

**IN THE SUPREME COURT OF OHIO**

UTSI FINANCE, INC. (CROWN )  
ENTERPRISES CONSTRUCTION )  
SERVICES, INC.) (CROWN )  
ENTERPRISES, INC.), )

CASE NO. 2015-1861

Appeal from the Ohio Board of Tax Appeals

Appellant, )

Board of Tax Appeals Case No.  
2014-3748 and 2014-3749

-vs- )

FRANKLIN COUNTY BOARD OF )  
REVISION, THE FRANKLIN COUNTY )  
AUDITOR, BOARD OF EDUCATION OF )  
THE HILLIARD CITY SCHOOLS AND )  
TAX COMMISSIONER OF OHIO )

Appellees. )

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**UTSI FINANCE, INC.'S MERIT BRIEF**

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**I. INTRODUCTION**

This appeal involves the proper valuation of a truck terminal located at 2950 International St. in Columbus, Ohio. The subject property had a deed filed on March 5, 2009 for \$2,300,000. The Property Owner presented evidence that the subject property was actually purchased in September of 2002. UTSI Supp. p. 1. Thus, on the face of the deed there is a signature and notarization expressly indicating that the deed was executed in September 2002, which is over six (6) years prior to the deed being filed and eight (8) years from the tax lien date. The deed sets forth the following:

and expectancy of DOWER in the above described premises.

Executed by the said Grantor herein this 20<sup>th</sup> day of September 2002.

WITNESSES: [Signature] LAKESHORE VENTURES, LLC.

The notarization section on the deed also occurred in September 2002 as follows:

STATE OF MICHIGAN, MACOMB COUNTY, ss.

Before me, a Notary Public within and for said County and State, personally appeared the above named

Lakeshore Ventures, LLC., the Grantor herein, who acknowledged that they did sign and seal the foregoing instrument, and the same is their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal on this 23 day of September, 2002.

TRANSFERRED  
AR 05 2009  
JOSEPH W. TESTA  
AUDITOR  
FRANKLIN COUNTY, OHIO

2951  
Conveyance  
Mandatory 2,313,500  
Permissive 2,313,500  
JOSEPH W. TESTA  
FRANKLIN COUNTY AUDITOR

[Signature]  
Notary Public

KATHLEEN A. YEAGER  
Notary Public, Macomb County, MI  
My Commission Expires Apr 7, 2008

UTSI Supp. p. 1.

Under *Akron City School Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, syllabus, 9 N.E.3d 1004, a September 2002 sale cannot be a reliable indicator of the subject property's value as of January 1, 2011.

Given the date of the deed's execution and the legal effect of the notarization, the BTA unreasonably reversed the BOR's decision, which found that the sale (regardless of the date) was not the best evidence of value. BOR Audio, Statutory Transcript, Exhibit E. The BTA unlawfully determined that the sale was arm's length and recent by utilizing the March 5, 2009 recording date.

The Property Owner presented testimony to rebut the arm's-length nature of the sale as well as the sale's recentness at the BOR hearing. In addition, at the BOR hearing, the Property Owner presented appraisal evidence as to the value of the real estate as of January 1, 2011. UTSI Supp. p. 2-51. The BOR agreed and valued the subject property at \$1,470,000 relying on Ms. Fried's expert appraisal testimony and comprehensive appraisal report. UTSI Appx. p. 13.

The Board of Education ("BOE") appealed the BOR's decision. UTSI Appx. p. 11-12. The BTA, despite receiving no new evidence, reversed the BOR's decision and excluded Ms. Fried's testimony and report. UTSI Appx. p. 6-10. The Board of Tax Appeals ("BTA") reversed the Franklin County Board of Revision's ("BOR") lawful and reasonable decision. In short, the BTA misapplied *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, ¶16, 923 N.E.2d 1144. The BTA ignored the express fact that the deed transferring title to the subject property was executed in September 2002. Compounding its error, the BTA misapplied the hearsay rule by failing to consider that there is an exception to the hearsay rule for expert testimony. As a result, the BTA unlawfully excluded Ms. Fried's testimony and report from its consideration. Notably, at the BOR hearing, counsel for the School Board conceded that appraisers

necessarily work with and justifiably rely upon hearsay-type evidence. BOR H.T. 15:41:17 through 15:41:24.

The BTA's decision is in contravention of the Court's recent decision holding that an expert appraiser's sworn and certified statements and report can rebut the presumptive reliability of a sale. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2016-Ohio-757 (hereinafter, "*Buckeye Hospitality*").

*Buckeye Hospitality* requires the Court to remand this appeal to the BTA. Under *Buckeye Hospitality*, all of Ms. Fried's critical, competent and probative expert evidence should have been considered by the BTA given her certification statement. UTSI Supp. p. 49. Since the BTA had Ms. Fried's oral testimony and written report before it, the BTA should have affirmed the BOR's decision.

The record established that the sale at issue occurred between related entities making it a non-arm's-length sale. Ms. Fried testified about her investigation into the sale at the BOR hearing. BOR H.T. 15:41:50 through 15:42:30. In addition, the sale occurred eight years prior to the tax lien date and thus was too remote to be a reliable indicator of the subject property's true value in money. Fried also testified about the changes in the market place. Specifically, she testified that she investigated the sale, reviewed the market activity and determined that the circumstances surrounding the sale meant it was not reliable enough to be included in her sales comparison analysis. BOR H.T. 15:39:05 through 15:39:30, 15:40:17 through 15:40:51 and 15:45:05 through 15:45:09. For these reasons, the BTA unlawfully and unreasonably relied on the sale price to value the subject property.

## **II. STATEMENT OF FACTS**

### **A. Subject Property**

The subject truck terminal is located at 2950 International St. in Columbus, Ohio. UTSI Supp. p. 2. Having been built in 1991, the property is a twenty-year-old industrial warehouse used to service semi-trucks. UTSI Supp. p. 22. The building contains a rentable area of 9,600 square feet. UTSI Supp. p. 21. The total land area is 24.705 acres. Ms. Fried determined that there was 23.162 acres of excess land. UTSI Supp. p. 22.

Ms. Fried inspected the subject property's interior and exterior. UTSI Supp. p. 7-8. Ms. Fried's appraisal report sets forth a detailed discussion of the site and building improvements. UTSI Supp. p. 22-23. Ms. Fried described the subject property in detail at the BOR hearing.

### **B. The Board of Revision Proceeding**

On February 17, 2012, the Board of Education of the Hilliard City Schools (hereinafter "BOE") filed a real estate tax complaint with the Franklin County Board of Revision (hereinafter "BOR") for tax year 2011 seeking an increase in the Auditor's value of \$1,717,300.

On August 21, 2014, the BOR conducted a hearing on the BOE's complaint. Both the BOE and the Property Owner were represented by counsel at the hearing. In addition, the Property Owner presented an expert appraisal witness – Ms. Kelly Fried. UTSI Supp. p. 2-51. The BOE presented a deed recorded on March 5, 2009, which transferred title from Lakeshore Ventures, LLC to Universal Truckload Services, Inc. and a conveyance fee statement. UTSI Supp. p. 1. The BOE presented no witness to testify about the circumstances or details of the transfer of the subject property or to the value of the subject property.

The BOE made no objection to Ms. Fried's appraisal testimony at the hearing and even stipulated to Ms. Fried's qualifications as an expert. BOR H.T. 15:20:40 through 15:20:46. Ms. Fried testified that through her investigation she determined that the transfer was not an arm's-length transaction since the buyer and the seller were related. UTSI Supp. p. 22; BOR Audio 27:00-27:32, 31:12. Despite acknowledging that appraisers must rely on hearsay evidence as an unavoidable aspect of their job, the BOE objected to Ms. Fried's testimony about her conversations with the owner regarding the sale as hearsay. The BOR noted the objection.

In coming to a conclusion of value for the subject property, Ms. Fried reviewed the three traditional approaches to value in her appraisal. UTSI Supp. p. 27. Ultimately, Ms. Fried relied on the sales comparison approach and income approach to determine the value of the subject property. UTSI Supp. p. 48.

Ms. Fried testified that the subject property had positive location factors such as its proximity to the interstate highway system. UTSI Supp. p. 5 & 47. Ms. Fried testified that the subject property was negatively affected by the "overall recessionary economic conditions and the submarket's high vacancy rate." UTSI Supp. p. 22. Ms. Fried's appraisal report sets forth a detailed area analysis and market analysis including socioeconomic trends, land uses, governmental influences and environmental influences. UTSI Supp. p. 16-22.

Ms. Fried conducted a highest and best use analysis. S.T. Ex. F, p. 26. Ms. Fried considered what was legally permissible, physically possible, financially feasible, and maximally productive. And Ms. Fried concluded that the highest and best use for the subject property "as vacant" was for a variety of industrial applications. *Id.* Ms. Fried concluded that the highest and best use for the subject property "as improved" was its current use as of the tax lien date. *Id.*

Ms. Fried utilized four comparable land sales to arrive at a land value for the excess land. Among making other adjustments, Ms. Fried compared the date of each comparable land sale to the tax lien date. Ms. Fried made an adjustment for changes in market condition from the sale date to the tax lien date—January 1, 2011. UTSI Supp. p. 26-29.

Ms. Fried made a market condition adjustment to Comparable 1 upward by 7.5% (sold 9/30/2010), Comparable 2 downward by 15.0% (sold 12/20/2007), Comparable 3 downward by 15.0% (sold 4/2/2008), and Comparable 4 downward by 15.0% (sold 11/21/2007). UTSI Supp. p. 29. After analyzing the comparable land sales, Ms. Fried reached a final value conclusion of \$43,174 per acre or \$1,000,000 as of January 1, 2011 for the excess land. UTSI Supp. p. 29.

Ms. Fried then utilized six comparable industrial building sales to develop the overall value of the building and 1.543 acres of land via the sales comparison approach. UTSI Supp. p. 32-37. Ms. Fried testified that she adjusted the comparable sales for property rights conveyed, financing terms, conditions of sale, buyer expenditures, market conditions, location, physical features, economic characteristics, land building ratio improved (building size) and size. UTSI Supp. p. 35-36.

Among the other adjustments, Ms. Fried also made a market condition adjustment to each sale, which compared the changes in the market from the date of each comparable building sale to the tax lien date. UTSI Supp. p. 35-36. Ms. Fried adjusted Comparable 1 upward by 5.0% (sold 4/14/2010), Comparable 2 was adjusted downward by 5.0% (sold 12/20/2012), and Comparable 6 was adjusted downward by 2.5%. UTSI Supp. p. #. Since sales 3, 4 and 5 sold in 2011, Ms. Fried made no market condition adjustment to these three sales.

Ms. Fried's adjusted building sales ranged from \$38.78 per square foot to \$54.55 per square foot of building area. UTSI Supp. p. 35-36. Ms. Fried reached a final value conclusion of \$50.00 per square foot of building area or \$480,000 as of January 1, 2011 for the main site and building. UTSI Supp. p. 37. Ms. Fried reached a final value conclusion of \$1,480,000 (i.e., \$480,000 for the main site + \$1,000,000 for the excess land = \$1,480,000 total) as of January 1, 2011 via her sales comparison approach. *Id.*

Ms. Fried utilized the direct income capitalization method in her income approach to value the subject property. UTSI Supp. p. 40-46. Based on a rental survey, Ms. Fried calculated the total gross potential rental income to be \$55,200. UTSI Supp. p. 40-41. Next, Ms. Fried calculated the expenses that the tenant would reimburse the owner, which was calculated to be \$21,120. UTSI Supp. p. 41. Ms. Fried calculated the potential gross income to be \$76,320 (\$7.95 per square foot). UTSI Supp. p. 41.

Based upon the published market data, Ms. Fried opined to a stabilized 15% vacancy and credit loss. Based on her experience, knowledge and research, Ms. Fried determined the insurance expense at \$0.20 per square foot, common area maintenance at \$2.00 per square foot and management/administrative expenses at 3% of the effective gross income. UTSI Supp. p. 41-42. Reserves for replacement were set forth at \$0.25 per square foot or \$2,400. *Id.* Thus, the net operating income was \$39,406 for 2011. *Id.*

In determining the overall capitalization rate, Ms. Fried reviewed the capitalization rates derived from ten (10) sales of comparable properties, RealtyRates.com's Investor Survey, a band-of-investment analysis and a debt-coverage-ratio analysis. UTSI Supp. p. 43-45. Ultimately, Ms. Fried determined that the appropriate capitalization rate would be between 9.25% and 9.75% before the partial real estate tax additur for the 2011 tax year of 0.47%. UTSI Supp. p. 46.

The recap of Ms. Fried's pro forma operating statement is set forth at page 40 of her appraisal report. UTSI Supp. p. 42. Ms. Fried capitalized the pro forma net operating income and arrived at a value of \$395,000 for the main site and building as of January 1, 2011. UTSI Supp. p. 46. Ms. Fried then added the excess land value of \$1,000,000 to arrive at a total value via the income approach of \$1,395,000. *Id.*

Having determined a value via the income and sales comparison approaches to value, Ms. Fried reconciled the two approaches. UTSI Supp. p. 48. Ms. Fried considered both approaches and gave 10% weight to the income capitalization approach and a 90% weight to the sales comparison approach in concluding to a value of \$1,470,000 for the 2011 tax year. *Id.*

The BOE failed to rebut any of Fried's testimony. On August 27, 2014, the BOR issued its decision decreasing the value of the subject property to \$1,470,000.

A review of the audio transcript of the BOR hearing and the BOR's deliberations indicates that the BOR members concluded that market conditions had changed enough between the recorded date of the transfer (i.e., March 5, 2009) to render the transfer too remote from the tax lien date to constitute a reliable indicator of the subject property's fair market value. (BOR Deliberation 1:50). The audio transcript also establishes that board members also found that the sale was not an arm's-length sale. (BOR Deliberation 2:50).

### **C. The Board of Tax Appeals Hearing**

This Court has held that when the property owner has prevailed at the board of revision using expert, appraisal testimony, the burden of proof shifts to the BOE "going forward." *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543, 11 N.E.3d 206, ¶15-16. Thus, given the record developed at the BOR, the Board of Education had the burden of proof at the BTA in the present case and was required to present "competent and

probative evidence to make its case.” *Id.* at ¶16. However, at the BTA, the Board of Education failed to present an expert witness or any new evidence.

Under the *Dublin City Schools* holding, the Board of Education necessarily failed to meet its burden of proof at the BTA. *Id.* at ¶16. Accordingly, the BOR’s decision adopting Ms. Fried’s opinion of value should have been upheld by the BTA. Since the BTA reversed the BOR’s decision, the BTA’s decision is unlawful and unreasonable.

On appeal to the BTA, it was not enough for the BOE to attack the Property Owner’s competent and probative evidence presented at the BOR hearing and relied upon by the BOR in reaching its decision. Since the BOR heard and relied on competent and probative evidence in valuing the subject property at \$1,470,000, the burden of proof “going forward” shifted to the BOE. *Dublin City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 139 Ohio St.3d 193, 2013-Ohio-4543, 11 N.E.3d 206, ¶15-16. On appeal, the BOE failed to present any new or different evidence that the sale was a recent, valid, arm’s-length sale. Therefore, the BOE failed its burden of proof before the BTA.

The Board of Education sought to utilize a remote transfer of the property between related entities (i.e., a non-arm’s-length transaction), to set the value of the subject property. The Property Owner presented competent and probative testimony to rebut the arm’s length nature of the sale and the recentness of the sale. In addition, the Property Owner presented appraisal evidence as to the value of the real estate on the tax lien date.

#### **D. The Property Owner’s appeal to the Supreme Court**

The BTA failed to consider critical evidence regarding the dates on the face of the deed showing that the sale occurred in September 2002. UTSI Supp. p. 1. The BTA also ignored Kelly Fried’s testimony regarding both the fact that the property transferred between two related parties

and that the market had changed sufficiently between the sale and the tax lien date. UTSI Supp. p. 20. In doing so, the BTA rendered an unlawful and unreasonable decision and, in the process, abused its discretion. Accordingly, the Property Owner timely appealed the BTA's decision to this Court.

### III. LAW & ARGUMENT

**Proposition of Law 1: The BTA's decision was unlawful and unreasonable as it found that the sale of the subject property was a recent, arm's-length sale even though the evidence established that the sale occurred in 2002 between related entities**

In this case, the School Board asked the Franklin County Board of Revision to use a deed executed on September 20, 2002 but recorded on March 5, 2009 to value the subject property for the 2011 tax year. The BOR, based on evidence and testimony before it, found that the transfer was not the best evidence of value. Instead, the BOR found the subject property's value to be \$1,470,000 in accordance with the property owner's appraisal evidence. UTSI Appx. p. 2-51.

The School Board appealed the BOR's decision to the BTA. UTSI Appx. p. 11-12. Despite the overwhelming weight of the evidence in the record and the fact the School Board failed to present any witness or evidence, the BTA reversed the BOR and determined that that sale price was indicative of the property's value. UTSI Appx. p. 13.

Generally, a recent sale price is presumed to indicate a property's value, and if the presumption is not overcome, appraisal evidence of an alternative value is ordinarily not competent evidence of the property's value. *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, ¶13, citing *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979, 834 N.E.2d 782.

Well established Ohio law establishes that the presumptive validity of using the sale price as the best evidence of value may be rebutted by evidence showing that the sale is not recent, not at arm's length, or not voluntary. *Cummins, supra* at ¶13.

In the case before this Court, any presumption in the School Board's favor that may have arisen was rebutted by the dates of the notarized signatures on the face of the deed, the appraisal report and Property Owner's appraiser testimony regarding the changing market conditions after the sale but prior to the tax lien date.

In *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, the court stated then when determining whether a sale is remote there should be "a consideration of the changes that have occurred in the market. If the market is changing rapidly, then the selling price will not be the best evidence of true value for as long a period of time as when the market is not changing or is changing very slowly." The BTA has followed this rule in *Columbus City Schools Bd. of Ed. v. Franklin Cty. Bd. of Revision* (June 23, 2000), B.T.A. No. 97-G-1216, unreported, where it stated: "Changing economic, financial, and market conditions may affect the reliability of sales data over a period of time, and this period of time may be relatively short depending upon circumstances."

The BTA unlawfully and unreasonably excluded critical portions of Ms. Kelly Fried's certified appraisal evidence and expert testimony. The BTA unlawfully and unreasonably applied the hearsay rule to avoid considering the competent and probative evidence that the subject property transferred between two related corporate entities. In the *Buckeye Hospitality* case, this Court held that an expert appraiser's sworn statements and report can rebut the presumptive reliability of a prior sale. *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, Slip Opinion No. 2016-Ohio-757, syllabus.

In *Buckeye Hospitality*, the sale at issue occurred in January 2007 relative to a January 1, 2009 tax lien date. *Id.* at ¶3. As in the above-captioned case, the *Buckeye Hospitality* appraiser considered the changing market conditions and determined that it was not appropriate to use the January 2007 sale price in his sales comparison approach to value or to reach his opinion of value. *Id.* at ¶3.

Over and above the fact the deed states *on its face* that the sale occurred in 2002, Ms. Fried's sworn statements and her report state that the sale was not an arm's-length transaction and that market conditions changed significantly between the sale (whether September 2002 or March 2009) and the January 1, 2011 tax-lien date. Thus, the BTA abused its discretion in failing to find that the sale at issue was not recent or unreliable evidence of the subject property's value. *Buckeye Hospitality* at ¶19; see also *AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 343, 2008-Ohio-2565, 889 N.E.2d 115, ¶16.

This Court found in *Buckeye Hospitality* that "sworn statements of an expert appraiser at hearing in conjunction with his appraisal report can, by extension, serve to rebut the presumptive validity of valuation of the property at issue based on its prior sale price." *Buckeye Hospitality, supra* at ¶19. Continuing, the Court stated that "specific information bearing on the question of the recency, the arm's-length character, or the voluntariness of the sale may be introduced as part of an appraiser's report and opinion of value and may thereby rebut the presumption and permit the appraiser's opinion of value to be considered." *Id.* at ¶20.

**A. The sale was not recent to the tax lien date**

**1. The subject property was sold and transferred in September 2002 not March 2009**

The face of the deed expressly indicates that the transfer occurred in September 2002, which is eight (8) years prior to the tax lien date at issue. Under *Akron City School Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, syllabus, 9 N.E.3d 1004, a September 2002 sale cannot be a reliable indicator of the subject property's value as of January 1, 2011. The deed at issue sets forth the following:

and expectancy of DOWER in the above described premises.

Executed by the said Grantor herein this 23<sup>rd</sup> day of September 2002.

WITNESSES: [Signature] LAKESHORE VENTURES, LLC.

UTSI Supp. p. 1. The notarization of the deed also occurred in September 2002:

STATE OF MICHIGAN, MACOMB COUNTY, ss.

Before me, a Notary Public within and for said County and State, personally appeared the above named

Lakeshore Ventures, LLC., the Grantor herein, who acknowledged that they did sign and seal the foregoing instrument, and the same is their free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal on this 23 day of September, 2002.

TRANSFERRED  
AR 05 2009  
JOSEPH W. TESTA  
AUDITOR  
FRANKLIN COUNTY, OHIO

2871  
Conveyance  
Mandatory 2,313,500  
Permissive 2,313,500  
JOSEPH W. TESTA  
FRANKLIN COUNTY AUDITOR

[Signature]  
Notary Public  
KATHLEEN A. YEAGER  
Notary Public, Macomb County, MI  
My Commission Expires Apr 7, 2008

*Id.*

Given the legal effect of the notarization, it was an abuse of discretion for the BTA to find that the sale occurred on or about March 5, 2009.

In Michigan, the Secretary of State's website states that:

A notary public is an officer commissioned by the Michigan Secretary of State *to serve as an unbiased and impartial witness*. The most common function of the notary is *to prevent fraud* by attesting to the identity of a person signing a document. Notarization on a document certifies that the person whose signature is entered on the document personally appeared before the notary, established his or her identity, and personally signed the document in the presence of the notary.

Michigan Secretary of State, *What is a Notary Public?*, [https://www.michigan.gov/sos/0,4670,7-127-1638\\_8736-85744--,00.html](https://www.michigan.gov/sos/0,4670,7-127-1638_8736-85744--,00.html) (March 21, 2016).

In Ohio, notarization of the deed would constitute an acknowledgment. The Ashtabula County Bar Association Notary Public Committee, for instance, states:

An acknowledgment is the formal authentication of one's signature on a deed, mortgage, lease, power of attorney, or other formal instrument. The person signing the document is formally declaring the signature to be his or hers, and verifying that the signature was his or her free act and deed. *The purpose of an acknowledgment is to lend credence to the authenticity of the instrument and to authorize its introduction in evidence without further proof that it was properly executed.*

Ashtabula County Bar Association, Notary Public Handbook, Foreword <http://ashtabulacountybar.com/pdfs/notarypublichandbook.pdf> (March 21, 2016).

The BTA unreasonably and unlawfully relied on *HIN* in determining that the sale occurred on March 5, 2009. *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, ¶16, 923 N.E.2d 1144. *HIN* was a fact-intensive case where this Court considered which of two sales bookending the tax lien date was most recent. *Id.* In a sense, creating a “tie-breaker,” *HIN* held:

1. *When a property has been the subject of two arm's-length sales between a willing seller and a willing buyer within a reasonable*

length of time either before or after the tax lien date, the sale occurring closer in time to the tax lien date establishes the true value of the property for taxation purposes.

2. In determining the date a sale of property occurs, only for purposes of establishing the true value of property pursuant to R.C. 5713.03, the auditor should use the date that the real property conveyance fee statement is filed in the auditor's office as the sale date of the property.

*Id.* at the syllabus. (Emphasis added.)

In this case before the Court, there is *one* sale not *two*. In *HIN*, given the facts, the Court had to determine which of the two transactions occurred closest to the tax lien date. In the *UTSI* case, the question is better framed as: “when did the *singular* sale occur—on the date the deed was executed or the date the deed was recorded?” That is, did the subject property sell in September 2002 or March 2009? Accordingly, *HIN* is distinguishable.

The BTA's holding in *McMahan v. Clark Cty. Bd. of Revision*, (Nov. 27, 2012) BTA No. 2011-Y-3828 applies to the fact pattern before this Court and more accurately sets forth Ohio law regarding title transfers. In *McMahan*, the BTA found:

The Ohio Supreme Court has previously addressed when an owner obtains legal title to a property and has held that a deed takes effect on the date it is delivered to the purchaser. *Kniebbe v. Wade* (1954), 161 Ohio St. 294, 297. In Ohio, whether or not recorded, a deed passes title upon its proper execution and delivery. *Wayne Bldg. & Loan Co. v. Yarborough* (1967), 11 Ohio St.2d 195, 212. Additionally, while this board has acknowledged that the better practice is to ensure a deed transferring property is promptly recorded, we have also held that ownership is not dependent on such recording and that an owner of property, even if the deed is not recorded, acquires sufficient title to file a complaint with a county board of revision challenging value.

*Id.* at p. 3.

The fact that the sale occurred in September 2002 but the deed was not recorded until March 5, 2009 is further evidence that the sale was between two related parties who were under

no rush to record the new deed and no rush to record the transfer. Recording a deed serves primarily to put the general public on notice of the ownership. If the property transferred between two related parties, as testified to by Ms. Fried, it is reasonable to infer that there would be little need or urgency to record the transfer. UTSI Supp. p. 22.

On its own, the passage of eight (8) years necessitates a finding that the transfer was too remote to be relied upon as the best evidence of the subject property's true value in money on January 1, 2011. *Akron City School Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588, syllabus, 9 N.E.3d 1004. If the sale was deemed to have occurred in September 2002 not March 5, 2009, then the sale was not recent as a matter of law and the BTA's decision was unreasonable and unlawful.

If the sale was not recent, it cannot be evidence of the value of the subject property. If the sale was not recent, the best evidence of value is Kelly Fried's expert appraisal opinion. If Kelly Fried's opinion of value is the best evidence of value, then the School Board shouldered the burden of proof at the BTA. The School Board failed to meet that burden when it failed to present any new evidence of its own.

**2. Kelly Fried's Appraisal Report Contains Ample Evidence of Changes in Market Conditions**

Assuming, in arguendo, that the BTA was correct in determining that March 5, 2009 represents the subject property's date of sale, it is still too remote to January 1, 2011 given changes in the market place. Ms. Fried testified at the BOR regarding the market changes. BOR H.T. 15:39:05 through 15:39:30, 15:40:17 through 15:40:51 and 15:45:05 through 15:45:09. Further, Ms. Fried's report contains ample evidence that the market changed from March 2009 to January 1, 2011.

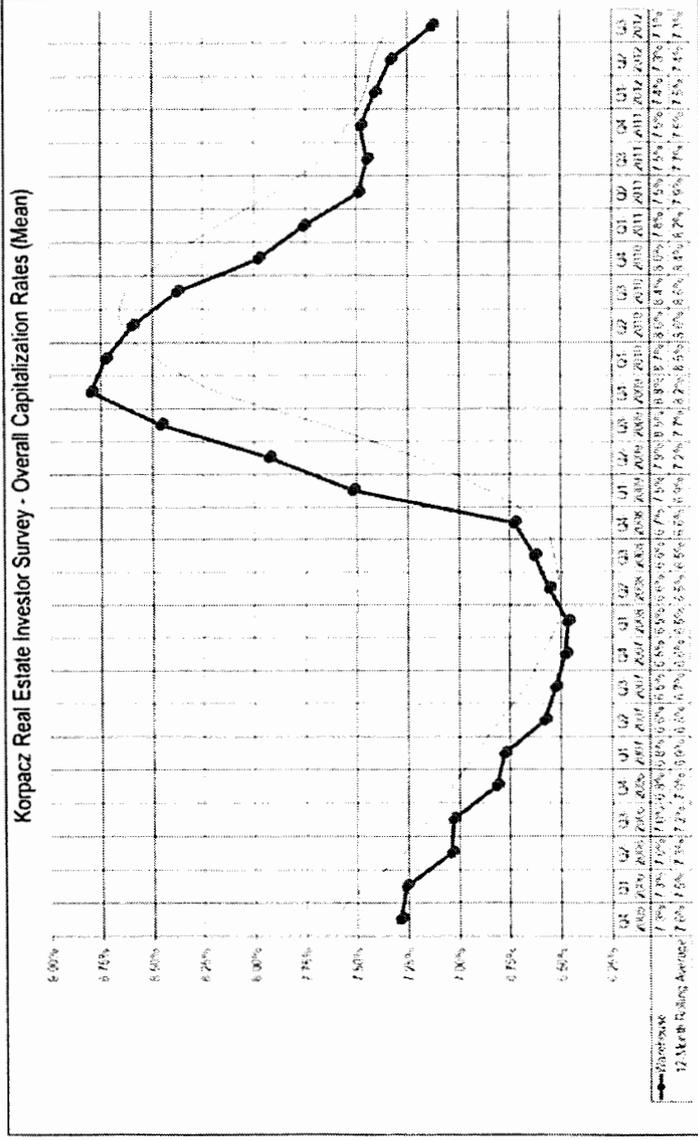
For instance, on page 28 of her report—regarding land sales—she states:

*Market Conditions:* Sale Comparable 1 [sold 9/30/2010] occurred at a time inferior to market conditions as of the effective date of the appraisal deeming an upward adjustment to be necessary. Sale Comparables 2, 3 and 4 [sold 12/20/2007, 4/2/2008 and 11/21/2007 respectively] were adjusted downward for having occurred at times superior to market conditions as of the effective date of the report. Capitalization rate trends have been used to calculate percentage adjustments for market conditions for sale of properties that occurred in superior market conditions. In addition, changes in market rent and vacancies were also used to account for total adjustments in market conditions. UTSI Supp. p. 30.

On page 33 of her report—regarding improved building sales—Ms. Fried states:

*Market Conditions:* Sale Comparable 1 [sold 4/14/2010] was adjusted upward due to the transaction occurring in a time considered to be inferior to the effective date of the report. Sale Comparable 2 [sold 12/20/2012] and 6 [sold 6/8/2012] transferred in times considered to be superior to market conditions as of January 1, 2011 resulting in downward adjustments being needed. Capitalization rate trends have been used to calculate percentage adjustments for market conditions for sale of properties that occurred in varying market conditions. In addition, changes in market rent and vacancies were also used to account for total adjustments in market conditions. UTSI Supp. p. 35.

On page 40 of her report, Ms. Fried includes a chart from the Korpacz Real Estate Investor Survey as published by PriceWaterhouseCoopers and Real Capital Analytics to show changes in market conditions. The chart is shown here:



**National Market Investor Surveys:** For this analysis, rates from secondary data sources were extracted as provided by The Korpacz Real Estate Investors Survey as published by PriceWaterhouseCoopers and Real Capital Analytics, as illustrated below:

Capitalization rate trends have been utilized to calculate percentage adjustments for market conditions for sale of properties that occurred in superior and inferior market times. In addition, changes in market rent and vacancies were also used to account for total adjustments in market conditions.

The chart establishes that the dramatic fluctuations in the national mean capitalization rate from a low of 7.5% in the first quarter of 2009 to 8.75% in the fourth quarter of 2009 to 7.75% in the first quarter of 2011. UTISI Supp. p. 42. While not local in its scope, the Korpacz chart is an authoritative reference in the real estate industry and must be considered competent and probative evidence that establishes there were changing market conditions between March 2009 and the January 1, 2011 tax-lien date.

Ms. Fried further testified at the BOR regarding why she did not use the \$2,300,000 transfer in determining the value of the subject property as of January 1, 2009. BOR H.T. 15:39:05 through 15:39:30, 15:40:17 through 15:40:51 and 15:45:05 through 15:45:09.

In *Health Care REIT*, this Court found evidence of “general market changes” to be sufficient to rebut recency. *Health Care REIT, Inc. v. Cuyahoga Cty. Bd. of Revision*, 140 Ohio St.3d 30, 2014-Ohio-2574.

In the present matter, as set forth above, the record contains evidence of significant market changes plus evidence of local market changes as well as Ms. Fried’s direct testimony on why she did not include the sale at issue in her valuation analysis.

The quantum of proof standard in *Health Care REIT* standard simply asks whether the BTA relied on “affirmative evidence” in making its decision to ignore a sale. *Id.* at ¶23. The evidence in the record contains Ms. Fried’s testimony and report, which constitutes “affirmative evidence” and undercuts any argument that there was no competent and probative evidence in the record to support the BOR’s decision.

Established case law has established that if the market changed sufficiently between the sale date and the tax lien date, then the sale would be too remote would no longer be the best evidence of true value. *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36. The BTA has followed this rule in *Columbus City Schools Bd. of Ed. v. Franklin Cty. Bd. of Revision* (June 23, 2000), B.T.A. No. 97-G-1216, unreported, where it cautioned: “Changing economic, financial, and market conditions may affect the reliability of sales data over a period of time, and this period of time may be relatively short depending upon circumstances.”

As in *Buckeye Hospitality*, Ms. Fried’s sworn and certified expert appraisal testimony and her report rebut the presumption that the March 2009 transfer was the best evidence of value. If changes in market conditions between March 2009 and January 1, 2011 render the sale too remote, the sale cannot be the best evidence of the value of the subject property. If the sale was not the best evidence, then the BOR was correct to look to Ms. Fried’s expert appraisal opinion. If Ms.

Fried's opinion of value is the best evidence of value, then the School Board had the burden of proof at the BTA.

In failing to present any witness or evidence of its own, the School Board failed to meet its burden. Accordingly, the Court should reverse the BTA's decision and reinstate the BOR's determination of value.

**Proposition of Law 2: The BTA unlawfully and unreasonably excluded Ms. Kelly M. Fried's sworn testimony and the certified statements of fact contained in her appraisal report**

The BTA unlawfully and unreasonably excluded aspects of Ms. Fried's expert appraisal evidence and testimony. The BOE made no objection to Ms. Fried testifying at the hearing and stipulated to Ms. Fried's qualifications as an expert. BOR H.T. 15:20:40 through 15:20:46. In her appraisal report, Ms. Fried states: "The property last transferred in March 3, 2009 from Lakeshore Ventures LLC to Universal Truckload for \$2.3 million in a sale that the owner reported to be *between related entities*." UTSI Supp. p. 22. (Emphasis added.) Her certification is included at page 47 of her report. UTSI Supp. p. 49.

Just as the School Board's counsel conceded at the BOR hearing, the very nature of an appraiser's job requires reliance on hearsay evidence. *The Appraisal of Real Estate* sets forth:

Appraisers should verify information with a party to the transaction to ensure its accuracy and to gain insight into the motivation behind each transaction. The buyer's and seller's views of precisely what was being purchased at the time of sale are important. Sales that are not arm's-length transactions... should be identified and rarely, if ever, used. To verify sales data, the appraiser confirms statement of fact with the principals to the transaction, if possible, or with the brokers, closing agents, or lender involved. Owners and tenants of neighboring properties may also provide helpful information.

Appraisal Institute, *The Appraisal of Real Estate* 305 (13<sup>th</sup> Ed. 2008). In setting forth her opinion as to the prior sale, Ms. Fried complied with widely-accepted and appropriate appraisal practice in

investigating the circumstances surrounding the March 2009 deed. The inclusion of the “related party” testimony is critical and explains why the subject sale was not used in the appraisal report.

This Court found in *Buckeye Hospitality* that “sworn statements of an expert appraiser at hearing in conjunction with his appraisal report can, by extension, serve to rebut the presumptive validity of valuation of the property at issue based on its prior sale price.” *Columbus City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision, supra* at ¶19. Continuing, the Court stated that “specific information bearing on the question of the recency, the arm’s-length character, or the voluntariness of the sale may be introduced as part of an appraiser’s report and opinion of value and may thereby rebut the presumption and permit the appraiser’s opinion of value to be considered.” *Id.* at ¶20.

In excluding competent, credible and probative evidence that the subject property transferred between two related corporate entities, the BTA failed to apply the expert exception to the hearsay rule. Evid. R. 703; 705; 801; 802. In *Buckeye Hospitality*, this Court held that an expert appraiser’s sworn statements and report can rebut the presumptive reliability of a sale.

The rules regarding hearsay are complicated. Moreover, in its decision, the BTA correctly recognizes that the Ohio Rules of Evidence are “a guide” to help the BTA make determinations of whether certain testimony is reliable, competent and probative. However, the BTA’s decision failed to apply the expert witness exception to the hearsay rule. The BTA’s over-simplified analysis of the hearsay issue undercuts the entire ad valorem tax valuation case law and the expert appraisal witness’ role in that process.

If there is no recent, arm’s-length sale, the proponent of a value must present a proper appraisal report. Given the nature of the real estate appraiser’s job as both an expert on real estate values as well as a qualified witness regarding the value of a specific piece of real estate: “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, 616 N.E.2d 550 (10<sup>th</sup> Dist. 1992).

Regardless, Ms. Fried’s testimony was admissible. Evid. R. 702, 703, 704 and 705 permit expert witness testimony and Evid. R. 803(6) provides for an “expert exception” to the hearsay rule since the experts’ role is inherently premised on the consideration of and reliance upon information provided by third parties.

Over and above the fact the deed and the notarized signatures unambiguously establish that the deed was executed in 2002, Ms. Fried’s sworn statements and her report state that the transfer was not an arm’s-length transaction and that the sale occurred during much different market conditions than those that existed on the January 1, 2011 tax-lien date. Thus, the BTA abused its discretion when it found that the sale at issue was recent and reliable evidence of the subject property’s value. *See also AP Hotels of Illinois, Inc. v. Franklin Cty. Bd. of Revision*, 118 Ohio St.3d 343, 2008-Ohio-2565, 889 N.E.2d 115, ¶16.

If the sale was not a recent, arm’s-length transaction, the sale cannot be evidence of the value of the subject property. If the sale was not the best evidence, then the BOR was correct to look to Ms. Fried’s appraisal opinion. If Ms. Fried’s opinion of value is the best evidence of value, the School Board had the burden of proof at the BTA and failed to meet that burden. Accordingly, the Court should reverse the BTA’s decision and reinstate the BOR’s determination of value.

#### **IV. CONCLUSION**

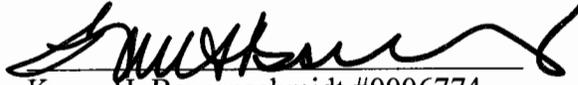
The BOR correctly decided this case. Based on Ms. Fried’s expert witness testimony and report, the BOR reasonably determined that the sale at issue was not a recent, arm’s-length

transaction. Alternatively, and based on all the evidence in the record, it can be reasonably concluded that the deed was executed in September 2002 rendering the sale too remote to the January 1, 2011 tax lien date. Regardless, the Property Owner established that even if the sale was determined to have occurred in March 2009, then market conditions had changed so significantly as to render a March 2009 sale too remote from the tax lien date to be a reliable indicator of the subject property's value.

The BTA abused its discretion when it excluded Ms. Fried's testimony regarding that the sale at issue was not an arm's-length transaction by failing to properly apply Evid. R. 702, 703, 704 and 705, which permit expert witness testimony and Evid. R. 803(6), which provides an exception to the hearsay rule for expert testimony. The BTA unreasonably and unlawfully failed to consider whether Ms. Fried's testimony was acceptable through the hearsay exception for expert witnesses. Moreover, the very nature of an expert appraiser's job is to rely on hearsay evidence. BOR H.T. 15:41:17 through 15:41:24. Given all the indicia of reliability surrounding Ms. Fried's testimony, the BTA abused its discretion by failing to properly apply a rule of evidence that was meant to guide the BTA, which resulted in it excluding critical evidence.

For all these reasons, the Court should reverse the BTA's decision and reinstate the BOR's determination of value.

Respectfully submitted,



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**UTSI FINANCE, INC. (CROWN ENTERPRISES CONSTRUCTION SERVICES, INC.)  
(CROWN ENTERPRISES, INC.)'S APPENDIX TO MERIT BRIEF**

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ORIGINAL

IN THE SUPREME COURT OF OHIO

15-1861

UTSI FINANCE, INC. (CROWN ENTERPRISES CONSTRUCTION SERVICES, INC.) (CROWN ENTERPRISES, INC.),

Appellant,

-vs-

FRANKLIN COUNTY BOARD OF REVISION, THE FRANKLIN COUNTY AUDITOR, BOARD OF EDUCATION OF THE HILLIARD CITY SCHOOLS AND TAX COMMISSIONER OF OHIO

Appellees.

CASE NO. \_\_\_\_\_

Appeal from the Ohio Board of Tax Appeals

Board of Tax Appeals Case No. 2014-3748 and 2014-3749

FILED  
NOV 17 2015  
CLERK OF COURT  
SUPREME COURT OF OHIO

NOTICE OF APPEAL OF UTSI FINANCE, INC. (CROWN ENTERPRISES CONSTRUCTION SERVICES, INC.) (CROWN ENTERPRISES, INC.)

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## **NOTICE OF APPEAL**

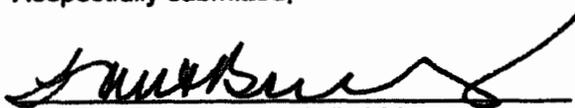
UTSI Finance, Inc. (Crown Enterprises Construction Services, Inc. and Crown Enterprises, Inc.) ("UTSI"), hereby gives notice of its appeal as of right under R.C. 5717.04 to the Supreme Court of Ohio from a Decision and Order of the Board of Tax Appeals journalized in Case Nos. 2014-3748 and 2014-3749 on October 22, 2015. A true copy of the Decision and Order of the Board being appealed is attached hereto as **Exhibit A** and incorporated herein by reference. Appellant hereby complains of the following errors in the Decision and Order of the Board of Tax Appeals:

1. The Board of Tax Appeals unreasonably and unlawfully determined that a deed executed and delivered in September 2002, but recorded in March 2009, was a 2009 sale rather than a 2002 sale in contravention of *Goddard v. Goddard*, 192 Ohio App.3d 718, 2011-Ohio-680, 950 N.E.2d 567 (4th Dist.).
2. The Board of Tax Appeals' decision and order unreasonably and unlawfully failed to apply established Ohio law that a deed does not need to be recorded to complete transfer of ownership.
3. The Board of Tax Appeals' decision and order unreasonably and unlawfully ignored competent and probative appraisal evidence when it relied on the September 2002 sale to determine value for the 2011 tax year.
4. The 2002 sale was, presumptively, not recent to constitute a "recent sale" and the School Board failed to rebut that presumption. Accordingly, the Board of Tax Appeals' decision and order is in contravention of *Akron City Sch. Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 9 N.E.3d 1004, 2014-Ohio-1588 and, therefore, is unreasonable and unlawful.
5. The Board of Tax Appeals abused its discretion when it ignored competent and probative evidence from an expert witness that the sale was between related entities and, therefore, is unreasonable and unlawful.
6. The Board of Tax Appeals abused its discretion when it disregarded Ms. Fried's testimony as an expert witness, which was probative, and relevant. Ms. Fried's expert testimony was admissible hearsay under Evid. R. 702, 803(6) and/or 803(7).

7. The Board of Tax Appeals' decision unreasonably and unlawfully determined that Ms. Fried failed to present any market data to support her assertion that the market changed significantly from the time the deed was recorded in March 2009 to the January 1, 2011 tax lien date.
8. The Board of Tax Appeals' decision and order unreasonably and unlawfully failed to consider the testimony of the Property Owner's witness.
9. The Board of Tax Appeals' decision and order unreasonably and unlawfully vacated the Board of Revision's decision since the School Board failed to present any new evidence or testimony at the Board of Tax Appeals hearing.
10. The Board of Tax Appeals' committed plain error in relying on a quit claim deed executed and delivered on September 20, 2002 when it determined that the subject property sold on February 12, 2009.
11. The Board of Tax Appeals' decision and order is unreasonable and unlawful since it relied on *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 138 Ohio St.3d 223, 5 N.E.3d 637, 2014-Ohio-523 in error.
12. The Board of Tax Appeals erred in determining that the Appellant failed to present competent and probative evidence of value, as a result the Board of Tax Appeals' decision is unreasonable and unlawful.
13. The Board of Tax Appeals' decision and order is unreasonable and unlawful since the findings of fact and conclusions of law are against the manifest weight of the evidence.
14. The Board of Tax Appeals' decision violates the Property Owner's right to due process under the Ohio and U.S. Constitution and, as a result, is unreasonable and unlawful.
15. The Board of Tax Appeals' decision and order results in an unlawful taking of property under the Ohio and U.S. Constitution and, as a result, is unreasonable and unlawful.

Appellant requests that the Court vacate the Board of Tax Appeals' decision and order the Board of Tax Appeals to determine that the subject property's true value as of January 1, 2011, 2012 and 2013 was \$1,470,000 in accordance with Kelly M. Fried, MAI's expert appraisal testimony and report.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Karen H. Bauernschmidt', written over a horizontal line.

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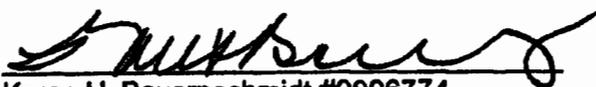
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**OHIO BOARD OF TAX APPEALS**

**BOARD OF EDUCATION OF THE HILLIARD  
CITY SCHOOLS, (et. al.),**

**CASE NO(S). 2014-3748, 2014-3749**

**Appellant(s),**

**(REAL PROPERTY TAX)**

**vs.**

**DECISION AND ORDER**

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

**Appellee(s).**

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**Entered Thursday, October 22, 2015**

**Mr. Williamson, Ms. Clements, and Mr. Harbarger concur.**

**Appellant appeals decisions of the board of revision ("BOR"), which determined the value of the subject real property, parcel numbers 560-212872-00 and 560-212873-00, for tax years 2011-2013. This matter is now considered upon the notice of appeal, the transcript certified by the BOR pursuant to R.C. 5717.01, the record of the hearing before this board, and the parties' written argument.**

**The subject's total true value was initially assessed at \$1,850,000. Both the appellee property owner, UTSI Finance, Inc. ("UTSI"), and appellant filed original complaints, with UTSI seeking a reduction to \$1,100,000, and appellant seeking an increase to \$2,313,500. Appellant submitted a deed and conveyance fee statement evidencing a March 2009 transfer of the subject property. Appellant**

contends that UTSI is estopped from challenging the arm's-length nature of the sale because it did not appeal a prior decision of the BOR relying on the sale to establish the subject's value for an earlier year. UTSI argued that the sale was not a recent arm's-length transaction and relied upon the appraisal of Kelly Fried. Ms. Fried opined that the total true value of 560-212873-00 was \$1,470,000 as of January 1, 2011. Ms. Fried also testified regarding her investigation into the March 2009 sale of the subject property, to which appellant objected on the basis of hearsay. The BOR overruled the objection, and allowed Ms. Fried to testify as to the information relayed to her regarding the sale. Notably, other than Ms. Fried's testimony, UTSI did not present any additional evidence to controvert the arm's-length nature of the sale. UTSI also argued that even if it was arm's-length, the sale was not recent to the tax lien date and is not a reliable indication of value. As support for this argument, UTSI refers to the deed recorded in March 2009, asserting that it was signed by the parties and notarized in September 2002. Accordingly, UTSI argues, the transfer took place more than eight years before the tax lien date, well-exceeding the time frame that would benefit from a presumption of recency. UTSI further contends that even the March 2009 date was remote from the tax lien date based on the conclusions reached by Ms. Fried in her appraisal. The BOR issued a decision reducing the initially assessed valuation to \$1,602,700, based on Ms. Fried's appraisal for the parcel she appraised and retaining the auditor's value for the other, indicating that it found the sale to be remote from the tax lien date. From this decision, appellant filed the the present appeals.

"When cases are appealed from a board of revision to the BTA, the burden of proof is on the appellant, whether it be a taxpayer or a board of education, to prove its right to an increase [in] or decrease from the value determined by the board of revision." *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision* (2001), 90 Ohio St.3d 564, 566. See, also, *Shinkle v. Ashtabula Cty. Bd. of Revision*, 135 Ohio St.3d 227, 2013-Ohio-397. In *EOP-BP Tower, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 1, 2005-Ohio-3096, ¶6, the court elaborated: "In order to meet that burden, the appellant must come forward and demonstrate that the value it advocates is a correct value. Once competent and probative evidence of value is presented by the appellant, the appellee who opposes that valuation has the opportunity to challenge it through cross-examination or by evidence of another value. *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, \*\*\*. The appellee also has a choice to do nothing. However, the appellant is not entitled to the valuation claimed merely because no evidence is adduced opposing that claim. *W. Industries, Inc. v. Hamilton Cty. Bd. of Revision* (1960), 170 Ohio St. 340, 342, \*\*\*." *Id.* at ¶¶5-6. (Parallel citations omitted.)

It has long been held by the Supreme Court that "the best evidence of 'true value in money' of real property is an actual, recent sale of the property in an arm's-length transaction." *Conalco v. Bd. of Revision* (1977), 50 Ohio St.2d 129. The existence of a facially qualifying sale may be confirmed through a variety of means, e.g., purchase agreement, deed, conveyance fee statement, property record card. See, e.g., *Worthington City Schools Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 124 Ohio St.3d 27, 2009-Ohio-5932; *Mason City School Dist. Bd. of Edn. v. Warren Cty. Bd. of Revision*, 138 Ohio St.3d 153, 2014-Ohio-104. Once the existence of a sale is established, "a sale price is deemed to be the value of the property, and the only rebuttal lies in challenging whether the elements of recency and arm's-length character between a willing seller and a willing buyer are genuinely present for that particular sale." *Cummins Property Servs., L.L.C. v. Franklin Cty. Bd. of Revision*, 117 Ohio St.3d 516, 2008-Ohio-1473, at ¶13. The court reaffirmed its position in *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 138 Ohio St.3d 223, 2014-Ohio-523, ¶14, stating "[t]he *only* way a party can show that a sale price is not representative of value is to show that the sale was either not recent or not an arm's-length transaction." (Emphasis sic.) Accordingly, the affirmative burden clearly rests with the opponent of using a reported sale price to demonstrate why it does not reflect the property's value. *Cincinnati Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (1997), 78 Ohio St.3d 325, 327. Additionally, "[t]hat burden

does not shift at the BTA even if the BOR decided not to use the sale price as the criterion of value.” *N. Royalton City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 129 Ohio St.3d 172, 2011-Ohio-3092, ¶16.

In the present matter, it is undisputed that the subject property transferred from Lakeshore Ventures LLC to Universal Truckload Services Inc. on March 5, 2009 for \$2,313,489. Absent an affirmative demonstration such sale is not a qualifying sale for tax valuation purposes, we find the existing record demonstrates that the transaction was recent, arm’s-length, and constitutes the best indication of the subject’s value as of tax lien date. We note that the record also contains evidence of a subsequent transfer that would be closer in time to the tax lien date, but the sale price is listed as \$0 and we find it to be an unreliable indication of value.

As the party opposing the March 2009 sale, UTSI bears an affirmative burden to demonstrate that it was not a recent arm’s-length transaction. First, we disagree with appellant’s argument that UTSI is prohibited from arguing the sale was not arm’s-length. The record from prior BOR proceedings is not before us to review, and this board is not bound by a determination of the BOR for a prior year. Compare *Sapina v. Cuyahoga Cty. Bd. of Revision*, 136 Ohio St.3d 188, 2013-Ohio-3028, ¶ 35 (“This court has emphatically held that the BTA’s independent duty to weigh evidence precludes a presumption of validity of the BOR’s valuation. *Vandalia-Butler City [School Dist. Bd. of Edn. v. Montgomery Cty. Bd. of Revision]*, 130 Ohio St.3d 291, 2011-Ohio-5078, \*\*\* ¶13.”).

In order for a recent sale to qualify as the best evidence of a property’s value, “a key consideration \*\*\* is whether the seller and buyer were both willing.” *Columbus City School Dist. Bd. of Edn. v. Franklin Cty. Bd. of Revision*, 134 Ohio St.3d 529, 2012-Ohio-5680, ¶28. In *Walters v. Knox Cty. Bd. of Revision* (1988), 47 Ohio St.3d 23, 25, the court held 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.” UTSI argues that the sale was among related parties. To support this contention, UTSI refers to Ms. Fried’s testimony, the fact that the address of both the buyer and seller were on the same street, and the length of time between the date the deed was apparently signed and the date it was recorded.

With respect to Ms. Fried’s testimony on the circumstances surrounding the subject sale, we must find that the BOR improperly overruled appellant’s objection on hearsay grounds. As an administrative entity, the Ohio Rules of Evidence do not strictly apply to our proceedings, yet they may serve to guide our hearings and determinations. See, e.g., *Orange City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1996), 74 Ohio St.3d 415; *Dublin Bd. of Edn. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 450. Pursuant to the Ohio Rules of Evidence, “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted,” is inadmissible hearsay, unless it meets one of the exceptions. Evid. R. 801; 802. Typically, when an appraiser testifies regarding the circumstances of a sale or lease of other properties as part of the investigation for her report, this testimony is offered as support for the appraiser’s analysis and ultimate conclusion of value. In this case, however, the statements were offered for the truth of the matter asserted, *i.e.*, that the sale was between related parties and may have included consideration for more than real property. Furthermore, UTSI has not set forth an exception to the hearsay rule that would otherwise permit this board to rely on such statements. Accordingly, we find that Ms. Fried’s testimony regarding the statements relayed to her regarding the March 2009 sale are unreliable hearsay and cannot be considered in our analysis. Moreover, we find that the commonality of street addresses of the two parties to the transaction and time that appears to have passed between the date the deed was signed and recorded are insufficient to show the sale was not an arm’s-length transaction.

UTSI argued, and the BOR agreed, that the sale was not recent to the tax lien date. Ohio courts have

refrained from setting forth a "bright line" test to establish whether a sale of property is sufficiently close to a tax lien date to be presumed to accurately reflect its value. See, generally, *New Winchester Gardens, Ltd. v. Franklin Cty. Bd. of Revision* (1997), 80 Ohio St.3d 36, 44, overruled in part on other grounds *Cummins Property Servs.*, supra ("The question of how long after a sale the sale price is to be considered the best evidence of true value will vary from case to case."). Such restraint results from the recognition that whether a sale is "recent" to or "remote" from a tax lien date is not decided exclusively upon temporal proximity, but may necessarily involve a multitude of other impacts/considerations. See, e.g., *Cummins Property Servs.*, supra, at ¶35 (recency "encompasses all factors that would, by changing with the passage of time, affect the value of the property"); *New Winchester Gardens*, supra (recency factors include "changes that have occurred in the market"). As for assertions regarding adjusting market changes, general claims are typically insufficient, and instead a party advocating for the existence of intervening events must demonstrate their actual existence. Nevertheless, as a sale becomes more distant in time from a tax lien date, "the proponent of the sale price as the value should come forward with evidence showing that market conditions or the character of the property have not changed between the sale date and the lien date." *Akron City School Dist. Bd. of Edn. v. Summit Cty. Bd. of Revision*, 139 Ohio St.3d 92, 2014-Ohio-1588.

UTSI points to the execution and notarization dates on the deed to show that the property was transferred several years prior to the date the deed and conveyance fee statement were filed. The Supreme Court has held, however, that "in determining the date a sale of property occurs, only for purposes of establishing the true value of property pursuant to R.C. 5713.03, the auditor should use the date that the real property conveyance fee statement is filed in the auditor's office as the sale date of the property." *HIN, L.L.C. v. Cuyahoga Cty. Bd. of Revision*, 124 Ohio St.3d 481, 2010-Ohio-687, ¶24. Relying on this holding, the court has further held that a conveyance-fee statement relied upon by a school board formed an adequate basis for this board to find a sale recent and arm's-length, subject to rebuttal by the property owner contesting the sale. *N. Royalton*, supra, at ¶16. Although the instant appeal involves the execution of a deed rather than a negotiation of the parties, we find that the holdings in *HIN* and *N. Royalton* apply. As the court explained in *HIN*:

"R.C. 317.22 provides that '[n]o deed of absolute conveyance of land \* \* \* shall be recorded by the county recorder until \* \* \* [t]he conveyance presented to the recorder bears the stamp of the county auditor \* \* \* [and s]uch conveyance has been presented to the county auditor, and by the county auditor indorsed "transferred" or "transfer not necessary."' Before the deed may be endorsed by the auditor, however, R.C. 319.202 requires the new owner to submit a real property conveyance fee statement to the auditor declaring the value of the real property, and pursuant to R.C. 319.20, the auditor must transfer the parcel into the new owner's name on the tax list. The purpose of this statutory scheme is to provide the auditor the necessary information to determine the true value of property based on a property sale in accordance with R.C. 5713.03." *Id.* at ¶23.

Accordingly, for purposes of our analysis, we consider the March 5, 2009 date on which the deed and conveyance fee statement were filed as the sale date.

As previously discussed, UTSI offered the appraisal of Ms. Fried to show that market conditions changed between March 2009 and January 1, 2011 to such an extent that the sale was not recent to the tax lien date. Ms. Fried performed a market trend analysis, in which she presented various statistics about the local market. Notably absent from this analysis, however, is any support for her summary and conclusion that "real estate Market Values in the area were stable to decreasing over the past few years as a result of the current economic conditions and increasing capitalization rates." Ms. Fried

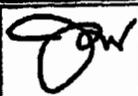
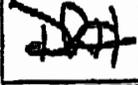
does not include any data to support this conclusion, whether it be by surveys, pared sales analysis, or another form of comparison to show that the market in which the subject is located underwent such significant decline as to render the March 2009 sale remote from the tax lien date. Accordingly, we find that UTSI has failed to show that the March 2009 sale was not a recent arm's-length transaction and reliable indication of the subject property's true value as of the tax lien date.

Thus, we do not reach the conclusions reached by Ms. Fried in her appraisal. As has been noted, the "best evidence" of a property's value is the amount for which it transfers between two unrelated parties "recent" to tax lien date. See, e.g., *Berea City School Dist. Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision*, 106 Ohio St.3d 269, 2005-Ohio-4979. Once evidence of a qualifying sale has been presented, "[i]t is only when the purchase price does not reflect the true value that a review of independent appraisals based upon other factors is appropriate. \*\*\*" *Pingue v. Franklin Cty. Bd. of Revision* (1999), 87 Ohio St.3d 62, 64. (Citation omitted.) See, also, *Cummins Property Servs.*, supra at ¶13 ("At the very heart of *Berea* lies the rejection of appraisal evidence of the value of the property whenever a recent, arm's-length sale price has been offered as evidence of value."). (Footnote omitted.)

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

PARCEL NUMBER  
560-212872-00  
TRUE VALUE  
\$165,950  
TAXABLE VALUE  
\$58,080

PARCEL NUMBER  
560-212873-00  
TRUE VALUE  
\$2,147,540  
TAXABLE VALUE  
\$751,640

BOARD OF TAX APPEALS		
RESULT OF VOTE	YES	NO
Mr. Williamson		
Ms. Clements		
Mr. Harbarger		

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Kathleen M. Crowley, Board Secretary

**NOTICE OF APPEAL TO THE BOARD OF TAX APPEALS  
FROM A DECISION OF A COUNTY BOARD OF REVISION**

READ IMPORTANT FILING INFORMATION ON BACK BEFORE COMPLETING THIS FORM

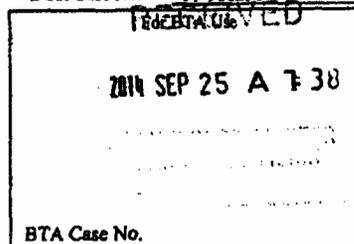
BOR Case No. 11-900291

Board of Education of the Hilliard City Schools  
Appellant, (Please Print)

v.

AUDITOR/FISCAL OFFICER AND THE BOARD OF REVISION OF  
Franklin County, Ohio and

UTSI Finance, Inc.  
Appellee(s) (All other parties to the appeal)



The Appellant appeals a Board of Revision (BOR) decision mailed on (date) 8/27/2014 for tax year 2011. (Attach decision copy)

Property Owner's Name UTSI Finance, Inc.

Property Owner's Address 12755 East Nine Mile Road, Warren, MI 48089

	1st Parcel	2nd Parcel	3rd Parcel
Parcel (or registration) No.	See attached sheet for parcel information		
Parcel's Address - Street City, State Zip			
Parcel's School District			
Appellant's Opinion of Parcel's Market Value			

Evidence supporting opinion of market value: See statutory transcript. Additional evidence may be submitted at the hearing.  
(Arm's-length sale of the subject, a qualifying appraisal, or some other evidence - describe)

Appeal of a BOR decision starts a formal adjudication process often involving lawyers, discovery, motions and expert witness (appraiser) testimony. The Small Claims Option avoids much of the formality and resolves simple disputes quickly and inexpensively. More information is in the form instructions.

Small Claims Option (Check One): YES  NO  Small claims involve simple disputes that can be resolved quickly and inexpensively. Most residential property qualifies for the small claims option but taxpayer consent is required because decisions have no precedential value, they are final for all parties and cannot be appealed. More information is provided in the instruction portion of this form. By electing to have your appeal resolved as a small claim, you understand and agree to these conditions.

Request Hearing (Check One): YES  NO  All evidence is required to be presented to the BOR, a record of which is transmitted to the BTA for consideration. BTA hearings are therefore unnecessary unless new evidence has become available since the BOR proceedings. If a BTA hearing is scheduled, it will be held in the BTA's offices in Columbus, OH, and your appeal may be dismissed if you do not attend or if you fail to provide prior notice of your intent not to attend. Hearings for small claims, if requested, will be an informal, non-record hearing conducted by telephone only.

Contact Information:  
  
Appellant or Representative (signature)  
Mark H. Gillis, Attorney  
Print Name and Title If Representative  
6400 Riverside Dr., Suite D  
Mailing Address  
Dublin Ohio 43017  
City State Zip

mgillis@richgillislawgroup.com  
Email Address  
(614) 228-5822  
Phone Number  
(614) 540-7476  
Fax Number (If Any)  
9/23/14  
Date

**EXHIBIT "B"**

40254

<b>PARCEL NUMBER</b>	<b>PARCEL ADDRESS</b>	<b>SCHOOL DISTRICT</b>	<b>APPELLANT'S OPINION OF MARKET VALUE</b>
560 - 212873-00	2950 International Street	See Appellant for applicable school district	2,147,400
560 - 212872-00	International Street	See Appellant for applicable school district	166,100
<b>TOTAL</b>			<b>2,313,500</b>



# Board of Revision

Franklin County • Ohio

AUGUST 27, 2014

UTSI FINANCE INC  
12755 E. NINE MILE RD  
WARREN, MI 48089

Complaint No: 11-900291 A&B  
Parcel: 560-212873  
Hearing Date: AUGUST 21, 2014

Marilyn Brown  
Commissioner

Edward J. Leonard  
Treasurer

Clarence E. Mingo II  
Auditor

LyAnne Brown  
Clerk

After consideration of the above complaint, it is the decision of the Board of Revision that the property's new fair market value is \$1,470,000. This value is effective as of tax lien date January 1, 2011, 2012 & 2013. If you have received a reduction in fair market value please see overpayment policy below.

You may appeal this decision by filing the proper notice of appeal with either the Ohio Board of Tax Appeals, (O.R.C. 5717.01), or with the Court of Common Pleas, (O.R.C. 5717.05). Such an appeal must be filed within 30 days after the mailing of this notice.

Please call (614) 525-3913 if we can be of further assistance.

Sincerely,

LyAnne Brown, Clerk  
Franklin County Board of Revision

LAB

CC: JEFFREY RICH, ESQ.

#### Overpayment Policy

If the decision of the Board of Revision results in a decrease in property value you may be entitled to a credit of overpaid taxes. Any taxes or assessments charged to the parcel, if ownership has not changed, will be paid off before a refund is issued. Thank you.

373 S. High Street • Columbus, Ohio 43215-6310 • (614) 525-3913 • FAX (614)525-6252

# OHIO BOARD OF TAX APPEALS

Board of Education of the	)	
Columbus City Schools,	)	
	)	
Appellant,	)	CASE NO. 97-G-1216
	)	
vs.	)	(REAL PROPERTY TAX)
	)	
Franklin County Board of Revision,	)	
Franklin County Auditor, and	)	DECISION AND ORDER
Leland R. Secrest Trust,	)	
	)	
Appellees.	)	

## APPEARANCES:

For the Appellant -	Martin J. Hughes, III Green and Hughes 100 East Wilson Bridge Rd. Suite 210 Worthington, Ohio 43085
For the County - Appellees	Ron O'Brien Franklin County Prosecuting Attorney By: Paul Stickel Assistant County Prosecutor 373 South High Street, 20 <sup>th</sup> Floor Columbus, Ohio 43215
For Leland R. - Secrest Trust	Leland R. Secrest 1178 Millcreek Lane Columbus, Ohio 43220

Entered June 23, 2000

Mr. Johnson, Ms. Jackson and Mr. Manoranjan concur.

This cause and matter is before the Board of Tax Appeals as a result of a notice of appeal filed herein by the above-named appellant from a decision of the

Franklin County Board of Revision (BOR). In said decision the BOR determined the taxable value of the subject real property for tax year 1996.

The subject property is located in the City of Columbus-Columbus City School District Taxing District, Franklin County, Ohio, and appears on the Auditor's records as Parcel Nos. 10-101437, 10-101438, 10-101439, and 10-101440. The subject property is improved with a 28- unit apartment complex.

The Franklin County Auditor found the true and taxable value of the subject property for tax year 1996 to be as follows:

**Parcel Number 10-101437**

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 28,000	\$ 9,800
Building	<u>154,800</u>	<u>54,180</u>
Total	\$ 182,800	\$ 63,980

**Parcel Number 10-101438**

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 28,000	\$ 9,800
Building	<u>-0-</u>	<u>-0-</u>
Total	\$ 28,000	\$ 9,800

**Parcel Number 10-101439**

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 28,000	\$ 9,800
Building	<u>154,400</u>	<u>54,040</u>
Total	\$ 182,400	\$ 63,840

**Parcel Number 10-101440**

	<u>True Value</u>	<u>Taxable Value</u>
--	-------------------	----------------------

Land	\$ 28,000	\$ 9,800
Building	<u>-0-</u>	<u>-0-</u>
Total	\$ 28,000	\$ 9,800

The Board of Revision granted a decrease and determined the true and taxable values to be as follows:

**Parcel Number 10-101437**

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 16,000	\$ 5,600
Building	<u>146,000</u>	<u>51,100</u>
Total	\$ 162,000	\$ 56,700

**Parcel Number 10-101438**

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 20,000	\$ 7,000
Building	<u>-0-</u>	<u>-0-</u>
Total	\$ 20,000	\$ 7,000

**Parcel Number 10-101439**

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 16,000	\$ 5,600
Building	<u>146,000</u>	<u>51,100</u>
Total	\$ 162,000	\$ 56,700

**Parcel Number 10-101440**

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 16,000	\$ 5,600
Building	<u>-0-</u>	<u>-0-</u>
Total	\$ 16,000	\$ 5,600

The appellant contends in its notice of appeal that the correct values for the subject property should be as follows:

**Parcel Number 10-101437**

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 28,000	\$ 9,800
Building	<u>154,800</u>	<u>54,180</u>
Total	\$ 182,800	\$ 63,980

**Parcel Number 10-101438**

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 28,000	\$ 9,800
Building	<u>-0-</u>	<u>-0-</u>
Total	\$ 28,000	\$ 9,800

**Parcel Number 10-101439**

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 28,000	\$ 9,800
Building	<u>154,400</u>	<u>54,040</u>
Total	\$ 182,400	\$ 63,840

**Parcel Number 10-101440**

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 28,000	\$ 9,800
Building	<u>-0-</u>	<u>-0-</u>
Total	\$ 28,000	\$ 9,800

This matter is now considered by the Board of Tax Appeals upon the notice of appeal, the statutory transcript certified to this Board by the Franklin County Board of Revision (BOR), and the testimony and evidence submitted at the hearing before this Board. We briefly note that counsel for the Board of Education, in his

opening remarks questioned the constitutionality of Sub. H.B. 694, but conceded that this Board lacked jurisdiction to decide the question.

At the outset, we acknowledge the affirmative burden which exists in an appeal to this Board from a decision of a county board of revision finding value. In its decisions in *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (1994), 68 Ohio St.3d 336, and *Springfield Local Bd. of Edn. v. Summit Cty. Bd. of Revision* (1994), 68 Ohio St.3d 493, the Ohio Supreme Court made it clear that in an appeal filed pursuant to R.C. 5717.01, there exists no presumption that the values found by a board of revision are correct. Nevertheless, an appellant has the burden of presenting evidence in support of the value which it has asserted. Once competent and probative evidence of value has been presented, then the other parties to the appeal have the burden of providing evidence which rebuts that of the appellant. *Springfield Local Bd. of Edn., supra*; *Mentor Exempted Village Bd. of Edn. v. Lake Cty. Bd. of Revision* (1988), 37 Ohio St.3d 318, 319. While this Board may ultimately find that a property has the same value as that previously determined by a county board of revision, either because the evidence supports such a conclusion or because the appellant has failed to prove otherwise, such a conclusion will be the result of an independent, *de novo*, determination which is predicated upon the preponderance of the evidence. See *National Church Residence v. Licking Cty. Bd. of Revision* (1995), 73 Ohio St.3d 397.

In assessing property at its taxable value, a county auditor must first determine the property's true value. In this regard, R.C. 5713.03 provides in part:

“In determining the true value of any tract, lot, or parcel of real estate under this section, if such tract, lot or parcel has been the subject of an arm’s length sale between a willing seller and a willing buyer within a reasonable length of time, either before or after the tax lien date, the auditor shall consider the sale price of such tract, lot, or parcel to be the true value for taxation purposes. \* \* \*”

*In State, ex rel. Park Investment Co. v. Bd. of Tax Appeals* (1964), 175 Ohio St. 410, the Supreme Court addressed the manner by which the value of real estate is to be ascertained:

“The best method of determining value, when such information is available, is an actual sale of such property between one who is willing to sell but not compelled to do so and one who is willing to buy but not compelled to do so. Paragraph two of the syllabus in In Re Estate of Sears [(1961)], 172 Ohio St., 443, 178 N.E. (2d), 240. This, without question, will usually determine the monetary value of the property. However, such information is not usually available, and thus an appraisal becomes necessary. It is in this appraisal that the various methods of evaluation, such as income yield or reproduction cost, come into action. Yet, no matter what method of evaluation is used, the ultimate result of such an appraisal must be to determine the amount which such property should bring if sold on the open market.” Id. at 412.

At the BOR hearing and the hearing before this Board Mr. Secrest testified at length regarding the history of this property. He purchased the property in 1970 for \$179,000. Thereafter, he and his wife established separate trusts and the property in issue was transferred to Mr. Secrest’s trust. In 1984 he sold the property by land contract for \$516,000. Ultimately, the purchaser was unable to operate the property successfully and Mr. Secrest repossessed the property in 1990. The property had deteriorated and the neighborhood was going down. Mr. Secrest testified that he spent approximately \$100,000 to bring the property up to shape. He hired Wallace Ackley Company to manage the property. Again, the apartment complex was not profitable.

Mr. Secrest testified that the neighborhood had become crime-ridden and

the apartments were filled with drug dealers and drug users. He stated that the police were no help and the vacancy rate was very high. He finally found a prospective buyer for the property, however the young man did not have enough money for the purchase. Mr. Secrest and the man struck a deal wherein the man would manage the property and in a year or so he would have the necessary funds to purchase the property. After a year or so the young man backed out of the deal. Mr. Secrest testified that the man's wife was fearful of his safety in that neighborhood.

Thereafter, Mr. Secrest made many attempts to sell the property with no success. He even offered to do seller financing but every deal fell through when the prospective buyer would view the property and the vacancy record. He stated that one prospective buyer was turned down by the bank because the income history was so low. He tried to sell the property in 1995 for \$500,000 with no success. He lowered the price to \$475,000 and finally to \$375,000 with no success. Finally in June of 1998, two and a half years after the tax lien date, he sold the property for \$300,000.

In the instant matter, the evidence before this Board indicates that the sale in issue was indeed actual and arm's-length in nature. However, given the length of time between the sale on June 22, 1998 and the tax lien date of January 1, 1996, we must determine whether the sale is sufficiently recent for the purpose of determining the true value of the subject property. See *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Dec. 31, 1992), B.T.A. No. 90-K-102 and 90-K-103, unreported. (“[R]egardless of whether the indices of a sale, as contemplated by R.C. 5713.03, are contested by the parties, this Board must review each of the requirements imposed in order to determine whether a sale provides the best evidence of true value \* \* \*.”)

In determining whether a sale is recent, both the Ohio Supreme Court and this Board have refused to establish a “bright-line” test. Whether a sale is “recent” for valuation purposes is viewed as being relative, *i.e.*, “whether a sale is recent for real estate tax valuation purposes depends upon the surrounding circumstances in each

case and not upon some arbitrary or absolute notion about what constitutes a recent sale \* \* \*.” *Cuturic v. Cuyahoga Cty. Bd. of Revision* (July 16, 1993), B.T.A. No. 92-R-329, unreported. Changing economic, financial, and market conditions may affect the reliability of sales data over a period of time, and this period of time may be relatively short depending upon circumstances. *Griffin v. Fairfield Cty. Bd. of Revision* (Oct. 9, 1992), B.T.A. No. 90-P-806, unreported; *Cleveland Bd. of Edn. v. Cuyahoga Cty. Bd. of Revision* (Mar. 19, 1982), B.T.A. Nos. 79-C-105 and 79-D-557, unreported.

Also germane to the present situation is our decision in *United States Postal Service v. Logan Cty. Bd. of Revision* (Mar. 29, 1985), B.T.A. Nos. 82-B-501 and 82-B-535, unreported. Therein, the property was sold via an arm’s-length transaction in August of 1977. This was approximately 40 months prior to the tax lien date of January 1, 1981. Nevertheless, we found the sale to be within a reasonable time of the tax lien date. In reaching our determination of value, we rejected the appraisal evidence offered by the parties and based our decision upon the 1977 sale. Specifically, we held the following:

“In our opinion the time interval, in and of itself, is of little consequence. It is the effect of the interval that is important. What happened between the sale of the subject property and the tax lien date that would alter the fair market value of the property? \* \* \* There is no evidence in the record to show a material change in values between 1977 and 1981. This applies to the community as well as the subject property. \* \* \* In consideration of the above we find that the best evidence of the subject property is the consideration paid in the 1977 sale.” *Id.* At 10-11.

See also, *Samuel Zell Trustee v. Hamilton Cty. Bd. of Revision* (Mar. 29, 1996), B.T.A. Case No. 94-N-27, unreported.

At the hearing before this Board the appellant, Mr. Secrest testified that the BOR had appraisers and was contacted by the appraisal firm of Cole, Layer and Trumble for information. He stated that he tried to answer any questions they had. Ultimately the BOR determined a value of \$360,000. The statutory transcript, however, does not indicate how the \$360,000 figure was derived. Further, the record does not contain any appraisal report. We are left to speculate how the BOR arrived at the value of \$360,000. The Board of Education did not present any appraisal or additional evidence to support the value claimed in its notice of appeal. The hearing record consists of the testimony of Mr. Secrest and cross-examination. As previously stated, Mr. Secrest gave detailed testimony before the BOR and this Board regarding the deteriorated state of the neighborhood, vacancy rates, and the failed attempts to sell the property. He testified that from 1986 to the time it was sold in June the property suffered from the same drug tenants and vacancy rates.

Regarding Mr. Secrest's testimony, the Ohio Supreme Court has specifically recognized that an owner of real property, by virtue of his interest in the property, is competent to testify regarding its market value. *Amsdell v. Cuyahoga Cty. Bd. of Revision* (1994), 69 Ohio St.3d 572; *Tokles & Son, Inc. v. Midwestern Indemn. Co.* (1992), 65 Ohio St.3d 621, paragraph two of the syllabus; *Smith v. Padgett* (1987), 32 Ohio St.3d 344, 347. However, the weight to be accorded this evidence is left to the sound discretion of this Board. *Cardinal Federal S. & L. Assn. V. Bd. of Revision* (1975), 44 Ohio St.2d 13, paragraphs two and three of the syllabus. Mr. Secrest submitted sufficient evidence that the property warranted a reduction in value. The BOR granted a reduction but it is unclear how the amount of reduction was determined. Further, the BOR did not have the advantage of considering the 1998 sale.

Based on the testimony of Mr. Secrest, the record in this matter, and the

statutes and case law, we find that the sale in June 1998 most accurately reflects the value of the property as of tax lien date. We further find no evidence of changing economic, financial or market conditions between the tax lien date and the date of the sale.

Accordingly, it is the decision and order of the Board of Tax Appeals that the value of the subject property as of January 1, 1996, was as follows:

**Parcel Number 10-101437**

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 13,200	\$ 4,620
Building	<u>121,800</u>	<u>42,630</u>
Total	\$ 135,000	\$ 47,250

**Parcel Number 10-101438**

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 16,800	\$ 5,880
Building	<u>-0-</u>	<u>-0-</u>
Total	\$ 16,800	\$ 5,880

**Parcel Number 10-101439**

	<u>True Value</u>	<u>Taxable Value</u>
Land	\$ 13,200	\$ 4,620
Building	<u>121,800</u>	<u>42,630</u>
Total	\$ 135,000	\$ 47,250

**Parcel Number 10-101440**

<u>True Value</u>	<u>Taxable Value</u>
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Land	\$ 13,200	\$ 4,620
Building	<u>-0-</u>	<u>-0-</u>
Total	\$ 13,200	\$ 4,620

It is ordered that the records of the Auditor of Franklin County shall reflect the values as determined above. ohiosearchkeybta

**OHIO BOARD OF TAX APPEALS**

Don McMahan and Florence Wile, )  
 )  
 Appellants, ) (CASE NO. 2011-Y-3828  
 ) (REAL PROPERTY TAX)  
 vs. )  
 ) (DECISION AND ORDER  
 )  
 Clark County Board of Revision, the )  
 Clark County Auditor, and the Tecumseh )  
 Local School District Board of Education, )  
 )  
 Appellees. )

**APPEARANCES:**

For the Appellants - Don McMahan, pro se  
3324 Valley Street  
Riverside, Ohio 45424

For the County Appellees - D. Andrew Wilson  
Clark County Prosecuting Attorney  
William P. Hoffman  
Assistant Prosecuting Attorney  
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For the Appellee - Means, Bichimer, Burkholder & Baker Co., L.P.A.  
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Columbus, Ohio 43204-4894

Entered **NOV 27 2012**

Ms. Margulies, Mr. Johrendt, and Mr. Williamson concur.

This matter is now considered upon review of matters currently pending before the Board of Tax Appeals. Specifically, this board must determine whether the board of revision ("BOR") properly dismissed the appellants' complaint.

On November 4, 2011, appellants filed a notice of appeal with this board appealing the BOR's dismissal of their complaint for lack of jurisdiction. Although given an opportunity to dispute whether the BOR properly determined that the

appellants' complaint was jurisdictionally deficient, appellants did not respond. Therefore, this matter is submitted to the Board of Tax Appeals upon the notice of appeal and the statutory transcript (S.T.) certified to this board by the county board of revision.<sup>1</sup>

On March 31, 2011, a complaint was filed with the BOR requesting a decrease in the value of certain real property, i.e., parcel number 010-05-00025-411-002, for tax year 2010. The complaint identified the owner of the property as "Florence Wile" and the complainant if not owner as "Don McMahan." S.T. at Exhibit ("Ex.") A. The complaint was signed by Don McMahan. Id. On April 22, 2011, the appellee Tecumseh Local School District Board of Education ("BOE") filed a countercomplaint. S.T. at Ex. B.

On October 5, 2011, a hearing was convened and attended by Mr. McMahan and a representative for the appellee BOE. Hearing transcript. At the hearing, Mr. McMahan testified that he bought the property in 1994, was given the deed at closing, but that his sister, who passed away roughly two months after the transfer, "did something with that deed and about three other deeds I had. And the deed had not been recorded." Id. at 16. Mr. McMahan continued to assert that he "bought her out. We had to do it. That's the only way. I do not have that deed." Id. Mr. McMahan further went on to testify that he was acting in the capacity of agent for the owner and that he is not an attorney. Id. at 18.

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<sup>1</sup> On August 29, 2012, the county appellees supplemented the record with a transcript of the hearing convened on October 5, 2011 before the BOR.

On October 7, 2011, the BOR dismissed the complaint, but did not state its grounds for doing so. S.T. at Ex. E. It appears that this appeal presents multiple issues. The first issue is that of ownership and line one of the complaint, while second is the issue of agency and the BOR's jurisdiction when someone other than the owner files the complaint on the owner's behalf.

The Ohio Supreme Court has previously addressed when an owner obtains legal title to a property and has held that a deed takes effect on the date it is delivered to the purchaser. *Kniebbe v. Wade* (1954), 161 Ohio St. 294, 297. In Ohio, whether or not recorded, a deed passes title upon its proper execution and delivery. *Wayne Bldg. & Loan Co. V. Yarborough* (1967), 11 Ohio St.2d 195, 212. Additionally, while this board has acknowledged that the better practice is to ensure a deed transferring property is promptly recorded, we have also held that ownership is not dependent on such recording and that an owner of property, even if the deed is not recorded, acquires sufficient title to file a complaint with a county board of revision challenging value. See, e.g., *Gammarino v. Hamilton Cty. Bd. of Revision* (Feb. 8, 1995), BTA No. 1994-H-48, unreported; *Women's Fed. Sav. & Loan v. Cuyahoga Cty. Bd. of Revision* (Interim Order, June 9, 2006), BTA No. 2005-M-1501, unreported. Cf. *Option One Mortgage Corp. v. Boyd* (June 15, 2001), Montgomery App. No. 18715, unreported.

The Supreme Court has also discussed when a complainant must accurately disclose requested information on a complaint form and found that the need to accurately identify the titled owner has been determined to run to the core of

procedural efficiency. See *Cincinnati School Dist. Bd. of Edn. v. Hamilton Cty. Bd. of Revision* (2000), 87 Ohio St.3d 363. Thus, when a complainant does not accurately disclose the identity of the owner, the county board of revision has no authority to act.

In the instant appeal, even if we found the record contained sufficient information to show that Mr. McMahan was the titled owner of the property, then the complaint would have improperly listed Florence Wile on line one of the complaint, making it jurisdictionally deficient.

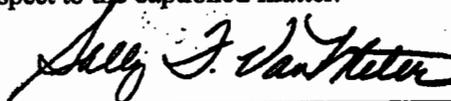
Prior case law would suggest that an agent of the owner of property does not have legal authority to file a real property valuation complaint unless that agent qualifies as an attorney at law. *Sharon Village Ltd. v. Licking Cty. Bd. of Revision* (1997), 78 Ohio St.3d 479 (“The preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law.”). However, more recent case law indicates that the Supreme Court has loosened its stance regarding the authority of a non-attorney agent to file on behalf of an owner where there is a fiduciary relationship between the non-attorney agent and the titled owner. See *Dayton Supply & Tool Co., Inc. v. Montgomery Cty. Bd. of Revision*, 111 Ohio St.3d 367, 2006-Ohio-5852.

In the instant case, Mr. McMahan was given the opportunity to challenge the BOR’s dismissal, but presented nothing to this board to contest the BOR’s findings. Further, there is nothing in the record to show that Mr. McMahan had a fiduciary relationship to the owner of the property. Accordingly, there is

nothing in the record to support a finding that the complaint was jurisdictionally sufficient.

Based upon the foregoing, it is the decision of the Board of Tax Appeals that the original decrease complaint filed in this matter was insufficient to invoke the jurisdiction of the BOR. Therefore, based upon the foregoing, we must find that the BOR correctly dismissed the subject complaint for lack of jurisdiction. Thus, the determination of the BOR is hereby affirmed.

I hereby certify the foregoing to be a true and complete copy of the action taken by the Board of Tax Appeals of the State of Ohio and entered upon its journal this day, with respect to the captioned matter.



Sally F. Van Meter, Board Secretary