendency of the appeal. *Painesville v. Lake Cty. Budget Comm.*, 56 Ohio St.2d 282, 284-285 (1978), citing *Gates Mills Investment Co. v. Parks*, 25 Ohio St.2d 16, 19-20 (1971) ("The failure of a litigant to object to subject-matter jurisdiction at the first opportunity is undesirable and procedurally awkward. But it does not give rise to a theory of waiver, which would have the force of investing

subject-matter jurisdiction in a court which has no such jurisdiction."). As such, we find no merit to this argument.

Second, though the property owner concedes that the notice of appeal was untimely filed with the BOR, she argues that the motion should be denied because she misunderstood the filing deadline and approved filing methods, which does not amount to willful neglect or unreasonable cause. Unfortunately, by proceeding in a pro se capacity, the property owner risked the possibility of an incomplete understanding of the real-property valuation challenge process. By electing to proceed without an attorney, the property owner is not relieved of the rules of litigation. See, e.g., *Phelps v. Ohio Atty. Gen.*, Franklin App. No. 06AP-751, 2007-Ohio-14, ¶8 ("We recognize that appellants are acting pro se. Nevertheless, a pro se litigant 'is held to the same rules, procedures and standards as those litigants represented by counsel and must accept the results of her own mistakes and errors.'"). As such, we find no merit to this argument.

Third, the property owner seemingly argues that the motion should be denied because of restrictions related to the coronavirus pandemic. We have previously considered and rejected a similar argument. In *Porat Group 3, LLC v. Cuyahoga Cty. Bd. of Revision* (Jan. 19, 2021), BTA No. 2020-1399, unreported, we held that the Governor vetoed the portion of House Bill ("H.B.") 197, which passed the General Assembly in March 2020, that would arguably have extended the deadline found in R.C. 5717.01. But see *Chapman v. McClain* (Oct. 13, 2020), BTA No. 2020-1162, unreported, appeal pending S. Ct. No. 2020-1390. It should also be noted that even if H.B. 197 applied to appeals filed with this Board from decisions of boards of revision, it would not support the property owner's argument. Tolling of statutory deadlines expired either when the Governor's declaration of emergency ended or after July 30, 2020, whichever occurred sooner. As such, we find no merit to this argument.

Fourth, she argues that the motion should be denied, and this matter remanded to theBOR. Not only do we lack jurisdiction to remand this matter to the BOR, because the notice of appeal was untimely filed with the BOR, but we can discern no basis to do so. As such, we find no merit to this

argument.

Accordingly, based upon the foregoing, we find merit to the county appellees' motion to dismiss and grant it. As a result, this appeal is dismissed.

OHIO BOARD OF TAX APPEALS

JLCO, LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-519
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Tuesday, July 6, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga*

Cty. Bd. of Revision, 46 Ohio St.3d (1989).”). This Board is duty-bound to abide by OhioSupreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a “technicality.”

Here, the movant alleges appellant did not file, or did not timely file, their notice of appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

REO INVESTMENTS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2719
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Tuesday, July 6, 2021

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

Appellant REO Investments LLC ("REO") appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real properties, parcel numbers 645-17-092, 645-26-129, and 645-31-052, 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 properties are single-family rental properties, and the Fiscal Officer initially assessed their values at $68,200, $60,200, and $52,400, respectively. REO filed a complaint with the BOR seeking reductions in value to $30,000 for each property. The complaint at issue in the present appeal is one of several related complaints that involve similar evidence and testimony. BOR convened hearings on the matter during the same day, with the hearing related

to BTA No. 2019-2712 (BOR case number 641-16-067-2018) taking place first. The BOR incorporated the record for this hearing into the present appeal. To the extent that the hearing record and evidence were not already certified in the transcript for this case, we incorporate the record from those BOR proceedings into the record for the present appeal. We note that during the BOR hearing for that case, the BOR set forth a list of sales of properties near the subject properties. Although this list was discussed by the witnesses and members of the BOR, it was not included in the transcript on appeal. After further attempts by this Board to attempt to obtain the list, the BOR certified that it is not available. As such, are unable to consider the list of sales in our determination.

During the incorporated BOR hearing, REO presented testimony and written reports of appraiser Michael Thomas. Thomas testified that he viewed the interior of each property and relied primarily on the sales comparison approach to value for each appraisal. Thomas stated that he looked at only arm's-length sales that were exposed to the market through the multiple listings service ("MLS") and took place within the twelve months preceding the tax lien date. Thomas explained that he chose which properties were most comparable based on not only location proximity, but also similarity in condition and effective age to the relevant subject. Thomas also performed an income analysis that was offered to the BOR as an addendum because it was not included in his original report. Thomas indicated that he did not consider the income approach in his conclusion of value, but it supported his sales comparison analysis.

REO also presented testimony from its managing member, Frank Dinardo, regarding its business model and the condition of the properties. Dinardo testified that REO is a building/renovation company that also purchases distressed properties, fixes the exterior, and quickly renovates the interior, and rents them to tenants. Dinardo stated that the repairs to properties that he intends to rent are done to make them free of any violations but not as nice as other properties that he renovates for owner-occupants.

At the BOR hearing regarding the subject properties, REO relied on testimony from Dinardo regarding the condition of the properties and their rental income. REO also presented testimony and reports from Thomas. The BOR questioned Thomas regarding his choices of comparable properties. Following the hearing, the BOR issued a decision maintaining the initially assessed valuation. On the Oral Hearing Journal Summary, the BOR indicated that it rejected the appraisals because Thomas used only lower value sales based on his distinction between "rental quality" and "owner quality." One member of the BOR dissented, though he observed that Thomas "consistently" chose to use the lower end of the market while all photographs appear to reflect the properties were in average (as opposed to below-average) condition.

REO appealed the BOR's decision, again seeking a reduction in value based on the Thomas appraisals as support for the requested reductions. REO argues that this Board should find value based on the Thomas appraisals because they are the only evidence presented from an independent third-party expert. The county appellees argue that the BOR properly rejected the appraisals as not being credible because Thomas used lower-priced sales based on his distinction between rental quality and owner quality.

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, in addition to Dinardo's testimony regarding the physical characteristics of the properties, REO relies on appraisal reports prepared by Thomas, a state-certified appraiser that personally viewed the interior and exterior of each subject property. Thomas appeared to testify before the BOR, describe his methodology, and explain the basis for his conclusions.

Upon review of Thomas's appraisals, which provide an opinion of value as of tax lien date, were prepared for tax valuation purposes, and attested to by a qualified expert, we find that they constitute competent and probative evidence of value. We further find that the value conclusions are reasonable and well-supported. We acknowledge the BOR's criticisms of his analysis, but we find that Thomas sufficiently explained the basis for his conclusions. We agree with the BOR that it would be improper for an appraiser to simply assume that because the subject properties are utilized as residential rental properties, they must be in below-average condition and, consequently, restrict comparable properties to only those in the lower end of the range. In this case, however, despite his comments to that effect, Thomas further explained that he personally viewed the properties and the condition of each, which he considered as he narrowed down sales to those properties that were most similar to the subject properties. Thus, the record shows that Thomas did not merely assume that the properties were in "below average" condition or "average condition" and choose the comparable properties based on that assumption. Rather, Thomas applied his observations of the properties and his knowledge of themarket to choose those properties most similar and to make any necessary adjustments. Accordingly, we find that, in the absence of any persuasive evidence or argument to the contrary, the Thomas appraisals reflect the value of the subject real properties 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:

PARCEL NUMBER 645-17-092

TRUE VALUE $31,000

TAXABLE VALUE $10,850

PARCEL NUMBER 645-26-129

TRUE VALUE $31,000

TAXABLE VALUE $10,850

PARCEL NUMBER 645-31-052

TRUE VALUE $38,000

TAXABLE VALUE $13,300

OHIO BOARD OF TAX APPEALS

REO INVESTMENTS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2718
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

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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, July 6, 2021

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

Appellant REO Investments LLC ("REO") appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real properties, parcel numbers 645-17-073, 649-06-089, and 650-12-042, 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 properties are single-family rental properties, and the Fiscal Officer initially assessed their values at $58,300, $52,400, and $80,000, respectively. REO filed a complaint with the BOR seeking reductions in value to $30,000, $30,000, and $38,000, respectively. The complaint at issue in the present appeal is one of several related complaints that involve similar evidence and testimony. BOR convened hearings on the matter during the same day, with the

hearing related to BTA No. 2019-2712 (BOR case number 641-16-067-2018) taking place first. The BOR incorporated the record for this hearing into the present appeal. To the extent that the hearing record and evidence were not already certified in the transcript for this case, we incorporate the record from those BOR proceedings into the record for the present appeal. We note that during the BOR hearing for that case, the BOR set forth a list of sales of properties near the subject properties. Although this list was discussed by the witnesses and members of the BOR, it was not included in the transcript on appeal. After further attempts by this Board to attempt to obtain the list, the BOR certified that it is not available. As such, are unable to consider the list of sales in our determination.

During the incorporated BOR hearing, REO presented testimony and written reports of appraiser Michael Thomas. Thomas testified that he viewed the interior of each property and relied primarily on the sales comparison approach to value for each appraisal. Thomas stated that he looked at only arm's-length sales that were exposed to the market through the multiple listings service ("MLS") and took place within the twelve months preceding the tax lien date. Thomas explained that he chose which properties were most comparable based on not only location proximity, but also similarity in condition and effective age to the relevant subject. Thomas also performed an income analysis that was offered to the BOR as an addendum because it was not included in his original report. Thomas indicated that he did not consider the income approach in his conclusion of value, but it supported his sales comparison analysis.

REO also presented testimony from its managing member, Frank Dinardo, regarding its business model and the condition of the properties. Dinardo testified that REO is a building/renovation company that also purchases distressed properties, fixes the exterior, and quickly renovates the interior, and rents them to tenants. Dinardo stated that the repairs to properties that he intends to rent are done to make them free of any violations but not as nice as other properties that he renovates for owner-occupants.

At the BOR hearing regarding the subject properties, REO relied on testimony from

Dinardo regarding the condition of the properties and their rental income. REO also presented testimony and reports from Thomas. The BOR questioned Thomas regarding his choices of comparable properties. Following the hearing, the BOR issued a decision maintaining the initially assessed valuation. On the Oral Hearing Journal Summary, the BOR indicated that it rejected the appraisals because Thomas used only lower value sales based on his distinction between "rental quality" and "owner quality." One member of the BOR dissented, though he observed that Thomas "consistently" chose to use the lower end of the market while all photographs appear to reflect the properties were in average (as opposed to below-average) condition.

REO appealed the BOR's decision, again seeking a reduction in value based on the Thomas appraisals as support for the requested reductions. REO argues that this Board should find value based on the Thomas appraisals because they are the only evidence presented from an independent third-party expert. The county appellees argue that the BOR properly rejected the appraisals as not being credible because Thomas used lower-priced sales based on his distinction between rental quality and owner quality.

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, in addition to Dinardo's testimony regarding the physical characteristics of the properties, REO relies on appraisal reports prepared by Thomas, a state-certified appraiser that personally viewed the interior and exterior of each subject property. Thomas appeared to testify before the BOR, describe his methodology, and explain the basis for his conclusions.

Upon review of Thomas's appraisals, which provide an opinion of value as of tax lien date, were prepared for tax valuation purposes, and attested to by a qualified expert, we find that they constitute competent and probative evidence of value. We further find that the value conclusions are reasonable and well-supported. We acknowledge the BOR's criticisms of his analysis, but we find that Thomas sufficiently explained the basis for his conclusions. We agree with the BOR that it would be improper for an appraiser to simply assume that because the subject properties are utilized as residential rental properties, they must be in below-average condition and, consequently, restrict comparable properties to only those in the lower end of the range. In this case, however, despite his comments to that effect, Thomas further explained that he personally viewed the properties and the condition of each, which he considered as he narrowed down sales to those properties that were most similar to the subject properties. Thus, the record shows that Thomas did not merely assume that the properties were in "below average" condition or "average condition" and choose the comparable properties based on that assumption. Rather, Thomas applied his observations of the properties and his knowledge of the market to choose those properties most similar and to make any necessary adjustments. Accordingly, we find that, in the absence of any persuasive evidence or argument to the contrary, the Thomas appraisals reflect the value of the subject real properties 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:

PARCEL NUMBER 645-17-073

TRUE VALUE $37,000

TAXABLE VALUE $12,950

PARCEL NUMBER 649-06-089

TRUE VALUE $30,000

TAXABLE VALUE $10,500

PARCEL NUMBER 650-12-042

TRUE VALUE $40,000

TAXABLE VALUE $14,000

OHIO BOARD OF TAX APPEALS

REO INVESTMENTS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2717
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

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CLEVELAND, OH 44113

Entered Tuesday, July 6, 2021

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

Appellant REO Investments LLC ("REO") appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real properties, parcel numbers 643-20-035, 644-27-016, and 645-34-019, 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 properties are single-family rental properties, and the Fiscal Officer initially assessed their values at $60,500, $62,600, and $57,600, respectively. REO filed a complaint with the BOR seeking a reduction in value to $35,000 for each property. The complaint at issue in the present appeal is one of several related complaints that involve similar evidence and testimony. BOR convened hearings on the matter during the same day, with the hearing related

to BTA No. 2019-2712 (BOR case number 641-16-067-2018) taking place first. The BOR incorporated the record for this hearing into the present appeal. To the extent that the hearing record and evidence were not already certified in the transcript for this case, we incorporate the record from those BOR proceedings into the record for the present appeal. We note that during the BOR hearing for that case, the BOR set forth a list of sales of properties near the subject properties. Although this list was discussed by the witnesses and members of the BOR, it was not included in the transcript on appeal. After further attempts by this Board to attempt to obtain the list, the BOR certified that it is not available. As such, are unable to consider the list of sales in our determination.

During the incorporated BOR hearing, REO presented testimony and written reports of appraiser Michael Thomas. Thomas testified that he viewed the interior of each property and relied primarily on the sales comparison approach to value for each appraisal. Thomas stated that he looked at only arm's-length sales that were exposed to the market through the multiple listings service ("MLS") and took place within the twelve months preceding the tax lien date. Thomas explained that he chose which properties were most comparable based on not only location proximity, but also similarity in condition and effective age to the relevant subject. Thomas also performed an income analysis that was offered to the BOR as an addendum because it was not included in his original report. Thomas indicated that he did not consider the income approach in his conclusion of value, but it supported his sales comparison analysis.

REO also presented testimony from its managing member, Frank Dinardo, regarding its business model and the condition of the properties. Dinardo testified that REO is a building/renovation company that also purchases distressed properties, fixes the exterior, and quickly renovates the interior, and rents them to tenants. Dinardo stated that the repairs to properties that he intends to rent are done to make them free of any violations but not as nice as other properties that he renovates for owner-occupants.

At the BOR hearing regarding the subject properties, REO relied on testimony from Dinardo regarding the condition of the properties and their rental income. REO also presented testimony and reports from Thomas. The BOR questioned Thomas regarding his choices of comparable properties. Following the hearing, the BOR issued a decision maintaining the initially assessed valuation. On the Oral Hearing Journal Summary, the BOR indicated that it rejected the appraisals because Thomas used only lower value sales based on his distinction between "rental quality" and "owner quality." One member of the BOR dissented, though he observed that Thomas "consistently" chose to use the lower end of the market while all photographs appear to reflect the properties were in average (as opposed to below-average) condition.

REO appealed the BOR's decision, again seeking a reduction in value based on the Thomas appraisals as support for the requested reductions. REO argues that this Board should find value based on the Thomas appraisals because they are the only evidence presented from an independent third-party expert. The county appellees argue that the BOR properly rejected the appraisals as not being credible because Thomas used lower-priced sales based on his distinction between rental quality and owner quality.

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, in addition to Dinardo's testimony regarding the physical characteristics of the properties, REO relies on appraisal reports prepared by Thomas, a state-certified appraiser that personally viewed the interior and exterior of each subject property. Thomas appeared to testify before the BOR, describe his methodology, and explain the basis for his conclusions.

Upon review of Thomas's appraisals, which provide an opinion of value as of tax lien date, were prepared for tax valuation purposes, and attested to by a qualified expert, we find that they constitute competent and probative evidence of value. We further find that the value conclusions are reasonable and well-supported. We acknowledge the BOR's criticisms of his analysis, but we find that Thomas sufficiently explained the basis for his conclusions. We agree with the BOR that it would be improper for an appraiser to simply assume that because the subject properties are utilized as residential rental properties, they must be in below-average condition and, consequently, restrict comparable properties to only those in the lower end of the range. In this case, however, despite his comments to that effect, Thomas further explained that he personally viewed the properties and the condition of each, which he considered as he narrowed down sales to those properties that were most similar to the subject properties. Thus, the record shows that Thomas did not merely assume that the properties were in "below average" condition or "average condition" and choose the comparable properties based on that assumption. Rather, Thomas applied his observations of the properties and his knowledge of the market to choose those properties most similar and to make any necessary adjustments. Accordingly, we find that, in the absence of any persuasive evidence or argument to the contrary, the Thomas appraisals reflect the value of the subject real properties 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:

PARCEL NUMBER 643-20-035

TRUE VALUE $43,000

TAXABLE VALUE $15,050

PARCEL NUMBER 644-27-016

TRUE VALUE $38,000

TAXABLE VALUE $13,300

PARCEL NUMBER 645-34-019

TRUE VALUE $41,000

TAXABLE VALUE $14,350

OHIO BOARD OF TAX APPEALS

MNC ASSET HOLDINGS OH LLC, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2019-2583 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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DAYTON CITY SCHOOLS BOARD OF EDUCATION
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Entered Tuesday, July 6, 2021

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

Appellant MNC Asset Holdings OH LLC ("MNC") appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real property, parcel number R72 05002 0093, 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. During the BOR hearing on the matter, MNC relied on an appraisal report that was not included in the transcript on appeal.

After informal attempts to obtain this evidence were unsuccessful, we ordered the BOR to supplement the record or certify that it had no additional evidence or documentation in its possession. In response, the BOR acknowledged that an appraisal is mentioned on the audio recording of the hearing, but no appraisal was included in the physical file. The BOR further indicated that an attempt to search email files from that time period to locate the appraisal or other evidence was unsuccessful. This Board then directed the parties to supplement the record, and MNC provided a copy of the appraisal, which we incorporate into the record of the appeal.

The subject property is improved with a four-unit residential rental property, with two bedrooms in each unit. The Auditor initially assessed the subject's total true value at $61,660. The appellee Board of Education ("BOE") filed a complaint seeking an increase to $164,900 based on the price for which MNC purchased it in May 2018. MNC filed a countercomplaint, though it did not include an opinion of value.

The BOR convened a hearing, at which the BOE presented the conveyance fee statement as evidence of the sale and argued that the recorded purchase price provided the best evidence of the value of the subject property. The conveyance fee statement demonstrates that MNC purchased the subject property from Freedom Real Estate Group, LLC, on May 22, 2018, for $164,900. MNC argued that the sale price did not reflect the value of the real property but rather the value of the income stream. MNC clarified that its opinion of value was $103,000 based on an appraisal performed by appraiser Allyn Yukawa. Yukawa indicated that he did not rely on the sale because it was his understanding that the purchase price included three years of guaranteed rent and other services performed by the seller. Yukawa also stated that the property was not listed on the open market before the transfer. No documents, such as a purchase agreement or leases, were provided to corroborate these claims though they would be in MNC's possession. Yukawa's appraisal also indicates that the property transferred in January 2018 for $80,000, though the record contains no information regarding this sale, and it was not discussed during the BOR hearing.

MNC's owner, Muthiah Nachiappan, also testified before the BOR regarding his motivations, the circumstances of the sale, and the subject property's rental rate. Nachiappan stated that he is part of an investor group with between 15 and 50 members throughout the country and that Freedom Real Estate sells to the investor group. Nachiappan was notified that the property was available through the group because he expressed interest in the geographical area. Nachiappan explained that the transaction was a quick cash purchase because there were multiple buyers, and no appraisal was performed for the sale. Nachiappan stated that he purchased the property based on its net income, which he calculated based on the rents in place at the time of the sale, less tax, insurance, property management fees, and maintenance.

Yukawa opined that the value of the subject property was $103,000 as of May 20, 2019. Yukawa relied primarily on the sales comparison approach, though he considered sales up to five miles from the subject property due to a lack of transactions of four-unit residential properties with two bedrooms per unit closer to the subject property. After making adjustments for differences among the properties and market conditions (based on a May 20, 2019, effective date), the five properties reflected a range of $23,200 to $27,875 per unit. Yukawa concluded to a value of $103,000 based on the sales comparison approach. Yukawa performed an income approach to value. Yukawa applied a gross rent multiplier of 53.00 to an estimated monthly income of $2,240, based on a market rent of $560 per unit, as compared to the $646 per unit achieved by the subject property. Yukawa concluded that the value of the subject was $118,720 based on this analysis, which he found supported his sales comparison approach.

The BOR issued a decision increasing the initially assessed valuation to $164,900. During the BOR decision hearing, the members of the BOR discussed Yukawa's appraisal and commented that Yukawa looked up to five miles from the subject property to find comparable properties for his sales comparison approach. The BOR acknowledged the circumstances as described by Yukawa and Nachiappan, including the purported rent guarantees, but noted that no evidence had been provided to support those contentions. The BOR then explained that it found

the sale was an open-market transaction and the purchase price was the best evidence of value. MNC appealed the BOR's decision 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 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.

It is undisputed that the May 22, 2018, sale of the subject property was a recent transfer among unrelated parties. Nevertheless, MNC argues that due to the circumstances of the transaction, Yukawa's appraisal provides better evidence of value as of January 1, 2018. As such, the burden falls on MNC 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. Rebuttal evidence may include an appraisal, such as the appraisal evidence presented in this case, to demonstrate that the sale was not reflective of market value or provide affirmative evidence of value. Id. at ¶9, citing *Westerville City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 308, 2018-Ohio-3855, ¶14.

First, we reject MNC's arguments that the sale was not reliable evidence of the value of the real property. MNC maintains that the sale should be disregarded because it was not listed on

the open market. "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. Nachiappan testified that he was made aware that the property was for sale because of his membership in an investor group that included at least 15-50 people. Nachiappan also testified that the transaction was a cash purchase and happened quickly because there were other buyers interested in the property. In this case, we find that the sale meets the criteria of an arm's-length transaction.

Additionally, we find no evidence in the record to support the contention that the purchase price included a three-year income guarantee or additional services. Notwithstanding the fact that these statements were made by Yukawa and not Nachiappan, there was no documentation offered to corroborate this claim. To the contrary, the conveyance fee statement reflects that the transaction was a "fee simple" transfer, without any other boxes checked, such as "leased fee" or "leasehold," and there was no portion of consideration listed for any items other than the real property. Additionally, to the extent that Yukawa commented that the subject property's rental rate was above-market, we find that the report does not support this finding as its rent falls within the range of the rent comparables.

Second, we find that the appraisal is not more reliable than the sale. At the outset, we note that the effective date was May 20, 2019, more than 16 months after the tax lien date. The Court has emphasized that the Board "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." *Olmsted Falls Village Assn. v. Cuyahoga Cty. Bd. of Revision,* 75 Ohio St.3d 552, 555. Thus, we find limited utility in Yukawa's appraisal without some demonstration as to how his data relates to January 1, 2018. *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.").

Furthermore, if we were to rely on the data within the report and accepted it as relevant to the tax lien date, we would find it less reliable than the sale of the subject property. Each of these sales required adjustments for physical differences among the properties and were located between 3.43 and 4.5 miles away from the subject property. Under these circumstances, we find that the appraisal neither rebuts the sale nor provides more probative 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

$164,900

TAXABLE VALUE

$57,720

y

OHIO BOARD OF TAX APPEALS

DORA BURNETT, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2477
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Tuesday, July 6, 2021

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

The appellant property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 645-40-005, 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 complaint with the BOR, requesting the subject property be revalued from $86,000 to $45,000. The BOR held a hearing on the matter, at which the property owner appeared to submit argument and evidence. In doing so, she testified that she had made some improvements to the subject property since she purchased it in 2011; however, she asserted that she believed that its value had not increased much since that time. She provided estimated values of other properties from the website Realtor.com to support her assertion. She also argued that the subject property's value had increased too greatly over its prior assessed

value. The BOR pulled a list of comparable sales that occurred in 2017 and 2018. The BOR voted to retain the subject property's initially assessed value and this appeal ensued. Neither the property owner nor the county appellees availed themselves of the opportunity to submit evidence at a hearing before this Board.

Before we consider the merits of this appeal, we must first dispose of a preliminary issue. As noted above, none of the parties requested a hearing before this Board to provide evidence relevant to this matter. The property owner submitted her appeal in the form of a letter, which included a mixture of argument, documents, and factual assertions that were not previously provided at the BOR hearing. We will not consider any of the newly provided documents and factual assertions as they are considered impermissible 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."). Documents and factual assertions rendered outside the circumscribed rules of evidence are excluded based upon a time-tested practice designed to insure truth in the fact-finding process. At our merit hearings, documents are authenticated, and witnesses are placed under oath and subjected to the rigors of cross-examination. Only then is evidence deemed admissible. If tribunals were to rely upon documents and 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 documents and factual assertions contained in, and attached to, the property owner's notice of appeal. We will, however, consider the argument contained in the 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. "[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 argue that the subject property had been overvalued. First, she argued that the subject property should be valued consistent with the $45,000 price at which she purchased it in July 2011. We must reject this argument. The subject sale occurred well before the tax lien date at issue, January 1, 2018, and the Fiscal Officer rejected it in carrying out the statutory sexennial reappraisal for tax year 2018. Therefore, the burden was on the property owner to provide competent, credible, and probative evidence that neither the character of the subject property nor real-estate market had changed in the nearly 78 months between the sale and tax lien dates. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, at ¶26 ("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."). For this reason, we find that the property owner has not satisfied the evidentiary burden on appeal.

Second, the property owner argued that comparable sales supported reduction to the subject property's value. The Ohio Supreme Court has affirmed this Board's repeated rejection

of unadjusted comparable sales. See, e.g., *Schutz*, supra, at ¶ 9. 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."). We see no reason to stray from our prior holding and, for this reason, find that the property owner has not satisfied the evidentiary burden on appeal.

Third, the property owner argued that defects of the subject property, whether the condition of the subject property or the condition of the area in which it was located, necessitated reduction to the subject property's value. This argument is equally unpersuasive as it has been consistently rejected by this Board and Ohio courts. 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 this reason, we find that the property owner has not satisfied the evidentiary burden on appeal.

Fourth, the property owner argued that the subject property's value had increased too much given its value for the prior triennial period. We must also reject this argument. 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).

We further note that even if we had considered the appraisal report attached to the notice of appeal, we would not have found it competent, credible, and/or probative because no hearing was held at which the appraiser testified about the underlying data and methodologies used to derive the opinion of value, see *Evenson v. Erie Cty. Bd. of Revision* (Apr. 12, 2002), BTA No. 2001-V-770, unreported, and at which the property owner testified about the reliance that she and/or a third party placed upon the appraisal report, see *Copley-Fairlawn City School Dist.*, supra.

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. As a result, this Board finds that the subject property shall remain as initially assessed as of the relevant tax lien date:

True Value: $86,000

Taxable Value: $30,100

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). 2021-7 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - FIRST EQUITY CAPITAL LLC
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Entered Thursday, July 8, 2021

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

The appellant appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of parcel 684-27-008 for tax year 2019. While this matter was pending with this Board, the county appellees filed a motion to remand with instructions to dismiss, alleging that the underlying complaint failed to invoke the BOR's jurisdiction. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and motion to remand filed by the county appellees.

The record reveals the following. On March 27, 2020, a complaint was filed with the BOR, requesting a reduction to the subject property's value. Line 1 of the complaint identified "Emmet Inc." as the property owner. Lines 2 and 3 of the complaint, which requested the

identity of the complainant, if other than the property owner, and of the complainant's agent, respectively, were left blank. At the BOR hearing, Alex Vinokur appeared on behalf of "First Equity Capital [LLC]," the appellant in this matter. There was no discussion about "Emmet Inc." or the complainant's identity. The BOR subsequently issued a decision that retained the subject property's value and this appeal ensued. The appellant in this appeal was identified as "First Equity Capital LLC" and Vinokur filed the appeal.

The county appellees' motion to remand asserts that "Emmet Inc." transferred the subject property to the appellant in February 2020, as evidenced by the attached quitclaim deed, and, therefore, did not have standing to file the complaint on March 27, 2020. As a consequence, the county appellees argue, the BOR lacked jurisdiction to issue a value decision. The appellant did not respond to the motion.

In *Victoria Plaza, LLC v. Cuyahoga Cty. Bd. of Revision*,86 Ohio St.3d 181, 183 (1999), the Ohio Supreme Court, citing to *Buckeye Foods v. Cuyahoga Cty. Bd. of Revision*, 78 Ohio St.3d 459 (1997), stated: "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.'" Furthermore, R.C. 5715(A)(1)(e) expressly authorizes an owner of property to file a complaint against the valuation of property with a board of revision. The Ohio Supreme Court has spoken to the definition of "owner" in real property cases: "In cases that address issues of real property taxation, we have construed 'owner' narrowly to encompass only the legal-title holder ***." *Gilman v. Hamilton Cty. Bd. of Revision*, 127 Ohio St.3d 154, 158 (2010).

Based upon the foregoing, we find that the underlying complaint failed to invoke the BOR's jurisdiction. The record before us demonstrates that "Emmet Inc." was no longer the legal titleholder of the subject property at the time the complaint was filed, and the record is void of any other basis that would allow "Emmet Inc." to file a complaint challenging the subject property's value. Therefore, we grant the county appellees' motion. This matter is remanded to

the BOR with instructions to dismiss the complaint.

OHIO BOARD OF TAX APPEALS

A.N.N.P., LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-2267
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Thursday, July 8, 2021

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

This matter is now considered upon the county appellees' motion to remand with instructions to dismiss the underlying complaint. The county appellees assert that the underlying complaint was filed by a person not authorized to do so and therefore failed to properly invoke the jurisdiction of the Board of Revision ("BOR"). The appellant did not respond to the motion. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and motion to remand.

The record shows that a decrease complaint against the valuation of real property was filed with the Cuyahoga County Board of Revision. The complaint identified the property owner as "A.N.N.P. LLC" but did not identify the complainant, if not property owner, or the complainant's agent. However, the complaint provided contact information, a physical address,

email address and telephone number, for a contact person and was signed by an individual who identified as "Authorized Agent." Such person's signature is illegible. After the BOR issued a decision finding no change in value, Yisrael Harris filed an appeal on behalf of the property owner with this Board. He identified himself as "Officer" and provided the same contact information listed on the complaint.

The county appellees' motion argues that Harris manages the subject property, and a "manager" is not one who is authorized by 5715.19(A) to file a complaint on behalf of the property owner. Further, the county appellees argue that the complaint was filed by a non-attorney manager who engaged in the unauthorized practice of law.

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. Neither "authorized agent" nor "manager" is among the nonlawyers who are explicitly authorized to file complaints under R.C. 5715.19(A). *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 230, 2018-Ohio-4244. 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.

In this matter, as noted above, the appellant did not respond to the motion. In the absence of any evidence that the complaint was filed by one authorized to file on behalf of the property owner, we find the underlying complaint failed to properly invoke the BOR's jurisdiction. We acknowledge that Harris filed the instant appeal in his purported capacity as "[o]fficer," but that conflicts with the information he provided on the complaint. Therefore, based upon the record before us, we grant the county appellees' motion and remand this matter to the BOR with

instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

A.N.N.P., LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-2266
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - A.N.N.P., 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:
MARK R. GREENFIELD
ASSISTANT PROSECUTING ATTORNEY
CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Thursday, July 8, 2021

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

This matter is now considered upon the county appellees' motion to remand with instructions to dismiss the underlying complaint. The county appellees assert that the underlying complaint was filed by a person not authorized to do so and therefore failed to properly invoke the jurisdiction of the Board of Revision ("BOR"). The appellant did not respond to the motion. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and motion to remand.

The record shows that a decrease complaint against the valuation of real property was filed with the Cuyahoga County Board of Revision. The complaint identified the property owner as "A.N.N.P. LLC" but did not identify the complainant, if not property owner, or the complainant's agent. However, the complaint provided contact information, a physical address,

email address and telephone number, for a contact person and was signed by an individual who identified as "Authorized Agent." Such person's signature is illegible. After the BOR issued a decision finding no change in value, Yisrael Harris filed an appeal on behalf of the property owner with this Board. He identified himself as "Officer" and provided the same contact information listed on the complaint.

The county appellees' motion argues that Harris manages the subject property, and a "manager" is not one who is authorized by R.C. 5715.19(A) to file a complaint on behalf of the property owner. Further, the county appellees argue that the complaint was filed by a non-attorney manager who engaged in the unauthorized practice of law.

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. Neither "authorized agent" nor "manager" is among the nonlawyers who are explicitly authorized to file complaints under R.C. 5715.19(A). *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 230, 2018-Ohio-4244. 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.

In this matter, as noted above, the appellant did not respond to the motion. In the absence of any evidence that the complaint was filed by one authorized to file on behalf of the property owner, we find the underlying complaint failed to properly invoke the BOR's jurisdiction. We acknowledge that Harris filed the instant appeal in his purported capacity as "[o]fficer," but that conflicts with the information he provided on the complaint. Therefore, based upon the record before us, we grant the county appellees' motion and remand this matter to the BOR with

instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

DONNA R. FRENCH, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-585
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - DONNA R. FRENCH
OWNER
3945 ZINSLE AVENUE
CINCINNATI, OH 45213

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

Entered Thursday, July 8, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of

appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

11824 DETROIT AVE. LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-545 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 11824 DETROIT AVE. LLC
Represented by:
GREG ROSSI
21539 LAKE RD
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

LAKEWOOD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
DAVID H. SEED
BRINDZA MCINTYRE & SEED, LLP
1111 SUPERIOR AVENUE, SUITE 1025
CLEVELAND, OH 44114

Entered Thursday, July 8, 2021

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

This case is before the Board on the county appellees' motion to dismiss and appellant's motion to remand. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is

fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the county appellees allege that appellant did not file, or did not timely file, a notice of appeal with the BOR. Appellant's response argues that the BOR decision was not served according to the requirements of R.C. 5715.20, which specifies that notice of the decision be given either by certified mail *or* by ordinary mail and email, as defined in R.C. 9.312. R.C. 5715.20. Upon review of appellant's response and the statutory transcript certified by the BOR, we find notice was properly given by ordinary mail and email. Appellant did not provide documentation to demonstrate that a notice of the appeal was timely filed with the BOR. Having reviewed the motion, the responses thereto, and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this matter must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

ELYAHU CITRONBAUM LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-2268 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ELYAHU CITRONBAUM 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

Entered Thursday, July 8, 2021

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

This matter is now considered upon the county appellees' motion to remand with instructions to dismiss the underlying complaint. The county appellees assert that the underlying complaint was filed by a person not authorized to do so and therefore failed to properly invoke the jurisdiction of the Board of Revision ("BOR"). The appellant did not respond to the motion. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and motion to remand.

The record indicates that a decrease complaint against the valuation of real property was filed with the Cuyahoga County Board of Revision. The complaint identified the property owner as "Eliyhu Citronbaum, LLC" but did not identify the complainant, if not property

owner, or the complainant's agent. However, the complaint provided contact information, a physical address, email address and telephone number, for a contact person and was signed by an individual who identified as "Authorized Agent." Such person's signature is illegible. After the BOR issued a decision finding no change in value, Yisrael Harris filed an appeal on behalf of the property owner with this Board. He identified himself as "Officer" and provided the same contact information listed on the complaint.

The county appellees' motion argues that Harris manages the subject property, and a "manager" is not one who is authorized by 5715.19(A) to file a complaint on behalf of the property owner. Further, the county appellees argue that the complaint was filed by a non-attorney manager who engaged in the unauthorized practice of law.

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. Neither "authorized agent" nor "manager" is among the nonlawyers who are explicitly authorized to file complaints under R.C. 5715.19(A). *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. of Revision*, 155 Ohio St.3d 230, 2018-Ohio-4244. 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.

In this matter, as noted above, the appellant did not respond to the motion. In the absence of any evidence that the complaint was filed by one authorized to file on behalf of the property owner, we find the underlying complaint failed to properly invoke the BOR's jurisdiction. We acknowledge that Harris filed the instant appeal in his purported capacity as "[o]fficer," but that conflicts with the information he provided on the complaint. Therefore, based upon the record

before us, we grant the county appellees' motion and remand this matter to the BOR with instructions to dismiss the underlying complaint.

OHIO BOARD OF TAX APPEALS

JOSEPH CASHIOTTA, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1938
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JOSEPH CASHIOTTA
8305 ELIA AVE
CLEVELAND, OH 44105

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, July 8, 2021

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

The appellant property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 134-15-039, for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and any written argument submitted by the parties.

The property filed a complaint with the BOR, requesting the subject property's value be reduced from $5,900 to $200. At the BOR hearing, the property owner appeared to submit argument and evidence in support of his requested value. In doing so, he submitted a one-page excerpt from an appraisal report that valued an adjacent parcel, not the subject property, and a one-page excerpt from "Agreement of Conveyance," which purportedly transferred the subject property to the property owner for $100 from the county land bank. The property owner testified as to the facts and circumstances of the transaction and condition of the subject property, which is adjacent to the parcel on which his home is located. The BOR voted to

reduce the subject property's value to $1,500 and this appeal ensued. Neither the property owner nor the county appellees requested an opportunity to submit evidence at a hearing before this Board. The property owner submitted his notice of appeal in the form of a letter, which asserted that the subject property was worth no more than $500 and remained overvalued despite the BOR's decision.

Before we consider the merits of this appeal, we must first dispose of preliminary issues. As noted above, the property owner submitted his notice of appeal in the form of a letter and did not request a hearing. *Newport Harbor Assn. v. Cuyahoga Cty. Bd. of Revision* (Nov. 25, 2014), BTA No. 2014-447, unreported at 2 ("A review of the notice of appeal demonstrates that the appellant used an outdated copy of the notice of appeal form, which was revised in October 2013. Although the appellant was not required to use the most recent notice of appeal form, by failing to do so, the appellant failed to provide newly requested information *** regarding the necessity of a merit hearing."). While this matter was pending, the property owner submitted additional documentation and written argument, which included factual assertions, to support this appeal. Because these documents were not submitted at a hearing, either before the BOR or before this Board, they will not 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). Likewise, the factual assertions included in the written argument will also not be considered. *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 insure truth in the fact-finding process.

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, ¶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, ¶¶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, ¶19.

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 proponent of a sale may generally meet their initial burden with sale documents that contain basic details about the sale, e.g., sale price, parties, and sale date. See *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075, ¶15 (no additional testimony is usually necessary); *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St. 3d 691, 2017-Ohio-1412, ¶18 (noting that aparty need only present minimal evidence of a sale when there is "no real dispute about the basic facts of the sale.").

Here, the property owner submitted an "Agreement of Conveyance," which demonstrated the $100 transfer of the subject property from the county land bank to the property owner in February/March 2018. The property record confirms that such transfer took place; however, we acknowledge that it does not provide the $100 sale price. It should be noted that the county appellees have not disputed that the subject sale transferred for $100. Furthermore, we have found land bank sales "to be akin to sales from financial banks, which this Board has repeatedly found to be arm's-length." *REO Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Mar. 6, 2014), BTA No. 2013-4641, unreported. Accordingly, we find the sale to be the best

evidence of value because the BOR did not rebut the presumption created by the 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 find that the property owner has satisfied the evidentiary burden on appeal. Absent an affirmative demonstration that the subject sale was not a recent, arm's-length sale, we find that it is the best indication of the subject property's value as of the relevant tax lien date:

True Value: $100

Taxable Value: $35

OHIO BOARD OF TAX APPEALS

CANTON CITY SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. STARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2020-1454 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - CANTON CITY SCHOOLS BOARD OF EDUCATION
Represented by:
ROBERT M. MORROW
LANE, ALTON, HORST LLC
TWO MIRANOVA PLACE, SUITE 220
COLUMBUS, OH 43215

For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
JOEL BLUE
CHIEF OF THE CIVIL DIVISION
STARK COUNTY
STARK COUNTY PROSECUTOR'S OFFICE
110 CENTRAL PLAZA SOUTH, SUITE 510
CANTON, OH 44702

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

JORL PROPERTIES, LLC
Represented by:
DANIEL ORLANDO
ESQUIRE
NIEKAMP, WEISENSELL, MUTERSBAUGH & MASTRANTONIO, LLP
23 SOUTH MAIN STREET
3RD FLOOR
AKRON, OH 44308

Entered Thursday, July 8, 2021

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

The Canton City Schools Board of Education ("BOE") appeals from a final determination

of the Stark County Board of Revision ("BOR") valuing parcel 247787 for tax year 2019. We decide the case on the notice of appeal, the statutory transcript, and the parties' written argument.

The subject property is improved with a mental health and addiction treatment facility. The Auditor valued the property at $1,012,200. The property owner filed a complaint seeking a value of $500,000 citing a June 2019 foreclosure receiver sale for $515,000. At the BOR hearing, counsel explained the amount sought accounted for the sale price minus certain personal property included in the sale. In support, appellant supplied the relevant foreclosure order from the court of common pleas. That order permitted the receiver to sell the property to appellant for the benefit of Huntington National Bank. Counsel emphasized the order stated the transaction was arm's-length and made in "good faith." No witnesses to the transaction were called by any party. The BOR ultimately adopted appellant's opinion of value.

When cases are appealed from a BOR to this Board, an appellant must ordinarily 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 apply to this case, meaning the BOE is not required to come forward with affirmative evidence of a proposed value. 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. That rule does not apply in this case because the BOR's value is based on a sale. *Gahanna-Jefferson City Sch. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Sept. 10, 2018), BTA No. 2017-1178, 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, we are required to presume a forced sale, like a foreclosure sale, is not the best evidence of value. R.C. 5713.04; *Boyd v. Cuyahoga Cty. Bd. of Revision* (May 13, 2020), BTA No. 2019-2751, unreported. That presumption can be overcome if the proponent shows the sale was arm's-

length. *Olentangy Local Sch. Bd. of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723. For example, a party may overcome the presumption by showing a property was marketed for a meaningful period of time, the property was advertised broadly, or multiple offers were. To be clear, these are all factors to be considered and not necessary elements. See *Hersch v. Cuyahoga Cty. Bd. of Revision*, 8th Dist. Cuyahoga No. 109035, 2020-Ohio-3596.

After review, we must find appellant has not carried its burden because it presented no evidence on any of the factors listed above. No witnesses to the transaction were called; we have no knowledge of how the property was advertised, how a buyer was selected, or how a price was negotiated (if at all). We acknowledge appellant's argument that the court order said the sale was arm's-length. However, forced sales do not become arm's-length sales for tax purposes simply because they are approved by court order. See *Olentangy Local*, supra; *Olentangy Local Schools Bd. of Edn v. Delaware Cty. Bd. of Revision* (May 25, 2016), BTA No. 2015-1315, unreported. We also note the order made no specific findings regarding marketing or other factors noted above.

For these reasons, we order the property valued as follows for tax year 2019. See *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶12.

TRUE VALUE

$1,012,200

TAXABLE VALUE

$345,270

OHIO BOARD OF TAX APPEALS

THE HOME CITY ICE COMPANY, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1361 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - THE HOME CITY ICE COMPANY
Represented by:
TODD W. SLEGGS
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, SEVENTH FLOOR
CLEVELAND, OH 44113

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

BEDFORD CITY SCHOOLS BOARD OF EDUCATION
Represented by:
THOMAS A. KONDZER
THE LAW OFFICE OF THOMAS A. KONDZER, LLC
1991 CROCKER ROAD, SUITE 600-712
WESTLAKE, OH 44145

Entered Thursday, July 8, 2021

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

The Home City Ice Company appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the Fiscal Officer's of the subject property for tax year 2018. We decide the case on the notice of appeal, the statutory transcript, and the parties' written arguments.

The subject property is improved with office space and an ice production facility, which the Fiscal Officer valued at $757,900 for tax year 2018. Appellant filed an amended complaint seeking a value of $638,000 citing an appraisal completed by appraiser Paul Provencher. The

Bedford City Schools Board of Education ("BOE") filed a countercomplaint asking the Fiscal Officer's value be retained. At the BOR hearing, appellant called Provencher to present his appraisal. The parties stipulated to his credentials.

Provencher valued the property using only the sales comparison approach, and he testified he felt the income approach would not be indicative because of the "specialty nature" of the property. He also testified he was unable to find any sales of ice production facilities in northeast Ohio. He believed the property's highest and best use as improved to be its current industrial use. In his sales comparison approach, Provencher selected four industrial properties located within Cuyahoga County. He adjusted for site/land ratio, building size, age, condition, percentage office space, and shop height. We note two sales were adjusted just short of 25% (net). Two sales were adjusted 5% and 12%, both net. His sales comparison approach calculation came to $638,000.

The BOR rejected the appraisal. Its opinion comments state as follows, in relevant part:

> ***Mr. Provencher, the appraiser, testified to the physical and market characteristics, highest and best use, approaches to value implemented and his opinion of value. In testifying, Mr. Provencher indicated the Subject was a "special use" property. The building was designed for the manufacturing and distribution of ice by the current property owner. The property contains refrigeration/freezer space not typical in light manufacturing/light industrial buildings. The appraiser did not demonstrate in the report that this space contributes or detracts from value. Mr. Provencher did not supply any secondary sources regarding the refrigeration and its effect on value. In the Sales Comparison Approach, he did not include any sales with refrigeration. The Income Approach was not completed. The Subject is currently valued at $47.53/sq.ft., which is in the value range of $37.62-$50.34 indicated by Mr. Provencher's sales. The board find no change is warranted.

Appellant filed a notice of appeal with this Board arguing Provencher's appraisal is the

best evidence of value. In its brief, appellant also argues the BOR erred in disregarding Provencher's appraisal, in part, because Provencher did not consider the benefit derived from the refrigeration space. Appellant argues these are business fixtures. The BOE argues Provencher's comparables are not comparable because they are not improved with an ice production storage facility or cold storage. It also argues some of his adjustments are unsupported by adequate data, e.g., location. The BOE further argues Provencher erred in failing to perform the cost approach.

When cases are appealed from a BOR 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.

Because there are no recent sales of the subject property, we turn to Provencher's appraisal. After review, we find his appraisal is the best evidence of value for three reasons. First, Provencher selected industrial properties of similar size, location, and age, and he made adjustments to each. We note the BOR and BOE's arguments that comparable one is quite distinct. However, we also note sales two and four are more similar and received fewer adjustments. In fact, Provencher's value is within the range of sales two and four.

Second, we do not find the BOR and BOE's argument that these comparables are too dissimilar because none are used as ice production facilities or cold storage. Provencher testified he could find no sales of such properties within the northeast Ohio market, and we have no evidence to the contrary. More fundamentally, no party has presented evidence that the use of such comparables would substantially undercut Provencher's opinion of value.

Third, we do not find it necessary to reject the appraisal because Provencher failed to use

the cost approach. Provencher testified to his belief the property was too old to produce a reliable cost approach appraisal. This Board has recognized the cost approach may be less than helpful for a property with older improvements. *Society Nat'l Bank v. Cuyahoga Cty. Bd. of Revision* (Apr. 26, 1996), BTA No. 94-A-1117, unreported.

For these reasons, we order the property valued as follows for tax year 2018:

PARCEL NUMBER 794-28-006

TRUE VALUE

$638,000

TAXABLE VALUE

$223,300

OHIO BOARD OF TAX APPEALS

CMR HOSPITALITY LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1048
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Thursday, July 8, 2021

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

This matter is now considered upon the Board of Education's ("BOE") motion to dismiss, which we will construe as a motion to remand with instructions to dismiss the underlying complaint for lack of jurisdiction. This matter is now decided upon the motion, the response thereto, the transcript certified by the BOR, and appellant's notice of appeal.

The record shows that Hetal Patel filed a complaint for property owned by CMR Hospitality LLC with the Cuyahoga County Board of Revision. The complaint does not list any

one as the complainant if not owner or as the complainant's agent. At the Board of Revision ("BOR") hearing, Hetal Patel identified herself as the property manager of CMR Hospitality LLC's hotel property. Subsequent to the BOR's decision of no change to the property's value, the present appeal ensued.

In its motion the BOE argues that the complaint failed to identify the correct property owner. Additionally, as a property manager, Hetal Patel lacked standing to file the complaint on behalf of the owner and engaged in the unauthorized practice of law by doing so. Further, no evidence was provided to show that Hetal Patel owns property in Cuyahoga County. The property owner responded and argued that any error in filling out the complaint did not violate the core of procedural efficiency. This Board notes there is no statutory requirement to correctly identify the owner on the complaint. See *Groveport Madison Local Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 137 Ohio St.3d 266, 2013-Ohio-4627. It is undisputed that Hetal Patel, property manager, filed the underlying complaint for property owned by CMR Hospitality LLC.

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. Non-owner "property managers" are not among the nonlawyers who are explicitly authorized to file complaints under R.C. 5715.19(A). *Greenway Ohio, Inc. v. Cuyahoga Cty. Bd. Of Revision*, 155 Ohio St.3d 230, 2019-Ohio-4244. In the absence of any evidence that the complaint was filed by one statutorily authorized to file on behalf of the owner, we find the underlying complaint failed to properly invoke the BOR's jurisdiction. The 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

REO INVESTMENTS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2722
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - REO INVESTMENTS LLC
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Entered Thursday, July 8, 2021

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

Appellant REO Investments LLC ("REO") appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real property, parcel number 711-01-007, 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 a single-family rental home, and the Fiscal Officer initially assessed its value at $88,000. REO filed a complaint with the BOR seeking a reduction in value to $42,000. The complaint at issue in the present appeal is one of several related complaints that involve similar evidence and testimony. BOR convened hearings on the matters during consecutive days, with the hearing related to BTA No. 2019-2712 (BOR case number

641-16-067-2018) taking place first. The BOR incorporated the record for this hearing into the present appeal. To the extent that the hearing record and evidence were not already certified in the transcript for this case, we incorporate the record from those BOR proceedings into the record for the present appeal. We note that during the BOR hearing for that case, the BOR set forth a list of sales of properties near the subject properties in several different cases. Although this list was discussed by the witnesses and members of the BOR, it was not included in the transcript on appeal. After further attempts by this Board to attempt to obtain the list, the BOR certified that it is not available. As such, are unable to consider the list of sales in our determination. This case, however, involved a property located in a different school district and a list of raw sales data from the BOR was included in the transcript.

During the incorporated BOR hearing, REO presented testimony and written reports of appraiser Michael Thomas. Thomas testified that he viewed the interior of each property and relied primarily on the sales comparison approach to value for each appraisal. Thomas stated that he looked at only arm's-length sales that were exposed to the market through the multiple listings service ("MLS") and took place within the twelve months preceding the tax lien date. Thomas explained that he chose which properties were most comparable based on not only location proximity, but also similarity in condition and effective age to the relevant subject. Thomas also performed an income analysis that was offered to the BOR as an addendum because it was not included in his original report. Thomas indicated that he did not consider the income approach in his conclusion of value, but it supported his sales comparison analysis.

REO also presented testimony from its managing member, Frank Dinardo, regarding its business model and the condition of the properties. Dinardo testified that REO is a building/renovation company that also purchases distressed properties, fixes the exterior, and

quickly renovates the interior, and rents them to tenants. Dinardo stated that the repairs to properties that he intends to rent are done to make them free of any violations but not as nice as other properties that he renovates for owner-occupants.

At the BOR hearing regarding the subject property, REO relied on testimony from Dinardo regarding its condition and rental income. REO also presented testimony and a report from Thomas. The BOR questioned Thomas regarding his choices of comparable properties. Following the hearing, the BOR issued a decision maintaining the initially assessed valuation. On the Oral Hearing Journal Summary, the BOR indicated that it rejected the appraisal because Thomas used only lower value sales based on his distinction between "rental quality" and "owner quality." One member of the BOR dissented, though he observed that Thomas "consistently" chose to use the lower end of the market while all photographs appear to reflect the properties were in average (as opposed to below-average) condition.

REO appealed the BOR's decision, again seeking a reduction in value based on Thomas's appraisal as support for the requested reduction. REO argues that this Board should find value consistent with Thomas's opinion because the appraisal is the only evidence presented from an independent third-party expert. The county appellees argue that the BOR properly rejected the appraisal as not being credible because Thomas used lower-priced sales based on his distinction between rental quality and owner quality.

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, in addition to Dinardo's testimony regarding the physical characteristics of the property, REO relies on an appraisal report prepared by Thomas, a state-certified appraiser that personally viewed the interior and exterior of the subject property. Thomas appeared to testify before the BOR, describe his methodology, and explain the basis for his conclusions.

Upon review of Thomas's appraisal, which provides an opinion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find that it constitutes competent and probative evidence of value. We further find that the value conclusion is reasonable and well-supported. We acknowledge the BOR's criticisms of his analysis, but we find that Thomas sufficiently explained the basis for his conclusions. We agree with the BOR that it would be improper for an appraiser to simply assume that because the subject property is utilized as a residential rental property, it must be in below-average condition and, consequently, restrict comparable properties to only those in the lower end of the range. In this case, however, despite his comments to that effect, Thomas further explained that he personally viewed the property and its condition, which he considered as he narrowed down sales to those properties that were most similar to the subject property. Thus, the record shows that Thomas did not merely assume that the property was in "below average" condition or "average condition" and choose the comparable properties based on that assumption. Rather, Thomas applied his observations of the property and his knowledge of the market to choose those properties most

similar and to make any necessary adjustments.

We observe that the record also contains unadjusted sales data from the BOR's independent research. In the absence of an appraisal which analyzes such data, however, 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). Accordingly, we find that, in the absence of any persuasive evidence or argument to the contrary, the Thomas appraisal reflects the value of the subject real property as of the tax lien date.

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

PARCEL NUMBER 711-01-007

TRUE VALUE $46,000

TAXABLE VALUE $16,100

OHIO BOARD OF TAX APPEALS

REO INVESTMENTS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2722
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - REO INVESTMENTS 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 Thursday, July 8, 2021

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

Appellant REO Investments LLC ("REO") appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real property, parcel number 711-01-007, 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 a single-family rental home, and the Fiscal Officer initially assessed its value at $88,000. REO filed a complaint with the BOR seeking a reduction in value to $42,000. The complaint at issue in the present appeal is one of several related complaints that involve similar evidence and testimony. BOR convened hearings on the matters during consecutive days, with the hearing related to BTA No. 2019-2712 (BOR case number

641-16-067-2018) taking place first. The BOR incorporated the record for this hearing into the present appeal. To the extent that the hearing record and evidence were not already certified in the transcript for this case, we incorporate the record from those BOR proceedings into the record for the present appeal. We note that during the BOR hearing for that case, the BOR set forth a list of sales of properties near the subject properties in several different cases. Although this list was discussed by the witnesses and members of the BOR, it was not included in the transcript on appeal. After further attempts by this Board to attempt to obtain the list, the BOR certified that it is not available. As such, are unable to consider the list of sales in our determination. This case, however, involved a property located in a different school district and a list of raw sales data from the BOR was included in the transcript.

During the incorporated BOR hearing, REO presented testimony and written reports of appraiser Michael Thomas. Thomas testified that he viewed the interior of each property and relied primarily on the sales comparison approach to value for each appraisal. Thomas stated that he looked at only arm's-length sales that were exposed to the market through the multiple listings service ("MLS") and took place within the twelve months preceding the tax lien date. Thomas explained that he chose which properties were most comparable based on not only location proximity, but also similarity in condition and effective age to the relevant subject. Thomas also performed an income analysis that was offered to the BOR as an addendum because it was not included in his original report. Thomas indicated that he did not consider the income approach in his conclusion of value, but it supported his sales comparison analysis.

REO also presented testimony from its managing member, Frank Dinardo, regarding its business model and the condition of the properties. Dinardo testified that REO is a building/renovation company that also purchases distressed properties, fixes the exterior, and

quickly renovates the interior, and rents them to tenants. Dinardo stated that the repairs to properties that he intends to rent are done to make them free of any violations but not as nice as other properties that he renovates for owner-occupants.

At the BOR hearing regarding the subject property, REO relied on testimony from Dinardo regarding its condition and rental income. REO also presented testimony and a report from Thomas. The BOR questioned Thomas regarding his choices of comparable properties. Following the hearing, the BOR issued a decision maintaining the initially assessed valuation. On the Oral Hearing Journal Summary, the BOR indicated that it rejected the appraisal because Thomas used only lower value sales based on his distinction between "rental quality" and "owner quality." One member of the BOR dissented, though he observed that Thomas "consistently" chose to use the lower end of the market while all photographs appear to reflect the properties were in average (as opposed to below-average) condition.

REO appealed the BOR's decision, again seeking a reduction in value based on Thomas's appraisal as support for the requested reduction. REO argues that this Board should find value consistent with Thomas's opinion because the appraisal is the only evidence presented from an independent third-party expert. The county appellees argue that the BOR properly rejected the appraisal as not being credible because Thomas used lower-priced sales based on his distinction between rental quality and owner quality.

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, in addition to Dinardo's testimony regarding the physical characteristics of the property, REO relies on an appraisal report prepared by Thomas, a state-certified appraiser that personally viewed the interior and exterior of the subject property. Thomas appeared to testify before the BOR, describe his methodology, and explain the basis for his conclusions.

Upon review of Thomas's appraisal, which provides an opinion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find that it constitutes competent and probative evidence of value. We further find that the value conclusion is reasonable and well-supported. We acknowledge the BOR's criticisms of his analysis, but we find that Thomas sufficiently explained the basis for his conclusions. We agree with the BOR that it would be improper for an appraiser to simply assume that because the subject property is utilized as a residential rental property, it must be in below-average condition and, consequently, restrict comparable properties to only those in the lower end of the range. In this case, however, despite his comments to that effect, Thomas further explained that he personally viewed the property and its condition, which he considered as he narrowed down sales to those properties that were most similar to the subject property. Thus, the record shows that Thomas did not merely assume that the property was in "below average" condition or "average condition" and choose the comparable properties based on that assumption. Rather,

Thomas applied his observations of the property and his knowledge of the market to choose those properties most similar and to make any necessary adjustments.

We observe that the record also contains unadjusted sales data from the BOR's independent research. In the absence of an appraisal which analyzes such data, however, 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). Accordingly, we find that, in the absence of any persuasive evidence or argument to the contrary, the Thomas appraisal reflects the value of the subject real property as of the tax lien date.

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

PARCEL NUMBER 711-01-007

TRUE VALUE $46,000

TAXABLE VALUE $16,100

OHIO BOARD OF TAX APPEALS

DANNY PRATT, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-104
	)	
vs.	)	
	)	(PERSONAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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CITY OF AKRON
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Entered Friday, July 9, 2021

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 Summit 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, did not attach documentation of a BOR decision. The county appellees attached to their motion, the affidavit of the executive assistant to the BOR that there is no record of a decision issued for the subject property. R.C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and

determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an appeal "may be taken to the BTA within thirty days *after notice of the decision* of the county BOR is mailed as provided in division (A) of section 5715.20 of the Revised Code." (Emphasis added.) "Where a statute confers the right of appeal, adherence to the conditions thereby imposed is essential to the enjoyment of the right conferred." *Am. Restaurant & Lunch Co. v. Glander* 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

PIETRO DAMICO, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-2200, 2020-2201 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PIETRO DAMICO
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
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Entered Monday, July 12, 2021

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

The appellant property owner appeals decisions of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject properties, parcels 211-11-015 and 211-11-004, for tax year 2019. We proceed to consider these consolidated matters based upon the notices of appeal, certified statuary transcripts, and written argument submitted by the parties.

The property owner filed separate complaints with the BOR, requesting parcel 211-11-015 be revalued from $185,600 to $69,000 and parcel 211-11-004 be revalued from $165,800 to $60,000. By way of the complaints, the property owner asserted that the condition of the subject properties necessitated reductions to their values. The affected Board of Education ("BOE") filed countercomplaints, objecting to the requests. The BOR held hearings on the matter

at which the property owner and BOE appeared to offer argument and/or evidence in support of their respective positions. The property owner testified as to the condition of the subject properties and estimated rehabilitation costs; he was examined, and cross-examined, by the BOR members and BOE, respectively. The BOR issued decisions that retained the subject properties' initially assessed values. These appeals ensued. Because of the commonality of the issues and parties, we sua sponte consolidated these matters.

None of the parties availed themselves of the opportunity to submit new evidence at a hearing before this Board. Instead, the property owner and county appellees submitted written argument to fully assert their respective positions.

Before we consider the merits of these appeals, we must first dispose of preliminary issues. First, as previously noted, none of the parties requested an opportunity to submit new evidence at hearings before this Board. However, the property owner submitted documents with the notices of appeal, which were not submitted at the BOR hearing. Because these newly submitted documents were not submitted at a hearing at any level of these proceedings, we cannot consider them. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996). Similarly, the property owner's written argument includes factual assertions that were not testified to at the hearing before the BOR and, therefore, such factual assertions will not be considered. Id.

Second, at the BOR hearing, one of the BOR members stated that parcel 211-11-015 transferred into the property owner's name in 2019. However, the record is void of any evidence of such transfer.

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, ¶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, ¶¶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, ¶19.

The property owner primarily argued that the condition and/or defects of the subject properties necessitated a reduction to its value. This argument is unavailing. 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 of the subject properties' condition and/or defects are not self-evident.

Likewise, we must reject the property owner's secondary argument that the subject properties' values should be reduced commensurate with the costs to make necessary repairs and/or updates. This Board has repeatedly held that dollar-for-dollar costs do not necessarily correlate to value. *Gallick*, 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 provide competent, credible, and/or probative evidence of the subject properties' values. Neither his arguments nor his evidence justified any reduction in real property 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 211-11-015

True Value: $185,600

Taxable Value: $64,960

Parcel 211-11-004

True Value: $165,800

Taxable Value: $58,030

OHIO BOARD OF TAX APPEALS

TONY NASSIF, JR., (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1628
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - TONY NASSIF, JR.
Represented by:
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DAN MORELL & ASSOCIATES, L.L.C.
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INDEPENDENCE, OH 44131

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

STRONGSVILLE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
STRONGSVILLE CITY SCHOOLS BOARD OF EDUCATION
13200 PEARL RD
STRONGSVILLE, OH 44136

Entered Monday, July 12, 2021

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 399-14-016, 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 appellant's written argument. We acknowledge that appellant attached a document to his notice of appeal and several documents to his written argument that were not presented to the BOR during the proceedings below. Because this information was not presented at a hearing before this Board, we will not consider the documents or the references thereto in our

determination. See *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996).

The subject property consists of roughly 0.769 acres of land improved with a two-family residential property, which the Fiscal Officer initially assessed at a total true value at $197,200. Appellant filed a complaint with the BOR seeking a reduction in value to $145,000 based upon the price at which he purchased the property in November 2018 via sheriff's auction. At the BOR hearing, appellant and his father testified regarding the property's condition, indicating that they were unable to observe its condition prior to the sale. They further stated that although vacant at the time of the sale, both sides of the property could be rented after replacing the carpet and painting the interior, as no major repairs were necessary. Appellant argued that the sale price provided the best evidence of the subject's value, though the BOR explained that a sheriff's sale is presumed to be forced and not indicative of value for purposes of real property taxation. Appellant maintained that this sale was nevertheless good evidence of value because it sold for $145,000, which was more than the minimum bid of $116,000. Appellant also asserted that other sales in the area supported the sale price, though no evidence regarding such sales was offered.

The BOR issued a decision maintaining the initially assessed valuation, which led to the present appeal. On appeal, appellant argues that the Fiscal Officer's value did not adequately consider the distressed condition of the property and that the sale price is "some evidence" of value. Appellant references a valuation report prepared for the sheriff's auction that was not presented at a hearing to the BOR or this Board and argues it provides the best evidence of value.

When cases are appealed from a board of revision to this Board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). 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. It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977).

In this case, appellant relied on his November 2018 purchase of the subject property via sheriff's auction, though such a sale 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. We acknowledge that appellant and his father testified regarding the circumstances surrounding the sale and asserted that it was arm's-length because it sold for more than the minimum bid. Despite this testimony, we find that appellant failed to present sufficient evidence to establish that the sale "was nevertheless an arm's-length transaction between typically motivated parties and should therefore be regarded as the best evidence of the property's value." Id., at ¶43. Accordingly, we cannot rely on the sale as competent evidence of value.

In the absence of a recent sale, "an appraisal becomes necessary." *State ex rel. Park Invest. Co. v. Bd. of Tax Appeals*, 175 Ohio St. 410 (1964). On appeal, appellant argued that the Board should rely on a value report performed for the Sheriff's Office for the sale. As discussed above, however, this valuation is not properly in the record before us. Thus, we cannot consider it in our determination. Even if we could, however, we would find that it failed to support appellant's requested reduction, as was discussed by the Court in *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 152 Ohio St.3d 548, 2018-Ohio-919, ¶18 (fn. omitted):

In this case, the BOR valued the property for tax years 2012 and 2013 based on a

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

The sheriff's sale value report in the instant appeal shares similar deficiencies, as it opines value for a date other than the tax lien date and does not include any detailed analysis, let alone a description of the appraisers' methodology and what adjustments, if any, were considered among the sales. See, e.g., *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶16 (holding that owner's sales data was legally insufficient to satisfy his burden of proof where he offered nothing to confirm that the sales actually occurred and made no adjustments to relate the purported sale prices to the subject property).

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

$197,200

TAXABLE VALUE

$69,020

OHIO BOARD OF TAX APPEALS

MARTIN PEASPANEN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1563
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
ASHTABULA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - MARTIN PEASPANEN
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For the Appellee(s) - ASHTABULA COUNTY BOARD OF REVISION
Represented by:
GENE C. BARRETT
ASSISTANT PROSECUTING ATTORNEY
ASHTABULA COUNTY
25 WEST JEFFERSON STREET
JEFFERSON, OH 44047-1092

Entered Monday, July 12, 2021

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

The appellant property owner appeals a decision of the Ashtabula County Board of Revision ("BOR"), which determined the value of the subject property, parcel 12-342-00-069-00, for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and record of this Board's hearing.

A complaint was filed with the BOR, requesting the subject property's value be reduced from $129,000 to $26,000 based upon its age, condition, and nature. The BOR held a hearing on the matter, at which evidence was offered in support of the complaint. The BOR subsequently issued a decision that noted "NO VALUE CHANGE" but also noted issues to suggest the presence of jurisdictional issues. This appeal ensued.

This Board held a virtual hearing to provide the parties an opportunity to submit argument and/or evidence in support of their respective positions. In doing so, the property owner testified about the subject property's value history as well as efforts to bring its value

more in line with the assessed values of neighboring properties. (It should be noted that the property owner referred to "comparables" to mean the assessed values of neighboring properties and not to mean sales data.) In support of his arguments, he submitted a document to demonstrate ongoing litigation in the court system, involving the subject property and a document noting the transfer of a neighboring property. The property owner argued that the evidence highlighted that the subject property has been consistently overvalued, possibly because of malfeasance and/or misfeasance of county officials. The county appellees cross-examined the property owner. In their case in chief, the county appellees submitted the testimony of Michael Houser, chief appraiser at Ashtabula County Auditor's Office. Houser testified generally about the mass-appraisal system and the county appellees' defeated efforts to conduct a specific appraisal of the subject property. The property owner cross-examined Houser.

Before we consider the merits of this appeal, we must dispose of preliminary issues. As noted above, the BOR issued a decision that included a value decision that suggested the presence of jurisdictional issues. Because the BOR decision specifically noted "NO VALUE CHANGE" and because the county appellees did not raise the issue of the scope of this Board's authority during the pendency of this matter, we conclude that this Board has jurisdiction to consider the issue of the subject property's value.

At this Board's hearing, the attorney examiner deferred ruling on an objection to a document proffered by the property owner, a document entitled "TAX VALUE-Peaspanen.pdf." We now sustain the objection as the document was essentially being offered as testimony from a person who did not testify at this Board's hearing, which amounts to hearsay, about a neighboring parcel, which is not the subject of this appeal and irrelevant. *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. "[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, ¶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, ¶¶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, ¶19.

Upon review of the record, we are constrained to conclude that the property owner failed to satisfy the evidentiary burden. The property owner advanced a number of arguments to assert that the subject property's value should be reduced consistent with his request. First, the property owner argued that the assessed values of neighboring properties, with substantially similar dimensions of land, demonstrated that the subject property had been overvalued. We find this argument unpersuasive. 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.").

Second, the property owner argued that the condition and/or defects of the subject property necessitated a reduction to its value. This argument is equally unavailing. 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 of the subject property's condition and/or defects are not self-evident.

Third, the property owner argued that the subject property experienced too great an increase in its value, when compared to prior years' values, particularly when there were no material changes to the subject property. As a result, the property owner asserted, the subject property's value should be reduced. We are constrained to reject this argument as well. 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).

Fourth, the property owner argued that the sale of a neighboring property supports some reduction to the subject property's value. We must also reject this argument. There is no indication that the transfer of the neighboring property was an arm's-length transfer given that the buyer and seller have the same last name. *DAF Investments, LLC v. Montgomery Cty. Bd. of Revision* (Nov. 29, 2017), BTA No. 2016-2213, unreported (finding a transfer between parent and child not to be an arm's-length transaction because there was no showing that the sale reflected market value). There is also no evidence of the sale amount. Furthermore, there is no indication that the property owner had any firsthand knowledge of the transfer of the neighboring property and, therefore, any information about this sale amounts to 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, at ¶19.

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. Neither his arguments nor his evidence justified any reduction to the subject property's value. It is, therefore, the order of this Board that the subject property's values are as follows as of the relevant tax lien date:

True Value: $129,000

Taxable Value: $45,150

OHIO BOARD OF TAX APPEALS

MAXINE C JACKSON, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-163
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - MAXINE C JACKSON
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SHAKER HTS., OH 44122

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, July 12, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of

appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

RONALD WITT, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1936
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
WOOD COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - RONALD WITT
OWNER
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For the Appellee(s) - WOOD COUNTY BOARD OF REVISION
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PAUL A. DOBSON
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BOWLING GREEN, OH 43402-2431

Entered Monday, July 12, 2021

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

The appellant taxpayer appeals a decision of the Wood County Board of Revision ("BOR"), which granted his request for remission of the late-payment penalty associated with the property-tax bill for the first half of tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and taxpayer's written argument.

Before we consider the merits of this appeal, we must first determine whether this appeal presents an issue in controversy. The taxpayer filed an application for remission of the late-payment penalty, for the first half of tax year 2020, with the Treasurer. The application was filed in August 2020 and noted that the property-tax bill was due in July 2020. Given that theproperty-tax bill for the first half of tax year 2020 was not yet due and owing, but the property-tax bill for the first half of tax **2019** was due in July 2020, we conclude that the taxpayer's application actually related to the property-tax bill for the first half of tax year **2019**. Further

review of the record highlights that the Treasurer, Auditor, and BOR all agreed that the taxpayer's request for remission of the late-payment penalty should be granted. The BOR subsequently issued a decision, which stated: "Upon review, your request is granted. The penalty will be removed from your tax parcel." Statutory Transcript at Exhibit G-Decision Letter. Nevertheless, the taxpayer filed this appeal, which challenges the BOR's decision granting his request for remission of the late-payment penalty for the first half of tax year 2019.

The only issue over which this board has jurisdiction is the propriety of the BOR's decision. Because the taxpayer requested remission of the late-payment penalty for the first half of tax year 2019 (again, it could not have related to the first half of tax year 2020) and because the BOR granted his request for remission of the late-payment penalty for the first half of tax year 2019, we find no justiciable issue is before us. *Kelsch v. Hamilton Cty. Bd. of Revision* (Feb. 7, 2003), BTA Nos. 2002-T-1271 et al., unreported (dismissing appeals on the ground that appellant was not an aggrieved party who had standing to appeal since he received the values requested).

Based upon the foregoing, we conclude that the taxpayer received the relief requested in the underlying application for remission of the late-payment penalty. The taxpayer is not an aggrieved party. As such, this matter is dismissed.

OHIO BOARD OF TAX APPEALS

W.Y. ESPENSCHIED, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-526
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - W.Y.ESPENSCHIED
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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, July 14, 2021

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

This case is before the Board on a motion to remand, or in the alternative to dismiss for lack of jurisdiction. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, the notice of

appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1675, 2020-1676, 2020-1679 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEREK STRAUSS ADM EST OF BERTHA B. STRAUSS
Represented by:
DEREK STRAUSS, EXECUTOR
ADM EST OF BERTHA B. STRAUSS
10888 LAKEBROOK DRIVE
KIRTLAND, OH 44094

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, July 14, 2021

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

This matter is before this Board upon the filing of a motion to dismiss filed by the county appellees. The motion asserts that the appellant failed to file a copy of this appeal with the Cuyahoga County Board of Revision ("BOR"). We proceed to consider the motion based upon the notice of appeal and certified statutory transcript.

The county appellees' motion is premised upon 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. "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.

In this matter, the record indicates that the BOR mailed its decision on August 18, 2020; the appellant filed the appeal with this Board on September 17, 2020. There is no indication that the appellant filed a copy of the appeal with the BOR, as required by R.C. 5717.01, and the appellant failed to respond to the motion to dismiss. We are, therefore, constrained to conclude that the appellant failed to follow the proper steps to appeal the BOR's decision.

Upon consideration of the existing record, and for the reasons stated in the county appellees' motion, we find that the appellant did not properly appeal from a BOR decision, which deprives this Board of jurisdiction to consider the merits of this appeal. Accordingly, this matter is dismissed.

OHIO BOARD OF TAX APPEALS

EDWARD E HOWARD JR, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-130
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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EUCLID CITY SCHOOLS BOARD OF EDUCATION
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Entered Friday, July 16, 2021

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

The property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and county appellees' motion to dismiss.

Before we consider the merits of this appeal, we must first determine whether we have jurisdiction to do so. As such, we begin our analysis with the county appellees' motion to dismiss, which is premised upon the relevant portions of R.C. 5717.01, which allows for an

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

In this matter, the county appellees assert that the property owner untimely filed a copy of the notice of appeal with this Board and never filed a copy of the notice of the appeal with the BOR, which precludes this Board from considering the merits of this appeal. According to the county appellees, the BOR sent its decision to the property owner on October 5, 2020. The county and the property owner filed his notice of appeal with this Board on January 17, 2021. The property owner did not come forward to dispute any of the county appellees' assertions or to demonstrate that he did timely filed a copy of the notice of appeal with the BOR.

Accordingly, based upon the foregoing, we find merit to the county appellees' motion to dismiss and grant it. As a result, this appeal is dismissed.

OHIO BOARD OF TAX APPEALS

Y. B. S.Z. LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-816
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - Y. B. S.Z. LLC
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Entered Monday, July 19, 2021

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

[1] The appellant appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 644-14-028, 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 complaint with the BOR, requesting the subject property be revalued from $77,100 to $25,000 purportedly based upon the price at which it transferred in August 2015. No one appeared on behalf of the property owner at the BOR hearing, and the BOR issued a decision that retained the subject property's value. This appeal ensued. None of the parties availed themselves of the opportunity to submit evidence at a hearing before this Board.

[2] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. Yisrael Harris filed a motion to supplement the record on behalf of the property owner.

There was no indication that Harris was an attorney licensed to practice law in Ohio; thus, it appears that he has engaged in the unauthorized practice of law by attempting to represent the property owner in this matter, i.e., engaging in motion practice. 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 strike the motion to supplement the record and order Harris to cease and desist from the unauthorized practice of law.

[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, ¶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, ¶¶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, ¶19.

[4] We begin our analysis with the property owner's $25,000 purchase of the subject property in August 2015, which formed the basis of the property owner's requested valuation. 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, ¶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 have 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 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."). For this reason, we must conclude that the property owner's $25,000 purchase of the subject property in August 2015 was too remote from the tax lien date and, consequently, is not reflective of its value.

[5] 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 property's value. As a result, it is the order of this Board that the subject property's value shall remain as initially assessed as of the relevant tax lien date:

True Value: $77,100

Taxable Value: $26,990

OHIO BOARD OF TAX APPEALS

DEBORAH A. CAPRETTA AND RICHARD A. CAPRETTA, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-1291 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - DEBORAH A. CAPRETTA AND RICHARD A. CAPRETTA
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Entered Tuesday, July 20, 2021

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

[1] The property owners appeal a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 164-15-012, 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 owners filed a complaint with the BOR, which requested that the subject property be revalued from $111,400 to $52,000. By way of the complaint, the property owner asserted that another, similar property recently sold for $52,000 and that there were a number of issues, including foundation issues with the home, that limited the subject property's marketability. At the BOR hearing on the matter, Mrs. Capretta appeared to submit argument and evidence in support of the complaint. She detailed the history of condition issues with the

subject property and her ongoing efforts to remediate those issues. In support of the complaint, she submitted comparable sales data, which she asserted indicated that the subject property had been overvalued. The BOR voted to reduce the subject property's value to $100,300, based upon the property owners' evidence, and this appeal ensued.

[3] At this Board's hearing, only the property owners appeared to submit additional evidence into the record. In doing so, they submitted an appraisal report performed by David Ward, which opined the value of the subject property to be $53,000 as of January 1, 2018. The property owners noted that the subject property required rehabilitation, which had been ongoing since their purchase of it in 2014, and also detailed the monies they were required to spend, by their municipality, to transition the subject property off a septic system.

[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. *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 property owners' appraisal evidence performed by appraiser David Ward. Ward solely developed the sales comparison approach to valuing real property. In doing so, he compared the subject property's salient features to those of four other properties and, after adjusting the comparable properties for some differences with the subject property, he concluded to an opinion of value of $53,000 as of the tax lien date.

[5] Upon review, we do not find Ward's appraisal report to be competent, credible, and

probative evidence of value. Ward did not appear at this Board's hearing. We generally reject an appraisal report when the appraiser fails to testify 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).

[6] In this case, Ward's testimony was particularly necessary because he failed to adjust for important differences between the subject property and comparable properties. For example, he failed to adjust the comparable sales to account for date of sale, location, condition, style of home, and garage size. This Board has previously rejected appraisal reports that failed to account for fundamental and meaningful differences between comparable properties and the property under review. See, e.g., *Barley v. Greene Cty. Bd. of Revision* (May 20, 2019), BTA No. 2018-948, unreported. We also note the large gross adjustments effected by Ward, which suggests that the comparable properties may not have been truly comparable to the subject property. This Board has previously held that sales that require large adjustments are properly given less weight. See e.g., *Alliance City Schools Bd. of Edn. v. Stark Cty. Bd. of Revision* (Aug. 21, 2017), BTA No. 2016-1916, unreported. We also find it curious that Ward's preliminary opinion of value, $52,000, mirrors the property owners' opinion of value on the underlying complaint. Hearing Record at Exhibit B. We find the written explanation for his methodologies, in the addendum of the

appraisal report, to be inadequate.

[7] Unfortunately, we are also constrained to reject the property owners' argument that the condition of the subject property, including but not limited to the foundation issues and financial requirements of transitioning off the septic system, necessitated a reduction to its value. The property owners failed to provide evidence to quantify the specific diminution in value that resulted from the cited defects. *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 owners seemingly argued that the subject property's prior value at approximately $52,000 should carry forward. For tax year 2018, the fiscal officer was under the statutory duty to revalue all real property in the county in light of existing market conditions. 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, 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 v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 1997-Ohio-362 (1997).

[9] The property owners also submitted comparable sales data, at the BOR hearing, to demonstrate that the subject property's value should be decreased. However, like our critique of Ward's appraisal report, there were no adjustments made to the comparable sales to account for important differences with the subject property. 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).

[10] In sum, we do not find the property owners' evidence to be competent, credible, or probative evidence of the subject property's value. *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.").

[11] 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%, as opposed to 9% or 11%, for example. 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.) Compare *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237.

[12] In reviewing this matter, we are mindful of our duty to independently determine the subject property's value. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13, 15 (1996) (BTA must reach its "own independent judgment based on its weighing of the

evidence contained in [the BOR] transcript"). In doing so, we are constrained to conclude that the property owners failed to provide competent, credible, and/or probative evidence of the subject property's value 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 $100,300. We must, therefore, reinstate the subject property's initially assessed value. *FirstCal Indus. .2 Acquisitions, L.L.C. v. Franklin Cty. Bd. of Revision*, 125 Ohio St.3d 485, 2010-Ohio-1921.

[13] It is, therefore, the order of this Board that the subject property shall be valued in accordance with the following values as of the relevant tax lien date:

True Value: $111,400

Taxable Value: $38,990

OHIO BOARD OF TAX APPEALS

DO THANH TAN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1482
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
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Entered Monday, August 2, 2021

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 3, 2020, the appellant filed an application for remission with this Board. Appellant did not include a copy of a Board of Revision ("BOR") decision. The county appellees attached to their motion 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* 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

MCKAY CREEK LAND, LLC, (et. al.), Appellant(s), vs. MONTGOMERY COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2275 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MCKAY CREEK LAND, LLC
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Represented by:
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Entered Monday, August 2, 2021

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

[1] The appellant property owner, McKay Creek Land LLC ("McKay Creek"), appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real property, parcel number E21 01009 0070, 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.

[2] The subject property consists of 1.274 acres of land improved with a 14,820-square-foot freestanding retail building occupied by Dollar Tree. The Auditor initially assessed the subject's total true value at $950,300. The appellee Board of Education ("BOE") filed a complaint with the BOR seeking an increase in value to $1,954,100, and McKay Creek filed a countercomplaint in support of the Auditor's value.

[3] At the BOR hearing, the BOE submitted a deed and conveyance fee statement to demonstrate that McKay Creek purchased the subject property from BEL Investments Dayton OH, LLC ("BEL") on August 15, 2017, for $1,954,044.44. The BOE argued that the price for which the subject property sold just months before the tax lien date provided the best evidence of its value. McKay Creek did not dispute the basic details of the transaction but argued that the sale price did not reflect the value of the real property due to a lease in place at the time of the sale. BEL purchased the subject property from Walgreens in April 2017, after Walgreens vacated the property. BEL made some updates to the property and secured Dollar Tree as a new tenant before listing the property for sale. McKay Creek presented testimony from its sole member, Bob Bobowsky, who testified about the purchase and his motivations, and appraiser Kelly Fried, MAI, who discussed her appraisal of the property and opinion that its value was $1,140,000 as of January 1, 2018.

[4] Bobowsky explained that throughout his career, he had been involved in the purchase, operation, and sale of roughly 200 properties, and he currently owned around a dozen single-tenant properties, in addition to other types of properties. Bobowsky was looking to purchase a different property in Cincinnati and reached out to a local broker as part of his due diligence. After Bobowsky decided not to purchase the property in Cincinnati, that broker made him aware that the subject property was about to come on the market. At that time, Bobowsky had just sold a property in Oregon with a low basis and was looking to complete a §1031 exchange, with the subject property being one of four he purchased. Bobowsky purchased the property for the amount asked by the seller with little negotiation in part due to time constraints and because the asking price was

within the range of similar properties throughout the country with the same tenant. Because he was using cash for the purchase, no appraisal was necessary. When he visited the property, he found it in good condition, as BEL had replaced the roof, sealed and striped the parking lot, and painted the property prior to the sale. Bobowsky stated that he was taking on the risk that Dollar General would vacate the property at the conclusion of its ten-year lease, but that he was hopeful they would extend the lease based on favorable demographics for Dollar General's business in the subject's location.

[5] Fried appraised the property and opined that its fee simple value was $1,140,000 as of January 1, 2018. Fried determined that the highest and best use of the subject property was continued use as retail, with the most likely buyer being a local or regional investor or owner-user based on her sales comparison analysis, to which she gave primary weight. Fried utilized the sales of five properties with an unadjusted range of $46.23 to $123.20 per square foot in her sales comparison approach, which included the sales of three properties vacant at the time of transfer and two that were occupied by Family Dollar selling. After making transactional adjustments and adjustments for physical differences among the properties, the indicated price per square foot ranged from $60.79 to $76.43. Based on this analysis, Fried concluded that value of the property on the tax lien date was $75.00 per square foot, or $1,110,000 (rounded).

[6] Although given secondary weight, Fried also performed an income capitalization approach to value. Fried analyzed the leases of four properties, two occupied by Family Dollar, one occupied with Dollar General, and a 10,000-square-foot unit in a shopping center occupied by Dollar Tree. Fried made financial adjustments only for market conditions, finding them unnecessary to account for expense structure or conditions of lease, with all four leases reimbursed on a triple-net basis. After additional physical adjustments, the rent per square foot ranged from $8.11 to $11.33, and Fried concluded to an indicated rent of $9.00, which was the rent in place at the time of the sale and on the tax lien date. Fried added $3.24 for recovered expenses and then applied a vacancy and collection loss of 7.5%, or $0.92, or $11.32 per square foot ($167,787 total)

effective gross income. Fried subtracted an additional $3.49 for operating expenses, for a net operating income ("NOI") of $7.83 ($116,071 total). Fried extracted the capitalization rate from five sales: two Walgreens stores, two Family Dollar stores, and one NAPA store, which ranged from 7.05% to 9.45%. Fried also looked at investor surveys for national retail properties (averages ranging 6.05% to 10.53%) and the band of investment (8.75%), and determined that 9.00% was appropriate. Fried added a vacancy-weighted tax additur and applied the total 9.36% rate to the NOI, for a resulting value of $1,240,000 (rounded) as of the tax lien date.

[7] Fried reconciled the two approaches, giving more weight to the sales comparison approach because she concluded the most likely purchaser would be an owner-occupant (though in her highest and best use analysis, she concluded that a national or regional investor like Bobowsky would be another likely buyer), opining that the value of the property was $1,140,000 as of January 1, 2018. As part of her appraisal, Fried also analyzed the August 2017 sale and determined that the property was leased at market rates to a national credit tenant, and therefore the reported sale price needed to be adjusted to remove the effects of both. Fried performed a "risk premium analysis," wherein she applied a 9.00% capitalization rate to the contract rent in place in the subject property, compared to the 6.83% capitalization rate derived from the sale, and concluded that McKay Creek paid a $472,044 risk premium. Fried further performed a "market and contract rent differential analysis," she applied the 9.00% capitalization rate to the difference between the annual contract rent and the NOI she calculated in her income analysis. This indicated a value of $192,326 attributable to the lease. Based on these two analyses, Fried allocated $1,289,674 of the total purchase price to the underlying real property.

[8] The BOR issued a decision increasing the initially assessed valuation $1,954,040 based on the sale price, as it found that McKay Creek did not meet its burden to rebut the sale. From this decision, McKay Creek filed the present appeal, arguing that it met its burden of proof to rebut the sale price as the best evidence of the subject property's value and that the BOE did not present any evidence to contradict McKay Creek's rebuttal or dispute the credibility of Fried's appraisal.

McKay Creek further maintains that the BOR erred in granting the BOE's increase request and failed to fully consider Fried's appraisal or analyze whether it more accurately reflected the subject property's value than the sale price.

[9] The BOE asserts that there is a well-established presumption 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, such as the August 2017 sale in this case. The BOE argues that the owner failed to meet its burden to rebut this presumption. The BOE claims that potential income is a motivation in the purchase of any income-producing property and that Fried's report showed that the lease on the property at the time of the sale was consistent with the market. The BOE contends that the primary reason Fried's opinion of value was below the sale price was based on her capitalization rate, ignoring the capitalization rate reflected by the sale, which was supported by the investor survey in her report. The BOE finally argues that this Board has consistently rejected the argument that a sale price should be disregarded merely because it was part of a §1031 exchange.

[10] 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.

[11] In the present appeal, the burden falls on McKay Creek to demonstrate that the purchase price does not reflect the subject's true value. *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. Rebuttal evidence may include an appraisal, such as the appraisal evidence presented in this case, to demonstrate that the sale was not reflective of market value or provide affirmative evidence of value. *Spirit Master Funding*, at ¶9, citing *Westerville City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 308, 2018-Ohio-3855, ¶14.

[12] First, we reject McKay Creek's arguments that the sale was not reliable evidence of the value of the real property. We observe that every transaction involves a buyer and seller with subjective motives. Bobowsky claims that he was motivated by the lease, and Fried's appraisal shows that the lease reflected market conditions. The argument that a property must be valued as vacant has been rejected repeatedly. 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. Although Fried claimed that she was not attempting to value the property as vacant and the adjustments to the sale were necessary to remove the effect of the lease on the sale price to make it in line with market conditions, we find that such adjustments were not necessary based on the data within her report.

[13] In her analysis of the sale, Fried made adjustments to account for the creditworthiness of the tenant and the expenses that would be experienced during a vacancy. These adjustments were necessary, she claimed, because of Dollar Tree's credit rating and to adjust the contract rent to reflect the market NOI. We disagree. Fried's report confirms that the lease in place during the purchase was consistent with other leases in the subject's market in terms of rental rate, duration,

type of tenant, and reimbursement on a net basis. While Dollar Tree is a national retailer, it has a BBB- credit rating and is similar to the other national retail brands that occupied the properties utilized by Fried in both her sales comparison and income approaches to value. Furthermore, Bobowsky testified that he was aware of the risk that the tenant may vacate the building and the demographics in the area. As such, it appears that he considered the possibility of vacancy-related expenses and the risk of losing the tenant when he agreed to purchase the property.

[14] Additionally, this Board has previously found that the transfer of real property as part of a §1031 exchange does not negate the arm's-length nature of a sale. See, e.g., *Bd. of Edn. of the Hilliard City Schools v. Franklin Cty. Bd. of Revision* (Jan. 13, 2009), BTA No. 2006-T-1804, unreported. Furthermore, although we acknowledge that Bobowsky may have had some pressing motivations to purchase the subject property, we note that every party to a sale has some subjective motivations for its participation in the transaction. The record shows that Bobowsky was not held "hostage" to the seller, as he acknowledged that he considered at least one other property and chose not to go through with the purchase. Rather, it appears that he is a sophisticated market participant that made an investment decision as to whether it would be more favorable to complete the purchase of the subject property, purchase a different property, or pay the taxes resulting from the failed §1031 exchange. Compare *Lakeside Avenue L.P. v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 540 (1996) (discussing the concepts of economic duress and compulsion in the context of determining the utility of a sale in establishing value). Thus, this aspect of Bobowsky's motivation does not invalidate the sale. Accordingly, we find that the recorded purchase price is reliable evidence of the value of the subject real property.

[15] Second, we find that the appraisal is not more reliable than the sale. We are mindful that the "best-evidence rule of property valuation" creates a rebuttable presumption that the sale price reflected true value. *Terraza*, supra. Fried's appraisal analysis, though competent, reasonable, and supported, is not more reliable than the recent arm's-length sale of the subject property. Fried gave primary weight to the sales comparison approach but ignored the sale of the

subject property. Fried utilized the sales of two other properties that were similarly leased at the time of the transaction and found that the contract rent for the subject property was at market rates. All properties in Fried's sales comparison analysis required adjustments for physical differences from the subject property in addition to the transaction adjustments for market conditions or property rights conveyed. The sale of the subject property itself took place only months before the tax lien date and requires no subjective adjustment for physical differences.

[16] Additionally, although given secondary weight, Fried's income analysis does not provide a better indication of value than the sale of the subject property. As noted by the BOE, aside from the consideration of expenses related to vacancy, the primary difference between the income analysis and the sale price resulted from the capitalization rate. While the comparable retail sales included in Fried's survey include capitalization rates ranging from 7.05% to 9.45%, the ranges from the investor surveys support the rate paid by McKay Creek: PwC – National Retail – Strip Shopping Center at 4.00% to 9.50% (6.36% average), Situs RERC – National Retail – Neighborhood/Community at5.00% to 7.50% (6.20% average), Real Capital Analytics – National Retail – Shops with range listed but an average rate of 6.05%, and Realty Rates – National Retail – Free Standing at 4.93% to 13.96% (10.53% average). Therefore, while Fried's 9.00% capitalization rate was certainly within the range, we find that it does not provide more probative evidence of the value of the subject property than McKay Creek's purchase.

[17] 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

$1,954,100

TAXABLE VALUE

$683,940

OHIO BOARD OF TAX APPEALS

RICHARD SEAVER, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-607
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Wednesday, August 4, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990),the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory.***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

WORLD WEST PROPERTIES, LLC, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2168 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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ELYRIA CITY SCHOOLS BOARD OF EDUCATION
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HUBBARD AND HUBBARD
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Entered Wednesday, August 4, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory.

***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, the notice of appeal with the BOR. Appellant responded to the motion but failed to provide probative, tangible evidence appellant did timely file its notice of appeal with the Board of Revision. A review of the record reveals the notice of appeal was not delivered to the BOR until October 10, 2019, which is after the appeal window closed. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

MARK SERTICH, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-703
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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CLEVELAND, OH 44113

Entered Monday, August 16, 2021

Mr. Harbarger and Ms. Clements concur. Mr. Caswell not participating.

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion

and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

MARK SERTICH, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-702
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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CLEVELAND HEIGHTS-UNIVERSITY HEIGHTS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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Entered Monday, August 16, 2021

Mr. Harbarger and Ms. Clements concur. Mr. Caswell not participating.

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio

Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

CLE LAX 21 LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-704
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Monday, August 16, 2021

Mr. Harbarger and Ms. Clements concur. Mr. Caswell not participating.

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of

appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

MARK SERTICH, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-700
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Represented by:
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Entered Monday, August 16, 2021

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

The county appellees move to dismiss this matter on the basis that appellant withdrew the complaint and therefore the BOR did not have jurisdiction to decide value for the subject property, or in the alternative because it was not timely filed, or filed at all, 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.

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

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

OHIO BOARD OF TAX APPEALS

MARK SERTICH, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-701
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Monday, August 16, 2021

Mr. Harbarger and Ms. Clements concur. Mr. Caswell not participating.

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio

Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

APANASEWICZ SUSAN M AND KEVIN J, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-720 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, August 16, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellants did not file, or did not timely file, their notice of appeal with the BOR. The appellants did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellants did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

ROBERT STONE TRUSTEE ROBERT STONE TRUST 7-21-99, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-496 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - ROBERT STONE TRUSTEE ROBERT STONE TRUST 7-21-99
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Entered Monday, August 16, 2021

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

[1] The appellant property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 871-09-013, for tax year 2019. 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 requesting the subject property's value be reduced from $279,400 to $230,000. By way of the complaint, the property owner asserted that its opinion of value was based upon the condition of the home sitused on the subject property. The

BOE filed a countercomplaint objecting to the request. The BOR held a hearing on the matter, at which the property owner appeared through its trustee, Robert Stone, and BOE appeared through counsel. As the hearing commenced, Stone amended the property owner's opinion of value to $195,000. He testified as to the defects of the home, i.e., water in the basement and problematic sewage/septic tank system, which he believed necessitated a reduction to the subject property's value. To further demonstrate that the subject property had been overvalued, the property owner submitted the report and testimony of appraiser George Burke, who opined the value of the subject property to be $195,000 as of January 1, 2019. Burke testified as to the data and methodologies used to derive his opinion of value. The BOR members and counsel for the BOE cross-examined Mr. Stone and Mr. Burke. According to the BOR hearing worksheet, the BOR believed that Burke's appraisal report undervalued the subject property and subsequently issued a decision that retained the subject property's value. This appeal ensued. At this Board's hearing, only the property owner appeared, again through Mr. Stone who essentially reiterated his testimony 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. *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 Burke's appraisal report, which solely developed the sales

comparison approach to valuing real property. In doing so, he compared the subject property's features to the features of nine alleged comparable properties that sold within the same vicinity as the subject property between November 2017 and May 2019. After adjusting comparable properties for differences with the subject property and deducting $30,000 to account for the costs to remediate cited deficiencies, he preliminarily concluded to a range in value from $157,000 and $206,780. Burke selected a value in the middle of the range to finally conclude to an indicated value of $195,000 as of January 1, 2019.

[5] Upon review, we must conclude that the property owner's evidence is not competent, credible, and/or probative. We must reject the Burke appraisal report for four primary reasons. First, Burke conceded that he did not verify the comparable sales with people involved in the respective sales and solely relied upon information provided by the Multiple Listing Service (more commonly known as "MLS") to determine the condition of the comparable properties. Because he did not verify the details of the comparable sales and because he did not inspect the comparable sales to determine their condition, it is unclear how Burke determined that the condition adjustments in his appraisal report were proper. This Board has previously rejected reliance on unverified sale information. See, e.g., *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (June 13, 2013), BTA Nos. 2011-Q-550, et seq., unreported; *Overstreet v. Hamilton Cty. Bd. of Revision* (Feb. 15, 2002), BTA No. 2001-V-639, unreported. The Appraisal of Real Estate (14th Ed.2013) also comments on the need to verify information regarding the comparable sales "to make sure that the sale occurred under conditions that meet the definition of value based in the appraisal." Id. at 125. See, also *Fitterman v. Cuyahoga Cty. Bd. of Revision* (Mar. 29, 2021), BTA No. 2020-26, unreported (rejecting appraisal report when the appraiser failed to verify salient information about the comparable properties).

[6] Second, Burke made large gross adjustments to the comparable properties, which suggests that the properties really were not comparable to the subject property. The gross adjustments ranged from 28.3% to 40.9%. We have previously held that "[t]he greater the

magnitude of the adjustments, the less reliable the appraisal will be." *Gammarino v. Hamilton Cty. Bd. of Revision* (Sept. 30, 2019), BTA Nos. 2018-622 et al., unreported at 8. See, also *Nachi Investments LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 5, 20210, BTA No. 2020-25, unreported (rejecting an appraisal report that made large adjustments ranging from 24.1% to 28.8%).

[7] Third, it appears that Burke "double dipped" in his methodology to account for the condition of the subject property. He accounted for the condition of the home by making condition adjustments to the comparable properties, but he *also* deducted $30,000 to account for the costs to remediate the condition issues from all the comparable sales except comparable sale two. 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.

[8] Fourth, Burke did not explain why he relied upon properties with homes that were dissimilar in design from the subject property, i.e., he relied upon properties with Cape Cod style (3) and ranch style (5) homes. Only one of the comparable properties has a similar Colonial style home as the subject property. We have previously rejected an appraisal report that relied upon properties that were dissimilar than the property under review. See *Robinson v. Hamilton Cty. Bd. of Revision* (July 11, 2019), BTA No. 2018-1616, unreported.

[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 do not find the property owner's evidence to be competent, credible, 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: $279,400
Taxable Value: $97,790

OHIO BOARD OF TAX APPEALS

KEITH ADAMS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-925
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HAMILTON COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - KEITH ADAMS
OWNER
5 LARKING DR
CINCINNATI, OH 45242

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

Entered Monday, August 16, 2021

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 June 20, 2021, the appellant filed an application for remission with this Board. Appellant did not include a copy of a Board of Revision ("BOR") decision. The record provides the statement of the clerk for the Hamilton County BOR, stating that there is no record of a decision issued for the subject property.

R. C. 5703.02 grants the Board of Tax Appeals ("BTA") the authority to hear and determine appeals from *decisions* of county boards of revision. R.C. 5717.01 requires that an

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

Upon consideration of the existing record, and for the reasons stated in the motion, we find that the appellant has not appealed from a BOR decision and thus this matter is premature. Accordingly, this matter must be, and hereby is, dismissed.

OHIO BOARD OF TAX APPEALS

KENNETH KIM, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-1006
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - KENNETH KIM
OWNER
2826 CHAMBERLIN BLVD
HUDSON, OH 44236

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

Entered Monday, August 16, 2021

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 Summit 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, did not attach documentation of a BOR decision. The county appellees attached to their motion the affidavit of the Executive Assistant to the Fiscal Officer 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

VEREIT REAL ESTATE LP, (et. al.), Appellant(s), vs. LORAIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-933 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - VEREIT REAL ESTATE LP
Represented by:
ROBERT K. DANZINGER
SLEGGS, DANZINGER & GILL, CO., LPA
820 WEST SUPERIOR AVENUE, 7TH FLOOR
CLEVELAND, OH 44113

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

AVON LOCAL SCHOOLS BOARD OF EDUCATION(Default)
Represented by:
ABRAHAM LIEBERMAN
O'TOOLE, MCLAUGHLIN, DOOLEY & PECORA CO., LPA
5455 DETROIT ROAD
SHEFFIELD VILLAGE, OH 44054

Entered Monday, August 16, 2021

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

[1] This appeal is now considered upon the county appellee's motion to affirm the dismissal of appellant's tax year 2020 complaint, issued by the Lorain Board of Revision ("BOR"). Specifically, the county appellees argue that appellant's complaint is the second complaint filed within the same interim period. Appellant did not respond. This matter is now decided upon the county's motion, the statutory transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01, and appellant's notice of appeal.

[2] The record shows that appellant filed a tax year 2020 complaint for parcel no. 04-00-027-101-198. Appellant's complaint does not allege any of the circumstances required by R.C. 5715.19(A)(2) when filing a succeeding complaint. The BOR ruled to dismiss the complaint for lack of jurisdiction due to a previous complaint "filed within the interim period." Thereafter the present appeal ensued.

[3] The applicable interim period in Lorain County is 2018, 2019, and 2020; 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. In support of their motion, the county appellees argue that the previous complaint for the subject property was filed for tax year 2018 and is currently pending with this Board as BTA No. 2019-1971.

[4] R.C. 5715.19(A)(2) expressly limits the number of times a complaint may be filed within an applicable three-year period but allows multiple filings under certain circumstances. See *Soyka Kulchystsky, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 141 Ohio St.3d 43, 2014-Ohio-4511, 21 N.E.3d 297. "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 St3d 32, 35, 1998-Ohio 683, 701 N.E.2d 975 (1998).

[5] Upon review, we find that appellant's tax year 2020 complaint is a second filing within the applicable interim period that failed to invoke the jurisdiction of the BOR. As such, the BOR's decision is affirmed.

OHIO BOARD OF TAX APPEALS

JAMES D. KOSSICK, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-826
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JAMES D. KOSSICK
OWNER
1089 HANCOCK AVE.
AKRON , OH 44314

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

Entered Monday, August 16, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of

appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

MALCOLM ERICH, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-686
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
GREENE COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - MALCOLM ERICH
Represented by:
JULIE ERICH
OWNER'S DAUGHTER
57 COOK STREET
SAN FRANCISCA , CA 94118

For the Appellee(s) - GREENE COUNTY BOARD OF REVISION
Represented by:
CHERI L. STOUT
ASSISTANT PROSECUTING ATTORNEY
61 GREENE ST. SUITE 200
XENIA, OH 45385

Entered Monday, August 16, 2021

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 May 25, 2021, the appellant filed an application for remission with this Board. Appellant did not include a copy of a Board of Revision ("BOR") decision. The county appellees attached to their motion a statement from the Green County Auditor that there is no record of a decision issued for the subject property. R. C. 5703.02 grants the Board 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

BAHMAN MIRPOURIAN, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-112
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - BAHMAN MIRPOURIAN
8825 CRANBERRY RIDGE DR
BROADVIEW HEIGHTS, OH 44147

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

Entered Monday, August 16, 2021

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

The property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which denied a request for remission of the late-payment penalty associated with the property-tax bill for the second half of tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and county appellees' motion to dismiss.

Before we consider the merits of this appeal, we must first determine whether we have jurisdiction to do so. As such, we begin our analysis with the county appellees' motion to dismiss, which is premised upon the relevant portions of R.C. 5717.01, which allows for an appeal to be taken to this Board from a decision of a county board of revision provided such appeal is filed with this Board *and* the board of revision *within thirty days after notice of the decision* of the county board of revision *is mailed*. See, also, R.C. 5715.20. In *Hope v. Highland Cty. Bd. of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that "[a]dherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear

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

In this matter, the county appellees assert that the property owner never filed a copy of the notice of the appeal with the BOR, which precludes this Board from considering the merits of this appeal. The property owner did not come forward to dispute any of the county appellees' assertions or to demonstrate that a copy of the notice of appeal was filed with the BOR.

Accordingly, based upon the foregoing, we find merit to the county appellees' motion to dismiss and grant it. As a result, this appeal is dismissed.

OHIO BOARD OF TAX APPEALS

DIRE4 INSTRUCTIONAL SUPPORT SYSTEMS, INC., (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2020-1488
vs.	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - DIRE4 INSTRUCTIONAL SUPPORT SYSTEMS, INC.
Represented by:
MICHAEL SOBIESKI
ACCOUNTANT
6582 HUNTLEY RD
COLUMBUS, OH 43229-1012

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

Entered Monday, August 16, 2021

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 1, 2020, the appellant filed an application for remission with this Board. Appellant did not include a copy of a Board of Revision ("BOR") decision. The county appellees attached to their motion 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* 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

DO THANT T, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1477
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - DO THANT T
Represented by:
THANH T. DO
OWNER
2985 ONTARIO ST.
COLUMBUS , OH 43224

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

Entered Monday, August 16, 2021

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 3, 2020, the appellant filed an application for remission with this Board. Appellant did not include a copy of a Board of Revision ("BOR") decision. The county appellees attached to their motion 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* 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

REVERE LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. SUMMIT COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2020-1289 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - REVERE LOCAL SCHOOLS BOARD OF EDUCATION
Represented by:
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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

VERNICK & ASSOCIATES
2401 TRAIN AVENUE
CLEVELAND, OH 44113

Entered Monday, August 16, 2021

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

The Revere Local Schools Board of Education ("BOE") appeals from a final decision of the Summit County Board of Revision ("BOR") retaining the Fiscal Officer's value of parcel 50-02752 for tax year 2019. We decide the case on the notice of appeal, the statutory transcript, and the record of this Board's hearing.

Per the complaint, the subject property is vacant agricultural land, which the Fiscal Officer valued at $86,170 for tax year 2019. The BOE filed a complaint seeking a value of $190,000 citing a January 2020 sale for that amount. At the BOR hearing, the BOE supplied the relevant deed and conveyance fee statement. The statement indicates the property transferred

from Pemco Inc., to Vernick & Associates on January 28, 2020, for $190,000. The statement also indicates no portion of the sale was attributable to non-realty. The sale is also reflected on the parcel card. The BOR rejected the sale. The speaking member indicated the BOR did not adopt the sale because it occurred in 2020 and the relevant tax year was 2019. This appeal ensued. At this Board's hearing, the BOE appeared to advocate its position.

When cases are appealed 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).

Because this case implicates a sale, we begin there. 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 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. The Ohio Supreme Court has explained that a party seeking to value property pursuant to 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. Here, the BOE did so by presenting the relevant deed

and conveyance fee statement. Accordingly, the burden shifted to the BOR and property owner to rebut.

We find the sale has not been rebutted. First, the property owner never appeared at either hearing nor did the property owner submit evidence for consideration. Second, the BOR has supplied no evidence to rebut the sale. The BOR categorically rejected the sale because it occurred one year after the tax-lien date. The BOR misapplied binding Ohio Supreme Court precedent in doing so. See *Lone Star*. According, we find the sale is the best evidence of value and order the property valued as follows for tax year 2019.

TRUE VALUE

$190,000

TAXABLE VALUE

$66,500

OHIO BOARD OF TAX APPEALS

MICHAEL BABYAK AND MELISSA SHUTTLESWORTH, (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2021-849
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - MICHAEL BABYAK AND MELISSA SHUTTLESWORTH
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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 Thursday, August 19, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of

appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

JOHN W. SCOTT, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-615
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - JOHN W. SCOTT
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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, August 19, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of

appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

JOSE TORRES, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-602
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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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 Thursday, August 19, 2021

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

This case is before the Board on a motion to dismiss. R.C. 5717.01 permits a party to appeal from a decision of a board of revision ("BOR"). To appeal, the party must file their notice of appeal with both this Board and the BOR within thirty days after notice of the decision is mailed by the BOR. In *Hope v. Highland County Board of Revision*, 56 Ohio St.3d 68 (1990), the Ohio Supreme Court held that this Board lacks jurisdiction to hear a case if an appellant fails to fully comply with R.C. 5717.01. Id. ("R.C. 5717.01 is specific and mandatory. ***Failure to comply with the appellate statute is fatal to the appeal. *Austin Co. v. Cuyahoga Cty. Bd. of Revision*, 46 Ohio St.3d (1989)."). This Board is duty-bound to abide by Ohio Supreme Court precedent, and that Court has held the dual filing requirement is mandatory and not a "technicality."

Here, the movant alleges appellant did not file, or did not timely file, their notice of appeal with the BOR. The appellant did not respond to the motion. Having reviewed the motion

and the existing record, we must conclude appellant did not comply with R.C. 5717.01. As such, this case must be, and hereby is, dismissed for lack of jurisdiction.

OHIO BOARD OF TAX APPEALS

TYEISHA M. CARRUTHERS, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-304 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - TYEISHA M. CARRUTHERS
Represented by:
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For the Appellee(s) - CUYAHOGA COUNTY BOARD OF REVISION
Represented by:
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GARFIELD HEIGHTS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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CLEVELAND, OH 44131-2222

Entered Monday, August 30, 2021

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

[1] The property owner appeals the decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 541-28-048, for tax year 2019. 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's value be increased from $49,500 to $140,000 purportedly based upon the

price at which it transferred in May 2019. The property owner filed a countercomplaint, requesting the subject property be increased from $49,500 to $79,000 based upon comparable sales. By way of the countercomplaint, the property owner noted that the subject property sold for $140,000 in May 2019.

[3] At the BOR hearing, the BOE and property owner appeared to submit argument and/or evidence in support of their respective positions. In its presentation, the BOE submitted sale documents to demonstrate the $140,000 transfer of the subject property from Kevin DeOlivieira to the property owner in May 2019. The BOE requested that the subject property be revalued accordingly, based upon its presentation. In her presentation, the property owner testified about the facts and circumstances of the subject sale and argued that, after the fact, she believed that she overpaid for the subject property based upon comparable sales. The property owner was examined and cross-examined by the BOR members and counsel for the BOE, respectively. The BOR voted to revalue the subject property consistent with its $140,000 purchase price. The property owner, then, appealed to this Board, requesting the subject property be revalued at $125,000.

[4] None of the parties availed themselves of the opportunity to submit evidence at a hearing before this Board. Instead, the property owner opted to submit written argument to assert that she overpaid for the subject property and that a financial hardship would result if the subject property's value increased to $140,000. She also argued that it would be unfair to increase the subject property's value to $140,000 for tax year 2019 given the passage of time. Neither the BOE nor county appellees filed written argument.

[5] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. As noted above, the property owner did not request a hearing to submit new evidence into the record; however, after filing this appeal, she submitted a written statement, which included a mix of argument and factual assertions, and supporting documents. Some of the factual assertions and all of the documents were not previously provided at the BOR hearing. As such, they are not properly before us and are considered unreliable hearsay that cannot be considered

in our analysis. 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."). See, Also *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 1 (1996). We will, therefore, limit our review to the evidence submitted at the BOR hearing.

[6] 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. *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, ¶14 (quoting *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, ¶41). A proponent may generally meet their initial burden with sale documents that contain basic details about the sale, e.g., sale price, parties, and sale date. *Lunn*, at ¶15 (no additional testimony is usually necessary); *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St. 3d 691, 2017-Ohio-1412, ¶18 (noting that a party need only present minimal evidence of a sale when there is "no real dispute about the basic facts of the sale."). The opposing party must, to succeed, rebut the presumption created by the sale.

[7] In this matter, upon presentation of the sale documents, the BOE created a rebuttable presumption that the subject sale price, $140,000 reflect the subject property's value as of January 1, 2019. As the opponent of the subject sale, the property owner had the burden to come forward with competent, credible, and/or probative evidence to demonstrate that the subject sale was not reflective of the subject property's value. The property owner attempted to meet this burden by advancing three primary arguments.

[8] First, the property owner argued that she overpaid for the subject property. 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 e.g., *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] Second, the property owner argued that increasing the subject property's value to its full sale price would create a financial hardship. The Ohio Supreme Court has long held that 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-183unreported. While we sympathize with the property owner's situation, this Board must base its decisions upon argument and evidence that is properly before us, consistent with case and statutory law. As such, we lack equitable jurisdiction and cannot grant the property owner the relief that she seeks out of a sense of fairness or equitable considerations. *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564 (1953).

[10] Third, the property owner argued that comparable sales demonstrate that the subject property should not be valued at its full sale price. 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, ¶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).

[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"). Based upon our review of the record, we find that the property owner did not rebut 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 it to be reflective of the subject property's value as of the relevant tax lien date:

True Value: $140,000

Taxable Value: $49,000

OHIO BOARD OF TAX APPEALS

MEDDAH & STACY HADJAR, (et. al.), Appellant(s), vs. WARREN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-2389 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MEDDAH & STACY HADJAR
OWNERS
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For the Appellee(s) - WARREN COUNTY BOARD OF REVISION
Represented by:
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WARREN COUNTY
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LEBANON, OH 45036

Entered Monday, August 30, 2021

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

[1] The taxpayers appeal a decision of the Warren County Board of Revision ("BOR"), which denied their request for remission of the late-payment penalty associated with the property-tax bill for the second half of tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and parties' written argument.

[2] The taxpayers filed a single complaint, requesting remission of the late-payment penalties associated with the above-referenced tax period, in addition to the first half of tax year 2019. By way of an attached statement, the taxpayers asserted that they recently purchased the subject property and mistakenly believed that the property-tax bills would be paid by the closing agent. They did not select the basis that entitled them to remission of the late-payment penalties. The county Treasurer recommended that remission of the penalty be granted for the first half of

tax year 2019 but denied for the second half of tax year 2019. The BOR agreed and issued a written decision consistent with that recommendation. The taxpayers appealed to this Board, requesting remission of the late-payment penalty associated with the property tax bill for the second half of tax year 2019.

[3] Neither party availed themselves of the option to submit new evidence at a hearing before this Board. Instead, they opted to submit written argument to more fully assert their respective positions. The taxpayers' written submission, included with the notice of appeal, reiterated the previously provided statements. The county appellees argued that the taxpayers' mistaken belief did not relieve them of the obligation to timely pay the property tax bill.

[4] Before we consider the merits of this appeal, we must dispose of a preliminary issue. As noted above, neither the taxpayers nor the county appellees requested a hearing before this Board. Nevertheless, the county appellees attached documents, which are not included in the statutory transcript, to their written argument. Because these documents were not submitted into evidence at a hearing, they will not be considered in our analysis. *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.").

[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. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001).

[6] Upon review, we find that the appellants have not demonstrated that the facts and circumstances of this matter qualify for remission of the late-payment penalty. R.C. 5715.39 provides the guidelines to determine when real property tax late-payment penalty shall be remitted. The BOR reviewed the appellants' application to determine whether the appellants had demonstrated reasonable cause, not willful neglect, for failing to timely pay the property-tax

bills under R.C. 5715.39(C). This Board has held that failure to meet tax obligations suggests willful neglect, not reasonable cause. *Garcia v. Testa* (Aug. 17, 2017), BTA No. 2016-1592, unreported. Here, it undisputed that the taxpayers failed to pay the property tax bills for the entirety of tax year 2019 and, therefore, had a history of making delinquent property-tax payments. As such, we find that remission of the late-payment penalties would be inappropriate in this matter.

[7] Based upon the foregoing, we find that the appellants have failed to demonstrate entitlement to remission of the late-payment penalty associated with the untimely property-tax payment for the second half of 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). 2020-1930 (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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COLUMBUS, OH 43215

LIBAN ABDULLE
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SHARON, MA 02067

Entered Monday, August 30, 2021

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

[1] The affected Board of Education ("BOE") appeals a decision of the Franklin County Board of Revision ("BOR"), which determined the value of the subject property, parcels 010-059357-00 and 010-059079-00, for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and written argument submitted by the BOE.

[2] For tax year 2019, the subject properties were initially assessed $39,500 for parcel 010-059357-00 and $134,200 for parcel 010-059079-00. The property owner filed a complaint with the BOR, requesting the subject properties values be reduced. By way of the complaint, the

property owner asserted that the buildings sitused on the subject properties were demolished on February 18, 2019. The BOE filed a countercomplaint, objecting to the request. At the BOR hearing, the property owner and counsel for the BOE appeared to submit argument and/or evidence. As he began his testimony, the property owner argued that the buildings sitused on the subject properties were demolished in 2018. He testified that the subject properties remained vacant at the time of the BOR hearing. Upon questioning from BOR member Kimbol Stroud, the property owner could not confirm whether the proper notices of demolition were provided to the county Auditor. Counsel for the BOE cross-examined the property owner, who reiterated that the buildings sitused on the subject properties were demolished in 2018. Later, Raymond Smith, the subject properties' manager, joined the hearing. He was specifically questioned about the date on which the buildings were demolished and testified that it was sometime between November and December 2018. Because the demolition date was unclear, the BOR held the record open to allow the property owner to provide more specific information about the date of demolition. At the BOR decision hearing, the BOR voted to remove the value of the buildings sitused on the subject properties' value, purportedly after receiving confirmation of the demolition date from Smith. The BOR issued a decision that reduced the value of parcel 010-059357-00 to $13,900 and parcel 010-059079-00 to $24,300. This appeal ensued.

[3] At the BOE's request, a merit hearing was initially scheduled before this Board. However, such hearing was canceled, and the parties were provided an opportunity to submit written argument in support of their respective positions. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Interim Order, Feb. 10, 2021), BTA No. 2020-1930, unreported. Only the BOE availed itself of such opportunity. In doing so, the BOE argued that the property owner's evidence was insufficient to support any reduction to the subject properties' values and, as a consequence, the BOR erred when it reduced their values.

[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 are constrained to 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 subject properties' values should only reflect land values because the buildings situsedon them had been demolished. Unfortunately, the record is void of any evidence to corroborate this allegation. Notably, the record contains varying dates on which the buildings were demolished. The underlying complaint asserted that the buildings were demolished in February 2019; however, nothing in the record supports that. The property owner testified that the buildings were demolished in February 2018; however, nothing in the record supports that. Smith testified that the buildings were demolished in November/December 2018; however, nothing in the record supports that. Furthermore, the property record cards are void of any indication that the buildings situsedon the subject properties were demolished. In fact, the property record cards undercut the conclusion that the buildings were demolished on any date prior to the tax lien date of January 1, 2019. For example, the property record card for parcel 010-059357-00 noted "SOME WINDOWS BOARDED UP" as of January 10, 2019, and recommended a recheck for tax year 2020. Statutory Transcript at Property Record Cards. Similarly, the property record card for parcel 010-059079-00 noted "[DWELLING] BOARDED

UP" AND "NO CHANGES TO [DWELLING]" as of January 10, 2019, and recommended a recheck for tax year 2020. Id. See also 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."); Ohio Adm.Code 5703-25-09. Because of the inconsistencies in the record, we cannot conclude that the buildings sitused on the subject properties were demolished and, therefore, that they should have no values.

[6] We find it important to reiterate that, as indicated above, the BOR kept the record open to allow the property owner to submit evidence indicating the date on which the buildings sitused on the subject properties were demolished. At the BOR decision hearing, the BOR noted that Smith provided such evidence. However, the record certified by the BOR does not contain any documentary evidence that confirms the demolition date. Consequently, the BOR's decision is unsupported.

[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"). Based upon our review of the record, we find that the BOE satisfied its burden on appeal. We must conclude that, at the BOR level, the property owner failed to provide competent, credible, and/or probative evidence of the subject properties' values and that the BOR erred when it reduced the subject properties' values. Because the record does not support the BOR's value decisions, we are constrained to reinstate the subject properties' initially assessed values as of the relevant tax lien date:

Parcel Number: 010-059357-00

True Value: $39,500

Taxable Value: $13,830

Parcel Number: 010-059079-00

True Value: $134,200

Taxable Value: $46,970

OHIO BOARD OF TAX APPEALS

PLAIN LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. STARK COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1888 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PLAIN LOCAL SCHOOLS BOARD OF EDUCATION
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For the Appellee(s) - STARK COUNTY BOARD OF REVISION
Represented by:
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CANTON, OH 44702-1413

STARK COUNTY BOARD OF REVISION
Represented by:
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CHIEF OF THE CIVIL DIVISION
STARK COUNTY
STARK COUNTY PROSECUTOR'S OFFICE
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CANTON, OH 44702

IRAR TRUST FBO STEVEN WILLIAMSON
Represented by:
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Entered Monday, August 30, 2021

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

[1] The affected Board of Education ("BOE") appeals a decision of the Stark County Board of Revision ("BOR), which determined the value of the subject properties, parcels 1702442 and 1702617, for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and BOE's written argument.

[2] For tax year 2019, the subject properties were initially assessed $358,000 for parcel 1702442 and $642,600 for parcel 1702617. A single complaint was filed with the BOR, requesting that the subject properties be revalued at a combined value of $49,500 purportedly based upon the price at which they transferred at an auction in October 2019. The BOE filed a countercomplaint, objecting to the request.

[3] The BOR held a hearing on the complaint and countercomplaint, at which representatives of the property owner and BOE appeared to offer argument and/or evidence in support of their respective positions. Steven Williamson, a beneficiary of the property owner, testified as to the facts and circumstances of the $49,500 transfer of the subject properties in October 2019. He claimed that other people bid on the subject properties at the absolute auction and that he was the highest bidder. He also discussed the motives of parties to past transfers of the subject properties.

[4] None of the parties availed themselves of the opportunity to submit additional evidence at a hearing before this Board. Instead, they were provided an opportunity to submit written argument in support of their respective positions. By way of its submission, the BOE argued that the $49,500 sale in October 2019 was conducted via an absolute auction and that the property owner failed to rebut the presumption that such sale was not indicative of the subject properties' values. Neither the property owner nor the county appellees filed written argument.

[5] As an initial matter, the property record card demonstrates that there were two sales that occurred recent to the tax lien date of January 1, 2019: a transfer from Gaetano Mattoli Cecchini Living Trust ("Gaetano") to Pegasus Farm ("Pegasus") for an unspecified amount or for no consideration in June 2019 and a transfer from Pegasus to the current property owner for $49,500 in October 2019. We would ordinarily consider the sale closest to the tax lien date, i.e., the transfer from Gaetano to Pegasus, however, the record is void of any competent, credible, and/or probative information about this sale, specifically the sale price. *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687. Williamson attempted to

testify about the facts and circumstances of the transfer from Gaetano to Pegasus. However, there is no indication that he had firsthand knowledge of the transfer. As such, we find his statements about the transfer to be impermissible hearsay. *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."). We will, therefore, consider the merits of the subsequent sale of the subject properties, the current property owner's $49,500 purchase of the subject properties in October 2019.

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

[7] In the present appeal, it is undisputed that the subject properties transferred to the current property owner via an absolute auction, which means that the subject properties would

have sold regardless of the amount of the minimum bid. The property owner had the "heavier burden" to demonstrate that the $49,500 sale of October 2019 was an arm's-length transaction. Based upon our review, the property owner failed to satisfy such burden.

[8] The property owner solely relied on Williamson's uncorroborated testimony to support its requested value. We acknowledge that he testified that there were other bidders at the absolute auction, but the record is void of any information about the bidding process itself. Moreover, the record is void of any information about the marketing and minimum bid at the absolute auction, as well as any information that would establish that the sale price reflected the subject properties' values despite resulting from an absolute auction. Here, the property owner requested very substantial decreases to the subject properties, i.e., a $340,290 decrease for parcel 1702442 and a $610,310 decrease for parcel 1702617, based upon a sale that is presumptively invalid. As such, it had to produce more than uncorroborated testimony to support a reduction to less than five percent (5%) of the subject properties' assessed values. See also *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094, ¶20 (the Court concluded that evidence advocating a 62% reduction in value called for more "careful scrutiny.").

[9] 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 are constrained to find that the property owner did not rebut the presumption that the $49,500 transfer of the subject properties in October 2019 was not reflective of their values. Because the property owner's evidence was not competent, credible, and/or probative, the BOR erred when it decided to reduce the subject properties' values to a combined value of $49,500. As a result, we are constrained to reinstate the subject properties' initially assessed values as of the relevant tax lien date:

Parcel 1702442

True Value: $358,000

Taxable Value: $125,300

Parcel 1702617

True Value: $642,600

Taxable Value: $224,910

OHIO BOARD OF TAX APPEALS

CHRISTOPHER T. CLINE, MARGARET ANN PLAHUTA, TERESA JO GUBSCH, (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2020-1498
vs.	)	(REAL PROPERTY TAX)
HOCKING COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - CHRISTOPHER T. CLINE, MARGARET ANN PLAHUTA, TERESA JO GUBSCH
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Entered Monday, August 30, 2021

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

[1] The property owners appeal a decision of the Hocking County Board of Revision ("BOR"), which determined the value of the subject property, parcel 05-000216.0000, for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and parties' written argument.

[2] The property owners filed a complaint with the BOR, requesting that the subject property's value be reduced from $189,140 to $128,160. At the BOR hearing on the matter, property owner Christopher Cline appeared to submit argument and/or evidence in support of the complaint. In doing so, he argued that the subject property's prior triennial value should carry forward into tax year 2019, in part, because of defects to the subject property, i.e.,

easements granted in favor of utility companies, topography of the land, and steep, unpaved road that bisects the subject property. He also noted the difference between the subject property's assessed value and the assessed value of a neighboring property. The BOR members questioned Cline in an effort to understand the use of the subject property and income derived from it. The BOR subsequently issued a decision that retained the subject property's value. This appeal ensued.

[3] Although the property owners requested an opportunity to submit additional evidence into the record at a hearing before this Board, such hearing was canceled when the parties failed to disclose evidence consistent with the case management system. Instead, the parties were provided an opportunity to submit written argument. They submitted a joint stipulation of facts and documents and separately filed written argument. In their submission, the property owners argued that the "exclusive easements" and lack of access limited the use of the subject property such that it had little use and value to the property owners and that fairness necessitated a finding in their favor. They also argued that the subject property should be split into two separate parcels to make the electric company responsible for property tax on the land that it uses instead of them. In their submission, the county appellees argued that, for real property tax purposes, the easements granted in favor of utility companies cannot be considered in our analysis and that the property owners failed to quantify the specific diminution in 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] Upon review, we must conclude that the property owners failed to provide competent, credible, and/or probative evidence of the subject property's value. They advanced two primary arguments in support of their request to reduce the subject property's value. We fully explain below why we find no merit to the arguments.

[6] First, the property owners argue that defects of the subject property necessitate reduction to the subject property's value. This argument is unavailing. 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 of the subject property's defects, i.e., the easements and inaccessibility, are merely speculative. This Board has repeatedly held that "mere speculation is not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006 Ohio 1059, at ¶26.

[7] Relatedly, the property owners more specifically argue that the subject property's value should be reduced because of the easements in favor of the utility companies. Again, the property owners failed to quantify the specific monetary impact of the easements. It is well settled that voluntarily undertaken restrictions cannot be considered when valuing real property. *Muirfield Assn., Inc. v. Franklin Cty. Bd. of Revision*, 73 Ohio St.3d 710 (1995). In *Muirfield*,

the court first discussed its holding in *Alliance Towers v. Stark Cty. Bd. of Revision*, 37 Ohio St.3d 16 (1988), in which it "concluded that voluntary encumbrances, such as leasehold interests, deed restrictions, and restrictive contracts with the government, which the owner had granted, should not complicate the true value of property." *Muirfield*, supra, at 711. The court then remanded the matter to this board "to value the property as a fee simple estate, unencumbered by the voluntarily undertaken restrictions contained in the warranty deed." Id. at 712. Compare *Woda Ivy Glen Ltd. Partnership v. Fayette Cty. Bd. of Revision*, 121 Ohio St.3d 175, 2009-Ohio-762 (holding that deed restrictions associated with a low-income housing tax credit project constitute governmental restrictions for the general welfare and must be taken into account in the property's value). Accordingly, the case law is clear that voluntarily undertaken restrictions such as those involved in the present appeal should not be considered in the valuation of property for property tax purposes.

[8] Second, the property owners specifically request that this Board exercise equitable jurisdiction and grant them the relief they seek. However, it is well settled that we lack the authority to grant requests based upon equity or fairness. The Ohio Supreme Court has long held that 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.

[9] Third, the property owners argue that the subject property's prior triennial value, $128,600, should be reinstated. 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).

[10] Fourth, the property owners argue that the subject property's assessed value was too high when compared to the assessed values of nearby properties. The Supreme Court has

considered, and rejected, the utility of comparing assessed values amongst parcels to determine value. For example, in *Benedict v. Bd. of Revision,* 170 Ohio St. 62, 63 (1959), the court held that "[i]t is to be borne in mind that the determination of the true value of each parcel of real estate, with the improvements placed on it, is a separate undertaking and does not wholly depend on values accorded other parcels in the same vicinity. A particular parcel, because of its location and the improvements thereon, may properly be given a higher value than other parcels in the same neighborhood, without discrimination resulting. After all, true value of the particular property is the controlling consideration, and this is a question of fact primarily within the province of the taxing authorities." See, also *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.").

[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 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."). 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: $189,140

Taxable Value: $66,200

OHIO BOARD OF TAX APPEALS

KEVIN & MAUREEN GAZDAG, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-510 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, August 30, 2021

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

[1] The property owners appeal a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 952-08-002, 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 owners filed a complaint with the BOR, requesting the subject property's value be reduced from $531,900 to $441,000. Although the BOR scheduled the matter for a hearing, no one appeared on behalf of the property owners. The BOR issued a decision that retained the subject property's initially assessed value. This appeal ensued.

[3] At this Board's virtual hearing, the property owners and county appellees appeared to submit argument and/or evidence into the record. Mr. Gazdag testified about the condition of

the subject property, assessed values of nearby properties, and recent sales of nearby properties. He also submitted documents to support his testimony. He was examined and cross-examined by the attorney examiner and counsel for the county appellees, respectively. Based upon his presentation, Mr. Gazdag amended the property owners' opinion of value to $460,000. Counsel for the county appellees argued that the property owners' argument and evidence were insufficient to support any reduction to the subject property's assessed 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. *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, we find that the property owners failed to provide competent, credible, and/or probative evidence of the subject property's value. They advanced four primary arguments to claim that the subject property had been overvalued. First, they argued that the subject property's assessed value was too high when compared to the assessed values of neighboring properties. The Supreme Court has considered, and rejected, the utility of comparing assessed values amongst parcels to determine value. For example, in *Benedict v. Bd. of Revision*, 170 Ohio St. 62, 63 (1959), the court held that "[i]t is to be borne in mind that the determination of the true value of each parcel of real estate, with the improvements placed on it, is a separate undertaking and does not wholly depend on values accorded other parcels in the same vicinity. A particular parcel, because of its location and the improvements thereon, may properly be given

a higher value than other parcels in the same neighborhood, without discrimination resulting. After all, true value of the particular property is the controlling consideration, and this is a question of fact primarily within the province of the taxing authorities." *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.").

[6] Second, they argued that the subject property's assessed value was too high when compared to its assessed value for the prior tax year(s). We note that the county Fiscal Officer was under the statutory duty to reevaluate all real property in the county for tax year 2018 and, as such, the subject property's assessed value for tax year 2017 could not carry forward. R.C. 5713.01. 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." 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).

[7] Third, they argued that the condition of the subject property and the costs to make necessary repairs demonstrates that the subject property had been overvalued. 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*). We acknowledge that the property owners provided the cost to remediate the cited defects; however, Ohio courts, and this Board, have repeatedly held that dollar-for-dollar costs do not necessarily correlate to value. *Gallick*, supra.

[8] Fourth, the property owners argued that recent sales of nearby properties necessitate some reduction to the subject property's value. This Board has repeatedly held that unadjusted comparable sales data are an 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).

[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 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."). 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: $531,900

Taxable Value: $186,170

OHIO BOARD OF TAX APPEALS

DJS X INVESTMENTS, LLC, (et. al.), Appellant(s), vs. LUCAS COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-372 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, August 30, 2021

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 79-60337, for tax year 2019. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the parties' written argument.

[2] The subject property consists of roughly 0.25 acres of land improved with a 3,439 square-foot single-family home constructed in 2004. The Auditor initially assessed the subject's total true value at $291,700, and appellant filed a complaint with the BOR seeking a reduction in value to $255,000. The BOR convened a hearing, at which counsel appeared on behalf of appellant and submitted the Auditor's information regarding properties that had recently sold.

Counsel also indicated that the property sold in 2015 for $224,000, and that the Auditor's value was roughly 30% higher. The BOR issued a decision maintaining the initially assessed valuation, commenting that the comparable sales data provided by appellant supported the Auditor's value as most of the sales taking place within the same subdivision had a price per square foot that exceeded the assessed value of the subject property. From this decision, appellant filed the present appeal.

[3] On appeal, appellant maintains that it purchased the subject property for $224,000 on April 15, 2015, fewer than four years prior to the tax lien date, and that the Auditor's value of $291,700 represents an increase in excess of 30% over the three-year period. Appellant further maintains that the sales it presented to the BOR were all substantially less than the Auditor's value for the subject property. Appellant argues that the increase was unreasonable and inconsistent with the increases established by the Auditor for numerous other single-family residences near the subject property. The county appellees argue that the value of $291,700 should be retained.

[4] 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 an 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.

[5] In the present appeal, appellant did not present sufficient evidence to meet its burden. Appellant challenged the increase in value from over the prior years' value despite a lack of changes or improvements to the parcel. This 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.").

[6] In lieu of an appraisal of the subject property, appellant relies on the Auditor's assessed 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.

[7] Additionally, while comparable sales data is frequently utilized by appraisers to determine the value of a given property, the sales presented in this case do not support a reduction in the values of the subject property. Significantly, appellant 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. Appellant 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. Moreover, when the members of the BOR considered this data, they found that it supported the Auditor's value, and the record supports that finding.

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

[9] It is, therefore, the order of this Board that the true and taxable values of the subject property, as of January 1, 2019, were as follows:

TRUE VALUE

$291,700

TAXABLE VALUE

$102,100

OHIO BOARD OF TAX APPEALS

REO INVESTMENTS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2716
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Monday, August 30, 2021

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

[1] Appellant REO Investments LLC ("REO") appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real properties, parcel numbers 642-24-017, 642-25-110, and 643-17-006, 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 single-family rental properties, and the Fiscal Officer initially assessed their values at $34,000, $40,000, and $48,700, respectively. REO filed a complaint with the BOR seeking reductions in value to $30,000, $25,000, and $25,000, respectively. The complaint at issue in the present appeal is one of several related complaints that involve similar evidence and testimony. BOR convened hearings on the matter during the same

day, with the hearing related to BTA No. 2019-2712 (BOR case number 641-16-067-2018) taking place first. The BOR incorporated the record for this hearing into the present appeal. To the extent that the hearing record and evidence were not already certified in the transcript for this case, we incorporate the record from those BOR proceedings into the record for the present appeal. We note that during the BOR hearing for that case, the BOR set forth a list of sales of properties near the subject properties. Although this list was discussed by the witnesses and members of the BOR, it was not included in the transcript on appeal. After further attempts by this Board to attempt to obtain the list, the BOR certified that it is not available. As such, are unable to consider the list of sales in our determination.

[3] During the incorporated BOR hearing, REO presented testimony and written reports of appraiser Michael Thomas. Thomas testified that he viewed the interior of each property and relied primarily on the sales comparison approach to value for each appraisal. Thomas stated that he looked at only arm's-length sales that were exposed to the market through the multiple listings service ("MLS") and took place within the twelve months preceding the tax lien date. Thomas explained that he chose which properties were most comparable based on not only location proximity, but also similarity in condition and effective age to the relevant subject. Thomas also performed an income analysis that was offered to the BOR as an addendum because it was not included in his original report. Thomas indicated that he did not consider the income approach in his conclusion of value, but it supported his sales comparison analysis.

[4] REO also presented testimony from its managing member, Frank Dinardo, regarding its business model and the condition of the properties. Dinardo testified that REO is a building/renovation company that also purchases distressed properties, fixes the exterior, and quickly renovates the interior, and rents them to tenants. Dinardo stated that the repairs to properties that he intends to rent are done to make them free of any violations but not as nice as other properties that he renovates for owner-occupants.

[5] At the BOR hearing regarding the subject properties, REO relied on testimony from

Dinardo regarding the condition of the properties and their rental rates. REO also presented testimony and reports from Thomas. The BOR questioned Thomas regarding his choices of comparable properties. Following the hearing, the BOR issued a decision maintaining the initially assessed valuation. On the Oral Hearing Journal Summary, the BOR indicated that it rejected the appraisals because Thomas used only lower value sales based on his distinction between "rental quality" and "owner quality." One member of the BOR dissented, though he observed that Thomas "consistently" chose to use the lower end of the market while all photographs appear to reflect the properties were in average (as opposed to below-average) condition.

[6] REO appealed the BOR's decision, again seeking a reduction in value based on the Thomas appraisals as support for the requested reductions. REO argues that this Board should find value based on the Thomas appraisals because they are the only evidence presented from an independent third-party expert. The county appellees argue that the BOR properly rejected the appraisals as not being credible because Thomas used lower-priced sales based on his distinction between rental quality and owner quality.

[7] 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.

[8] 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, in addition to Dinardo's testimony regarding the physical characteristics of the properties, REO relies on appraisal reports prepared by Thomas, a state-certified appraiser that personally viewed the interior and exterior of each subject property. Thomas appeared to testify before the BOR, describe his methodology, and explain the basis for his conclusions.

[9] Upon review of Thomas's appraisals, which provide an opinion of value as of tax lien date, were prepared for tax valuation purposes, and attested to by a qualified expert, we find that they constitute competent and probative evidence of value. We further find that the value conclusions are reasonable and well-supported. We acknowledge the BOR's criticisms of his analysis, but we find that Thomas sufficiently explained the basis for his conclusions. We agree with the BOR that it would be improper for an appraiser to simply assume that because the subject properties are utilized as residential rental properties, they must be in below-average condition and, consequently, restrict comparable properties to only those in the lower end of the range. In this case, however, despite his comments to that effect, Thomas further explained that he personally viewed the properties and the condition of each, which he considered as he narrowed down sales to those properties that were most similar to the subject properties. Thus, the record shows that Thomas did not merely assume that the properties were in "below average" condition or "average condition" and choose the comparable properties based on that assumption. Rather, Thomas applied his observations of the properties and his knowledge of the market to choose those properties most similar and to make any necessary adjustments. Accordingly, we find that, in the absence of any persuasive evidence or argument to the contrary, the Thomas appraisals reflect the value of the subject real properties as of the tax lien date.

[10] It is, therefore, the order of this Board that the true and taxable values of the subject

property, as of January 1, 2018, were as follows:

PARCEL NUMBER 642-24-017

TRUE VALUE $34,000

TAXABLE VALUE $11,900

PARCEL NUMBER 642-25-110

TRUE VALUE $25,000

TAXABLE VALUE $8,750

PARCEL NUMBER 643-17-006

TRUE VALUE $29,000

TAXABLE VALUE $10,150

OHIO BOARD OF TAX APPEALS

JOHN WADSWORTH, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2248
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Monday, August 30, 2021

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

[1] The property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject properties, parcels 112-14-080 and 112-14-087, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The property owner filed a single complaint with the BOR, which requested reductions to the subject properties' values, along with a third parcel that is not the subject of this appeal. By way of the complaint, the property owner requested that the value of parcel 112-14-080 be reduced from its initially assessed value of $99,700 to $48,000 and that the value of parcel 112-14-087 be reduced from its initially assessed value of $68,400 to $35,000. The BOR held a consolidated hearing on the complaint, along with other parcels that are not the subject of this appeal. The property owner testified that the subject properties are multifamily rental properties

and submitted written statement in support of the complaint. For both properties, he argued that a nearby property, located at 18 Brookfield Avenue, was for sale for substantially lower than its assessed value, which he claimed demonstrated that the subject properties had been over-assessed by approximately 50%. As to parcel 112-14-080, the property owner testified that he attempted to sell it at its initially assessed value, $99,700 and received two offers, for $60,000 and $50,000, which he rejected. As additional support for his requested value of this parcel, the property owner submitted an estimate to remediate plumbing issues. The BOR members asked a number of questions about the subject properties. Relevant to this appeal, the BOR subsequently issued a decision that reduced the value of parcel 112-14-080 to $76,800 and retained the value of parcel 112-14-087. This appeal ensued.

[3] Neither the property owner nor the county appellees availed themselves of an opportunity to submit new evidence at a hearing before this Board. We will, therefore, base our decision upon the arguments and evidence submitted to 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, ¶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, ¶¶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, ¶19.

[5] Upon review, we are constrained to find that the property owner failed to satisfy the burden on appeal. The property owner primarily argued that asking prices, or offering prices, for real property, whether parcel 112-14-080 or neighboring property located at 18 Brookfield Avenue,

demonstrated that the subject properties had been overvalued. This Board has repeatedly held that unsuccessful attempts to sell a property are not good indicators of value. See, e.g., *Fletcher, Trustee v. Montgomery Cty. Bd. of Revision* (Sept. 14, 2018), BTA No. 2017-1536, unreported. In *Schutz*, supra, at ¶15, 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. In essence, 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. Here, the property owner failed to provide any evidence to support the specific valuations for the subject properties.

[6] Likewise, we find the property owner's citation to defects of the subject properties to be equally unavailing. 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, ¶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. Similarly, the repair estimate, for the plumbing for parcel 112-14-080, is not competent, credible, or probative. This Board has also repeatedly held that 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] At the BOR hearing, the property owner noted that he was a realtor with knowledge of the real estate market. We note that he is not an appraiser, an expert qualified to opine 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), at 8-9. We note that a property owner is free to express an opinion of value; however, 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. Accord *Schutz*, supra.

[8] To the extent that the property owner argued that the subject properties experienced too great an increase to their values when compared to neighboring properties, we must reject that argument as well. Initially, the fallacy of reliance upon other properties' assessed values must be acknowledged since the fundamental basis of this challenge is the erroneous nature of the subject property's value. Indeed, "[m]erely showing that two parcels of property have different values without more does not establish that the tax authorities valued the properties in a different manner." *WJJK Investments, Inc. v. Licking Cty. Bd. of Revision*, 76 Ohio St.3d 29, 31 (1996). See, also, *Meyer v. Bd. of Revision*, 58 Ohio St.2d 328, 335 (1979).

[9] Now that we have concluded that the property owner failed to submit competent, credible, and probative evidence of the subject properties' values, we turn to the propriety of the BOR's decision to reduce the value of parcel 112-14-080. We note that there is no deference given to the BOR's decision because the appellant is not a Board of Education and because the BOR's decision was not based upon the property owner's appraisal evidence. *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237. Upon careful review of the record, we can discern no basis for the BOR's decision to reduce the parcel's value from $99,700 to $76,800. As noted above, the property owner's evidence failed to satisfy the evidentiary burden and nothing in the record supports valuing parcel 112-14-080 at $76,800, as opposed to, as an example, $66,800 or $86,800. Because the record does support the BOR's decision, we are constrained to reinstate the parcel'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, ¶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.*, supra.

[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 before this Board. We must also find that the record does not support the BOR's decision to reduce the value of parcel 112-14-080 to $76,800 and, therefore, must reinstate its initially assessed value.It is, therefore, the order of this Board that the true and taxable values for the subject properties are as follows as of January 1, 2018:

Parcel 112-14-080

True Value: $99,700

Taxable Value: $34,900

Parcel 112-14-087

True Value: $68,400

Taxable Value: $23,940

OHIO BOARD OF TAX APPEALS

RICHARD A. MARTHALLER, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-2215 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, August 30, 2021

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

[1] The property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 001-06-013, for tax year 2018. We proceed consider this matter based upon the notice of appeal, certified statutory transcript, property owner's prehearing statement, and record of this Board's hearing.

[2] The county fiscal officer initially assessed the subject property at $445,900 and property owner filed a complaint with the BOR, requesting its value be reduced to $114,730. 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 father, Ronald Marthaller, testified in support of the complaint. As the hearing commenced, the property owner amended his opinion of value to $327,800. He testified that a neighbor built a large garage, despite a zoning prohibition, which

blocked his view of a nearby lake. He provided repair estimates, and photographs, to demonstrate the condition issues with the subject property, and comparable sales data. The property owner argued that the home sitused on the subject property was made of wood, which required more upkeep than the neighboring brick homes. There was some discussion about the subject property's assessed values over the last few years, which suggested that the property owner's opinion value reflected the subject property's value from the prior triennial period, i.e., tax years 2015, 2016, and 2017. The property owner and BOR agreed that it was difficult to find comparable properties within the same area as the subject property because the properties were unique in various ways. One of the BOR members noted the difficulty of determining the impact the large garage on the neighboring property had on the subject property's value. The BOR subsequently voted to retain the subject property's initially assessed value. This appeal ensued.

[3] 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.

[4] This Board held a consolidated hearing, which included the instant appeal and an appeal filed by Ronald Marthaller, i.e., BTA No. 2019-2220, given the similarities in the arguments and/or presented. (A separate decision will be issued for BTA No. 2019-2220.) The property owner argued that the subject property's assessed value increased by approximately 36% without any justification or any consideration that it would cost about $42,973 to repair certain defects. He submitted a photograph of the large garage on the neighboring property in further support of his requested valuation.

[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. *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] 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 a number of arguments to support his position. First, he argued that defects of the subject property, i.e., the large garage on the neighboring property, condition of the driveway, upkeep on the wood exterior of the home, necessitated a reduction to its value. Unfortunately, the property owner failed to quantify the specific diminution in value as a result of each of the cited defects. *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* unreported. (Mar. 15, 2016), BTA No. 2015-1451,

[7] 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 $42,973 to repair the cited defects does not mean that the subject property's value would decrease or increase by approximately $42,973 by failing to make those repairs or making those repairs.

[8] Third, the property owner argued that subject property's prior triennial value, $327,800, should be reinstated. 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/or 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.

[9] Fourth, the property owner argued that comparable sales data, submitted at the BOR hearing, 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, very little information was provided about the alleged comparable sales. We have no information about the site sizes of those properties and square footage, condition, and age of the homes situsued on the properties. As a result, we cannot even attempt to adjust the properties to account for any differences among the properties. See, generally, The Appraisal of Real Estate (14th Ed.2013).

[10] 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 equitable concepts. *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564 (1953).

[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 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: $445,900

Taxable Value: $156,070

OHIO BOARD OF TAX APPEALS

WINDSOR TOWER LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2166
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY	)	
BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

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Entered Tuesday, August 31, 2021

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

[1] The appellant property owner appeals a decision of the Montgomery County Board of Revision ("BOR"), which determined the value of the subject property, parcel R72 00504 0008, for tax year 2018. 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, requesting the subject property's value be reduced from $1,586,630 to $952,381 purportedly based upon the price at which it

transferred in January 2019. The affected Board of Education ("BOE") filed a countercomplaint, objecting to the request. The BOR held a hearing on the matter at which both parties appeared through counsel to submit argument and/or evidence in support of the complaint and countercomplaint. In doing so, the property owner submitted sale documents demonstrating the $952,381 transfer of the subject property from Matrix Dayton, LLC, through Vincent Grillo to the property owner in January 2019. Charles Griffith, a member of the property owner, testified in support of the complaint. He testified that the property owner purchased the subject property after it failed to sell at a reserve auction and conceded that the subject sale was a short sale. Griffith was examined and cross-examined by the BOR members and counsel for the BOE. The BOR concluded that the subject sale did not occur on the open market and was not an arm's-length transaction. It subsequently issued a decision that retained the subject property's initially assessed value. This appeal ensued.

[3] None of the parties availed themselves of the opportunity to submit additional evidence into the record at a hearing before this Board. Instead, the property owner and BOE opted to submit written argument to fully assert their respective positions.

[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). 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. The court has recently explained that a taxpayer seeking to reduce the value of property based on sale can satisfy its initial burden through the presentation of undisputed evidence of a sale, and that testimony from an individual with knowledge of the sale is not required. *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-8075. Once an owner triggers this rebuttable presumption that a sale met all the requirements that characterize true value by presenting unchallenged evidence of sale, however,

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

[5] 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, we will focus on whether the property owner successfully demonstrated that the subject sale occurred "without compulsion or duress" and [that] the parties act[ed] in their own self-interest." Id.

[6] Upon review of the record, we find that the property owner failed to satisfy the evidentiary burden to demonstrate that the subject sale occurred free of improper forces. There are two primary issues that preclude us from determining that the subject sale was an arm's-length transaction. First, it appears that the subject sale was a short sale, which raises the specter that the subject sale was not conducted by a willing seller, i.e., with "compulsion or duress." In *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 134 Ohio St. 3d 529, 2012-Ohio-5680, the court stated that:

> [a] sale price from a short sale raises suspicion about the voluntary character of the sale because a short sale is a transaction in which the sale generates less than the amount owed on the mortgage note. *See Cattel v. Lake Cty. Bd. of Revision*, 11th Dist. No. 2009-L-161, ¶ 23. A short sale often occurs in the context of a mortgage-loan default, which is a distressed situation.

> *** Moreover, a mortgage default raises the specter of imminent foreclosure, which is evidence the seller is not typically motivated participant.

Id. at ¶¶ 29-30. See, also *DiFore Family Prop., LLC v. Cuyahoga Cty. Bd. of Revision* (May 9, 2014), BTA No. 2012-1963, unreported; *Bd. of Edn. of the Princeton City School Dist. v. Hamilton Cty. Bd. of Revision* (May 9, 2014), BTA No. 2011-3859, unreported.

[7] Based upon the record before us, we conclude that the subject sale "raises the inference of distress and duress[]" and, as such, as the proponent of the sale, the appellant bore "an initial burden to offer evidence that the sale [was] voluntary." *Columbus City School Dist. Bd. of Edn.* supra, at ¶¶31, 35. At the BOR hearing, Griffith testified that he negotiated with a representative of the holder of the mortgage guaranteed by the prior property owner, which indicates that the prior property owner was not a willing participant to the subject seller. Furthermore, it is difficult to discern whether such person was acting in the best interest of the prior property owner, or the holder of the mortgage given his dual role as a representative of the holder of the mortgage and of the prior property owner. We acknowledge that Griffith testified that the prior property owner attempted to sell the subject property at auction before he became aware that the subject property was for sale, it appears that he had no firsthand knowledge of the facts and circumstances of the auction and that such information was communicated to him by others. *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.").

[8] Second, we are also unable to determine whether the subject sale occurred free of compulsion or duress because the sale documents reference a tax certificate in favor of Tax Ease, LLC ("Tax Ease"), i.e., the settlement statement noting $65,619.46 paid to Tax Ease, and special warranty deed noting a tax certificate in favor of Tax Ease for $190,397.41. We have previously noted the importance of testimony about the impact delinquent real estate taxes had on the negotiations and final purchase price in the sale of real property. *Northridge Local Schools*

Bd. of Edn. v. Montgomery Cty. Bd. of Revision (Feb. 27, 2018), BTA No. 2016-2553, unreported. Here, none of the parties addressed this issue at the BOR or before this Board and, as a result, the record is void of any evidence about the impact of the tax certificate on the subject sale or to explain the differing dollar amounts on the settlement statement and special warranty deed.

[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 subject sale was a short sale that included delinquent real estate taxes, which required the appellant to do more than just demonstrate the existence of a sale but, instead, the appellant was required to demonstrate whether the seller acted as a typically motivated seller and whether the subject sale occurred free of compulsion or duress. The appellant failed to satisfy such evidentiary burden and, as a consequence, we must conclude that the subject sale is not the best indication of the subject property's value. Because the appellant failed to provide any other evidence of value, we are unable to independently determine value and have no choice but to affirm the BOR's decision. 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: $1,586,630

Taxable Value: $555,320

OHIO BOARD OF TAX APPEALS

SULA LIMITED, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2033
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
SANDUSKY COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Tuesday, August 31, 2021

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

[1] The appellant property owner appeals a decision of the Sandusky County Board of Revision, which determined the value of the subject property, parcels 13-32-00-0039-05 and 13-32-00-0039-07, 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 affected Board of Education ("BOE") filed a complaint with the BOR, requesting that the subject property's value be increased to reflect the $620,000 price at which it transferred in November 2018, i.e., that the value of parcel 13-32-00-0039-05 be increased from $535,300 to $580,000 and value of parcel 13-32-00-0039-07 be increased from $29,400 to

$40,000. The property owner filed a countercomplaint, requesting that the subject property's value be reduced to $315,840. At the BOR hearing on the matter, only the BOE appeared to submit argument and/or evidence into the record. In doing so, counsel submitted sale documents that demonstrated the $620,000 transfer of the subject property, by trustee's deed, to the property owner in November 2018 and argued that the subject sale was the best indication of the subject property's value as of the tax lien date. The BOR orally voted to accept the subject sale, noting that the value of parcel 13-32-00-0039-05 would be increased from $535,300 to $590,600 and value of parcel 13-32-00-0039-07 would be retained at $29,400. However, the BOR issued a written decision that increased the value of parcel 13-32-00-0039-05 to $633,400 and retained the $29,400 value of parcel 13-32-00-0039-07. This appeal ensued with the property owner again asserting that the subject property should be valued at $315,840 for tax year 2018.

[3] This Board held a virtual hearing at which the property owner and BOE appeared. However, there is no record of the hearing because of a technical issue. Eric Glynn, a member of the property owner, testified about the facts and circumstances of the subject sale and occupancy/vacancy subsequent to such sale. Glynn testified that increasing the subject property's value would create a financial hardship on the property owner because the subject sale occurred approximately two and one-half years ago and there was a period in which the subject property was vacant. As a result, he testified, the subject property's value was between $315,840 and $620,000. The BOE argued that Glynn's testimony confirmed that the subject sale occurred between unrelated parties acting in their own self-interest, which culminated into the subject sale that occurred recent to the tax lien date.

[4] 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 details about the sale, e.g., sale price, parties, and sale date. See *Lunn*, at ¶15 (no additional testimony is usually necessary); *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St. 3d 691, 2017-Ohio-1412, at ¶18 (noting that a party need only present minimal vidence of a sale when there is "no real dispute about the basic facts of the sale."). The opposing party must then, to succeed, rebut the presumption created by the sale.

[5] In this matter, upon presentation of the sale documents, the BOE created a rebuttable resumption that the property owner's $620,000 purchase of the subject property was the best indication of its value. The burden then shifted to the property owner to rebut such presumption. Based upon the testimony provided at this Board's hearing, we find that the property owner failed to satisfy such burden.

[6] Glynn's testimony indicates that the property owner believes that it overpaid for the subject property. We have previously considered and rejected the argument that a sale must be disregarded because the buyer later believes that he overpaid for a property. *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."). We acknowledge that Glynn testified that the subject property was vacant at some point *after* the subject sale occurred in November 2018; however, there is no evidence that this (uncorroborated) factor impacted the subject property's value as of the tax lien date, January 1, 2018, purportedly months *before* the alleged vacancy. As such, we find no merit to the property owner's argument.

[7] Though the property owner asserted that the subject property should be valued at $315,840, on the countercomplaint and notice of appeal, the record is void of any evidence to demonstrate that the subject property should be valued specifically at $315,840 or any other value

less than $620,000. As such, we find no merit to the property owner's argument.

[8] Having concluded that the subject sale is the best indication of the subject property's value, we now turn to the BOR's decision to value the subject property at $662,800. We can discern no basis for the BOR's written decision as the record is void of any evidence to support valuing the subject property at $662,800. As noted above, the BOR orally voted to specifically value parcel 13-32-00-0039-05 at $590,600 and value parcel 13-32-00-0039-07 at $29,400, for a total of $620,000, but issued a written decision that increased the value of parcel 13-32-00-0039-05 to $633,400 and retained the $29,400 value of parcel 13-32-00-0039-07. Because we cannot discern any basis for the BOR's decision, we must find that the BOR erred in issuing a written decision that valued the subject property at $662,800.

[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 satisfy the evidentiary burden on appeal. Because the property owner failed to provide sufficient evidence to rebut the subject sale, we find the existing record demonstrates that the transaction was recent, and arm's-length, and constitutes the best indication of the subject property's value as of tax relevant lien date. It is, therefore, the order of this Board that the subject property shall be valued as follows as of January 1, 2018:

Parcel 13-32-00-0039-05

True Value: $587,720

Taxable Value: $205,700

Parcel 13-32-00-0039-07

True Value: $32,280

Taxable Value: $11,300

OHIO BOARD OF TAX APPEALS

ISAM AND SHERRI SALEH, (et. al.), Appellant(s), vs. FRANKLIN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-177, 2021-190 (REAL PROPERTY TAX) DECISION AND ORDER

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Entered Wednesday, September 1, 2021

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

[1] The property owners appeal a decision of the Franklin County Board of Revision ("BOR"), which determined the value of the subject property, parcel 010-208017-00, for tax years 2019 and 2020. We proceed to consider this matter based upon the notices of appeal, certified statutory transcript, and parties' written argument.

[2] The affected Board of Education ("BOE") filed a complaint, requesting the subject property's value be increased from $96,800 to $180,000 for tax year 2019. By way of the complaint, the BOE alleged that the subject property had been the subject of a $180,000 transfer

in February 2019. The property owners did not file a countercomplaint.

[3] While the matter was pending for a hearing before the BOR, the county Auditor conducted the countywide, triennial update of real property values for tax year 2020. In doing so, the subject property was reassessed at $135,500.

[4] At the BOR hearing on the matter, the BOE and property owners appeared to submit argument and/or evidence. The BOE submitted sale documents to demonstrate that the property owners purchased the subject property for $180,000 from Bruce A. Kimball in January/February 2019 and argued that the subject property should be revalued accordingly. The property owners testified as to the facts and circumstances of the subject sale, asserting that the $180,000 purchase price included items other than realty, i.e., furniture and three months of rent to reflect that Kimball continued to reside at the subject property after the transfer. They conceded that the subject property's tax year 2019 value of $96,800 was too low; however, they argued that the subject property' reassessed value for tax year 2020, $135,500, best reflected its value for tax year 2019. They argued that they were unable to rent the subject property because of the coronavirus pandemic, which had caused a financial hardship, and the BOR should consider these factors in making its decision. Counsel for the BOE cross-examined the property owners to gain additional insight into the facts and circumstances of the subject sale. The BOR voted to accept the subject sale as the best indication of value and subsequently issued a written decision that valued the subject property at $180,000 for tax years 2019 and 2020. These appeals ensued. The property owners filed two appeals with this Board, which were consolidated at the BOE's request.

[5] None of the parties availed themselves of the opportunity to submit new evidence at a hearing before this Board. Instead, the parties opted to submit written argument. The property owners attached a written statement with the notice of appeal filed in BTA No. 2021-190, asserting that the BOR's decision was wrong and requesting that the subject property be valued at $135,500. Conversely, the BOE's written argument asserted that the property owners failed to

rebut the presumption that the subject sale reflected the subject property's value and that the BOR accurately determined the subject property's value to be $180,000 for tax years 2019 and 2020.

[6] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. As noted above, the property owners submitted a written statement along with the notice of appeal in BTA No. 2021-190. Such statement included argument and factual assertions that were not previously provided at the BOR hearing. Because the factual assertions were not offered at a hearing at which the property owners were placed under oath and subject to cross-examination, they cannot be considered in our analysis. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996). 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.").

[7] When cases are appealed from a Board of Revision to this Board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[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.

[8] We begin our consideration with the property owner's $180,000 purchase of the subject property. The conveyance fee statement, deed, and property record card created a rebuttable presumption that the subject sale was a recent, arm's-length sale 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 owners to demonstrate why the subject sale should be rejected.

[9] The property owners attempted to satisfy their burden by advancing a number of arguments. First, they argued that their $180,000 purchase price included items other than the subject property. 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. Here, the property owners failed to provide any corroborating evidence to support their argument that any portion of the $180,000 purchase price was allocated to, for example, furniture or rent to allow Kimball to remain in the subject property. Moreover, the property owners failed to specify what furniture was purportedly included in the purchase price or how much of the purchase price reflected rent from Kimball. This Board has repeatedly held that uncorroborated, bare assertions are insufficient to support a reduction to real property value. See e.g., *Lombard v. Butler Cty. Bd. of Revision* (Dec. 5, 2018), BTA No.2018-600, unreported.

[10] Second, the property owners 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 at its full sale price. 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." *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.").

[11] Third, the property owners argued that comparable sales demonstrate that the subject property should be valued less than its full sale price. This Board has repeatedly held that unadjusted comparable sales data are insufficient basis to determine real property value. *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).

[12] Fourth, the property owners argued that assessing the subject property at their

$180,000 sale price would create or exacerbate a financial hardship. While we sympathize with their plight, 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 owners the relief that they seek out of a sense of fairness or equity. *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564 (1953).

[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"). Based upon our review of the record, we find that the property owners did not rebut 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 January 1, 2019, and January 1, 2020:

True Value: $180,000

Taxable Value: $63,000

OHIO BOARD OF TAX APPEALS

GOPAL KUMAR MOR, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-129
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
WOOD COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

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Entered Wednesday, September 1, 2021

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

[1] The taxpayer appeals a decision of the Wood County Board of Revision ("BOR"), which denied a request for remission of the late-payment penalty associated with the delinquent payment of the property tax bill for the second half of tax year of 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and taxpayer's written argument.

[2] The taxpayer filed a single application, requesting penalty remission for the first and second halves of tax year 2019. By way of the application, the taxpayer asserted that the property tax bills were not received and that attempts to obtain them were made on February 24, 2020, and September 28, 2020. The taxpayer also argued that failure to timely pay the property tax bills was not willful neglect, but reasonable cause, because contact information had not been

updated in the county Treasurer's records. The county Treasurer, Auditor, and BOR all agreed that the taxpayer should be granted remission of the late-payment penalty for the first half of tax year 2019 but denied remission of the late-payment penalty for the second half of tax year 2019, which is the apparent basis for this appeal.

[3] None of the parties availed themselves of the opportunity to submit new evidence at a hearing before this Board. However, the taxpayer submitted a document along with the notice of appeal, which includes a mix of argument and factual statements. The factual statements are not properly in the record, i.e., statements made outside of a hearing in which the taxpayer was placed under oath and subject to examination by other parties and the tribunal and will not be considered in our analysis. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996). However, we will consider the taxpayer's argument that the late-payment penalty for the second half of tax year 2019 should be remitted.

[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. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001).

[5] The BOR reviewed the taxpayer's application to determine whether the taxpayer had demonstrated reasonable cause, not willful neglect, for failing to timely pay the property tax bill under R.C. 5715.39(C). Though the taxpayer argued that the late-payment penalty should be removed because the tax mailing address had not been updated and, as a result, the property tax bill was not received, R.C. 323.13 provides that "[a] change in the mailing address of any tax bill shall be made in writing to the county treasurer. *** Failure to receive any bill *** does not excuse failure or delay to pay any taxes shown on such bill or, except as provided in division (B)(1) of section 5715.39 of the Revised Code, avoid any penalty, interest, or charge for such delay." In this matter, the record is void of any indication that the taxpayer updated the tax mailing address consistent with R.C. 323.13, which may have led to the failure to receive the property tax bill(s). Furthermore, 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. As such, we find that remission of the late-payment penalty would be inappropriate in this matter.

[6] To the extent the taxpayer argues that circumstances of the coronavirus pandemic should weigh in favor of granting the request for penalty remission, we must reject that argument. This Board does not have equitable jurisdiction and cannot make decisions based upon fairness or equitable concepts. *Columbus S. Lumber Co. v. Peck*, 159 Ohio St. 564, 569 (1953).

[7] Based upon the foregoing, we find that the taxpayer failed to satisfy the evidentiary burden on appeal. In doing so, we find that the taxpayer is not entitled to remission of the late-payment penalty associated with the property tax bill for the second half of tax year 2019.

OHIO BOARD OF TAX APPEALS

JAD 1031 BUSINESS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1405
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
COSHOCTON COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Wednesday, September 1, 2021

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

[1] The property owner appeals a decision of the Coshocton County Board of Revision ("BOR"), which determined the value of the subject property, parcels 020-00000131-00, 020-00000132-00, and 020-00000133-00, for tax year 2019. 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 the subject property be revalued from a combined value of $272,260 to $125,000 based upon the price at which it transferred in January 2018. The BOR held a hearing on the matter at which the property owner appeared through counsel. In doing so, the property owner submitted sale documents that memorialized the sale referenced on the complaint and argued that the subject property should be revalued accordingly. According to the BOR decision, the BOR rejected the property owner's

request because there was no evidence about the relationship between the buyer and seller involved in the transaction and marketing of the subject property, and because there was information that suggested the subject property was offered for sale for $250,000 and the rental income supported a higher market value. The BOR issued a decision that retained the subject property's initially assessed value. This appeal ensued. Only the property owner appeared at this Board's virtual hearing on the matter.

[3] 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 details about the sale, e.g., sale price, parties, and sale date. See *Lunn*, at ¶15 (no additional testimony is usually necessary); *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St. 3d 691, 2017-Ohio-1412, at ¶18 (noting that a party need only present minimal vidence of a sale when there is "no real dispute about the basic facts of the sale."). The opposing party must then, to succeed, rebut the presumption created by the sale.

[4] In this matter, the conveyance fee statement and limited warranty deed confirm the details of the $125,000 sale of the subject property from DBChase, LLC to the property owner in January 2018. Contrary to the BOR's decision, the property owner was not required to disprove that the subject sale was anything other than facially valid. See *Lunn*, supra. Upon presentation of the sale documents, the burden shifted to the opponent of the sale, the BOR in this case, to rebut the presumption that the subject sale was *not* the best indication of the subject property's value. The BOR failed to submit any rebuttal evidence and, therefore, failed to rebut the

presumptions accorded to the subject sale. See e.g., *Talawanda City Schools Bd. of Edn. v. Butler Cty. Bd. of Revision* (Nov. 30, 2020), BTA No. 2019-2061, unreported (reversing the BOR decision that rejected a sale because it could not confirm whether such sale was an arm's-length transaction even though the record was void of any evidence to suggest that it was not). Though the BOR speculated about a number of factors that *could* demonstrate that the subject sale was not indicative of the subject property's value, the record is void of any indication that any of those factors were present. This Board has repeatedly held that "mere speculation is not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶26.

[5] 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 submitted sufficient evidence at the BOR hearing to demonstrate that the subject property should be valued consistent with the subject sale. Given the total lack of rebuttal evidence, we also find that the BOR erred when it rejected the subject sale as the best indication of the subject property's value. Absent an affirmative demonstration that the subject sale is not a qualifying sale for tax valuation purposes, we find the existing record demonstrates that the transaction was recent, and arm's-length, and constitutes the best indication of the subject property's value as of the relevant tax lien date. It is, therefore, the order of this Board that the subject property shall be valued as follows as of January 1, 2019:

Parcel 020-00000131-00
True Value: $1,780
Taxable Value: $620

Parcel 020-00000132-00
True Value: $117,690
Taxable Value: $41,190

Parcel 020-00000133-00

True Value: $5,530
Taxable Value: $1,940

OHIO BOARD OF TAX APPEALS

5326 TURNEY ROAD INVESTMENTS, LLC, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)))))))))	CASE NO(S). 2020-1028 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - 5326 TURNEY ROAD INVESTMENTS, LLC
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GARFIELD HEIGHTS CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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Entered Wednesday, September 1, 2021

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 542-30-003 and 542-30-004, 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 appellant's written argument. We acknowledge that appellant attached a document to its written argument that was not presented to the BOR during

the proceedings below. Because this information was not presented at a hearing before this Board, we will not consider the document 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 full-service gas station. The Fiscal Officer initially assessed the subject's total true value at $876,700. Appellant filed a complaint with the BOR seeking a reduction in value to $460,400. 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 relied on testimony from its owner and argument that the value increased too drastically from the prior triennium during the 2018 countywide reappraisal. Appellant claimed that no changes to the property had been made, yet the Fiscal Officer's value increased $416,300, or roughly 90% of the prior triennium's value. Appellant discussed nearby properties and asserted that their values had not experienced a similar increase. The BOE argued that the Fiscal Officer's value should be retained. The BOE claimed that appellant had provided no evidence to support a new value and that an earlier year's value is not relevant to the value for a subsequent year.

[3] The BOR issued a decision maintaining the initially assessed valuation, which appellant appealed to this Board. On appeal, appellant again argues that the value of the subject property increased too drastically as a result of the 2018 reappraisal, and that the subject's increase was inconsistent with the change in value to other similar properties. No argument was submitted by the appellees.

[4] 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. The auditor or fiscal officer is not required to defend the value originally concluded to by the mass appraisal system. 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.").

[5] In the present appeal, appellant did not present sufficient evidence to meet its burden. Appellant challenged the increase in value from over the prior years' value despite a lack of changes or improvements to the parcel. This 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.").

[6] In lieu of an appraisal of the subject property, appellant relies on the Fiscal Officer's assessed value for other parcels near the subject. 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* (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."). For this reason, the Fiscal Officer's value for other properties does not support a reduction.

[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 542-30-003

TRUE VALUE $75,900

TAXABLE VALUE $26,570

PARCEL NUMBER 542-30-004

TRUE VALUE $800,800

TAXABLE VALUE $280,280

OHIO BOARD OF TAX APPEALS

TESSMER GROUP, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-1125
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
STARK COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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For the Appellee(s) - STARK COUNTY BOARD OF REVISION
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LAKE LOCAL SCHOOLS BOARD OF EDUCATION(STARK)
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Entered Tuesday, September 21, 2021

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

[1] The Stark County Board of Revision ("BOR") moves this Board to dismiss this matter, which the BOR alleges stems from an improper multiple filing within a triennium. The appellant did not respond. Accordingly, we decide this matter on the motion and the statutory transcript ("S.T.") certified by the BOR pursuant to R.C. 5717.01.

[2] Pursuant to statute, the Auditor conducted a reappraisal for tax year 2018. Appellant filed a valuation complaint for 2018, and it was partially successful. Of the three parcels in the complaint, the BOR granted a reduction on one parcel. Appellant attempted to appeal that decision to this Board; however, we dismissed that appeal after appellant failed to timely file its notice of

appeal with the BOR. *See Tessmer Group v. Stark Cty. Bd. of Revision* (Oct. 22, 2019), BTA No. 2019-1007, unreported.

[3] The attachments to the instant motion show appellant filed a second complaint for 2019. Appellant alleged that complaint was permissible due to an arm's-length sale of the parcels and because of a 15% decrease in occupancy. *See generally* R.C. 5715.19(A)(2). The BOR dismissed that complaint for lack of jurisdiction. According to the motion, the BOR did so because appellant failed to prove there had been an intervening arm's-length sale and failed to prove a change in occupancy had a "substantial economic impact on the property." *See id.* [4] Appellant filed a third complaint for tax year 2020. *See* S.T., Ex. A. Appellant again alleged an intervening arm's-length sale and a change in occupancy which had a "substantial economic impact on the property." Appellant further argued the property suffered loss due to a casualty.

[5] In support, appellant's owner provided evidence of a sale in 2017, and he testified that was the most recent subject sale. He testified he was a 50% owner of the prior owner and 100% owner of the current owner, the appellant. He acknowledged the sale was not arm's-length. He also testified the properties are in a blighted area. He next testified there had been no change in occupancy since approximately 2017. The BOR dismissed for lack of jurisdiction.

[6] R.C. 5715.19(A)(2) expressly limits the number of times a complaint may be filed within an applicable three-year period but allows multiple filings under certain circumstances. "The apparent purpose of the modification of R.C. 5715.19(A) was to reduce the number of filings, while still allowing new tax valuations in interim years in certain limited circumstances." *Dublin City School Dist. v. Franklin Cty. Bd. of Revision*, 79 Ohio App.3d 781,784 (1992); *see also Hamilton Manor Partners v. Brown* (Sept. 27, 1993), Butler App. No. CA93-04-080, unreported. "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).

[7] We find merit to the BOR's motion. The record is very clear appellant filed a complaint

in 2018 and 2019. The record is also clear none of the exceptions in R.C. 5715.19(A) apply. Even appellant agrees there have been no intervening arm's-length sales. Appellant's owner further testified at the BOR that there had been no significant change in occupancy since 2017.

[8] Because appellant failed to satisfy its burden under R.C. 5715.19(A)(2), the BOR correctly dismissed for lack of jurisdiction. Accordingly, because we likewise lack jurisdiction, we dismiss this case.

OHIO BOARD OF TAX APPEALS

PAUL AND SANDRA PANNELL, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-984, 2021-985, 2021-986, 2021-987, 2021-988, 2021-989, 2021-990, 2021-991, 2021-996 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - PAUL AND SANDRA PANNELL
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Entered Tuesday, September 28, 2021

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

[1] These consolidated cases are before the Board on a motion to dismiss, which we will construe as a motion to remand with instructions to dismiss the underlying applications for remission of penalties for lack of jurisdiction. In their motion, the county appellees argue that appellants lack standing to file the underlying complaints and the present appeals. Appellants did not respond to the motion.

[2] The county appellees argue that, per R.C. 5715.39, appellants did not have standing to file applications for remission of late-payment penalties assessed to the subject property for tax years 2010, 2011, 2012, and 2019. The record shows such applications were signed by appellants on April 2, 2021. Attached to the motion was a certificate of transfer and a quitclaim deed documenting the transfer of the subject property from Jasper Tomlin to Sandra and Paul Pannell on April 2, 2021. The BOR denied the applications for abatement and appellants filed the present

appeals. The county appellees rely on *Mosher v. Harris*, 2nd Dist. Montgomery No. 12834 (July 24, 1992), in which the Court found that a subsequent owner does not have standing to request penalty remission for penalties accrued before the applicant owned the property. *See also Kolesar v. Cuyahoga Cty. Bd. of Revision* (Sept. 12, 2019), BTA No. 2019-356 et al., unreported.

[3] There is nothing in the record to show that appellants owned the subject property before April 2, 2021, or that they had the authority to file the applications on behalf of the prior owner. We find that appellants lacked standing to file the applications. Accordingly, these appeals are remanded to the Cuyahoga County Board of Revision with instructions to dismiss the applications for lack of standing.

OHIO BOARD OF TAX APPEALS

ELLY MARANOS, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1419
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
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Entered Wednesday, September 29, 2021

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

[1] The property owner appeals a decision of the Cuyahoga Board of Revision ("BOR"), which determined the value of the subject property, parcel 373-31-035, for tax year 2018. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and property owner's written argument.

[2] The property owner filed a complaint, requesting the subject property's value be reduced from $97,900 to $22,000. At the BOR hearing on the matter, the property owner appeared to offer argument and evidence in support of the complaint. As the hearing commenced, the property owner amended her opinion of value to $71,000. She argued that the condition of the subject property, and the costs to make necessary repairs, demonstrated that the subject property had been overvalued. The BOR obtained a list of comparable sales, which suggested that neighboring properties were selling at higher prices. The property owner conceded that point; however, she argued that those properties had been rehabilitated whereas the subject property

was in a state of disrepair. The BOR voted to reduce the subject property's value to $88,100 and this appeal ensued.

[3] The property owner opted not to avail herself of the opportunity to submit additional evidence into the record at a hearing before this Board. Instead, she submitted a written statement, comprised of argument and factual statements. The factual assertions were not provided at a hearing before the BOR or before this Board and, as such, these factual assertions are considered hearsay. *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 insure truth in the fact-finding process. 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. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 16 (1996). Accordingly, we will accord no weight to the factual assertions contained in the property owner's written statement.

[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. *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 conclude that the property owner failed to provide competent,

credible, and probative evidence of the subject property's value. She primarily argued that the costs to remediate the cited condition issues necessitates a reduction to the subject property's value. However, 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). We find, therefore, that the property owner is not entitled to the relief she seeks on this basis.

[6] Similarly, the property owner failed to provide evidence to quantify the specific diminution in value that resulted from the cited defects. *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.

[7] We now turn to the propriety of the BOR's decisions to reduce the subject property's value to $88,100. "[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. In *Brahaxhia v. Cuyahoga Cty. Bd. of* Revision (Sept. 15, 2020), BTA Nos. 2019-2413 et al., unreported at 4, this Board held:

> 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.3d188, 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.

We see no reason to stray from our prior holding and, consequently, we must reinstate the subject property's initially assessed value.

[8] 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 value before the BOR and before this Board. As such, the subject property's value shall remain as initially assessed as of the relevant lien date:

True Value: $97,900

Taxable Value: $34,270

OHIO BOARD OF TAX APPEALS

STANLEY W KEBE JR, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-50 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - STANLEY W KEBE JR
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CUYAHOGA COUNTY
1200 ONTARIO STREET, 8TH FLOOR
CLEVELAND, OH 44113

Entered Wednesday, September 29, 2021

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

[1] The property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 125-36-060, for tax year 2018. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The property owner filed a complaint with the BOR, requesting the subject property be revalued from $14,000 to $2,500 based upon its condition. At the BOR hearing on the matter, the property owner appeared to submit argument and/or evidence in support of the requested value. In doing so, he testified that he purchased the subject property for $150 from a fellow church member who was unable to sale it because the home sitused on the subject property was uninhabitable. The property owner also submitted photographs of the home to demonstrate its

condition. The BOR members questioned the property owner to gain insight into the facts and circumstances of the subject sale. Based upon the BOR hearing worksheet, the BOR voted to reduce the subject property's value to $7,900 to reflect a land value of $5,900 (as initially assessed) and nominal building value of $2,000. The BOR subsequently issued a written decision to that effect; this appeal ensued. None of the parties availed themselves of the opportunity to submit additional argument and/or evidence 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. 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] Because 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," see *Conalco v. Bd. of Revision*, 50 Ohio St.2d 129 (1977), we begin our analysis with the $150 transfer of the subject property to the property owner in 2017. It is undisputed that the subject property transferred via a quit-claim deed. When questioned about the facts and circumstances of the subject sale, at the BOR hearing, the property owner was unclear whether there was additional consideration, i.e., payment of delinquent property taxes, included in such sale. Given the subject property transferred by way of quit-claim deed and the lack of clarity about the facts and circumstances of the subject sale, we do not find it reflective of the subject property's value.

[5] The property owner primarily argued that the condition of the home necessitates valuing the subject property at $2,500. We disagree. The property owner failed to provide evidence to quantify the specific diminution in value that resulted from the defects, i.e., the subject property's location in Slavic Village. *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.

[6] 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.").

[7] We now turn to the propriety of the BOR's decision to reduce the subject property's value to $7,900. We note that "case law has repeatedly instructed [this Board] to eschew a presumption of the validity" to decisions of boards of revision. See *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 to $7,900 to reflect a land value of $5,900 (as initially assessed) and nominal building value of $2,000. *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.) Because the record does not support the BOR's decision, we must reverse it and reinstate the subject property's initially assessed value.

[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"). Based upon the foregoing, we find that the property owner failed to satisfy the evidentiary burden before the BOR and before this Board and conclude, therefore, that the subject property's initial value shall be reinstated. It is the order of this Board that the subject property's value shall be as follows as of the relevant tax lien date:

True Value: $14,000

Taxable Value: $4,900

OHIO BOARD OF TAX APPEALS

KARA AFRATES, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-806
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LORAIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
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Entered Monday, October 4, 2021

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

[1] The property owner appeals a decision of the Lorain County Board of Revision ("BOR"), which determined the value of the subject property, parcel 03-00-057-111-018, for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and property owner's motion for summary judgment.

[2] The property owner filed a complaint with the BOR, requesting the subject property's value be reduced from $70,610 to $35,573 based upon the average price taken from three comparable sales. Though the BOR scheduled the matter for a hearing, the property owner did not appear and, instead, submitted more detailed information about the three comparable properties referenced on the complaint. The BOR voted to retain the subject property's initially assessed value, and this appeal ensued.

[3] While this matter was pending, the BOR certified an abbreviate transcript to this Board.

However, this Board issued a show-cause order, which directed the BOR to file a complete statutory transcript or the appropriate jurisdictional motion. *Afrates v. Lorain Cty. Bd. of Revision* (Interim Order, May 17, 2021), BTA No. 2020-806, unreported. The BOR certified a complete statutory transcript, and the property owner filed a motion for summary judgment in response to the show-cause order.

[4] Before we consider the merits of this appeal, we must first dispose of the motion for summary judgment. The property owner requested summary judgment in her favor because the BOR failed to satisfy its statutory obligation to certify the statutory transcript within forty-five days as required by statute. The Supreme Court stated in *Brown v. Levin*, 119 Ohio St.3d 335, 2008-Ohio-4081, at ¶11 "the BTA has no power analogous to that of a court in a civil action to grant summary judgment ***." Accordingly, the motion is denied.

[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. *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 we review this matter, we note that the property record card indicates that the subject property transferred two times in 2019, i.e., a $44,000 transfer in March 2019 and a $29,500 transfer in July 2019. We are unable to determine whether these were arm's-length transfers, indicative of real property value because there is no information about the identity of the parties to the transactions and/or circumstances of the transactions. *Bd. of Edn. of the Gahanna-Jefferson City Schools v. Franklin Cty. Bd. of Revision* (Nov. 2, 2015), BTA

No. 2014-3200, unreported, at 2 ("The property record card reveals that the subject property transferred for $116,000 in August 2011. However, we are unable to discern whether the transfer was arm's-length because the identity of the parties and the circumstances of the transfer are unknown. As such, we find that the transfer is not the best indication of the subject property's value.).

[7] Upon review of the record in this matter, we must find that the property owner failed to provide competent, credible, and/or probative evidence of the subject property's value. She primarily argued that averaging the sales prices of three alleged comparable sales indicated that the subject property had been overvalued. This Board has repeatedly held that unadjusted comparable sales data are insufficient basis to determine real property value. *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] Furthermore, we have previously stated that "[w]e *** find the simple averaging of the [] sales to be suspect. An appraiser is to make adjustments to his sale comparable to account for differences in size, location, and other factors to bring the sales in line with what would be expected for the subject*." Matuszewski v. Erie Cty. Bd. of Revision* (June 17, 2005), BTA No. 2004-T-1140, unreported, at 9.

[9] 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 find that the property owner failed to provide competent, credible,

and/or probative evidence of the subject property's value. As a result, it is the order of this Board that the subject property shall remain as initially assessed as of the relevant tax lien date:

True Value: $70,610

Taxable Value: $24,710

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). 2018-1630 (REAL PROPERTY TAX) DECISION AND ORDER

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Entered Monday, October 4, 2021

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 010-017443-00, 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] The property owner filed a complaint with the BOR, requesting the subject property's value be reduced from $100,100 to $40,000. The BOE filed a countercomplaint, objecting to the request. The BOR held a brief hearing on the matter, at which both the property owner and BOE

appeared. The property owner appeared through its member, Brian Knoppe, and BOE appeared through counsel. Brian Knoppe testified that the property owner purchased the subject property at a sheriff sale for $30,000 in May 2017 and that the property owner receives $700 per month in rental income from the property. He submitted a refinancing appraisal report, which opined the value of the subject property to be $40,000 as of August 22, 2017, which was the basis for the property owner's complaint. The BOE objected to the BOR considering the appraisal report because the appraiser did not testify at the hearing and the appraisal report failed to value the subject property as of the tax lien date and was not performed for purposes of tax valuation. The BOR voted to accept the appraisal report as the best indication of the subject property's value. After it issued a written decision to that effect, the BOE appealed to this Board.

[3] At this Board's hearing, the BOE, through counsel, and property owner, through another one of its members Sean Knoppe, appeared to supplement the record with argument and/or evidence. As the hearing commenced, the attorney examiner advised Sean Knoppe that he would be limited in his ability to participate in the hearing because he was not an attorney licensed to practice law in Ohio and, therefore, could not engage in any acts of advocacy. The BOE argued that the BOR committed legal error by reducing the subject property's value based upon the appraisal report for the reasons raised at the BOR hearing. The BOE also objected to any new evidence from the property owner under R.C. 5715.19(G), because the property owner was required to first provide all evidence in its possession and knowledge to the BOR. Additionally, the BOE objected under Ohio Adm.Code 5717-1-07(A)(2)(e), because the property owner was required to submit its evidence at least thirty days before this Board's hearing. The attorney examiner deferred ruling and allowed Sean Knoppe to proffer testimony.

[4] Before we consider the merits of this appeal, we must first dispose of two preliminary issues. First, as noted above, Sean Knoppe was not an attorney licensed to practice law in the state of Ohio. As a result, the "Notice of Appearance" that he filed on behalf of the property owner will be stricken. See, e.g., *Yale Homes, LLC v. Franklin Cty. Bd. of Revision* (July 1, 2019),

BTA Nos. 2018-801 et seq., unreported at 2 ("[W]e agree that Mr. Knoppe is not authorized to represent the appellant property owners and hereby strike the filing from the record of this matter. See *Megaland GP, LLC v. Franklin Cty. Bd. of Revision*, 145 Ohio St.3d 84, 2015-Ohio-4918, ¶, 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).").

[5] Second, we find that the property owner, through Sean Knoppe's testimony before this Board, failed to articulate good cause for the property owner's failure to first provide all testimony in its possession and knowledge at the BOR hearing and failure to follow this Board's disclosure rules. As such, we sustain the BOE's objections based upon R.C. 5715.19(G) and Ohio Adm. Code 5717-1-07(A)(2)(e) and we will not consider the testimony of Sean Knoppe.

[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. "[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.

[7] We begin our analysis with the transfer of the subject property via sheriff sale in May 2017. Though Brian Knoppe testified that the subject property transferred for $30,000, the record is void of any competent, credible, and probative evidence to corroborate the sale price. The property record provides minimal information about the transfer but does not provide the sale price. Additionally, the record is void of competent, credible, and probative evidence to demonstrate that the sheriff sale, which is presumptively invalid, actually had all of the features

of an arm's-length transfer. We conclude, therefore, that the sheriff sale of May 2017 was not competent, credible, and probative evidence of the subject property's value. See *KMA Capital LLC v. Summit Cty. Bd. of Revision* (Apr. 20, 2020), BTA No. 2019-1301, unreported at 2("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.").

[8] We proceed to consider the property owner's appraisal report, performed by appraiser James Holycross, which opined the value of the subject property to be $40,000 as of August 22, 2017. Holycross 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 four other properties located in the same vicinity as the subject property, which sold in 2016 and 2017. After adjusting for differences with the subject property, the appraiser arrived at an indicated value of $40,000. Under the income approach to value, he relied upon three comparable rental properties to determine market rental income to be $700 per month, which was the same as the monthly rental income derived from the subject property. After applying a gross rent multiplier of 60 to $700, the appraiser reached an indicated value of $42,000. It appears that the appraiser gave no weight to the indicated value under the income approach. He concluded, therefore, the subject property's value to be $40,000 as of August 22, 2017.

[9] In the present appeal, the BOE urges this Board to find legal error with the BOR's decision, thus preventing affirmation of the value reduction. 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 ¶¶24-25.

[10] 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* unreported.(Nov. 26, 2018), BTA No. 2018-352,

[11] This matter is akin to *Musto* and not *Team Rentals*. the record in this matter does not contain competent, credible, and probative testimony about the reliance the property owner and lending institution placed upon the appraisal report. Brian Knoppe did not testify about the reliance placed upon the appraisal report at the BOR hearing. Though we sustained the BOE's objection to Sean Knoppe's testimony before this Board, we note that he did not testify about the reliance placed upon the appraisal report by the property owner or the lending institution. As a result, we cannot conclude that the property owner's appraisal evidence negated the subject property's initially assessed value.

[12] Even if we were to consider the substance of the appraisal report, without the appraiser's testimony, we would have had unanswered questions about the appraiser's analysis. First, the appraiser applied large adjustments to three of the four comparables under the sale comparison approach, which suggests that that the comparables were, in fact, incomparable. See, e.g., *Nachi Investments, LLC v. Cuyahoga Cty. Bd. of Revision* (Apr. 5, 2021), BTA No.

2020-25, unreported. Second, it appears that the appraiser did not inspect the comparable properties, under the sales comparison approach, and it is unclear whether he inspected the subject property. As a result, we question how he was able to make any conclusions about the subject property's value or how he could judge its comparability to other properties if he did not conduct interior inspections of the subject property or comparable properties. *Sutak v. Belmont Cty. Bd. of Revision* (June 23, 2020), BTA No. 2019-1852, unreported. Third, the appraiser relied upon a GRM of 60 to derive his opinion of value under the income approach. However, the record is void of any of the underlying information that provides the basis for the GRM, generally, or the GRM of 60, specifically. We note that appraisers must be careful when attempting to employ the GRM 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." The Appraisal of Real Estate (14th Ed. 2013) 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 GRM).

[13] We proceed to consider the propriety of the BOR's decision to reduce the subject property's value consistent with the appraisal report. In doing so, we are mindful of the rule derived from *Bedford Rd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237 ("*Bedford* rule"), which determined that in some circumstances, when a BOR reduces value based upon the property owner's appraisal evidence, such value overrides a property's initially assessed value. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 148 Ohio St.3d 700, 2016-Ohio-8375 ("*Metro Partners"*), is directly on point for the facts of this matter and the application of the *Bedford* rule. There the court noted:

> [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.

Id. at ¶¶ 16-17. (Parallel citation omitted.)

[14] As *Team Rentals* indicates, we must conclude that the BOR's straightforward reliance upon the hearsay appraisal report to be legal error. The appraisal report has an "as of" date that is more than eight months after the tax lien date of January 1, 2017, and the BOR made no effort to relate the data within the appraisal report to such date. As a result, it was improper for the BOR to wholesale rely upon the appraisal report to reach its decision to reduce the subject property's value to $40,000. Because the BOR's decision was based upon legal error, the *Bedford* rule does not apply.

[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"). In doing so, we find that the BOE satisfied its burden on appeal by demonstrating that the BOR's decision was legal error, unsupported by reliable, probative and competent evidence. Because the law does not support the BOR's decision, we are constrained to reinstate the subject property's initially assessed value.

[16] The subject property's true and taxable values are as follows as of the relevant tax lien date:

True Value: $100,100

Taxable Value: $35,040

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). 2019-264 (REAL PROPERTY TAX) DECISION AND ORDER

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Entered Monday, October 4, 2021

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

[1] The Board of Education ("BOE") appeals a decision of the Franklin Board of Revision ("BOR"), which determined the value of the subject property, parcel 010-215390-00 and 010-215396-00, for tax years 2017 and 2018. We consider this matter based upon the notice of appeal, certified statutory transcript, record of this Board's hearing, and parties' written argument.

[2] The subject property is comprised of four office buildings. The property owner filed a complaint with the BOR, requesting the subject property's value be reduced from $38,000,000 to $33,000,000. 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 support of their respective positions. In its presentation, the property owner submitted the appraisal report and testimony of appraiser Owen T. Heisey, which opined the value of the subject property to be $33,100,000 as of January 1, 2017. Heisey was examined, and cross-examined, about the underlying data and methodologies used to derive his opinion of value. The property owner also submitted the testimony of property manager William McVeigh who testified about the condition, history, and usage of the subject property. Based upon the evidence presented, the property owner requested that the subject property be reduced consistent with Heisey's appraisal report. At the BOR decision hearing, the BOR voted to value the subject property consistent with Heisey's appraisal report and testimony. This appeal ensued.

[3] At this Board's hearing, both parties appeared through counsel to supplement the record with argument and evidence. In its presentation, the BOE submitted the appraisal report and testimony of appraiser Thomas D. Sprout, which opined the value of the subject property to be $35,800,000 as January 1, 2017. Sprout was examined, and cross-examined, about the underlying data and methodologies used to derive his opinion of value. Subsequent to the hearing, the parties submitted post-hearing merit briefs to fully assert their respective positions. In its post-hearing briefs, the BOE argued that only Sprout had accurately estimated the subject property's value and Heisey undervalued it. The BOE also asserted that the property owner's case relies on a real-property value theory (more commonly known as "dark store theory") that has been repeatedly rejected by this Board and the Supreme Court. In its post-hearing briefs, the property owner argued that Sprout failed to value the subject property's unencumbered, fee-simple value and relied upon confusing methodologies to derive his opinion of value. As a result, the property owner asserted that the Sprout appraisal report was an unreliable indicator of the subject property's value, unlike Heisey's appraisal report.

[4] While this matter was pending for decision, the BOE submitted additional authority, *Lowe's Home Centers, LLC v. Cuyahoga Cty. Bd. of Revision*, 10th Dist. No. 19 AP 179 (Feb. 11,

2020), in support for its appeal.

[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. *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] 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." *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 St. 3d 449, 2007-Ohio-5237.

[7] 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.

[8] 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.

[9] Because both appraisers agree that the sales comparison approach would *not* be the best indication of the subject property's value, we give it little to no weight in our decision. Instead, we will focus on the argument and evidence related to the income approach to value, which both appraisers agreed provided the best indication of the subject property's value. Both appraisers also agreed that the subject property's highest and best use as improved would be its existing office use.

[10] In his income approach, Heisey relied upon six single and multi-tenanted buildings in the same vicinity as the subject property to derive market rent. After adjusting the comparable leases to reflect differences with the subject property, for items such as market condition and amenities, he concluded to market rent of $11.75 per square feet, which he applied to the subject property's 317,359 square feet of net rentable area, and $6.00 per square feet, which he applied to the subject property's 5,320 square feet of shell space. In doing so, he concluded to gross potential income of $3,760,888, from which he deducted 12.5% or $470,111, and concluded to

effective gross income of $3,290,777. He proceeded to determine operating expenses, for items such as management fee, reserves for replacement, and utilities, by relying upon a market survey and actual expenses of four comparable properties; he concluded to $359,810. To derive net operating income of $2,930,967, Heisey deducted market expenses from gross potential income, which he capitalized at 8.86%. In sum, he concluded to an indicated value of $33,100,000 as of January 1, 2017.

[11] In his income approach, Sprout relied upon eight single and multi-tenanted buildings, located throughout central and southern Ohio, as the subject property to derive market rent. After adjusting the comparable leases to reflect differences with the subject property, for items such as market condition and amenities, he concluded to market rent of $21.36 per square feet, which he applied to the subject property's 322,679 square feet of net rentable area. In doing so, he concluded to rental income of $3,810,389, to which he added $3,336,862 of reimbursable income, to conclude to gross potential income of $7,147,251. From that number, he deducted 12% or $857,724, and concluded to effective gross income of $6,289,977. He proceeded to determine operating expenses, for items such as management fee, reserves for replacement, and utilities, by relying upon a market survey and actual expenses of four comparable properties; he concluded to $2,302,968. To derive net operating income of $3,987,010, Sprout deducted market expenses from gross potential income, which he capitalized at 11.13%. In sum, he concluded to an indicated value of $35,800,000 as of January 1, 2017.

[12] Upon review, we find Heisey'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 income approach to value, we find Heisey's analysis best reflects the subject property's value. His use of comparable lease data from the same vicinity as the subject property best demonstrated the market in which the subject property would have competed on tax lien date. Sprout relied upon market data from other areas of Franklin County. We do not conclude that his use of market data from areas outside of the subject property's vicinity to be improper, generally.

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.

[13] Although we find merit with the property owner's appraisal report, we do not find merit with the property owner's arguments against Sprout's appraisal report. *Lowe's Home Ctr., Inc. v. Washington Cty. Bd. of Revision*, 154 Ohio St.3d 463, 2018-Ohio1974 (the Supreme Court has repeatedly rejected the argument. See, e.g., *Lowe's Home Ctr., Inc. v. Washington Cty. Bd. of Revision*, 154 Ohio St.3d 463, 2018-Ohio1974, at 20 ("Sprout himself said that he conducted a market-value appraisal of the subject property as an unencumbered, fee-simple estate. The fact that he appraised the property as such is not unexpected because it is, in fact, unencumbered by a lease."); *Bd. of Edn. of the Columbus City Schools v. Franklin Cty. Bd. of Revision* (June8, 2016), BTA No. 2015-601, unreported at 5 ("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."); *Kettering City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 2nd Dist. No. 27684, 2018-Ohio-2323.

[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"). In doing so, we find that the subject property's value is best reflected by Heisey'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: $33,100,000

Taxable Value: $11,585,000

OHIO BOARD OF TAX APPEALS

JACK H. CHABOT SECOND RESTATEMENT OF TRUST AGREEMENT U/A/D JUNE 30, 1978 & CAROLYN L. CHABOT SECOND RESTATEMENT OF TRUST AGREEMENT U/A/D JUNE 30, 1978, (et. al.),	)	CASE NO(S). 2018-2171, 2018-2183
Appellant(s),	)	(REAL PROPERTY TAX)
vs.	)	DECISION AND ORDER
LICKING COUNTY BOARD OF REVISION, (et. al.),	)	
Appellee(s).		

APPEARANCES:

For the Appellant(s) - JACK H. CHABOT SECOND RESTATEMENT OF TRUST AGREEMENT U/A/D JUNE 30, 1978 & CAROLYN L. CHABOT SECOND RESTATEMENT OF TRUST AGREEMENT U/A/D JUNE 30, 1978
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Entered Friday, October 8, 2021

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

[1] The property owner and Board of Education ("BOE") appeal a decision of the Licking County Board of Revision ("BOR"), which determined the value of the subject property, parcel 030-089004-00.000, for tax year 2017. We proceed to consider these consolidated matters based upon the notices of appeal, certified statutory transcript, and parties' written argument.

[2] The property owner and BOE both filed complaints with the BOR, seeking deviations from the subject property's initially assessed value of $740,000. The property owner requested that the subject property, an Arby's fast-food restaurant, be revalued at $335,000; the BOE requested that the subject property be revalued at $875,000. Both complaints noted an $875,000 transfer of the subject property in October 2016. At the hearing on the complaints, both parties appeared through counsel to submit argument and/or evidence in support of their respective positions. (As the hearing commenced, there was some discussion about the parties' settlement agreement as to tax year 2016 only.) The property owner submitted the appraisal report and testimony of appraiser Geoffrey A. Hatcher, who opined the value of the subject property to be $335,000 as of January 1, 2017. Hatcher was examined, and cross-examined, about the underlying data and methodologies used to derive his opinion of value. He rejected the subject sale because he claimed that the both the underlying lease rate and sale price were below market. The BOE submitted documents that memorialized the subject sale and the appraisal report and testimony of appraiser Thomas D. Sprout, which opined the value of the subject property to be $1,175,000 as of January 1, 2017. Sprout was examined, and cross-examined, about the underlying data and methodologies used to derive his opinion of value. He also conducted an appraisal review of Hatcher's appraisal report and noted objections and shortcomings with that report. He rejected the subject sale because he claimed that it did not reflect the post renovation condition of the subject property on the tax lien date. The BOE amended its opinion of value to conform to Sprout's appraisal report and testimony. One of the BOR members acknowledged that there were few fast-food restaurant sales within the county; however, he noted two fast-food restaurant sales

within the county that neither appraiser considered. The BOR issued a decision that retained the subject property's $740,000 value and these appeals ensued.

[3] While these matters were pending, the property owner filed an unopposed motion to consolidate because these appeals emanate from the same BOR decision. We granted such motion.

[4] In lieu of attending a hearing before this Board, the parties submitted written argument. In its submission, the property owner asserted that Hatcher's appraisal report was more competent and probative than Sprout's appraisal report because Hatcher relied upon market information within the subject property's immediate vicinity. However, because none of the parties submitted new evidence on appeal, the property owner alternatively argued that this Board should retain the subject property's initially assessed value. In its submission, the BOE asserted that the subject sale was the best indication of the subject property's value, which the property owner had failed to rebut. However, the BOE alternatively argued that the renovations to the improvement materially changed its character, such that the subject sale was no longer reflective of the subject property's value, and that the subject property should be valued consistent with Sprout's appraisal report and testimony.

[5] When cases are appealed from a board of revision to this Board, an appellant must prove the adjustment in value requested. See, e.g., *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. "[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.

[6] We begin our analysis with the subject sale. After reviewing the sale documents contained in the record and confirming such sale with information contained in the property record card, we discern that the subject property transferred with another parcel, 030-089010.00.002 for $875,000 in October 2016. The property record card confirms that contemporaneous with the subject sale, "10/14/16 COMBINE 0.203 AC (002) SPLIT FR 03008901000000." Statutory Transcript ("S.T.") at Property Record Card. Given that the parcel combination occurred contemporaneous with the subject sale and reflected how the subject property existed on the tax lien date, we do not find that the parcel combination negated the subject sale. See, e.g., *Doss v. Champaign Cty. Bd. of Revision* (Feb. 27, 2015), BTA No. 2014-2429, unreported (recombination of parcels performed to accurately reflect the ownership of the property after the sale did not negate recency). Compare *Richman Props., L.L.C. v. Medina Cty. Bd. of Revision*, 139 Ohio St.3d 549, 2014-Ohio-2439 (subdivision of parcels negated recency of sale because of evidence that the split increased the value of the property).

[7] As we evaluate the competency, credibility, and probative nature of the subject sale, we are mindful that upon presentation of the sale documents, a rebuttable presumption was created that the property owner's $875,000 purchase of the subject property was the best indication of its fee simple value as of January 1, 2017and the property owner does not dispute the minimal details of the subject sale. *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, at ¶¶32-34; *Lunn v. Lorain Cty. Bd. of Revision*, 149 Ohio St.3d 137, 2016-Ohio-807586; *Utt v. Lorain Cty. Bd. of Revision*, 150 Ohio St.3d 119, 2016-Ohio-8402. The burden then shifted to the opponent of relying on the subject sale, in this case both the property owner and BOE, to demonstrate that the subject sale did not reflect the subject property's value on the tax lien date. Both the property owner and BOE attempted to satisfy this burden with competing appraisal reports and testimonies from Hatcher and Sprout, respectively.

[8] As we review the relevant facts and circumstances in this matter, we note that each party asserted that the subject sale should be rejected for two different reasons. By way of

Hatcher's appraisal report and testimony, the property owner asserted that the subject sale should be rejected because the subject sale price and lease rate were below market. S.T. Hatcher Appraisal Report at 8. By way of Sprout's appraisal report and testimony, the BOE asserted that the subject sale should be rejected because the character of the subject property materially changed between the sale and tax lien dates and, therefore, the subject sale no longer reflected the subject property's value. S.T. at BOR Hearing Record; Sprout Appraisal Report at 20.

[8] As we evaluate the appraisers' testimonies, we note that each appraiser discussed material facts related to the subject sale and character of the subject property and that no one with firsthand knowledge of the subject sale or the character of the subject property, and the renovations, testified at any level of these proceedings. The appraisers basically reiterated material facts conveyed to them by others. In *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046, at ¶38, the Supreme Court determined that this Board was justified in determining that an appraiser's testimony amounted to impermissible hearsay because she "act[ed] merely as a conduit of information concerning material facts about the subject property itself[.]" Similarly, we find that those portions of Hatcher and Sprout's appraisal report and testimonies, related to material facts about the subject sale and character of the subject property and renovations, respectively, to be hearsay and will not be considered.

[9] Furthermore, it should be noted that neither appraiser utilized the subject sale as a comparable, with appropriate adjustments, under the sales comparison approach. In *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2020-Ohio-353, the Supreme Court affirmed this Board's rejection of an appraisal report in favor of the sale of the property at issue. In doing so, the court noted that the appraiser did not consider the underlying sale and failed to adequately explain the bases for doing so. Here, Hatcher admitted that he did not conduct a "great" analysis on the subject sale. S.T. at BOR Hearing. He only provided conclusory statements without explaining the data or information that formed the bases of his

opinion that the subject sale price and lease rate were below market. Indeed, he did not explain why he could not have utilized the subject sale as a comparable and applied adjustments to account for the below market sale price and lease rate. Moreover, it is also unclear how Hatcher concluded that the subject sale price of $875,000 was below market yet he opined to a significantly lower value of $335,000 as of the tax lien date. *Menlo Realty Income Properties 28, LLC v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 19AP-316, 2019-Ohio-4872, ¶16 ("Of course, a long-term lease that locks in a tenant at above-market rates can enhance sale value, just as a long-term lease that locks in a tenant at below-market rates can depress the sale value of a property.") For his part, Sprout did not explain why he could not have utilized the subject sale as a comparable property and then made an adjustment for condition.

[10] Based upon the foregoing, we find that the appraisers improperly rejected the subject sale as the best indication of the subject property's value. We turn to the analyses contained in their appraisal reports to determine if the data contained within them provides a basis for rejecting the subject sale.

[11] In his appraisal report, Hatcher fully developed the sales-comparison and income approaches to valuing real property. He determined the subject property's highest and best use, as vacant and improved, would be as "small retail" and its continued "use as a single tenant fast food retail building," respectively. S.T. at Hatcher Appraisal Report at 33-34. Under the sales-comparison approach, he compared the subject property's features to the features of four other properties located in Licking County or Fairfield County, which were either currently on the market or sold between June 2014 and July 2016. After adjusting the comparables for differences with the subject property, he concluded to an indicated value of $355,000. Under the income approach, Hatcher relied upon market information to determine net operating income of $28,867, i.e., effective gross income of $31,797 less $2,929 of expenses and reserves for replacement, which he capitalized at 9%, to conclude to an indicated value of $320,000. He reconciled the indicated values, giving the most weight to the income approach, to finally conclude the subject

property's value to be $335,000 as of January 1, 2017.

[12] In his appraisal report, Sprout fully developed the sales-comparison and income approaches to valuing real property. He determined the subject property's highest and best use, as vacant and improved, would be as "a national single tenant user" and its continued use "by a national fast-food restaurant," respectively. S.T. at Sprout Appraisal Report at 23. Under the sales-comparison approach, he compared the subject property's features to the features of nine other properties located throughout Ohio, which occurred between May 2014 and September 2017. After adjusting the comparables for differences with the subject property, he concluded to an indicated value of $1,160,000. Under the income approach, Sprout relied upon market information to determine net operating income of $107,889, i.e., effective gross income of $162,027 less $54,138 of expenses and reserves for replacement, which he capitalized at 9.19%, including a tax additur, to conclude to an indicated value of $1,175,000. He reconciled the indicated values, giving primary weight to the income approach, to finally conclude the subject property's value to be $1,175,000 as of January 1, 2017.

[13] Upon review of the appraisal reports, we find that neither contain information sufficient to rebut the subject sale. In the Hatcher appraisal report, though he concluded to a highest and best use, as improved, to be "use as a single tenant fast-food retail building," his data selection was inconsistent with this conclusion. For example, under the sales comparison approach, he relied on many comparable sales of *former restaurants*, which did not conform to Hatcher's highest and best use or conform to how the subject property's use of the tax lien date. Under his income approach, most of the lease comparables were not current restaurant properties and, in essence, relied upon one sale to derive his capitalization rate (as the other sales were multi-tenant properties). We have previously rejected appraisal reports of fast-food restaurants that relied upon data of dissimilar properties. See, e.g., *McDonalds USA, L.L.C. v. Lorain Cty.Bd. of Revision* (Feb. 27, 2018), BTA No. 2016-1429, unreported, affirmed on appeal, 9th Dist.Lorain No. 18CA011279, 2019-Ohio-4217; *South-Western City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Apr. 29, 2017), BTA No. 2016-428, unreported, affirmed on appeal, 10thDist. Franklin No. 17AP-691, 2018-

Ohio-4622; *Kettering City Schools Bd. of Edn. v. McDonald's USA, L.L.C.; Montgomery Cty. Bd. of Revision* (July 10, 2017), BTA No. 2015-2331, unreported, affirmed on appeal, 2nd Dist. Montgomery No. 27684, 2018-Ohio-2323. We also note that there is nothing in the Hatcher appraisal report that demonstrated that the subject sale price was impacted by the amount of rent charged under the lease in comparison to market rent, creditworthiness of the tenant, and lease structure. *GC Net Lease @ (3) (Westerville) Investors, LLC v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3856, ¶10; *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision* ("*State Farm II*"), 10th Dist. No. 19AP-204, 2020-Ohio-200, ¶13.

[14] Furthermore, in the Sprout appraisal report, there is nothing that demonstrated that the subject sale price was impacted by the amount of rent charged under the lease in comparison to market rent, creditworthiness of the tenant, and lease structure. *GC Net Lease*, at ¶10; *State Farm II*, at ¶13.

[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"). In doing so, we find that neither the property owner nor the BOE rebutted the presumptions accorded to the subject sale. The parties' appraisal evidence failed to demonstrate that the subject sale should be rejected, and that either respective appraisal report was a better indication of the subject property's value. We find, therefore, that the subject property should be valued consistent with the following as of the relevant tax lien date:

True Value: $875,000

Taxable Value: $306,250

OHIO BOARD OF TAX APPEALS

REGINA A. MASSEY, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-466
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
FRANKLIN COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
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Entered Tuesday, October 12, 2021

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

This matter is considered by the Board of Tax Appeals based upon the filing of a motion to dismiss by the county appellees, which asserts that this Board lacks jurisdiction to consider this matter. Specifically, the county appellees argue that the appellant taxpayer failed to file an Application for Remission of Real Property and Manufactured Home Late-Payment Penalties with the Franklin County Board of Revision ("BOR") and, therefore, has no BOR decision from which to appeal to this Board. The taxpayer did not respond to the motion within the time frame to do so. Ohio Adm.Code 5717-1-13(B). We proceed to consider this matter based upon the notice of appeal and motion to dismiss.

The motion to dismiss is premised upon relevant portions of R.C. 5717.01, which allows for an appeal to be taken to this Board from a decision of a county board of revision provided such appeal is filed with this Board and the board of revision within thirty days after notice of the decision of the county board of revision is mailed. See, also, R.C. 5715.20. See, e.g., *Hope*

v. Highland Cty. Bd. of Revision, 56 Ohio St.3d 68 (1990) ("Adherence to the provisions of the appellate statutes is essential to confer jurisdiction upon the BTA to hear appeals. *** R.C. 5717.01 is specific and mandatory. It requires that notice of appeal be filed by the appellant both with the board of revision and with the BTA. Failure to comply with the appellate statute is fatal to the appeal.")

In this matter, there is no indication that the taxpayer first filed a penalty-remission application with the county Treasurer, which was subsequently considered by the BOR, and that the BOR issued a decision from which the taxpayer could appeal to this Board. As noted above, the taxpayer did not come forward to dispute the allegations made in the motion to dismiss. (We note that the taxpayer filed a penalty-remission application with this Board, which was interpreted as a notice of appeal.)

Based upon the foregoing, we find that we lack jurisdiction to consider this matter. It is undisputed that there is no BOR decision from which the taxpayer could appeal to this Board. As a consequence, we must grant the county appellees' motion to dismiss. This appeal is now 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). 2019-71 (REAL PROPERTY TAX) DECISION AND ORDER

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Entered Tuesday, October 12, 2021

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

[1] The Board of Education ("BOE") appeals a decision of the Franklin County Board of Revision ("BOR"), which determined the value of the subject property, parcel 010-053329-00, 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] The BOE filed a complaint with the BOR, which requested that the subject property be revalued from $650,000 to $1,450,000, purportedly based upon the price at which it transferred in March 2015. The property owner filed a countercomplaint, which requested that the subject

property's initially assessed value be retained.

[3] At the BOR hearing, the BOE and property owner both appeared through counsel to submit argument and/or evidence in support of the respective positions. In its presentation, the BOE submitted sale documents to demonstrate the $1,450,000 transfer of the subject property from Roman F. and Debra J. Czech to the property owner in March 2015. The BOE also noted that the issue of valuing the subject property consistent with the March 2015 sale had previously been the subject of a complaint for tax year 2015, a matter in which the property owner failed to participate and the BOR accepted the subject sale as the best evidence of value. Based upon the presentation, the BOE requested that the subject property be revalued consistent with the property owner's $1,450,000 purchase price. In its presentation, the property owner began by amending its opinion of value to be consistent with the appraisal report and testimony of appraiser Samuel Koon, which opined the value of the subject property to be $1,000,000 as of the tax lien date. Koon testified about the data and methodologies used to derive his opinion of value; the BOE cross-examined him on these topics as well. The BOR voted to accept Koon's appraisal report, and to reject the subject sale, and this appeal ensued.

[4] On appeal, this Board held a brief hearing at which both the BOE and property owner appeared to supplement the record with additional argument. The BOE argued that the property owner failed to rebut the presumptions accorded to the subject sale, with Koon's appraisal report, and that the property owner was collaterally estopped from arguing that the subject sale was not an arm's-length transaction for tax year 2017 because it failed to challenge the BOR's acceptance of such sale for tax year 2015. The property owner argued that the BOE failed to submit new evidence on appeal to challenge Koon's appraisal report and, therefore, could not prevail on appeal.

[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. *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] Before we delve deeper into the substance of this matter, we have two preliminary issues to consider. First, we must reject the BOE's collateral estoppel argument. This Board has held it cannot determine collateral estoppel applies when a party fails to provide the relevant record (including evidence provided) from another administrative body. *Ravenna School Dist. Bd. of Edn. v. Portage Cty. Bd. of Revision* (Jan. 18, 2019), BTA No. 2017-1497, unreported. Here, without the BOR record from the tax year 2015 matter, this Board cannot determine how the BOR made its decision, what evidence the BOR considered, or whether the BOR's decision is supported by that evidence.

[7] Second, we must reject the property owner's assertion that the BOE was required to submit new evidence on appeal, consistent with rule derived from *Bedford Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 115 Ohio St.3d 449, 2007-Ohio-5237 (more commonly referredto as the "Bedford rule"). The court set forth four elements necessary to invoke the Bedford rule: (1) the property owner either filed the original complaint or a countercomplaint; (2) the Board of Revision ordered a reduced valuation based on "competent evidence offered by the property owner[;]" (3) the Board of Education is the appellant before this Board; and (4) "the board of revision's determination of value is based on appraisal evidence rather than a sale price offered as the property value." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 147 Ohio St.3d 38, 2016-Ohio-3025, ¶9-11. However, the Court also noted that "[w]hen the central issue is whether a sale price of the subject property establishes its value, the factors attending that issue must usually be determined de novo by the BTA, and the Bedford rule does not apply." Id. at ¶11. In this matter,

though the BOR reduced value based upon the property owner's appraisal report, the *Bedford* rule does not apply because the central issue is whether the subject property should be valued consistent with a recent sale.

[8] We proceed to evaluate the subject sale. The presentation of sale documents, by the BOE, created a rebuttable presumption that such 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(s) 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 ("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.) As the opponent of the subject sale, the property owner was obligated to provide sufficient evidence to support the rejection of such sale. The property owner does not assert that the subject sale was remote from the tax lien date; however, it does argue that the subject sale was not conducted between parties acting at arm's-length because the subject sale occurred as part of an assemblage, or under economic duress, which caused the property owner to pay more than the subject property was worth.

[9] The Supreme Court has explained that an arm's-length sale "is characterized by these elements: it is voluntary, i.e., without compulsion or duress; it generally takes place in an open market; and the parties act in their own self-interest." *Walters v. Knox Cty. Bd. of Revision*, 47 Ohio St.3d 23, 25 (1989). A sale is not arm's-length when it is conducted under duress characterized by "compelling business circumstances." *Lakeside Ave. Ltd. Partnership v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 540, 548 (1996). In this matter, no one with

firsthand knowledge of the facts and circumstances of the subject sale, including the negotiations, testified at the BOR hearing or this Board's hearing. Though the quality of the BOR hearing is rather poor, after careful review, we can discern no testimony from Koon that suggested the property owner consummated the subject sale under economic duress or "compelling business circumstances." But see, *Hilliard City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 449, 2018-Ohio-2046, at ¶38 (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[.]"). We are, therefore, left to speculate about this very important factor of the subject sale. "Mere speculation is not evidence." *Lakota Local School Dist. Bd. of Edn. v. Butler Cty. Bd. of Revision*, 108 Ohio St.3d 310, 2006-Ohio-1059, at ¶26. We conclude, therefore, that *Lakeside* has no application to this matter. See, also *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th Dist. Franklin No. 15AP-549, 2016-Ohio-4554; *Katabi Invs. Ltd. v. Franklin Cty. Bd. of Revision* (July 3, 2013), BTA No. 2010-L-3842, unreported. We must conclude that the record is void of any evidence that would lead this Board to conclude that the property owner was under any kind of duress to purchase the subject property or faced with "swift and sure corporate death" if it failed to purchase the subject property. *Lakeside* at 549.

[10] Furthermore, even if we accept Koon's testimony that the subject sale occurred as part of an assemblage, we would not conclude, on this record, that such sale did not occur between parties acting at arm's-length. As we acknowledged in *Kroger Ltd. Partnership I v. Hamilton Cty. Bd. of Revision* (Sept. 13, 2018), BTA No. 2016-2353, unreported, at 4, "there exists situations in which a purchaser's assemblage of several properties can provide the basis for inequality in bargaining"; however, "the mere allegation of a purchaser's desire to accumulate property in a particular area is not itself tantamount to economic duress."

[11] We recognize, however, that the property owner attempted to satisfy its burden to rebut the presumptions accorded to the subject sale with the appraisal report and testimony of

Koon. In his appraisal report, Koon solely developed the income and sales-comparison approaches to valuing real property. He began his analysis by determining the subject property's highest and best use, as if vacant and improved, would be "holding for future redevelopment for commercial and/or residential use" and "for utilization as commercial, nightclub or restaurant use [,]" respectively. Statutory Transcript ("S.T.") at Koon Appraisal Report at C-3-C-4. Under the income approach, he developed an estimate of market rent based upon the subject property's current rental rate and rental rates of three leased properties and concluded that the subject property's $15.78 per square foot rental rate reflected the market. He concluded to effective gross income of $57,038 ($53,865 potential rental income + 7,213 reimbursement income - $4,040 vacancy and credit loss), less $8,482 to reflect operating expenses and reserves for replacement, to conclude to net operating income of $48,556. He capitalized the net operating income at 7.72%, which included a tax additur, to conclude to an indicated value of $600,000. Under the sales comparison approach, he compared the salient features of the subject property's recent $1,450,000 sale to the salient features of five other properties, which sold in Franklin County between January 2015 and July 2018. After adjusting the comparable sales, he concluded to an indicated value of $1,000,000. He reconciled the indicated, placing the most emphasis on the sales-comparison approach, to finally the subject property's value to be $1,000,000 as of January 1, 2017.

[12] Upon review, we find nothing in Koon's appraisal report that rebuts the subject sale. Although the property owner did not argue that an above-market lease influenced the subject sale price of $1,450,000, we, nevertheless, proceed to consider whether the appraisal report demonstrates that: "(1) The amount of rent charged under the lease in comparison to market rent, (2) the creditworthiness of the tenant, and (3) whether the lease is a net lease." *MDC Coast I., L.L.C. v. Union Cty. Bd. of Revision*, 2020-Ohio-683, at ¶19, citing *GC Net Lease @ (3) (Westerville) Investors, L.L.C. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3856 and *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 10th

Dist. No. 19AP-204, 2020-Ohio-200. As indicated by the appraisal report and testimony, Koon concluded that the subject property's $15.78 per square foot rent was within the market range and relied upon it to develop his estimate of potential gross income. A review of the "Vacancy and Collection Loss Factor" section of the appraisal report suggests that the lessee, here, is not a creditworthy tenant. S.T. at Koon Appraisal Report at D-10. The underlying lease is not in the record, but Koon's appraisal report suggests that it is structured as a net lease, as are the lease comparables in the income approach; however, there is no evidence that the lease structure influenced the subject sale price.

[13] Moreover, we find nothing in the sales-comparison approach that rebuts the subject sale. We acknowledge that Koon included the subject sale as a comparable and applied a downward adjustment to account for what he believed to be the non, arm's-length character of the sale because the buyer/current property owner owned adjacent property. This Board has held that the transfers of property between adjacent property owners are, indeed, arm's-length sales indicative of value. See, e.g., *Marysville Exempted Village Schools Bd. of Edn. v. Union Cty. Bd. of Revision* (July 28, 2017), BTA No. 2016-1403, unreported. To be sure, this Board has found that transfers of property between parties with prior relationships, landlords and tenants for example, are arm's-length sales, subject to rebuttal showing duress. See *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092. Thus, we are unpersuaded that the exchange of property between neighboring property owners raises the specter of duress or unequal bargaining power. There has been no showing that the property owner was compelled to purchase the subject property and, without more, we cannot conclude that the subject sale was not an arm's-length transfer simply because the buyer and seller owned neighboring properties.

[14] To the extent that Koon's analysis was premised upon the theory that assemblages, by their very nature, should be disregarded, that theory does not conform to real property valuation law in Ohio. As noted above, the mere allegation of a purchaser's desire to accumulate property

in a particular area is not itself tantamount to economic duress. See, e.g., *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of* Revision (June 10, 2016), BTA No. 2015-1338, unreported; *Bd. of Edn. for Washington Local Schools v. Lucas Cty. Bd. of Revision* (Feb. 2, 2010), BTA No. 2007-K-1482, unreported; *Strongsville Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Feb. 25, 2005), BTA No. 2003-G-663, unreported;*27981 Euclid Co., LLC v. Cuyahoga Cty. Bd. of Revision* (June 4, 2004), BTA No. 2002-R-1688, unreported; *Bd. of Edn. of Groveport Madison Local Schools v. Franklin Cty. Bd. of Revision* (Mar. 8, 2002), BTA No. 1999-R-2050, unreported; *Beachcliff Properties, Ltd. Part. v. Cuyahoga Cty. Bd. of Revision* (Feb. 22, 2002), BTA Nos. 2000-K-1348, et al., unreported.

[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"). In doing so, we find that the property owner failed to rebut the presumptions accorded to its $1,450,000 purchase of the subject property. We further find that the BOR committed legal error when it accepted Koon's appraisal report as the best indication of value instead of the subject sale.

[16] It is, therefore, the order of this Board that the subject property's true and taxable values are as follows as of January 1, 2017:

True Value: $1,450,000

Taxable Value: $507,500

OHIO BOARD OF TAX APPEALS

RUTH ZANDER, TRUSTEE, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-179 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, October 12, 2021

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

This matter is ripe for consideration following the issuance of a show-cause order, which questioned whether this Board had jurisdiction to consider this matter. In the order, we directed the appellant property owner to demonstrate that this appeal emanated from a decision of the Cuyahoga County Board of Revision ("BOR") and/or that a copy of the notice of appeal was filed with the BOR. *Zander, Trustee v. Cuyahoga Cty. Bd. of Revision* (Interim Order, May 26, 2021), BTA No. 2021-179, unreported. The appellant did not respond to the show-cause order.

As we previously indicated, 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.").

Based upon the foregoing, we find that this Board lacks jurisdiction to consider the merits of this appeal. There is no indication that the BOR issued a decision from which the appellant could appeal and/or that the appellant filed a copy of the notice of appeal with the BOR. Accordingly, this matter is dismissed.

OHIO BOARD OF TAX APPEALS

RICHARD PLANT JR & DENISE PLANT, (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-2047 (REAL PROPERTY TAX) DECISION AND ORDER

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Entered Tuesday, October 12, 2021

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

[1] The property owners appeal a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 482-03-079, for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and property owners' written argument.

[2] The property owners filed a complaint with the BOR, which requested the subject property's value be reduced from $219,000 to $199,400. At the BOR hearing on the matter, property owner Denise Plant appeared to submit argument and/or evidence in support of their complaint. In doing so, she testified that they purchased an adjacent, 1.29-acre parcel for $15,401 in December 2018, which resulted in an increase to the subject property's value, because they were concerned about future development and/or use of the parcel and

consequences resulting from such action(s). Mrs. Plant noted that she compared the subject property's assessed value with the assessed value of other, nearby properties, which suggested that the subject property had been overvalued. She also testified that county records contained erroneous information about the ownership of the subject property and neighboring properties. Upon questioning by a BOR member, Mrs. Plant testified that, after adding 1.29 acres from the adjacent parcel to their original parcel (the property record card indicates that it was parcel 482-03-002), a new parcel was created, parcel 482-03-079, which is the subject of this appeal. (According to the property record card, the former parcel, 482-03-002, ceased to exist as of January 1, 2019.) Despite the sale and additional acreage, she argued that the subject property's value had not increased especially when compared with the assessed values of other properties. As a result, she argued the subject property's land value should be $54,500 as it had been previously assessed prior to tax year 2019. The BOR decided to reduce the subject property's land value from $74,100 to $69,900, which reduced the subject property's total value to $214,800. This appeal ensued.

[3] The property owners initially requested an opportunity to submit additional evidence at a hearing before this Board. However, such hearing was canceled after the property owners waived their appearance and county appellees failed to disclose evidence consistent with the case management schedule. The parties were provided an opportunity to submit written argument in lieu of the hearing; only the property owners availed themselves of such opportunity.

[4] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. The property owners' written argument is replete with factual assertions that were clearly offered for the truth of the matter asserted. Because there is no indication that these matters were offered in the form of documentary and/or testimonial evidence at a hearing, we cannot consider them in our analysis. *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."). See also *Dellick v. Eaton Corp.*, Mahoning App. No. 03-MA-246, 2005-Ohio-566, at ¶25 ("Hearsay is an out-of-court statement offered in court to prove the truth of the matter asserted. Evid.R. 801(C). Generally, hearsay is inadmissible. Evid.R. 802."). Our review will be strictly limited to the evidence submitted at the BOR hearing.

[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. *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 record indicates that there was a $15,401 transfer of 1.29 acres of an adjacent parcel in December 2018, which increased the subject property's acreage from approximately 2.58 acres to 3.87 acres as of January 1, 2019. Statutory Transcript at BOR Hearing Evidence. There is nothing in the record to rebut the presumption that this transfer was a recent, arm's-length transfer of 1.29 acres. *Terraza 8, LLC v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-527. While this transfer may assist in valuing the 3.87 acres that comprise the subject property, we recognize that it is not indicative of the value of the entire 3.87 acres.

[7] Upon review, we are constrained to find that the property owners failed to provide competent, credible, and/or probative evidence of the subject property's value. They advanced two primary arguments to assert that the subject property was overvalued. First, they argued that subject property should be valued at $199,400, as it had been valued in prior years, to reflect a

land value of $54,500 and building value of $144,900. 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. *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). Based upon the foregoing, we find that the property owners' argument lacks merit.

[8] It should also be noted that the subject property's prior land value reflected its value as it existed ***before*** the addition of 1.29 acres from the adjacent parcel in December 2018. Therefore, the subject property's prior value of $54,500 cannot reflect its value ***after*** the addition of the 1.29 acres on January 1, 2019. Though Mrs. Plant argued that the additional acreage did not add to the subject property's value, she failed to provide any evidence to support that assertion. The Ohio Supreme Court has held that an owner is competent to present an opinion of value of her or his property. *Snavely v. Erie Cty., Bd. of Revision* 78 Ohio St. 3d 500 (1997). However, the Court has also been clear this Board need not adopt that opinion of value unless probative evidence supports it. *GLS v. Stark Cty. Bd. of Revision* (Sept. 17, 2020), BTA No. 2019-2567, unreported. See, also *Johnson v. Clark Cty. Bd. of Revision*, 155 Ohio St.3d 264, 2018-Ohio-4390, at ¶21, ("An owner's opinion of value is competent evidence, but the BTA has discretion to determine its probative weight.").

[9] Second, the property owners argued that the assessed values of other, nearby properties necessitate 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. *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."). Based upon the foregoing, we find this argument lacks merit.

[10] In essence, the property owners argue that their $15,401 of the 1.29-acre parcel should be ignored when valuing the subject property's entire acreage, in part, because they were concerned about future development and/or use. We have previously considered a similar argument and rejected it. *Marysville Exempted Village Schools Bd. Of Edn. v. Union Cty. Bd. Of Revision* (July 28, 2017), BTA No. 2016-1403, unreported, at 3 ("The property owners primarily argued that their concern for maintaining the quiet enjoyment of their home on a neighboring parcel, and the concern for the future development of the subject property, forced them to accept the sellers' offer to purchase the subject property. However, these reasons manifest that they acted in their own self-interest, i.e., their attempt to protect their interests, and their willingness to pay $120,000 to do so. '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.'").

[11] Having concluded that the property owners failed to satisfy their evidentiary burden, we now consider the propriety of the BOR's decision to reduce the subject property's value from $219,000 to $214,800. We discern that the BOR added the $15,400 purchase price (as opposed to $15,401 as indicated in the purchase agreement) for the 1.29-acre parcel to the subject property's prior land value of $54,500 to conclude to a land value of $69,900. To that number, the BOR added the subject property's building value of $144,900, resulting in a total value of $214,800. Because the record supports the BOR's decision, we find that the BOR properly

reached such decision. *South-Western City School Dist. Bd. of Edn.*, 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.)

[12] 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 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."). However, we find that the BOR's decision value is supported by the record. 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: $214,800

Taxable Value: $75,180

OHIO BOARD OF TAX APPEALS

IMMOBILTEC USA INC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1304
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
WARREN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

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Entered Tuesday, October 12, 2021

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

[1] Immobiltec USA, Inc., appeals from a final determination of the Warren County Board of Revision ("BOR") valuing parcel 0421400023 for tax year 2019. We decide the case on the notice of appeal, the statutory transcript, and the parties' written argument.

[2] Per the complaint and parcel card, the property is improved industrial property, formerly a newspaper production facility for Dayton Daily News. The Auditor valued the property at $5,010,260 for tax year 2019. The Franklin City Schools Board of Education ("BOE") filed a complaint seeking a value of $13,163,000 citing a May 2019 sale. The BOE supplied

the relevant conveyance fee statement, which indicates the property transferred from Certa Franklin LLC to appellant in May 2019 for a total of $13,434,000, of which $271,000 constituted non-realty. The BOE's complaint asked for the sale price minus the value attributed to non-realty.

[3] The BOR held a hearing on the matter; we note that portions of the hearing recording are difficult to discern because multiple persons appeared by telephone. Regardless, both appellant and the BOE were represented by counsel. At the outset, the BOE relied on the evidence it had already provided. Appellant argued it would be legal error to value the property according to the May 2019 sale because it occurred after the 2019 tax-lien date. During the hearing, the BOR noted the property had sold at some point in 2018 for a smaller amount; however, no party advocated for that sale, and, as the BOR noted, the May 2019 sale was closer in time. The Auditor's appraiser also noted appellant had made very significant modifications to the property so it could be used for purposes other than a newspaper production facility. In its decision recording, the BOR indicated it was adopting the sale price. However, in its written decision, it adopted a value slightly below the sale price at $12,905,760.

[4] Appellant appealed to this Board. Here, it again argues it was legal error for the BOR to value the property pursuant to the sale because the sale occurred after the tax-lien date. No party disclosed new witnesses or evidence; so, this Board converted the hearing to a briefing date, and the parties filed briefs.

[5] When cases are appealed from a BOR 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. 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.

[6] Here, the property sold in an arm's-length transaction approximately five months after

the tax-lien date. The facts of that sale are undisputed. Appellant does not challenge the arm's-length nature of the sale. It only argues that the sale cannot be considered because it occurred after the tax-lien date. Supreme Court precedent says the opposite. A sale that postdates tax-lien date 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. We see no reason to disregard the sale on that basis. We also note that appellant has not provided this Board with an appraisal or other evidence of value to rebut the sale price. See id.

[7] We do note that the prior sale was referenced, largely in passing, at the BOR hearing. We do not find that sale is better evidence of value for several reasons. First, no party advocates for that sale as indicative of value as of January 1, 2019. Second, the sale, as the BOR noted, was more remote in time than the May 2019 sale. In *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, the 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." Third, the Auditor's appraiser testified substantial changes were made to the property between the first sale and the 2019 tax-lien date. Finally, we note we lack basic documentation of the sale, e.g., deed, conveyance fee statement, purchase agreement. See *Beechler v. Fayette Cty. Bd. of Revision* (May 6, 2019), BTA No. 2018-732, unreported (citing *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St.3d 691, 2017-Ohio-1412) (declining to adopt a sale price when no party presents basic evidence of the sale).

[8] For these reasons, we find the May 2019 sale to be the best evidence of value. As the BOE notes in its brief, the BOR's written decision is somewhat below the sale price. The record is unclear if that was simply a typo. Regardless, we find no reason to value the property below the sale price, and we order the property valued as such for tax year 2019:

TRUE VALUE

$13,163,000

TAXABLE VALUE

$4,607,050

OHIO BOARD OF TAX APPEALS

RAMY D. EIDI, TRUSTEE, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1208
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
LUCAS COUNTY BOARD OF REVISION, (et. al.),	)	
	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
For the Appellant(s) - RAMY D. EIDI, TRUSTEE
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ONE SEAGATE
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Entered Tuesday, October 12, 2021

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 65-03418, for tax year 2019. 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 submitted by the parties.

[2] The subject property consists of roughly 4.93 acres of land improved with a single-family home built in 2018. The Auditor initially assessed the subject's total true value at $1,160,200. Appellant filed a complaint with the BOR seeking a reduction in value to $950,000. The BOR convened a hearing, at which the Auditor's representative indicated she would abstain from participation and voting due to a conflict between the Auditor and appellant property owner. Appellant asserted that the property record card reflected the incorrect size of the

property (9,792 square feet) and submitted building plans from the architect to demonstrate a correct size of 8,001 square feet. During the hearing, the Treasurer's representative referenced the sales of nearby properties and explained to counsel that the BOR would consider other evidence regarding the value of the property and not merely apply the initially assessed price per square foot to the updated square footage, as was advocated by appellant.

[3] The BOR issued a decision maintaining the initially assessed valuation. During the decision hearing, the Treasurer's representative explained that the comparable sales data in its possession would support an increase in value – even based on the reduced square footage proposed by appellant – and the BOR, therefore, voted not to change the value of the subject property. From this decision, appellant filed the present appeal and again argued that the value of the property should be reduced to $950,000, which was calculated based on applying the Auditor's price per square foot ($118.67) to the corrected square footage and then rounding it. Appellant claims that this corrects a clerical error, which the Auditor is required to do. Appellant argues that the sales of other properties are not probative and should be disregarded, noting that the subject property is newly constructed and should be based on the price per square foot initially assessed by the Auditor but applied to the corrected square footage.

[4] The county appellees argue that appellant has failed to meet his burden. The county appellees acknowledge that the evidence presented by appellant purports to show that the square footage of the home was 8,001 square feet but notes that the document was submitted without testimony regarding the document and the context or to the basis for the measurements. The county appellees further maintain that it is unclear whether it was a prior plan and that it was not from the builder who constructed the home and would have knowledge of the actual construction of the property. The county appellees argue that the Auditor's records were based on an on-site measurement made in May 2019. The county appellees further assert that as a newly built property, the property owner would have records regarding the cost of construction that were not submitted, and that the sales comparison approach considered by the BOR was appropriate and

supported a higher value and thus the decision to maintain the Auditor's value was justified.

[5] Before we reach the merits of the instant appeal, we must address the deficiency in the record received from the BOR. The BOR did not include some evidence that was considered and discussed during the BOR hearing, specifically information regarding the sale of other properties near the subject. Parties and various tribunals rely upon boards of revision to fulfill their statutory duties to create and maintain a record capable of being reviewed on appeal. R.C. 5715.08; R.C. 5717.01. The BOR should take care to ensure its evidentiary record is accurate and provide all evidence considered during its proceedings in the transcript provided to this board because it defaults on its statutory obligation when it fails to transmit the record in its entirety. See *Cannata v. Cuyahoga Cty. Bd. of Revision*, 147 Ohio St.3d 129, 2016-Ohio-1094; *Vandalia-Butler City Schools Bd. of Edn. v. Montgomery Cty. Bd. of Revision*, 130 Ohio St.3d 291, 2011-Ohio-5078. Due to its absence from the record, we are unable to review the comparable sale evidence discussed by the BOR. Additionally, we note that the county appellees include factual assertions and reference information that was either not presented during the BOR hearing or not included in the transcript on appeal. As no hearing was convened before this Board, any information not included in the record below is not properly before us and cannot be considered by this Board. *Columbus Bd. of Education v. Franklin Cty. Bd. of Revision*, 76 Ohio St.3d 13 (1996). We find that the deficiency in the record, however, does not materially impact the present appeal or prejudice any party because even if it had been properly included, as described below, the evidence would not have changed the outcome of the appeal.

[6] When cases are appealed from a board of revision to this Board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). An appellant must present competent and probative evidence in support of the requested reduction, and an owner is not entitled to a reduction merely because no evidence is presented against its claim. Id. See, also, *Valigore v. Cuyahoga Cty. Bd. of Revision*, 105 Ohio St.3d 302, 2005-Ohio-1733. The Court has long held that "[t]he best method

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

[7] In the present appeal, appellant did not present sufficient evidence to meet his burden. In lieu of an appraisal of the subject property, appellant relies on the Auditor's assessed value and a document purporting to show that the square footage must be adjusted. We agree with the BOR that without corroborating testimony, this document does not establish that the square footage from the Auditor's records is incorrect. This document is dated 2017 and was created prior to construction. The property record card, on the other hand, includes a detailed sketch of the measurements following a review after construction was complete. As such, we find that appellant has failed to show that there is an error in the Auditor's initial value determination or that another value is appropriate.

[8] We acknowledge that the BOR reviewed unadjusted sales information that is not included in the record, which appellant rightly challenged as unreliable to establish the value of the subject property. While comparable sales data is frequently utilized by appraisers to determine the value of a given property, the unadjusted sales discussed in this case are not probative evidence of value. See *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002. Nevertheless, the probative value of these sales is not at issue because an appellant cannot merely challenge the accuracy of an auditor's value, and in this case, appellant failed to present sufficient evidence 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.

[9] Accordingly, based upon our review of the record, we find the bases cited insufficient to support the claimed adjustment to value. See, e.g., *Simmons v. Cuyahoga Cty. Bd. of Revision*, 81 Ohio St.3d 47, 49 (1998) ("Where the BTA rejects the evidence presented to it as not being competent and probative, or not credible, and there is no evidence from which the BTA can

independently determine value, it may approve the board of revision's valuation, without the board of revision's presenting any evidence.").

[10] It is, therefore, the order of this Board that the true and taxable values of the subject property, as of January 1, 2019, were as follows:

TRUE VALUE

$1,160,200

TAXABLE VALUE

$406,070

OHIO BOARD OF TAX APPEALS

LIBERTY PLAZA BUILDING, INC., (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-916 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Tuesday, October 12, 2021

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 562-32-002, 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 appellant's written argument.

[2] The subject property consists of 2.14 acres of land improved with a five-floor multi-tenant office building constructed in 1978, initially assessed by the Fiscal Officer at

$2,369,600 for tax year 2018. Appellant filed a complaint with the BOR seeking a reduction in value to $2,000,000, and the appellee Board of Education ("BOE") filed a countercomplaint in support of the Fiscal Officer's value.

[3] The BOR convened a hearing, at which appellant noted that it amended its opinion of value to $1,600,000. Mark Carrabine, an owner of appellant, testified that he had been involved with the building since its initial construction in 1978 and that his family's businesses own other office property in the area. Carrabine described the local office market and how the subject property compares to others in the area. Appellant submitted rent rolls and profit and loss statements. Carrabine also testified regarding the asking rent and contract rent for the subject property, noting that the largest tenant vacated its space in 2019. Appellant asserted that the Fiscal Officer's value is based on an income approach that utilizes a rental rate that the subject property could not support. Appellant provided a pro forma income approach that utilized the subject property's historical experience and a range of capitalization rates. The BOE cross-examined Carrabine and submitted information about several properties that had recently sold near the subject property. Appellant challenged the sales provided by the BOE, asserting that the income information for each of the properties is required to utilize the sales.

[4] The BOR issued a decision maintaining the initially assessed valuation. From this decision, appellant filed the present appeal and again argued that the value of the property should be reduced to $1,600,000, which was calculated based on the pro forma submitted to the BOR. Appellant claims that the property is unable to generate the income utilized by the Fiscal Officer in his income approach due to its age, condition, location, and amenities. Appellant argues that the subject's value should be reduced to reflect the income achievable by the subject property. Neither the county appellees nor the BOE submitted written argument.

[5] When cases are appealed from a board of revision to this Board, an appellant must prove the adjustment in value requested. *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 90 Ohio St.3d 564, 566 (2001). An appellant must present competent and

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

[6] In the present appeal, appellant did not present sufficient evidence to meet its burden. In lieu of an appraisal of the subject property, appellant challenged the Fiscal Officer's income approach, asserting that the subject property could not achieve the estimated income. Appellant relies on a pro forma based on the subject property's experience, noting that Carrabine has experience leasing and operating this and other properties in the area. 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. Additionally, although an owner is qualified to express an opinion of value, this Board nevertheless may properly reject that opinion when the evidence that forms the basis for the owner's opinion fails demonstrate the value requested. *Schutz v. Cuyahoga Cty. Bd. of Revision*, 153 Ohio St.3d 23, 2018-Ohio-1588, ¶20. Appellant neither submitted sufficient supporting documentation regarding market rents in the area nor demonstrated that Carrabine was qualified to offer expert testimony regarding the local rental market. As such, we find that appellant has failed to show that there is any error in the Fiscal Officer's initial value determination or that another value is appropriate.

[7] We acknowledge that the BOE submitted unadjusted sales information, which

appellant rightly challenged as unreliable to establish the value of the subject property. While comparable sales data is frequently utilized by appraisers to determine the value of a given property, the unadjusted sales discussed in this case are not probative evidence of value. See *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002. Nevertheless, the probative value of these sales is not at issue because an appellant cannot merely challenge the accuracy of the Fiscal Officer's value, and in this case, appellant failed to present sufficient evidence to establish that an alternative proposed value is the true value of the property. *Schutz*, at ¶9.

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

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

TRUE VALUE

$2,369,600

TAXABLE VALUE

$829,360

OHIO BOARD OF TAX APPEALS

KINGS LOCAL SCHOOLS BOARD OF EDUCATION, (et. al.), Appellant(s), vs. WARREN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-827 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - KINGS LOCAL SCHOOLS BOARD OF EDUCATION
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Entered Tuesday, October 12, 2021

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

[1] The appellant Board of Education ("BOE") appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real property, parcel numbers 16-24-251-006-1 and 16-24-251-006-2, for tax year 2019. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and any written argument submitted by the parties.

[2] The subject property is improved with a single-occupant commercial building constructed in 2018, purportedly operating as a Starbucks. The Auditor initially assessed the

subject's total true value at $645,680. The BOE filed a complaint with the BOR seeking an increase in value to $2,100,000.

[3] The BOR convened a hearing, at which the BOE presented evidence that the subject property sold from BRG4 Mason Grand LLC to Kings Mills Associates LLC on October 4, 2019, for $2,100,000, and argued that the sale price is the best evidence of the subject property on the tax lien date. The BOE further noted that the conveyance fee statement did not reflect that any consideration for items other than real property was included in the recorded purchase price.

[4] No one appeared on behalf of the appellee property owner to challenge the sale or the BOE's requested increase. Appraiser Ed Rinck appeared as a consultant to the BOR but did not provide an appraisal report opining the value of the subject property for purposes of the proceedings. Rinck stated that the sale price was too high, that it implied a rent higher than that achieved by other properties in the area, and that to accept the sale would upset equalization in the county. Rinck confirmed that the property was 100% complete on the tax lien date. At the conclusion of the BOR hearing, the Auditor indicated that he was confident with his value and believed that "this statement is wrong." The BOR issued a decision maintaining the initially assessed valuation, which the BOE appealed to this Board.

[5] On appeal, the BOE argues that the sale provides the best evidence of value and the appellees have not met their burden to prove that the sale price does not reflect market value. The BOE emphasized that the taxpayer did not appear or present any evidence controverting the sale, nor did it make clear it was even contesting the sale price. The county appellees submitted written argument in support of maintaining the Auditor's initial value, asserting that to accept the sale price "would result in a great disparity from other similarly situated properties in the County and would damage any attempt to apply equalization in valuation throughout the County." The county appellees further clarified, however, that its attorney did not represent the owner "and perhaps upon receipt of this brief, the owner may choose to file a brief in this matter explaining the sale in more detail." Nothing has been filed by the property owner.

[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 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.

[7] In the present appeal, the BOE relies on the October 2019 sale of the subject property and has provided sufficient evidence to meet its initial burden. As such, 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. It is uncontested that the sale was a recent, arm's-length transaction. Nor has there been any evidence submitted to show that any portion of the sale price was consideration for items other than the subject real property. There has been an allegation that the sale price may have included other tangible or intangible assets related to the Starbucks operating in the property, but no evidence has been offered that would support this contention. Likewise, aside from the general claim that the market could not support the sale, or the rental income derived from the sale, no market data has been presented, no lease has been submitted, nor has anyone with personal knowledge regarding the sale testified.

[8] To the extent that the BOR disregarded the sale, we acknowledge that 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. Moreover, mere presence of a lease is not sufficient to invalidate a sale:

> With this in mind, Terraza's argument is wrong in two respects. First, it incorrectly states that there is "no evidence" that the sale price reflected the value of the unencumbered fee-simple estate. The February 2013 sale price, which Terraza does not dispute, is the *best evidence* of the property's true value, subject to rebuttal. And second, R.C. 5713.03 does not now "*require*[ ] an inquiry into whether a lease in place reflects market rent at the time of a sale," as Terraza maintains in its first proposition of law. (Emphasis added.) Market rent becomes relevant only if an opponent presents it as evidence in an attempt to rebut a sale price.

Terraza, at ¶34. Thus, based on the lack of evidence in the present appeal to sufficiently rebut the sale, we find that it is the best evidence of the subject property's true value.

[9] It is, therefore, the order of this Board that the total true value of the subject property, as of January 1, 2019, was $2,100,000. Because the property appears to be subject to tax increment financing ("TIF") for tax year 2019, however, we hereby remand this matter to the Warren County BOR with instructions to allocate value among the parcels per the TIF agreement.

OHIO BOARD OF TAX APPEALS

REO INVESTMENTS LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2019-2721
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD	)	
OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:

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Entered Tuesday, October 12, 2021

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

[1] Appellant REO Investments LLC ("REO") appeals a decision of the Board of Revision ("BOR"), which determined the value of the subject real property, parcel number 702-01-038, 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 property is a single-family rental home, and the Fiscal Officer initially assessed its value at $75,600. REO filed a complaint with the BOR seeking a reduction in value to $36,000. The complaint at issue in the present appeal is one of several related complaints that involve similar evidence and testimony. BOR convened hearings on the matter during the consecutive days, with the hearing related to BTA No. 2019-2712 (BOR case number 641-16-067-2018) taking place first. The BOR incorporated the record for this hearing into the present

appeal. To the extent that the hearing record and evidence were not already certified in the transcript for this case, we incorporate the record from those BOR proceedings into the record for the present appeal. We note that during the BOR hearing for that case, the BOR set forth a list of sales of properties near the subject properties in several different cases. Although this list was discussed by the witnesses and members of the BOR, it was not included in the transcript on appeal. After further attempts by this Board to attempt to obtain the list, the BOR certified that it is not available. As such, are unable to consider the list of sales in our determination. This case, however, involved a property located in a different school district and a list of raw sales data from the BOR was included in the transcript.

[3] During the incorporated BOR hearing, REO presented testimony and written reports of appraiser Michael Thomas. Thomas testified that he viewed the interior of each property and relied primarily on the sales comparison approach to value for each appraisal. Thomas stated that he looked at only arm's-length sales that were exposed to the market through the multiple listings service ("MLS") and took place within the twelve months preceding the tax lien date. Thomas explained that he chose which properties were most comparable based on not only location proximity, but also similarity in condition and effective age to the relevant subject. Thomas also performed an income analysis that was offered to the BOR as an addendum because it was not included in his original report. Thomas indicated that he did not consider the income approach in his conclusion of value, but it supported his sales comparison analysis.

[4] REO also presented testimony from its managing member, Frank Dinardo, regarding its business model and the condition of the properties. Dinardo testified that REO is a building/renovation company that also purchases distressed properties, fixes the exterior, and quickly renovates the interior, and rents them to tenants. Dinardo stated that the repairs to properties that he intends to rent are done to make them free of any violations but not as nice as other properties that he renovates for owner-occupants.

[5] At the BOR hearing regarding the subject property, REO relied on testimony from

Dinardo regarding its condition and rental income. REO also presented testimony and a report from Thomas. The BOR questioned Thomas regarding his choices of comparable properties. Following the hearing, the BOR issued a decision maintaining the initially assessed valuation. On the Oral Hearing Journal Summary, the BOR indicated that it rejected the appraisal because Thomas used only lower value sales based on his distinction between "rental quality" and "owner quality." One member of the BOR dissented, though he observed that Thomas "consistently" chose to use the lower end of the market while all photographs appear to reflect the properties were in average (as opposed to below-average) condition.

[6] REO appealed the BOR's decision, again seeking a reduction in value based on Thomas's appraisal as support for the requested reduction. REO argues that this Board should find value consistent with Thomas's opinion because the appraisal is the only evidence presented from an independent third-party expert. The county appellees argue that the BOR properly rejected the appraisal as not being credible because Thomas used lower-priced sales based on his distinction between rental quality and owner quality.

[7] 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.

[8] 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, in addition to Dinardo's testimony regarding the physical characteristics of the property, REO relies on an appraisal report prepared by Thomas, a state-certified appraiser that personally viewed the interior and exterior of the subject property. Thomas appeared to testify before the BOR, describe his methodology, and explain the basis for his conclusions.

[9] Upon review of Thomas's appraisal, which provides an opinion of value as of tax lien date, was prepared for tax valuation purposes, and attested to by a qualified expert, we find that it constitutes competent and probative evidence of value. We further find that the value conclusion is reasonable and well-supported. We acknowledge the BOR's criticisms of his analysis, but we find that Thomas sufficiently explained the basis for his conclusions. We agree with the BOR that it would be improper for an appraiser to simply assume that because the subject property is utilized as a residential rental property, it must be in below-average condition and, consequently, restrict comparable properties to only those in the lower end of the range. In this case, however, despite his comments to that effect, Thomas further explained that he personally viewed the property and its condition, which he considered as he narrowed down sales to those properties that were most similar to the subject property. Thus, the record shows that Thomas did not merely assume that the property was in "below average" condition or "average condition" and choose the comparable properties based on that assumption. Rather, Thomas applied his observations of the property and his knowledge of the market to choose those properties most similar and to make any necessary adjustments.

[10] We observe that the record also contains unadjusted sales data from the BOR's independent research. In the absence of an appraisal which analyzes such data, however, 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). Accordingly, we find that, in the absence of any persuasive evidence or argument to the contrary, the Thomas appraisal reflects the value of the subject real property as of the tax lien date.

[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:

PARCEL NUMBER 702-01-038

TRUE VALUE $40,000

TAXABLE VALUE $14,000

OHIO BOARD OF TAX APPEALS

GARY G. & THERESA J. BRISTOW, (et. al.), Appellant(s), vs. BUTLER COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2021-361 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Wednesday, October 20, 2021

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

[1] The taxpayers appeal a decision of the Butler County Board of Revision ("BOR"), which denied their request for remission of the late-payment penalty associated with the untimely payment of property tax for the first half of tax year 2019. We proceed to consider this matter based upon the notice of appeal, statutory transcript, and written argument.

[2] The taxpayers filed an application for remission of the late-payment penalty associated with the tax period referenced above. By way of the application, they asserted that they made an online payment through their bank for property taxes by the due date; however, the county

failed to cash the check. The county Treasurer and Auditor recommended that the application be denied; the BOR accepted the recommendation and issued a decision that denied the application. 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. *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 taxpayers 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(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).

[5] The taxpayers specifically requested penalty remission based upon R.C. 5715.39(B)(4). However, the taxpayers failed to provide proof of timely mailing. They also asserted that their failure to timely pay the property-tax bill amounted to reasonable cause, not willful neglect, because they were unaware that the check, by which they paid the property-tax bill, was unpaid. Unfortunately, the taxpayers failed to provide proof that their property-tax check was unpaid.

[6] Moreover, though they claim otherwise, it is undisputed that the property-tax bill was unpaid for the first half of tax year 2019. 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. In sum, we are constrained to find that the taxpayers failed to demonstrate that they are entitled to remission of the late-payment penalty.

[7] Based upon the foregoing, we find that the taxpayers failed to provide competent, credible, and/or probative evidence that they are entitled to remission of the late-payment penalty associated with untimely payment of the property-tax bill for the first half of tax year 2019. We affirm the BOR's decision.

OHIO BOARD OF TAX APPEALS

CHICHAK LLC, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2021-126
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
MONTGOMERY COUNTY	)	
BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
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Entered Wednesday, October 20, 2021

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

[1] The appellant property owner appeals a decision of the Montgomery County Board of Revision ("BOR"), which determined the value of the subject property, parcel I39100701 0015, for tax year 2019. We proceed to consider this matter based upon the notice of appeal and certified statutory transcript.

[2] The property owner filed a complaint with the BOR, requesting the subject property's value be reduced from $405,480 to $60,000. At the BOR hearing, Mila Matasova and Israil Abbasov, a member of the property owner, appeared to submit testimony in support of the complaint. (Matasova also acted as an interpreter for Abbasov.) They testified that the property owner purchased the subject property, along with two other parcels that are not the subject of this appeal, for $450,000 in early 2018. Israil Abbasov testified that the property owner

performed very little work, such as cleaning and painting, subsequent to the $450,000 sale in early 2018 and that the subject property was in good condition in January 2019. Matasova noted that the building sitused on the subject property was used for two or five units of rentable office space. Upon questioning about the basis of the property owner's opinion that the subject property should be revalued at $60,000, they testified that business was slow, and the property owner could not afford the property taxes. Matasova noted that a fire destroyed one of the three buildings located at the particular address in August 2018, though it was unclear whether the destroyed building was sitused on the subject property. As the hearing was winding down, another member of the property owner, Ilkom Abbasov, appeared to testify in support of the complaint. He disagreed with portions of the previously provided testimony. He noted the building sitused on the subject property, which was destroyed in a fire, and he stated that the fire-damaged condition of the building was the basis of the property owner's opinion that the subject property should be valued at $60,000.

[3] At the BOR decision hearing, the BOR members noted that they forwarded information from the merit hearing to its consultant, Tyler Technologies, to assist with the BOR's decision-making. The BOR received information that a pole barn sitused on the subject property had been demolished. As a result, the BOR voted to reduce the subject property's value to $400,300. This appeal ensued. On appeal, the property owner requested that the subject property's value be reduced to $170,000.

[4] Neither the property owner nor the county appellees availed themselves of the opportunity to submit evidence at a hearing before this Board.

[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. *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 consideration with the property owner's $450,000 purchase of the subject property. The property record card contains information about the subject sale. *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision*, 138 Ohio St.3d 153, 2014-Ohio-104, at ¶¶42-44. Though the sale of a property is generally considered the best evidence of its value, *Terraza 8, L.L.C. v. Franklin Cty. Bd. of Revision*, 150 Ohio St.3d 527, 2017-Ohio-4415, at ¶31, in this instance, we lack sufficient information to make that determination. The record indicates that there was fire damage to one of the buildings sitused on the subject property between the sale date in early 2018 and tax lien date of January 1, 2019. See, generally, *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio 5932. As such, we cannot affirmatively conclude that the subject property was in the same condition on the relevant dates. It should also be noted that the record also indicates that two other parcels were included in the sale; however, because they are not the subject of this appeal, the record is void of any information about the two parcels. We proceed to review the property owner's argument and evidence.

[7] Upon review, we must conclude that the property owner failed to provide sufficient evidence to support reducing the subject property's value to $170,000, as it requested on appeal, or $60,000, as it requested before the BOR. The property owner primarily argued that the fire-damaged building sitused on the subject property necessitates a reduction to the subject property's value. Unfortunately, the record fails to quantify the *specific* diminution in value that resulted from the fire-damaged building.

[8] We acknowledge that the property owner submitted various documents to the BOR to support its position, which were included in the certified statutory transcript. However, upon review, it appears that most of these documents were received by the BOR on January 11, 2021, and February 19, 2021, several weeks *after* the BOR issued its decision on December 11, 2020. Because these documents were not submitted at the BOR hearing or at 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). Even if we were to consider these documents, we would not have given them any weight because they were offered for the truth of the matter asserted, which amounts to unreliable hearsay.

[9] It appears that the property owner argued that the subject property's value should be reduced because of the fire-damaged building. We note that the property record card demonstrates that there were three structures on the subject property; however, the record is void of any evidence to show which of the three structures were the subject of fire damage. To the extent that the property owner argued that the building's value should be reduced consistent with the estimated cost of repairs, $106,984.64, we must reject that argument. Ohio courts, and this Board, have 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)).

[10] In sum, we find the property owner's evidence to be an insufficient basis to establish the subject property's value.

[11] We now turn to the BOR's decision to reduce the subject property's value to $400,300. We can discern no basis for the BOR's decision. Though the BOR decision hearing noted that the BOR relied upon its appraisal consultant, Tyler Technologies, to reach its decision, the BOR failed to explain why it decided to reduce the subject property's value by $5,180, from $405,480 to $403,000. *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. As such, we are constrained to reinstate the subject property's initially assessed value.

[12] 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 property's value. We find that the subject property should be valued consistent with the following values:

True Value: $405,480

Taxable Value: $141,920

OHIO BOARD OF TAX APPEALS

CLEVELAND PROPERTY DEVELOPMENT GROUP LLC, (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2020-2119
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

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CUYAHOGA COUNTY
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Entered Wednesday, October 20, 2021

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 138-07-005, for tax year 2019. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the telephonic hearing before this Board.

[2] At the outset, we must note that although appellant requested that this matter be resolved through this Board's small claims docket, this appeal does not qualify for such treatment. R.C. 5703.021(C)(2) provides that after an appeal is assigned to the small claims docket, the Board may reassign the case to the regular docket only with the written consent of all the parties or as authorized under 5703.021(D), which states "[n]otwithstanding division (B) of this section,

theboard shall reassign an appeal initially assigned to the small claims docket to the regular docket upon the request of a party that is a taxpayer, when the appeal presents an issue of public or great general interest or presents a constitutional issue, or when the board determines that the appeal does not meet the requirements of division (B) of this section." R.C. 5703.021(B)(1) authorizes appeals to be assigned to the small claims docket if the appeal "[c]ommenced under section 5717.01 of the Revised Code in which the property at issue qualifies for the partial tax exemption described in section 319.302 of the Revised Code. The property subject to the instant appeal is a commercial property and does not meet this standard. Accordingly, this matter does not qualify for the small claims docket and will proceed on the regular docket. See *Megaland GP, L.L.C. v. Franklin Cty. Bd. of Revision*, 145 Ohio St.3d 84, 2015-Ohio-4918.

[3] The Fiscal Officer initially assessed the subject's total true value at $45,200. Appellant filed a complaint with the BOR seeking a reduction in value to $10,000. At the BOR hearing, appellant's member, George Caraman, acknowledged that appellant purchased the subject property on September 20, 2018, for $55,000 from an unrelated party, though appellant was still making payments because the transaction was seller-financed. Caraman explained that the property had been damaged by fire prior to the sale and that he discovered the extent of the damage only after the purchase. Caraman asserted that due to the extent of the necessary repairs, the property should be assessed only based on its land value. The BOR issued a decision increasing the initially assessed valuation to $55,000, which led to the present appeal. During this Board's telephonic hearing, Caraman again maintained that the value of the property should be reduced based on its fire damage, further asserting that the building has been condemned and should be demolished. Appellant submitted photographs of the property and comparable sale information as support for its requested reduction. The county appellees argued that the sale price provides the best evidence of the property's value.

[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). 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.

[5] In the present appeal, it is undisputed that the property transferred from Davis Property Management Ltd. to Cleveland Property Development Group LLC on September 20, 2018, for $55,000. Caraman testified that the property was not listed at the time of the sale, but that he saw the property and sought out the seller, interested in negotiating a purchase. The parties ultimately agreed on a purchase price of $55,000, with the seller financing the transaction. Caraman asserts that at the time of the sale, however, he was not aware of the extent to which the fire damage impacted the building and that he has since discovered that appellant overpaid for the property.

[6] We find that the sale was a recent, arm's-length transaction. A lack of exposure to the market and 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."). Furthermore, the subsequent understanding of the extent of the damage to the subject property is not sufficient to invalidate the sale. 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.

[7] We further find that appellant has not presented evidence that is more probative than the recent arm's-length sale of the subject property. Photographs and testimony regarding the condition of the subject property are 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). Additionally, appellant's comparable sales information does not establish a particular value. While comparable sales data is frequently utilized by appraisers to determine the value of a given property, unadjusted sales are not probative evidence of value because Caraman has not demonstrated sufficient knowledge about the circumstances of those sales or adjusted the sale prices to account for differences among the properties. *Moskowitz v. Cuyahoga Cty. Bd. of Revision*, 150 Ohio St.3d 69, 2017-Ohio-4002.

[8] It is, therefore, the order of this Board that the true and taxable values of the subject property, as of January 1, 2019, were as follows:

TRUE VALUE

$55,000

TAXABLE VALUE

$19,250

OHIO BOARD OF TAX APPEALS

R. SKIP SHAFER, (et. al.),	)	
	)	
Appellant(s),	)	CASE NO(S). 2020-1768
	)	
vs.	)	
	)	(REAL PROPERTY TAX)
HARDIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
	)	
Appellee(s).	)	

APPEARANCES:
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Entered Wednesday, October 20, 2021

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 41-12003.0000, for tax year 2019. 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 consists of five acres of land improved with a 980-square-foot farmhouse in "very poor" condition. The Auditor initially assessed the subject's total true value at $22,600. Appellant filed a decrease complaint with the BOR, asserting that the property had suffered over $100,000 in damage and the house was unlivable.

[3] The BOR convened a hearing, at which appellant testified regarding various aspects of the poor condition of the subject property, including both the farmhouse and the land. Appellant primarily focused on an event in 2011 that purportedly resulted in damage to the real property, various pieces of personal property (such as a lawnmower, 4-wheeler, and other related

equipment), and a tax assessment from the township. Appellant claimed that these defects had not been remedied and that the five acres were unable to be farmed. The BOR explained that after review, its appraiser determined that $100 was an appropriate value for the farmhouse but that the value of the land would not be reduced because it reflected the value of a homesite with a well and septic. The BOR issued a decision reducing the initially assessed valuation to $21,700 based on the appraiser's recommendation, which led to the present appeal. On appeal, appellant again focused on the subject property's condition and the amount of taxes assessed since 2011.

[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, 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 regarding the condition of the 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 alone is not sufficient to satisfy appellant's burden on appeal. We note that our review is limited to the property's value as of January 1, 2019, and not the propriety of any actions purportedly taken by or on behalf of the township in 2011.

[5] Testimony regarding the negative impact of the property's condition or prior tax assessments does not support a reduction. In *Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1996), the Supreme Court pointed out the affirmative burden attendant to advancing claims of negative conditions, emphasizing that a party must demonstrate more than the mere existence of factors potentially affecting a property, but the impact they have upon the property's value. See, also, *Gupta v. Cuyahoga Cty. Bd. of Revision*, 79 Ohio St.3d 397 (1997). Accordingly, we find that appellant has failed to present sufficient support for their opinion of value for the subject property.

[6] Additionally, we note that the BOR reduced the value of the property after considering

its condition. Thus, it appears that the BOR addressed appellants' concern, 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* at ¶10.

[7] It is, therefore, the order of this Board that the true and taxable values of the subject property, as of January 1, 2019, were as follows:

TRUE VALUE

$21,700

TAXABLE VALUE

$7,600

OHIO BOARD OF TAX APPEALS

NATIONWIDE COMMUNITY REVITALIZATION LLC, (et. al.), Appellant(s), vs. ALLEN COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1270 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - NATIONWIDE COMMUNITY REVITALIZATION LLC
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For the Appellee(s) - ALLEN COUNTY BOARD OF REVISION
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Entered Wednesday, October 20, 2021

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 28-0111-04-012.000, for tax year 2019. 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. We note that appellant attached documents to its brief that were purportedly submitted to the BOR but excluded from the transcript, including an email that was sent in response to a question during the hearing. Because these documents were offered in support of the complaint and considered by the BOR, they are properly part of the record.

[2] The subject property is improved with a single-family home. The Auditor initially assessed the subject's total true value at $94,600. Appellant filed a complaint with the BOR

seeking a reduction in value to $44,352. The BOR convened a hearing, at which appellant argued that the value of the property should be reduced consistent with the price at which it recently transferred among unrelated parties. Appellant did not offer any testimony from an individual with knowledge of the sale. Following the hearing, appellant sent an email that indicated that someone from the ownership confirmed the property had been listed and marketed prior to the sale.

[3] The BOR issued a decision maintaining the initially assessed valuation consistent with its appraiser's recommendation. From this decision, appellant filed the present appeal. On appeal, appellant again argues that the subject property should be valued consistent with the price at which it recently transferred via an arm's-length transaction. The county appellees contend that appellant failed to meet its burden because it did not demonstrate the propriety of the allocation and the sale was not an arm's-length transaction.

[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 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] In the present appeal, appellant purchased the subject property on September 9, 2019, from the Bank of New York Mellon Trust Company as part of a bulk transaction that involved nine

other parcels throughout Ohio and other states. The reported sale price for the subject property was $44,352, though the total transaction amount was $315,645. There is no information in the record as to how the parties allocated the total sale price among properties.

[6] Initially, we reject the county appellees argument that we must reject the sale because the seller obtained title to the property as a result of a foreclosure. 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.

[7] Nevertheless, we agree that the record in this case does not support the requested reduction. As the party both advocating the sale and in possession of any relevant information, appellant was required to prove the propriety of the allocation upon which it relies. *RNG Properties, Ltd. v. Summit Cty. Bd. of Revision*, 140 Ohio St.3d 455, 2014-Ohio4036, ¶36. While counsel stated that the purchase price for each property was separately negotiated, there is no evidence to corroborate that assertion or testimony from an individual with knowledge of the transaction. As statements of counsel are not evidence, we find no basis to conclude that the allocation as recorded accurately represents the value of the subject property. Accordingly, we find that appellant failed to meet its burden.

[8] It is, therefore, the order of this Board that the true and taxable values of the subject property, as of January 1, 2019, were as follows:

TRUE VALUE

$94,600

TAXABLE VALUE

$33,110

OHIO BOARD OF TAX APPEALS

ROCK1234, LLC; CORONA VERDE, LLC; FORSELLES II PARTNERS, LL PER AUDITOR, (et. al.),	)	CASE NO(S). 2021-1249
Appellant(s),	)	
vs.	)	(REAL PROPERTY TAX)
LORAIN COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - ROCK1234, LLC; CORONA VERDE, LLC; FORSELLES II PARTNERS, LL PER AUDITOR
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SHEFFIELD-SHEFFIELD LAKE CITY SCHOOLS BOARD OF EDUCATION
Represented by:
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PEPPLE & WAGGONER, LTD.
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Entered Wednesday, October 27, 2021

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

[1] This case is before the Board on two motions. The first is a motion to affirm the Lorain County Board of Revision's ("BOR") decision dismissing the appellants' valuation complaint for lack of jurisdiction. The second is a motion by appellants asking this Board to remand this case with instructions to the BOR to consider the merits in the first instance. We deny the first,

grant the second, and remand this case for the BOR to consider the merits in the first instance.

[2] Prior to late March 2021, Forselles II Partners, LLC ("Forselles") owned the subject property. The first relevant record is a limited warranty deed transferring the property from Forselles to Rock1234 LLC ("Rock"). The deed was signed by Kathy Narum, Forselles' managing partner, on March 23, 2021, before a notary in California. The record also contains a settlement statement indicating the parties closed on March 30, 2021. That same day, a valuation complaint was filed by counsel on behalf of Rock, Forselles, and Corona Verde, LLC. The deed was recorded on April 2, 2021. The record contains the conveyance fee statement, signed on March 29, 2021, and filed on April 2, 2021.

[3] At the BOR hearing, counsel presented the BOR with relevant documents, e.g., the deed, the applicable purchase agreement, the settlement statement, conveyance fee statement, and marketing materials. Counsel also called the broker. The Sheffield-Sheffield Lake Board of Education ("BOE") was represented by counsel. The BOR ultimately dismissed for lack of jurisdiction "[b]ased on research which found the complainant was not in ownership by the requisite time period." The case was appealed to this Board, and the parties filed cross-motions.

[4] We find the BOR erred when it dismissed the case for lack of jurisdiction. 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, ¶ 11. The owner of a subject property is such a party since that complainant would own property in the county. In this case, the county appellees claim that ownership changed on April 2, 2021, when the deed was recorded and the conveyance fee statement was filed, while appellants maintain that title transferred when the sale closed on March 30, 2021. The Ohio Supreme Court has been clear that ownership changes when a seller delivers, and a buyer accepts an executed deed. *HIN, LLC v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687. While the recording of a deed perfects delivery, there is no requirement that the deed be recorded to pass title. *See Turney, L.L.C. v. Cuyahoga Cty. Bd. of*

Revision, 8th Dist. Cuyahoga No. CV-14-834429, 2015-Ohio-4086. Furthermore, there is no requirement that a complainant legal title holder must also be the recorded title holder. *Id.* at ¶ 17. Putting aside that complaint was filed on behalf of both Rock and Forselles, Rock clearly had independent standing as the owner.

[5] We find the BOR erred in dismissing the complaint. Accordingly, we remand this case to the BOR with instructions to consider the merits in the first instance.

OHIO BOARD OF TAX APPEALS

NORDONIA HILLS CITY SCHOOLS BOARD OF EDUCATION, (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2020-1410
vs.	)	(REAL PROPERTY TAX)
SUMMIT COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - NORDONIA HILLS CITY SCHOOLS BOARD OF EDUCATION
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Entered Monday, November 8, 2021

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

[1] The Board of Education for the Nordonia Hills City Schools ("BOE) appeals a decision of the Summit County Board of Revision ("BOR), which determined the value of the subject property, parcels 33-02101, 33-02102, and 33-02103, for tax year 2019. We proceed to consider this matter based upon the notice of appeal, certified statutory transcript, and BOE's written argument.

[2] The BOE filed a complaint with the BOR, requesting the subject property be revalued from a combined value of $425,000. By way of the complaint, the BOE requested that the subject property be revalued consistent with the $425,000 total price at which it transferred in

February 2020. The property owner filed a countercomplaint, objecting to the request. By way of the complaint, the property owner noted that it would be unfair to value the subject property consistent with the subject sale for tax year 2019. The BOR held a brief hearing on the matter at which only the BOE appeared. In doing so, the BOE submitted a conveyance fee statement and general warranty deed, which memorialized the $425,000 transfer of the subject property from Raymond A. Kuchar to the current property owner in February 2020. Based upon the evidence presented, the BOE argued that the subject property should be revalued accordingly. At the BOR decision hearing, the BOR members voted to reject the subject sale based upon the date on which the subject property transferred. The BOR subsequently issued a decision that retained the subject property's value. This appeal ensued.

[3] Although this matter was scheduled for a merit hearing at this Board's office, such hearing was canceled when the parties either waived their appearance of the hearing or when they failed to disclose evidence consistent with the case management schedule. The BOE and property owner submitted written argument to assert their respective positions.

[4] Before we consider the merits of this appeal, we must first dispose of a preliminary issue. The property owner submitted written argument to this Board, which included a combination of factual statements and legal argument, filed by Victor Sohar on behalf of the property owner. For two primary reasons, we will not consider the property owner's written argument and it is stricken from the record. First, as previously noted, no one appeared at the BOR on behalf of the property owner at the BOR hearing and the property owner did not assert a right to an evidentiary hearing before this Board. As a result, the property owner waived opportunities to testify about the topics referenced in the written argument and, as a consequence, the factual statements amount to hearsay. *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 isinadmissible. Evid.R. 802."). Factual assertions rendered outside the circumscribed rules of

evidence are excluded based upon a time-tested practice designed to insure truth in the fact-finding process.

[5] Second, there was no indication that Victor Sohar was an attorney licensed to practice law in Ohio and, therefore, authorized to advocate on behalf of the property owner, a corporate entity. Thus, it appears that he engaged in the unauthorized practice of law by attempting to represent the property owner in this matter, i.e., filling written argument. *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).

[6] We proceed to consider the merits of this appeal. An arm's-length sale constitutes the best evidence of a property's value. *Terraza 8, LLC 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 details about the sale, e.g., sale price, parties, and sale date. *Lunn*, at ¶15 (no additional testimony is usually necessary); *Dauch v. Erie Cty. Bd. of Revision*, 149 Ohio St. 3d 691, 2017-Ohio-1412, at ¶18 (noting that a party need only present minimal evidence of a sale when there is "no real dispute about the basic facts of the sale."). The opposing party must then, to succeed, rebut the presumption created by the sale.

[7] Here, upon presentation of the sale documents, the BOE created a rebuttable presumption that the subject sale reflected the subject property's value as of the tax lien date of

January 1, 2019. The burden then shifted to the property owner and/or the BOR to submit competent, credible, and/or probative evidence to rebut the presumptions accorded to the subject sale. Neither the property owner nor the BOR satisfied such burden. As noted above, the property owner did not appear at the hearing before the BOR or request a hearing before this Board and, as a result, it has not submitted any rebuttal evidence.

[8] The BOR has also failed to submit any rebuttal evidence. Though it is unclear what the BOR meant by "the sale's date" at its decision hearing, to the extent that the BOR concluded that the subject sale was too far removed from the tax lien date (despite occurring 13 months later), the BOR was obligated to provide evidence about changed market conditions. *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588. A review of the record clearly demonstrates that the BOR failed to provide such evidence. Furthermore, as noted above, a sale that occurred after the tax lien date is presumed to reflect real property value, subject to rebuttal. *Lone Star*, supra. (We reject the property owner's reasoning, cited in the countercomplaint, for this reason as well.) It is also well known that R.C. 5715.19(D) states that "the determination of any such complaint shall relate back to the date when the lien for taxes *** for the current year attached ***." The lien for taxes for each year attaches on the first day of January. R.C. 323.11. In sum, the record and relevant law do not support the BOR's decision to reject the subject sale.

[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 submitted sufficient evidence at the BOR hearing to demonstrate that the subject property should be valued consistent with the subject sale. Given the total lack of rebuttal evidence, we also find that the BOR erred when it rejected the subject sale as the best indication of the subject property's value. Absent an affirmative demonstration that the subject sale is not a qualifying sale for tax valuation purposes, we find the existing record demonstrates that the transaction was recent and arm's-length and constitutes the best indication 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:

Parcel 33-02101

True Value: $186,010

Taxable Value: $ 65,100

Parcel 33-02102

True Value: $ 128,880

Taxable Value: $45,110

Parcel 33-02103

True Value: $110,110

Taxable Value: $38,540

OHIO BOARD OF TAX APPEALS

MARK A WISE, TRUSTEE AND DAVID S. WISE, TRUSTEE, (et. al.),	)	
Appellant(s),	)	CASE NO(S). 2020-478
vs.	)	(REAL PROPERTY TAX)
CUYAHOGA COUNTY BOARD OF REVISION, (et. al.),	)	DECISION AND ORDER
Appellee(s).	)	

APPEARANCES:

For the Appellant(s) - MARK A WISE, TRUSTEE AND DAVID S. WISE, TRUSTEE
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SOLON CITY SCHOOLS BOARD OF EDUCATION
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Entered Monday, November 8, 2021

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

[1] The property owner appeals a decision of the Cuyahoga County Board of Revision ("BOR"), which determined the value of the subject property, parcel 953-22-028, for tax year 2018. 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 requesting the subject property's

value be reduced from $314,200 to $142,434.55. By way of the complaint, the property owner challenged the subject property's land-use code, multi-tenant warehouse, given that it was vacant land, and cited the lower assessed values of neighboring properties. The affected Board of Education ("BOE") filed a countercomplaint, objecting to the request. At the hearing before the BOR, the property owner and BOE appeared through counsel to submit argument and/or evidence into the record. In its presentation, the property owner submitted information from the county Fiscal Officer's website about the subject property and two neighboring properties. Counsel for the property owner asserted that the subject property was the subject of a parcel split in 2016. Based upon the argument and documents submitted, the property owner argued that the subject property should be revalued consistent with its request. Counsel for the BOE asked a number of questions of opposing counsel; however, the record indicates that the property owner's counsel was not sworn in as a witness or otherwise had firsthand information about the topics on which he spoke. The BOR issued a decision that retained the subject property's value and this appeal ensued.

[3] Though this matter was initially scheduled for a merit hearing, at the property owner's request, such hearing was canceled after the parties mutually agreed to submit written argument instead. Only the property owner submitted written argument to assert its respective position.

[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. *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] Based upon our review of the record, we find that the property owner failed to provide competent, credible, and/or probative evidence of value. The property owner advanced two primary arguments to assert that the subject property had been overvalued. We reject each argument in turn.

[6] First, the property owner argued the subject property's value should be reduced because the Fiscal Officer erroneously classified the subject property as a warehouse instead of vacant land. This argument lacks merit. We note that the property record card, the place where the Fiscal Officer 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 R.C. 5713.03, demonstrates that the subject property *is not* valued as if it has an improvement, i.e., that there is an actual warehouse building situsedon the subject property. See, also Ohio Adm. Code 5703-25-09. We note that the property record card also shows that the subject property was a newly created parcel split from parcel 953-22-019 and that the classification or land use code was changed from "4000" to "4818" effective as of January 1, 2017.

[7] Furthermore, even if we agreed that the subject property's classification or land-use code should be changed, the property owner failed to demonstrate that such a change would result in a $171,765.45 decrease to the subject property's value to $142,434.55 or any other value lower than its initially assessed value. Indeed, the record is void of any explanation as to how the property owner arrived at its opinion of value.

[8] Second, the property owner argued that the subject property's value should be reduced to bring it more in line with the assessed values of two neighboring properties and submitted information about them from the Fiscal Officer's website, focusing entirely on their assessed values. 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. The Supreme Court has considered, and rejected, the utility of comparing assessed values amongst parcels to determine value. See, e.g., *Benedict v. Bd. of Revision*, 170 Ohio St. 62, 63 (1959) ("It is to be borne in mind that the determination of the true value of each parcel of real estate, with the improvements placed on it, is a separate undertaking and does not wholly depend on values accorded other parcels in the same vicinity."); *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.").

[9] It should be noted that the property owner elected to forego opportunities to submit testimonial evidence into the record at a hearing before the BOR or before this Board. As a consequence, this Board was limited to considering the documents, which had very little evidentiary value, submitted at the BOR. We acknowledge that the counsel for the property owner made statements at the BOR hearing and in written argument to this Board. However, it is important to stress that 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, affirmed on appeal 8th Dist. No. CA-20-109470, 2020-Ohio-6742 ("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.)

[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 has failed to satisfy the evidentiary burden 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's values are as follows as of the relevant tax lien date:

True Value: $314,200

Taxable Value: $109,970

OHIO BOARD OF TAX APPEALS

MARYLAND ESTATES INC., (et. al.), Appellant(s), vs. CUYAHOGA COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2019-444 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

For the Appellant(s) - MARYLAND ESTATES INC.
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Entered Monday, November 8, 2021

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

[1] Maryland Estates, Inc., appeals from a decision of the Cuyahoga County Board of Revision ("BOR") retaining the Fiscal Officer's value of parcel 139-20-001 for tax year 2017. We decide the case on the notice of appeal, the statutory transcript, and any written argument.

[2] According to the complaint, the property is improved with a store and apartments. The Fiscal Officer valued the property at $150,100 for tax year 2017. The property owner filed a complaint seeking an amended value of $37,500. The BOE filed a counter-complaint asking

that the Fiscal Officer's value be retained. At the BOR hearing, the property owner called its maintenance supervisor. He testified the property is in disrepair and largely uninhabitable. The property owner, through counsel, also presented an appraisal valuing the property at $37,500, as of February 11, 2019. The appraisal was created by Gary Sparano, but he was not called to testify. One of the BOR members noted the property sold in 2015 via sheriff sale for $90,000. The BOR ultimately retained the Fiscal Officer's value for lack of probative evidence of value.

[3] When cases are appealed from the BOR 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.

[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 an arm's-length transaction. *Olentangy Local Schools Bd. Of Edn. v. Delaware Cty. Bd. of Revision*, 141 Ohio St.3d 243, 2014-Ohio-4723, ¶ 2. No party relies on the 2015 sheriff's sale, and no party has presented evidence about the conditions of that sale. Accordingly, we find that sale is not indicative of value.

[5] The property owner relies primarily on the Sparano. It appears the appraisal was completed for tax litigation purposes, but the appraiser was not called to testify. We find that appraisal is not probative evidence of 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 a value as of the relevant tax-lien date. We have also generally rejected such appraisals in the past, and the Ohio Supreme Court has affirmed us. The Ohio Supreme Court has 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.'" *Jakobovitch v. Cuyahoga Cty. Bd. of Revision*, 152 Ohio St.3d 187, 2017-Ohio-8818, ¶ 15 (quoting *Freshwater v. Belmont Cty. Bd. of Revision*, 80 Ohio St.3d 26, 30 (1997)). Additionally, Sparano utilized six sales, but all of those sales occurred well after the relevant tax-lien date. Most sales occurred well over a year after the tax-lien date. Indeed, sale six occurred almost two years after the tax-lien date.

[6] To the extent appellant argues the property suffers from defects, the Ohio Supreme Court has been very clear that a litigant must do more than prove property suffers from negative characteristics. A party must quantify the value of those negative characteristics. It is insufficient to prove negative characteristics decrease the value to some extent. *See Throckmorton v. Hamilton Cty. Bd. of Revision*, 75 Ohio St.3d 299 (1997); *Hotel Statler v. Cuyahoga Cty. Bd. of Revision*, 75 Ohio St.3d 227 (1997); *Shinkle v. Ashtabula County Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. The litigant must quantify the impact on value.

[7] We find no other probative evidence of value in the record. Because we find appellant has not carried its burden, we order the property valued as follows for tax year 2017:

TRUE VALUE

$150,100

TAXABLE VALUE

$52,540

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). 2020-1136 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:

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Entered Monday, November 8, 2021

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 H4100-119-000-072, for tax year 2019. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, and the BOE's written argument.

[2] The Auditor initially assessed the subject's total true value at $1,790,530. The BOE filed

a complaint with the BOR seeking an increase in value to $3,750,000. At the BOR hearing, the BOE relied on a conveyance fee statement that reflected a transfer from Cole MT Oxford OH, LLC to Agree Limited Partnership for $3,750,000 on March 25, 2019. The BOE noted that line 6 reflected that it was a "fee simple" transaction and the purchase price was listed on line 7. The BOE argued that because it provided evidence of a recent, arm's-length sale, the value of the subject property should be set at the sale price. Agree LP did not present any evidence or testimony regarding the circumstances of the sale or make any express arguments regarding the reliability of the sale. Agree LP instead relied on a letter that set forth general legal argument regarding sales as evidence of value and requested that the BOR retain the Auditor's value.

[3] The BOR issued a decision maintaining the initially assessed valuation because it found that the BOE failed to meet its burden of proof. During the BOR decision hearing, a member commented that Agree LP had submitted some information that indicated the transaction could have potentially been a leased-fee sale. The BOR member further stated that the BOR could not determine from the conveyance fee statement that the sale aligns with the definition of taxable value pursuant to R.C. 5713.03 because it did not have any knowledge of the subject property transferring in the unencumbered fee simple interest among willing market participants after a reasonable length of exposure or marketing time.

[4] From this decision, the BOE filed the present appeal. The BOE argues that because it presented sufficient evidence regarding a recent, arm's-length sale of the subject property, Agree LP had the burden to rebut the presumption that the sale price represented the true value of the subject real property. The BOE further maintains that the Butler County BOR continues to ignore the law and shifts the burden to the BOE to prove that the property sold in the unencumbered fee simple interest rather than on the party opposing the sale to bring forth evidence that it did not. Neither Agree LP nor the county appellees submitted written argument in support of their respective positions.

[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 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, the BOE relies on the March 2019 sale of the subject property, and has provided sufficient evidence to meet its initial burden. As such, 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. It is uncontested that the sale was a recent, arm's-length transaction. Nor has there been any evidence submitted to show that any portion of the sale price was consideration for items other than the subject real property. There has been a suggestion that the subject property may have sold subject to a lease, but no evidence has been offered that would support this contention. Even if the property did sell with a lease in place, there is no evidence in the record that any factors were present that may cause the sale of a leased property to be unreliable evidence of value or that they were reflected in the sale price. See *GC Net Lease @ (3) (Westerville) Investors, L.L.C. v. Franklin Cty. Bd. of Revision*, 154 Ohio St.3d 121, 2018-Ohio-3856, ¶11. Moreover, mere presence of a lease is not sufficient to invalidate a sale:

> With this in mind, Terraza's argument is wrong in two respects. First, it incorrectly states that there is "no evidence" that the sale price reflected the value

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

Terraza, at ¶34. Thus, based on the lack of evidence in the present appeal to sufficiently rebut the sale, we find that it is the best evidence of the subject property's true value.

[7] It is, therefore, the order of this Board that the true and taxable values of the subject property, as of January 1, 2019, were as follows:

TRUE VALUE

$3,750,000

TAXABLE VALUE

$1,312,500

OHIO BOARD OF TAX APPEALS

BUTCHKO, DAVID & YUKI, (et. al.), Appellant(s), vs. UNION COUNTY BOARD OF REVISION, (et. al.), Appellee(s).	)	CASE NO(S). 2020-1891 (REAL PROPERTY TAX) DECISION AND ORDER

APPEARANCES:
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Entered Tuesday, November 16, 2021

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

[1] The property owners appeal a decision of the Union County Board of Revision ("BOR"), which determined the value of the subject property, parcel 39-0029010.0950, for tax year 2019. 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 owners filed a complaint with the BOR, requesting the subject property's assessed value be reduced from $423,340 to $406,350. By way of the complaint, the property owners asserted that the subject property's assessed value increased too much over its assessed value for tax year 2018. At the BOR hearing on the matter, the property owners appeared to offer argument and/or evidence in support of the complaint. They argued that the subject property's assessed value was too high when compared to neighboring properties and asserted that county records did not accurately reflect the square footage of their home. There was some discussion about the subject property's assessed value history. The BOR subsequently issued a decision that retained the subject property's initially assessed value. This appeal ensued.

[3] This Board convened a virtual hearing at which both parties appeared to supplement the record. The property owners expanded upon their previously provided testimony, arguing that it was unfair to value the subject property higher than neighboring properties particularly when all the properties were built at approximately the same time. In support of their arguments, they

submitted a packet of documents that included a spreadsheet, which calculated a ratio based upon averaging of assessed values over original sales prices. They were examined and cross-examined by this Board's attorney examiner and counsel for the county appellees, respectively. The county appellees argued that the property owners failed to satisfy the evidentiary burden on appeal. It should be noted that the property owners subsequently submitted documentation to demonstrate that there was an error in the county's records about the square footage of their home. Based upon such information, the BOR corrected its records, which resulted in a decrease to the subject property's value to $414,260.

[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. *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 are constrained to find that the property owners failed to satisfy their evidentiary burden. They advanced two primary arguments to argue that the subject property had been overvalued. First, they argued that the subject property's assessed value was too high when compared to the assessed values of neighboring properties. The Supreme Court has considered, and rejected, the utility of comparing assessed values amongst parcels to determine value. For example, in *Benedict v. Bd. of Revision*, 170 Ohio St. 62, 63 (1959), the Court held that "[i]t is to be borne in mind that the determination of the true value of each parcel of real estate, with the improvements placed on it, is a separate undertaking and does not wholly depend on values accorded other parcels

in the same vicinity. A particular parcel, because of its location and the improvements thereon, may properly be given a higher value than other parcels in the same neighborhood, without discrimination resulting. After all, true value of the particular property is the controlling consideration, and this is a question of fact primarily within the province of the taxing authorities." *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.").

[6] Second, they argued that the subject property's assessed value was too high when compared to its assessed value for the prior tax year. We note that the county Auditor was under the statutory duty to reevaluate all real property in the county for tax year 2019 and, as such, the subject property's assessed value for tax year 2018 could not carry forward. R.C. 5713.01. 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." 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 OhioSt.3d 26 (1997).

[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 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."). 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: $414,260

Taxable Value: $144,990