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II. STATEMENT OF THE CASE AND FACTS

In January 2009, Wasserpach IV, LLC ("Wasserpach"), filed a Complaint against the Valuation of Real Property with the Warren County Board of Revision ("Board") regarding parcel no. 16334760012, account number 0825495, and parcel no. 16334760011, account number 0825323. Complaint against the Valuation of Real Property, 01/22/2009, T.d. 08-113, & Amended Complaint against the Valuation of Real Property, 06/05/2009, T.d. 08-113. Wasserpach was seeking a reduction in the fair market value of the parcels for the tax year 2008. *Id.* The Board of Education for the Mason City School District ("BOE") also filed a complaint with the Board regarding Wasserpach's property, requesting the Board not to reduce the fair market value of the Property. Complaint against the Valuation of Real Property, 02/03/2009, T.d. 08-113. Wasserpach's parcels consisted of commercial rental property and were located at 5123 Bowen Drive, Mason, Warren County, Ohio. Transcript on Appeal for the Board of Revision, 08/12/2009, T.p. 08-113, p. 1.

On August 12, 2009, the Board held a hearing regarding Wasserpach's complaints. *Id.* At the hearing, Gene Manion, a certified general appraiser from the Appraisal Company of America, testified for Wasserpach. *Id.* at 2. Mr. Manion testified that, for his appraisal of the parcels, he used the income approach to determine the parcels' market value. *Id.* Mr. Manion testified that, when he conducted his appraisal of the parcels, only 57% of the total rental area was under lease, which had resulted in a loss of 56% of Wasserpach's annual income. *Id.* at 3. Mr. Manion testified that Wasserpach reduced the rent for the parcels from \$20.00 per square foot to \$14.00 per square foot but failed to find new tenants at that price. *Id.* at 4. Based on his analysis, Mr. Manion opined that the parcels' true market value was \$2,942,000.00. *Id.* at 6.

After Mr. Manion, Edward C. Rinck, an appraiser with the firm of Ward and Associates, testified for Warren County. *Id.* at 12. Regarding parcel 16334760011, account number 0825323, Mr. Rinck recommended no change to the fair market value. *Id.* Regarding parcel no. 16334760012, account number 0825495, Mr. Rinck testified that he agreed with Mr. Manion's approach in determining value. *Id.* Mr. Rinck did his own analysis, which took into account the vacant units and used \$12.00 per square foot as the rental rate. *Id.* Mr. Rinck recommended decreasing the value of parcel no. 16334760012, account number 0825495, to \$3,322,790.00, which resulted in a total value for both parcels of \$3,353,900.00. *Id.*

The Board acknowledged that Wasserpach had stated in its complaints that the parcels had previously sold for \$5,350,000.00 on December 15, 2006. *Id.* at 1, see also Complaint against the Valuation of Real Property, 01/22/2009, T.d., & Amended Complaint against the Valuation of Real Property, 06/05/2009, T.d. Counsel for the BOE advocated the use of that prior sale price as the true market value but failed to present any evidence regarding the prior sale. *Id.* at 8 & 12.

While no evidence of the 2006 sale was ever introduced by any party, the Board took notice of the sale. Despite that, the Board determined that the parcels had been negatively affected by the market between the date of the sale and the date of the tax lien significantly enough to cast doubt on the validity of the 2006 sale price as the parcels' true market value. *Id.* at 13. Thus, the Board adopted Mr. Rinck's recommendation and adjusted the parcels' value to \$3,353,900.00. *Id.* and Board's Decision, 09/16/2009, T.d. 08-113.

Afterwards, the BOE filed an appeal of the Board's decision with the Ohio Board of Tax Appeal ("BTA"). Notice of Appeal from a Decision of a County Board of Revision to the Board of Tax Appeals, 09/16/2009, T.d. 2009-K-2364. The BTA held a hearing

at which only the BOE's counsel appeared. Decision and Order, 11/16/2012, T.d. 2009-K-2364, p. 1. Even though the BOE's counsel was there at the hearing, she failed to adduce evidence before the BTA. *Id.* at 3. She merely argued that the Board had erred when it reduced the value. *Id.* To support this argument, the BOE argued that the 2006 sale was the best evidence regarding the parcels' value because the BOE asserted that it was a recent, arm's-length transaction. *Id.*

The BTA noted R.C.¹ 5713.03 and acknowledged that a recent, arm's-length transaction is the best method for determining the value of real estate for the purpose of assessing ad valorem tax. *Id.* at 4. The BTA agreed with the caselaw that the presentation of the trio of deed, conveyance-fee statement, and purchase agreement before a County Board of Revision was sufficient to establish the existence of an arm's-length sale. *Id.* However, the BTA also admitted that no party presented either documents or testimony regarding the December 2006 sale to either the Board or itself. *Id.* at 2 & 4. Despite a dearth of evidence regarding the 2006 sale, the BTA determined that the 2006 sale "appear[ed] to be arm's-length and recent to tax lien date . . ." and declined to "engage in conjecture as to bases for its rejection." *Id.* at 4-5. With that, the BTA adopted the amount of \$5,350,000.00 as the parcels' true value, reversed the Board's decision, and ordered the Warren County Auditor to list and assess the parcels at that amount. *Id.* at 6.

On December 17, 2012, the parcels' current owner, Squire Hill Properties II, LLC ("Squire Hill"), sought to appeal the BTA's decision to this Court as a matter of right. Amended Notice of Appeal of Squire Hill Properties II, LLC, T.d. 2012-2107.

¹ Ohio Revised Code.

The Warren County Board of Revision and the Warren County Auditor, herein afterwards collectively referred to as "the Board", will develop the facts further as needed in the argument section of this brief.

III. ARGUMENT

A. THE BOARD'S RESPONSE TO APPELLANT'S FIRST AND SECOND PROPOSITIONS OF LAW.²

The Board declines to address either the Appellant's first or second propositions of law.

The Board does not have an opinion either for or against Squire Hill's due process argument set forth in its first proposition of law. Nor does the Board have a position regarding Squire Hill's second proposition of law. Thus, the Board declines to address those propositions.

B. THE BOARD'S RESPONSE TO APPELLANT'S THIRD AND FOURTH PROPOSITIONS OF LAW.³

The decision of the Ohio Board of Tax Appeals was not supported by the evidence because no evidence regarding the 2006 sale was adduced before it or the Warren County Board of Revision. Alternatively, Ohio Board of Tax Appeals erred when it failed to consider evidence adduced before the Warren County Board of Revision that was potentially relevant to the issue of recency.

In its third and fourth propositions of law, Squire Hill argues that the BTA's decision must be reversed because the BOE did not meet its burden of proof since it did not present evidence of the 2006 sale; the BOE merely argued that the 2006 sale supported the Auditor's original assessment. Squire Hill also argues that the BTA's decision was not supported by the evidence since no evidence regarding the 2006 sale was ever presented to either the Board or the BTA. The Board agrees with Squire Hill's arguments regarding the sufficiency of the evidence.

² The Board has consolidated its response to Squire Hill's first and second propositions of law for the sake of judicial economy.

³ The Board has consolidated its response to Squire Hill's third and fourth propositions for the sake of judicial economy.

1. Standard of Review.

It goes without saying that the BTA's decision regarding a property's value is a finding of fact that must be supported by the evidence. *Board of Educ. of the Columbus City Sch. Dist. v. Franklin County Bd. of Rev. et al.*, 90 Ohio St. 3d 564, 565-566, 740 N.E.2d 276 (2001). Further, when a case has been appealed to the BTA, the appellant has the burden of presenting competent and probative evidence to make its case. *Worthington City Sch. Bd. of Educ. v. Franklin County Bd. of Rev. et al.*, 124 Ohio St. 3d 27, 2009-Ohio-5932, 918 N.E.2d 972, ¶27. When hearing has been waived, the BTA has a duty to make its own independent judgment based on the weight of the evidence contained in the transcript from the Board of Revision. *Id.* When the evidence does not support the BTA's decision, it must be set aside on appeal. *Id.*

2. The BTA's decision was not supported by any evidence in the record.

A review of the Board's transcript reveals that neither Wasserpach nor the BOE presented any evidence regarding the 2006 sale before that body. The BTA acknowledged this and candidly admitted that no one presented evidence of the 2006 sale before it. Further, the BTA's record indicates that only the BOE's counsel appeared for the hearing and that she presented no evidence whatsoever, merely argument. Since no evidence was presented to the BTA, that tribunal was restricted to the evidence contained in the Board's transcript. So, without evidence of the 2006 sale, the BTA could not rely on that transaction to support its decision regarding the parcels' true market value. Given the record in this case, not only did the BOE fail to meet its burden of proof, but also the BTA's decision was not supported by any evidence in the record. Thus, the BTA erred and must be reversed.

3. The BTA failed to consider evidence that was potentially relevant to the issue of recency of the 2006 sale.

Assuming for the sake of argument that evidence of the 2006 sale was introduced, the BTA still committed reversible error.

In *Worthington*, the tax payers appealed a decision of the BTA in which the BTA determined that a May 2003 sale price for the tax payers' commercial property was the true value for tax years 2004 and 2005. 2009-Ohio-5932, at ¶1. Originally, the Franklin County Auditor had assessed the tax payers' property at \$2,680,000.00. *Id.* The School Board filed a complaint with the Franklin County Board of Revision, seeking to increase the value of the tax payers' property. *Id.* Before the Board of Revision, the School Board presented the May 2003 deed and conveyance-fee statement showing that the tax payers' property had sold for \$4,175,000.00. *Id.* The School Board argued that the 2003 sale price was the property's value. *Id.* The tax payers presented evidence regarding the loss of tenants, the decrease in their rental income, and their vain attempts to sell the property. *Id.* at ¶¶5-10. After hearing the tax payers' evidence, the Board of Revision rejected the 2003 sale price and kept the Auditor's original assessment. *Id.*

The School Board appealed to the BTA and presented the purchase contract for the 2003 sale to bolster its argument that the 2003 sale constituted the property's true value. *Id.* at ¶2. While Franklin County appeared with the School Board before the BTA, the tax payers did not. *Id.* The BTA sided with the School Board and adopted the 2003 sale price as the property's value. *Id.* Regarding the issue of recency, the BTA stated that a sale eight months before the lien date qualified as recent. *Id.* at ¶14.

On appeal to this Court, the tax payers argued that the BTA's findings were not supported by the evidence and that the BTA had failed to hold the School Board to its burden of proof. *Id.* at ¶26. This Court determined that the BTA's decision regarding the

issue of whether the 2003 sale was an arm's length transaction was supported by the evidence. *Id.* at ¶30. However, this Court determined that the BTA's decision regarding the issue of recency was deficient. *Id.* at ¶30.

This Court noted that the Franklin County Board of Revision, in rejecting the 2003 sale, relied on several pieces of evidence that were potentially relevant to the issue of recency such as the immediate loss of tenants, the tax payers' later failures to sell, and the property's lower value as demonstrated by subsequent appraisals. *Id.* at ¶31. However, the BTA relied exclusively on the temporal proximity of the 2003 sale to the lien date when it determined that the sale was sufficiently recent to constitute the property's true value. *Id.* at ¶¶31-32. This Court reiterated that proximity is not the sole factor affecting recency. *Id.* at ¶32. This Court reiterated that recency encompasses all the factors that would affect a property's value such as changes in the market. *Id.* This Court held that the BTA erred when it failed to consider the evidence upon which the Board of Revision relied in making its decision regarding recency. *Id.* Thus, this Court reversed the BTA's decision and remanded. *Id.* at ¶¶35-36.

Assuming *arguendo* that the evidence of the 2006 sale had been adduced, the BTA still erred. As it did in *Worthington*, the BTA, in this case, relied exclusively on the temporal proximity of the 2006 sale to the lien date to determine that the sale was sufficiently recent. Like in *Worthington*, the BTA failed to consider the evidence produced by Wasserpach before the Board that the parcels were affected by the downward changes in the market after 2006. The BTA failed to consider the Wasserpach's loss of tenants, failed to consider the Wasserpach's loss of rental income, and failed to consider Wasserpach's inability to rent to new tenants despite a significant reduction in the rental rates. As in *Worthington*, Wasserpach's evidence was potentially relevant to the issue of recency and the BTA, once more as in *Worthington*, committed reversible error when it

failed to consider this evidence. Consequently, the BTA's decision must be reversed and the matter remanded.

IV. CONCLUSION

In this case, the decision of the Ohio Board of Tax Appeals was not supported by the evidence since no evidence regarding the 2006 sale was ever adduced before the Warren County Board of Revision or the Board of Tax Appeals. Alternatively, if evidence of the 2006 sale were introduced, the Board of Tax of Appeals still committed reversible error because it failed to consider evidence adduced before the Board of Revision that was potentially relevant to the issue of recency.

For the foregoing reasons, the Warren County Board of Revision and the Warren County Auditor respectfully request this Court to reverse the BTA's decision and remand the matter for further proceedings.

Respectfully submitted,

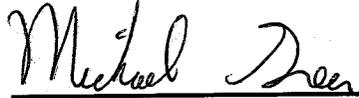


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V. CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered upon to counsels for the Appellant, Squire Hill, Mr. Scott R. Thomas and Mr. Carlo R. Wessels, Hemmer DeFrank PLLC, 250 Grandview Drive, Suite 500, Ft. Mitchell, Kentucky 41017; counsel for the BOE, Ms. Jennifer B. Antaki, David C. DiMuzio, Inc., 810 Sycamore Street, Sixth Floor, Cincinnati, Ohio 45202; and counsel for the Ohio Tax Commissioner, Michael DeWine, Ohio Attorney General, 30 East Broad Street, 17th Floor, Columbus, Ohio 43215 on this 12th day of April, 2013 by ordinary U.S. mail.



MICHAEL GREER, #0084352
Assistant Prosecuting Attorney

VI. APPENDIX

WORTHINGTON CITY SCHOOLS BOARD OF EDUCATION, APPELLEE, v. FRANKLIN COUNTY BOARD OF REVISION ET AL., APPELLEES; BOB-O-LINK GOLF COURSE, LTD., N.K.A. WEBER SISTERS ENTERPRISES, LTD., APPELLANT.

No. 2008-2365

SUPREME COURT OF OHIO

124 Ohio St. 3d 27; 2009 Ohio 5932; 918 N.E.2d 972; 2009 Ohio LEXIS 3195

**August 25, 2009, Submitted
November 17, 2009, Decided**

SUBSEQUENT HISTORY: On remand at, Judgment entered by *Bd. of Educ. v. Franklin County Bd. of Revision, 2010 Ohio Tax LEXIS 532 (Ohio B.T.A., Apr. 20, 2010)*

PRIOR HISTORY:

APPEAL from the Board of Tax Appeals, No. 2006-H-381.
Bd. of Educ. of Worthington City Sch. v. Franklin County Bd. of Revision, 2008 Ohio Tax LEXIS 2158 (Ohio B.T.A., Nov. 12, 2008)

DISPOSITION: Decision vacated and cause remanded.

HEADNOTES

Taxation -- Real property valuation -- Board of Tax Appeals must give full consideration to whether sale of property was recent with respect to the tax years involved.

COUNSEL: Rich & Gillis Law Group, L.L.C., Jeffrey A. Rich, and Mark H. Gillis, for appellee Worthington City Schools Board of Education.

Wayne E. Petkovic, for appellant.

JUDGES: MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O'CONNOR, O'DONNELL, and CUPP, JJ., concur. LANZINGER, J., concurs in judgment only.

OPINION

[***974] [*27] **Per Curiam.**

[**P1] Appellant, Bob-O-Link Golf Course, Ltd., n.k.a. Weber Sisters Enterprises, Ltd. ("Weber Sisters"), appeals from a decision of the Board of Tax Appeals ("BTA") in which the BTA determined that the May 2003 sale price of a four-acre commercial parcel constituted the value of the property for tax years 2004 and 2005. The auditor originally valued the property for tax year 2004 at \$ 2,680,000, and the Board of Education of the Worthington City Schools ("school district") filed a complaint against that valuation on February 18, 2005. The school district presented the May 2003 deed and conveyance-fee statement showing sale of the property for \$ 4,175,000, and urged that the sale price constituted the value of the property. The Franklin County Board of Revision, after hearing the evidence presented by Weber Sisters, rejected the sale price and reverted to the auditor's valuation of the property.

[**P2] The school district appealed to the BTA. The owner did not appear at the BTA hear-

ing, but the school board and the county did. The school board presented a purchase contract that it had obtained through discovery to bolster its contention that the BTA should use the sale price to value the property. On November 12, 2008, the BTA issued its decision, which adopted the sale price as the value of the property.

[**P3] On appeal, Weber Sisters argues that the school district failed to discharge its burden of proof as the appellant from the BOR's rejection of the sale price, and that the BTA's findings are not supported by the evidence. In one respect, we agree. The BTA failed to give full consideration to whether the sale was "recent" with respect to the lien dates for tax year 2004 and tax year 2005. We therefore vacate and remand.

[*28] Facts

[**P4] On February 18, 2005, the school board filed its complaint against the valuation of Weber Sisters' property, asking that the BOR adopt the May 2003 sale price of \$ 4,175,000 as the value of the property. Weber Sisters filed a countercomplaint on April 15, 2005, which asked that the auditor's valuation of \$ 2,680,000 be retained because the complaint constituted a second filing within the same triennial period. The parcel consists of four acres and is improved with two buildings.

[**P5] On February 22, 2006, the BOR held a hearing. Weber Sisters presented the testimony of Sally Marrell and Jodie Govenar, principals of Weber Sisters, along with exhibits that included a rent roll and an appraisal that was offered not as direct evidence of value, but rather as documentation of Weber Sisters' vain attempt to sell the property.

[**P6] The testimony indicated that Weber Sisters' purchase was predicated on the seller's leasing most of the space in the two buildings, each of which comprised 7,500 square feet of commercial space. Ms. Marrell stated that the "price we paid was for totally occupied units," meaning in this case that the sale would occur with leases in place for 11,740 of the 15,000 total square feet. But immediately after the May 2003 sale it became clear that two tenants slated to occupy the largest portions of the buildings -- Boston Market and Fiesta Fresh -- would not take possession. The former initially honored rent obligations; the latter did not.

[**P7] During 2004, Cold Stone Creamery began paying less and less and ultimately vacated its leased premises during 2005 and defaulted on its lease obligations. Another tenant, Mark Pi's, experienced financial difficulty and negotiated a rent reduction of approximately one-third. An [***975] Indian restaurant stopped paying rent as of November 2005. Another tenant, Robeck's Juice, subleased to Quizno's at a reduced rent while itself continuing to pay full rent. Only one tenant, a Starbucks, retained possession at the stated rent. Marrell stated that Weber Sisters was "operating at a total loss" as of the February 2006 hearing date.

[**P8] The testimony also confirmed that Weber Sisters acquired the property as part of a like-kind exchange pursuant to *Section 1031, Title 26, U.S. Code*. "The concept behind a 1031 exchange is that, when a property owner sells a property and reinvests its proceeds into another property, any economic gain has not been realized in a way that generates funds to pay any tax." *Bd. of Edn. Of Hilliard City Schools v. Franklin Cty. Bd. of Revision (Jan. 13, 2009), 2006-T-1804, at 7, 2009 Ohio Tax LEXIS 43*. Accordingly, the Internal Revenue Code defers the taxation of any gain from the sale of the property in this situation. *Id.* at 6. In the present case the consideration for the property acquired by Weber Sisters was a golf course [*29] worth approximately \$ 2.4 million. Weber Sisters borrowed the difference between the value of the golf course and the \$ 4,175,000 sale price.

[**P9] In 2005, Weber Sisters attempted to sell the property at issue. It received an offer of \$ 3.9 million but after the purchaser's appraisal indicated a value of only \$ 3 to \$ 3.2 million, the purchaser backed out of the deal. At that point, Weber Sisters obtained a written appraisal from Koenig & Associates that opined a value of \$ 3,200,000 as of September 12, 2005. That appraisal was performed before problems emerged with the Indian restaurant and Cold Stone Creamery and Mark Pi's rent reduction.

[**P10] The testimony also indicated that the principals of Weber Sisters had no knowledge and received poor advice concerning commercial property development in central Ohio.

[**P11] In making its decision, the BOR first disposed of a jurisdictional objection raised by We-

ber Sisters. The owner contended that the school board's complaint violated *R.C. 5715.19(A)(2)* because the complaint was the second within a three-year period. The BOR noted that the May 2003 sale occurred after the lien date for tax year 2003, which was the subject of the first complaint, and held that the timing brought the current case within a statutory exception. On the merits, the BOR stated that the principals of Weber Sisters were "not necessarily knowledgeable buyers" and "not familiar with the Franklin County commercial market." Additionally, the BOR noted a "significant loss of tenants in calendar year 2003," and the owner's subsequent inability to sell the property. Based on these findings, the BOR rejected use of the May 2003 sale price as constituting the value of the property for tax year 2004 and 2005. The BOR adopted the value of \$ 2,680,000 that had been assigned by the auditor.

[**P12] The school board appealed to the BTA. The school board served a written discovery request that, after the BTA issued an order compelling discovery, led to production of the purchase contract. On July 11, 2007, the BTA held a hearing at which the school board and the county appeared but the property owner did not. The purchase contract obtained through discovery was made an evidentiary exhibit.

[**P13] The BTA issued a decision on November 21, 2007. In that decision, the BTA ordered that the sale price be adopted as the value of the property. Weber Sisters filed a motion for reconsideration that reasserted its jurisdictional objection: Weber Sisters reiterated its argument that the BOR had lacked jurisdiction [***976] because the tax-year-2004 complaint was the second complaint that the school board had filed within the triennium. On December 10, 2007, the BTA issued an order vacating the November 21 decision and requiring the school board to show cause why the matter should not be remanded to the BOR with the instruction that the case should be dismissed on jurisdictional grounds. The school board [*30] filed a response, and on May 20, 2008, the BTA issued an order finding that the school board's complaint for tax year 2004 was not barred by *R.C. 5715.19(A)(2)* because the auditor changed the value from tax year 2003 to tax year 2004. The BTA also scheduled a

second merits hearing in the case, which the parties waived.

[**P14] On November 12, 2008, the BTA issued its decision. The BTA found that Weber Sisters "presented no competent or probative evidence challenging the arm's-length nature of the May 2003 sale * * * to rebut the presumption that the sale price is the best evidence of value." *Bd. of Edn. of Worthington City Schools v. Franklin Cty. Bd. of Revision (Nov. 12, 2008), BTA No. 2006-H-381, at 5, 2008 Ohio Tax LEXIS 2158*. As for the recency of the sale, the BTA confined itself to stating in a footnote that a sale eight months before the lien date for tax year 2004 qualified as recent. Accordingly, the BTA adopted the \$ 4,175,000 sale price as the value of the property for tax years 2004 and 2005. Weber Sisters appealed to this court.

Analysis

[**P15] Under our cases, the BTA is responsible for determining factual issues, but this court "will not hesitate to reverse a BTA decision that is based on an incorrect legal conclusion." *Satullo v. Wilkins, 111 Ohio St.3d 399, 2006 Ohio 5856, 856 N.E.2d 954, P 14*, quoting *Gahanna-Jefferson Local School Dist. Bd. of Edn. v. Zaino (2001), 93 Ohio St.3d 231, 232, 2001 Ohio 1335, 754 N.E.2d 789*. Weber Sisters presents several legal issues, and we consider each in turn.

R.C. 5715.19(A)(2) does not bar the school board's complaint for tax year 2004

[**P16] In its notice of appeal, Weber Sisters characterizes the present case as a "second filing within the same triennium and therefore prohibited by *section 5715.19 O.R.C.*" In Weber Sisters' brief, however, the second-filing issue is mentioned at most in passing, is not specifically argued, and is not the subject of a proposition of law. Under these circumstances we would ordinarily regard the issue as abandoned. *E. Liverpool v. Columbiana Cty. Budget Comm., 116 Ohio St.3d 1201, 2007 Ohio 5505, 876 N.E.2d 575, P 3*.

[**P17] But we have consistently treated full compliance with *R.C. 5715.19* as an indispensable prerequisite for the exercise of jurisdiction by a board of revision. See *Stanjim Co. v. Mahoning Cty. Bd. of Revision (1974), 38 Ohio St.2d 233, 235, 67*

O.O.2d 296, 313 N.E.2d 14; Cardinal Fed. S. & L. Assn. v. Cuyahoga Cty. Bd. of Revision (1975), 44 Ohio St.2d 13, 73 O.O.2d 83, 336 N.E.2d 433, paragraph one of the syllabus. An issue that pertains to the BTA's jurisdiction to hear the merits of an appeal thereby pertains derivatively to our own jurisdiction, and we have held that we possess authority to consider such jurisdictional issues in spite [*31] *of a failure to specify the theory in its notice of appeal. Elyria v. Lorain Cty. Budget Comm., 117 Ohio St.3d 403, 2008 Ohio 940, 884 N.E.2d 553, P 13. Accordingly, we consider whether R.C. 5715.19(A)(2) barred the complaint the school board filed for tax year 2004.*

[**977] [*P18] *R.C. 5715.19(A)(2) limits how often an owner or a school board may challenge the valuation of a parcel: subject to four enumerated exceptions, a person may file only one complaint within a three-year "interim period." The statutory limitation ties the interim period to the sexennial revaluation of property and the triennial update required by law. R.C. 5713.01(B) and 5715.24(A); Ohio Admin.Code 5703-25-06(B) and 5703-25-06(D). If "a person, board, or officer" files a complaint in an interim period it may not file another complaint in the same interim period, unless one or more of the four statutory circumstances listed * * * is alleged." Specialty Restaurants Corp. v. Cuyahoga Cty. Bd. of Revision, 96 Ohio St.3d 170, 2002 Ohio 4032, 772 N.E.2d 1165, P 11, quoting R.C. 5715.19(A)(2).*

[**P19] In the present case, the jurisdictional issue arises because the school board presented the May 2003 purchase price in a complaint that challenged the auditor's valuation for tax year 2003. Subsequently, the school board initiated the present case by filing a complaint seeking an increase for tax year 2004 on the basis of the May 2003 sale. The interim period in Franklin County encompassed tax years 2003 and 2004. *Bd. of Edn. of Worthington City Schools v. Franklin Cty. Bd. of Revision (May 20, 2008), BTA No. 2006-H-381, at 3, 2008 Ohio Tax LEXIS 950. Under the pronouncement of Specialty Restaurants, R.C. 5715.19(A)(2) bars the complaint in this case unless one (or more) of the four exceptions applies. As an initial matter, we note that the school board complied with the language of R.C. 5715.19(A)(2) by indicating on the*

complaint that the first of the four exceptions applied.

[**P20] We hold that two of the four exceptions applied. *R.C. 5715.19(A)(2)(a)* provides that a complaint asking for a change in value based on the sale of the property in an arm's-length transaction is not barred so long as (1) the sale occurred after the tax lien date for the tax year for which the prior complaint was filed -- in this case, 2003 -- and (2) the effect of the sale on value was "not taken into consideration with respect to the prior complaint." In this case, the sale took place in May 2003 -- after the January 1, 2003 lien date to which the earlier complaint related. Moreover, although the May 2003 sale formed the basis for the tax-year-2003 complaint, the BOR set the value for 2003 without regard to the sale price because the buildings at issue were *only partially completed* as of January 1, 2003. Because the record shows that the construction was fully completed by January 1, 2004, and because the May 2003 sale culminated a January 2003 purchase contract that contemplated completed construction, the [*32] effect of the May 2003 sale price on value was "not taken into consideration" under the statute for tax year 2003. Thus, the complaint is permitted under the exception at *R.C. 5715.19(A)(2)(a)*.

[**P21] *R.C. 5715.19(A)(2)(c)* furnishes an additional source of jurisdiction. In essence, the valuation complaint presently before the court asserts that the sale price should be considered to be the value of the property on January 1, 2004 -- the 2004 lien date -- because the buildings, which constitute a "substantial improvement" for purposes of *R.C. 5715.19(A)(2)(c)*, were completed after the 2003 lien date and before the 2004 lien date. As a result, *R.C. 5715.19(A)(2)(c)* applied to the present situation and permitted the filing of the tax-year-2004 complaint.

[**P22] In sum, the tax-year-2004 complaint is not barred by the filing of the tax-year-2003 complaint because (1) the tax-year-2004 complaint relies on a sale that occurred after the lien date of the 2003, the tax year that was the subject of [**978] the earlier complaint, and (2) the effect of the sale on the property's value was not considered previously because the construction on the property was incomplete.

Collateral estoppel does not bar the school board's complaint

[**P23] Weber Sisters also contends that the BOR's decision not to use the May 2003 sale price to determine the value of the property for tax year 2003 estops the school board from litigating the use of the sale price to value the property for tax year 2004. Our review of the record persuades us that Weber Sisters failed to establish the existence of an estoppel.

[**P24] The scope of collateral estoppel in tax proceedings is limited. We have acknowledged that the determination of a discrete issue as to one tax year may estop a party from relitigating the same issue in the context of a later valuation complaint. *Olmsted Falls Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 122 Ohio St.3d 134, 2009 Ohio 2461, 909 N.E.2d 597, P 17, citing *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (Dec. 28, 1993), *Franklin App. 92AP-1715*, 1993 Ohio App. LEXIS 6258. On the other hand, the ultimate issue of value for one tax year does not constitute the "same issue" for purposes of collateral estoppel as the ultimate issue of value for a later tax year. *Id.* Given these precepts, it is incumbent upon the party that asserts collateral estoppel to prove the identity between the issue currently presented and the issue previously decided. *Goodson v. McDonough Power Equip., Inc.* (1983), 2 Ohio St.3d 193, 198, 2 OBR 732, 443 N.E.2d 978; see also *Dublin School Dist. Bd. of Edn. v. Limbach* (1994), 69 Ohio St. 3d 255, 257-258, 1994 Ohio 101, 631 N.E.2d 604; *Beatrice Foods Co., Inc. v. Lindley* (1982), 70 Ohio St.2d 29, 35, 24 O.O.3d 68, 434 N.E.2d 727.

[**P25] In the present case some evidence was offered at the BTA concerning the BOR's disposition of the tax-year-2003 complaint. That evidence indicates [*33] that the BOR declined to regard the May 2003 sale price as indicative of value for tax year 2003 because the two buildings were still under construction on January 1, 2003. But the evidence also indicates that the buildings were complete by January 1, 2004. As a result, Weber Sisters has fallen well short of proving an identity of issues, because the question whether to use the sale price for 2004 does not involve the same issue whether to use the sale price for 2003. Accordingly, the BOR's disposition of the tax-year-2003 com-

plaint has no collateral-estoppel effect on the later complaint.

The BTA erred by failing to give full consideration to whether Weber Sisters had proven that the sale was not "recent" as to the lien dates for 2004 and 2005

[**P26] The gravamen of the Weber Sisters' appeal lies in its contentions that the BTA's decision lacks evidentiary support and that the BTA failed to hold the school board to its burden of proof.

[**P27] As an initial matter, Weber Sisters' argument relies on well-settled legal principles. We have held that the BTA's findings must be supported by evidence; indeed, when the evidence does not support those findings, they must be set aside on appeal. E.g., *NFI Metro Ctr. II Assoc. v. Franklin Cty. Bd. of Revision* (1997), 78 Ohio St.3d 105, 107, 1997 Ohio 231, 676 N.E.2d 881; *Gen. Motors Corp. v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 513, 515-516, 1996 Ohio 287, 660 N.E.2d 440. Moreover, when "cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to [***979] an increase or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566, 2001 Ohio 16, 740 N.E.2d 276. That burden requires the appellant to "present competent and probative evidence to make its case; it is not entitled to a reduction or an increase in valuation merely because no evidence is presented against its claim." *Id.*, citing *Hibschman v. Bd. of Tax Appeals* (1943), 142 Ohio St. 47, 26 O.O. 239, 49 N.E.2d 949. Additionally, when a hearing has been waived before the BTA, the BTA has the duty to "make its own independent judgment based on its weighing of the evidence contained in [the] transcript" of the proceedings before the BOR. *Columbus Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1996), 76 Ohio St.3d 13, 15, 1996 Ohio 432, 665 N.E.2d 1098.

[**P28] Turning to the school board's burden of proof at the BTA, we conclude that the BTA was justified in viewing the conveyance-fee statement and the deed that the school board had presented to the BOR as constituting a prima facie showing of

value. *Id. at 16, 665 N.E.2d 1098* (because the school board had introduced into evidence of a copy of a deed and a conveyance-fee statement as proof of a recent, arm's-length sale, the burden to prove a lesser value shifted to the property owner). In the present case, the school board additionally presented [*34] to the BTA a purchase agreement that it had obtained through discovery. The troika of deed, conveyance-fee statement, and purchase agreement formed an adequate basis for the BTA to find a recent arm's-length sale, subject to rebuttal by the Weber Sisters.

[**P29] As we stated in *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision, 117 Ohio St.3d 516, 2008 Ohio 1473, 885 N.E.2d 222, P 13*, a recent arm's-length-sale price must ordinarily be considered to be the value of the property. Usually the "only rebuttal" of the sale price "lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Id.*

[**P30] For its part, the BTA relied on its holding that the evidence did not impugn the arm's-length character of the sale. Specifically, the BTA acknowledged that Weber Sisters had pointed to several factors in challenging the arm's-length character of the sale: the like-kind exchange facet of the sale, their own lack of knowledge of the local market, their inability to resell, or their loss of tenants. But the BTA found that the owner had failed to show the significance of those factors for purposes of determining the question of arm's-length character. Weber Sisters has not pointed to any distinctly legal error in the BTA's discussion of the arm's-length character, and accordingly we will defer to the BTA's finding that the May 2003 sale was at arm's length. *Am. Natl. Can Co. v. Tracy (1995), 72 Ohio St. 3d 150, 152, 1995 Ohio 42, 648 N.E.2d 483* ("The BTA is responsible for determining factual issues and, if the record contains reliable and probative support for these BTA determinations, we will affirm").¹

¹ Weber Sisters' contention that the sale was not at arm's length because the property was not sold on the "open market" does not state a claim of legal error. We have held that the opponent of using the sale price to de-

termine value must shoulder the burden to show that the sale did not occur in the market that is relevant in the particular case -- here, the *Section 1031* like-kind-exchange market. See *AEI Net Lease Income & Growth Fund v. Erie Cty. Bd. of Revision, 119 Ohio St. 3d 563, 2008 Ohio 5203, P22, 23, 895 N.E.2d 830*. Weber Sisters has made no such showing.

[**980] [**P31] The BTA's treatment of the issue of recency is another matter. That issue the BTA relegated to a footnote, where the board stated that a "sale within eight months of the 2004 tax lien date is sufficiently recent for tax valuation purposes." *Worthington City Schools Bd. of Edn. (Nov. 12, 2008), BTA No. 2006-H-381, at 4, fn. 3, 2008 Ohio Tax LEXIS 2158*. But the BOR, in rejecting the sale price, had explicitly relied on several pieces of evidence that potentially bear on the issue of recency: the immediate loss of tenants, the subsequent failure to sell the property, and the lower values reflected by later appraisals. The BOR appeared to regard such factors as establishing a change in circumstances that made it inappropriate to use the May 2003 sale price to value the property as of January 1, 2004, and January 1, 2005.

[*35] [**P32] As noted, the BTA found that the sale was recent based solely on the temporal proximity of the sale date to the lien date. But under our case law such proximity is not the sole factor affecting recency. See *Cummins, 117 Ohio St.3d 516, 2008 Ohio 1473, 885 N.E.2d 222, P 35* (recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property"); *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision (1997), 80 Ohio St.3d 36, 44, 1997 Ohio 360, 684 N.E.2d 312* (recency factors include "changes that have occurred in the market"). Before the BTA, Weber Sisters specifically argued not only that the evidence presented to the BOR negated the arm's-length character of the sale, but also that "market changes and other factors make the sale price unreliable" on the record of this case. Yet the BTA did not address this aspect of Weber Sisters' argument. It follows that the BTA erred by not considering the evidence upon which the BOR relied when it made its finding as to the recency of the May 2003 sale. See *Columbus Bd. of Edn., 76 Ohio St.3d at 15, 665 N.E.2d 1098*.

[**P33] Before this court, Weber Sisters renews its argument that the BOR transcript clearly showed "change in the property" and "market changes and other factors that [make] the sale price unreliable." We have stated that the burden lay on Weber Sisters to rebut the presumptive recency of the sale, but it is evident that the BOR found such a rebuttal in the record before it. The BTA did not identify any error in the BOR's reasoning and, if the evidence that Weber Sisters presented to the BOR did tend to negate recency, then the school board acquired the burden of rebutting the probative force of that evidence. See *Board of Education v. Board of Revision (1988)*, 37 Ohio St. 3d 318, 319, 526 N.E.2d 64.

[**P34] Although the BTA's latitude in weighing evidence is broad, we have held that the BTA "has the duty to state what evidence it considered relevant in reaching its determination." *HealthSouth Corp. v. Levin*, 121 Ohio St.3d 282, 2009 Ohio 584, 903 N.E.2d 1179, P 34. While we accord deference to the BTA's explicit determination that Weber Sisters had not impugned the arm's-length character of the sale, we hold that the BTA did not perform the required review with respect to whether the May 2003 sale met the criteria of recency as of January 1, 2004, and January 1, 2005.

Accordingly, we vacate the BTA's decision and remand for a determination whether the May 2003 sale was "recent" as to tax years 2004 and 2005 in light of the entire record. As in *HealthSouth*, the parties have had ample opportunity to present evidence, so the BTA shall not take additional evidence on remand.

[**P35] We emphasize that we do not pre-judge the outcome of the BTA's analysis on remand. The BTA will have the [***981] duty to weigh the significance of the [*36] purchase contract, the other documentation of sale, and the testimony and documentation presented to the BOR to make its determination.

Conclusion

[**P36] For the reasons set forth, we vacate the BTA's decision and remand for further proceedings in accordance with this opinion.

Decision vacated and cause remanded.

MOYER, C.J., and PFEIFER, LUNDBERG STRATTON, O'CONNOR, O'DONNELL, and CUPP, JJ., concur.

LANZINGER, J., concurs in judgment only.